

VOLUME II OF II

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

V.

RICHARD KENNETH GALLOWAY,

APPELLANT

APPELLATE CASE NO 2018-001806

RECORD ON APPEAL

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## INDEX

|                                                       |     |
|-------------------------------------------------------|-----|
| INDEX .....                                           | i   |
| TRIAL TRANSCRIPT (MAY 14 – 16, 2018) .....            | 1   |
| MOTION FROM STATE TO AMEND DATE ON INDICTMENT .....   | 7   |
| COURT GRANTS MOTION TO AMEND DATE ON INDICTMENT ..... | 11  |
| JURY SELECTION .....                                  | 15  |
| MOTION FROM DEFENSE OF COMPETENCY OF WITNESS .....    | 24  |
| OPENING STATEMENT BY MR. HOLLOWAY .....               | 32  |
| OPENING STATEMENT BY MR. SHIPMAN .....                | 39  |
| TESTIMONY                                             |     |
| DETECTIVE REBECCA LINDLER (IN-CAMERA)                 |     |
| Direct Examination by Mr. Holloway .....              | 44  |
| COMPLAINANT (IN-CAMERA)                               |     |
| Direct Examination by Mr. Holloway .....              | 60  |
| Cross Examination by Mr. Shipman .....                | 144 |
| Redirect Examination by Mr. Holloway .....            | 197 |
| Re-Cross Examination by Mr. Shipman .....             | 205 |
| MOTION FROM DEFENSE .....                             | 207 |
| TESTIMONY                                             |     |
| PATRICIA WALDROP                                      |     |
| Direct Examination by Mr. Holloway .....              | 210 |
| Cross-Examination by Mr. Shipman .....                | 237 |
| Redirect Examination by Mr. Holloway .....            | 245 |
| JACKSON V. DENNO HEARING                              |     |
| INVESTIGATOR ROBERT PERRY (IN-CAMERA)                 |     |
| Direct Examination by Mr. Holloway .....              | 252 |
| Cross-Examination by Mr. Shipman .....                | 257 |

|                                                    |     |
|----------------------------------------------------|-----|
| COURT'S RULING ON JACKSON V. DENNO HEARING.....    | 262 |
| TESTIMONY                                          |     |
| SHAUNA GALLOWAY-WILLIAMS (IN-CAMERA)               |     |
| Direct Examination by Mr. Holloway .....           | 267 |
| Cross-Examination by Mr. Goldstein .....           | 285 |
| SHAUNA GALLOWAY-WILLIAMS                           |     |
| Direct Examination by Mr. Holloway .....           | 316 |
| Cross-Examination by Mr. Goldstein .....           | 340 |
| INVESTIGATOR ROBERT PERRY                          |     |
| Direct Examination by Mr. Holloway .....           | 358 |
| Cross-Examination by Mr. Goldstein .....           | 371 |
| Redirect Examination by Mr. Holloway .....         | 392 |
| THE STATE RESTS .....                              | 395 |
| MOTION FOR A DIRECTED VERDICT .....                | 396 |
| DEFENSE'S RENEWAL OF ALL MOTIONS.....              | 401 |
| COURT'S RULING .....                               | 401 |
| TESTIMONY                                          |     |
| DR. DAVID PRICE                                    |     |
| Direct Examination by Mr. Shipman .....            | 403 |
| Voir Dire Examination by Mr. Holloway .....        | 411 |
| Direct Examination by Mr. Shipman (Continued)..... | 416 |
| Cross-Examination by Mr. Holloway .....            | 423 |
| DR. DAVID PRICE (IN-CAMERA)                        |     |
| Direct Examination by Mr. Shipman .....            | 434 |
| Cross-Examination by Mr. Holloway .....            | 447 |
| Redirect Examination by Mr. Shipman .....          | 461 |
| DEFENSE RENEWAL OF ALL MOTIONS .....               | 462 |
| EXAMINATION BY THE COURT OF DEFENDANT .....        | 463 |
| CLOSING ARGUMENT BY MR. HOLLOWAY.....              | 468 |
| CLOSING ARGUMENT BY MR. SHIPMAN.....               | 493 |

|                                                                    |     |
|--------------------------------------------------------------------|-----|
| CLOSING STATEMENT BY MR. HOLLOWAY.....                             | 507 |
| CHARGE ON THE LAW .....                                            | 508 |
| ALLEN CHARGE .....                                                 | 546 |
| VERDICT .....                                                      | 549 |
| CHARGE ON THE LAW .....                                            | 516 |
| VERDICT .....                                                      | 529 |
| MOTION FROM DEFENSE FOR NEW TRIAL .....                            | 553 |
| COURT’S RULING .....                                               | 553 |
| SENTENCING .....                                                   | 562 |
| MOTION TO RECONSIDER SENTENCING TRANSCRIPT (OCTOBER 4, 2018) ..... | 565 |
| MOTION FOR RECONSIDERATION .....                                   | 568 |
| COURT’S RULING .....                                               | 574 |
| ORDER DEYING DEFENDANT’S MOTION TO RECONSIDER SENTENCE .....       | 576 |
| INDICTMENTS .....                                                  | 577 |
| SENTENCE SHEETS .....                                              | 581 |
| CERTIFICATE OF COUNSEL .....                                       | 583 |

1 abuse and delayed disclosures. We've offered  
2 Dr. Price in rebuttal. Y'all are competent to weigh  
3 those two experts. But the State seems to want to  
4 argue that the poorer a person's memory is, the more  
5 of a victim they were and the more of a reliable  
6 witness they are. I guess they think the birdbath  
7 remedies that.

8 The State made a point to tell you that  
9 Ms. Galloway-Williams didn't know anything about this  
10 case except what the prosecutor told her and that she  
11 was here to discuss general dynamics. I don't really  
12 know what that means. So, everything was couched  
13 generally, as a maybe. So, maybe some of the dates  
14 and times have gotten confused and missed the time,  
15 as it happens to all of us. Maybe the trauma made  
16 **Complainant** memory come alive, but maybe it doesn't.  
17 I don't know. Maybe this or that or the other  
18 things, maybe. We don't even really know if she has  
19 PTSD or schizoaffective disorder. Dr. Price told you  
20 there should be a diagnosis for that. Just like if  
21 you went to the hospital and got treated for any  
22 other kind of illness, there would be a record  
23 somewhere. If it's that important to the State's  
24 case, where was the doctor, where are the records?

25 But what does any of that have to do with the

1 outlandish details of some of these stories. Maybe  
2 her memory is jumbled up for any number of reasons  
3 that they could explain. How do they explain the  
4 outlandish details? Now, this isn't a major one, but  
5 the story about Richard cutting across the median on  
6 I-26 or Highway 25, whichever one it was. Now,

7 **Complainant** said it was 50 miles away from the house.  
8 That's pretty close to Asheville, so that's probably  
9 26, about 10 miles south of Asheville. Where are you  
10 going to cut through a median and flip around to the  
11 other side and chase somebody back up the street?  
12 How are you going to notice somebody coming from the  
13 other direction and see inside their car going at a  
14 high rate of speed and then turn around fast enough  
15 to avoid any other cars and get up the street after  
16 them? Not even the street, get up the highway after  
17 them. Just another little note, there were no park  
18 rangers that were listening for chainsaws in the  
19 woods, that could hear trees cracking and falling  
20 down? Nobody come up and asked what's going on?

21 **Complainant** said that Richard drove by and shot  
22 at the Texaco. She also said he went in and shot at  
23 the Texaco. Ms. Waldrop was there. She said it's a  
24 fight in the parking lot. **Complainant** said it made  
25 the news. The State didn't bother to produce any

1 evidence of that today. The investigator said it  
2 never even occurred to him to go looking for it.

3 **Complainant** talks about a police search for the  
4 kidnapping of her brother Clifton. She can describe  
5 it in great detail. She said it was one of the most  
6 traumatic events of her life. She remembers the  
7 police being in the yard, the police standing on the  
8 porch with Richard. She remembers imaging what  
9 Richard must be saying to the police. She remembers  
10 her brother dropping her off two blocks away later  
11 that night after the police failed to find her little  
12 brother. She remembers cutting through the yard,  
13 slipping up to the trailer and listening at the  
14 window and hearing her little brother inside, her  
15 captive little brother. But she doesn't remember how  
16 they got the brother home. It's one of the most  
17 traumatic events of her life, she says, and when I  
18 asked her about the details of her, she called it  
19 storytelling. The solicitor didn't ask about that  
20 part of the story. He asked about the University Inn  
21 and Clifton, but he didn't ask about the testimony.  
22 Maybe he thought I'd forget, I don't know, maybe.

23 At the beginning of this thing on Monday, the  
24 solicitor told you that part of this story was going  
25 to be hard to swallow. And I agree with him. That's

1       one thing we both agree on. So, what did he do? He  
2       tried to cut it up for you and hope you wouldn't  
3       notice he wasn't giving the whole thing on that  
4       story. I used to try it on my parents when I didn't  
5       want to eat my spinach. I'd cut it up and spread it  
6       around on the plate. It never worked for me. I  
7       don't know why it should work here when there's so  
8       much on the line.

9               I spent a lot of time talking about reasonable  
10       doubt and there are a lot of ways to define what that  
11       means. And one of them is that level of doubt that  
12       would cause a reasonable person to hesitate to act,  
13       even for a moment. A simpler version is this, a  
14       doubt for which you have a reason. It's not that  
15       complicated. Like I said earlier, maybe is  
16       reasonable doubt. But maybe is also maybe not.

17              This is all the evidence there is in this case.  
18       That's all the evidence there's ever going to be. If  
19       there was anything out there that the State could  
20       use, they would have used it. That reminds me of  
21       [indiscernible] -- someone accused ramming -- two  
22       faced, looking for a person -- two faced -- if they  
23       had a another better case out there, why would they  
24       use this one?

25              This is the scariest part of my job up here.

1       Because I'm about to sit down and I won't be able to  
2       rise again and speak on Mr. Galloway's behalf. I  
3       don't like that rule. You know, we talked about the  
4       King of England earlier on. That rule, once I sit  
5       down, I don't get to get back up, but the State does.  
6       That's left over from the days of kings. Not  
7       everything is perfect, not even this courtroom,  
8       ladies and gentlemen. The solicitor is going to come  
9       after me and try to mock up and you'll have the case.  
10      My contention is this, before anything else, the  
11      State has to prove these allegations in the  
12      indictments happened beyond every reasonable doubt.  
13      And I say they failed in that regard.

14             Much less, rather, they prove the date range in  
15      the indictments. They've got to prove every single  
16      element. I don't even believe they can prove the  
17      very basis of this charge, much less the age of  
18      **Complainant** when it happened. The best that their  
19      expert can tell you is maybe the memory is a little  
20      off, maybe not. But that doesn't explain the  
21      indulgence, the additions, the wild stories.

22             Let's just address one thing. Nobody needs an  
23      expert to understand how much of a story teller by  
24      nature and focus on emotion rather than dry facts.  
25      Nobody needs an expert to understand a lost

1 jurisdiction. She's told this story to investigators  
2 before. She lost jurisdiction. Maybe her story  
3 [indiscernible] -- who knows. Where does it end,  
4 where does it stop? I don't know. We don't know  
5 where it stops. We don't know where the story starts  
6 either.

7 As I told you at the beginning, I'm asking you  
8 to do justice and find him not guilty. We've all  
9 been put to task this week and it's about a quarter  
10 till 5:00 and I know y'all want to go home. I just  
11 ask you to hold on a little bit longer. You may  
12 never get to do this again. And it's worth it to do  
13 it right. The one chance you might get to do it.  
14 One time, maybe tomorrow, maybe a few years from now,  
15 you'll talk about this case. This is going to be a  
16 big part of your life because you're going to have to  
17 make one of the biggest decisions you'll ever make.  
18 It's certainly going to be the biggest decision  
19 you'll make in Mr. Galloway's life. Somebody is  
20 going to ask you about how you felt and that's going  
21 to be easy enough to answer. And you can tell them,  
22 it's going to be one word or two words. But they're  
23 going to ask you why you voted the way you did. What  
24 are you going to tell them? Are you going to tell  
25 them that it was late, it was a long week, it was a

1 hard case and I wanted to go home. I hope you won't.  
2 Because like I said before, if you can't get a fair  
3 shake in an American courtroom, I don't know where  
4 you can. Thank you.

5 THE COURT: Brief reply.

6 CLOSING STATEMENT

7 MR. HOLLOWAY: I just have one point to make and  
8 Mr. Shipman made it for me. These cases are always  
9 tough, whether it's criminal sexual conduct cases,  
10 armed robbery or murder. There's going to be  
11 differences in opinions and there's going to be facts  
12 that's hard to believe. That's why we're here at  
13 trial. But the point that he made for me is what  
14 when I got up here the first time, I said the guiding  
15 light of this case was Patricia Waldrop. I didn't  
16 ask **Complainant** about Clifton's incident. I knew  
17 he was going to ask about Clifton's incident. How  
18 would he not go into that tail?

19 You know who didn't back that up for her was  
20 Ms. Waldrop. She said that he came in, he busted in  
21 the door, he grabbed Clifton. Called his momma and  
22 said get his rear end back to her in the hour or I'm  
23 calling the cops. This is not a lady that is making  
24 up a story to protect her daughter. This is a lady  
25 who has sat here and testified in front you and when

1       it confirms her daughter's story, she said that's  
2       what happened and when she differentiates and says  
3       that's what happened. So, I'll leave you with that.

4             And I do take a little bit of exception when the  
5       defense talks about evidence because Ms. Waldrop was  
6       an eyewitness to everything that happened. And  
7       there's no better evidence than a eyewitness. Thank  
8       you.

9                             JURY CHARGE

10            THE COURT: All right, ladies and gentleman,  
11       it's now my opportunity to tell you what the law is.  
12       I'll ask the jury to stand and take a seventh inning  
13       stretch. No, I'm not going to ask you to leave, just  
14       sit down.

15            I normally don't take exception to anything  
16       attorneys say, but it's not 15 till 5:00, it's 15  
17       till 4:00. And the reason that's important is we  
18       usually try not to send anything to a jury unless we  
19       give it to them by 4 o'clock. But I realize it's  
20       late in the day, but in light of giving it more than  
21       three days, I felt it appropriate to go forward at  
22       this time. So, you can take a seat now.

23            Sorry, Mr. Shipman.

24            MR. SHIPMAN: I need the number school.

25            THE COURT: All right. And I remind you, as I

1 told you at the very beginning of this trial, that  
2 you and I have separate duties. My duty as the trial  
3 judge is to be responsible to preside over the trial,  
4 to rule on evidence and to tell you what the law is  
5 that you're to apply. If there was any -- and your  
6 job is to determine what the facts of this case are.  
7 And you're to determine that based on the evidence  
8 that was presented in this courtroom, and nothing  
9 else. If there was anything that I ordered stricken  
10 or any question that I ordered stricken, you're to  
11 disregard that. But you're only to consider the  
12 testimony which has been presented from the witness  
13 stand, any exhibits or any stipulations of counsel.

14 Now, I have this additional duty to charge you  
15 on the law which applies. Now, you may have come in  
16 here to the court today with the understanding of  
17 what you thought the law was or TV or maybe being  
18 involved in something else or you may have an  
19 impression of what you think the law should be.  
20 Well, you're to disregard that. You've taken an oath  
21 that says that you are to apply the law as I give it  
22 to you here today.

23 Now, in every case tried before a jury, you are  
24 the sole and exclusive judge of the facts. I cannot  
25 have an opinion on the facts. If anything that I

1       said or did makes you think I have an opinion on the  
2       facts, please disregard that. Because that would be  
3       invading your province there. So, please disregard  
4       that in its entirety because the law doesn't allow me  
5       to have an opinion. That's the sole duty of the  
6       jury. And you're to review all the evidence and you  
7       are, as the jury, as a collective body to give each  
8       piece of evidence the weight, the value that you  
9       think is appropriate.

10       Now, as I also told you at the beginning, the  
11       indictments in this matter, there are three counts of  
12       criminal sexual conduct with a minor first degree.  
13       Each of them have separate little specifics to them.  
14       And one count of lewd act with a minor. Now, I  
15       remind you the fact that a person is indicted, a  
16       person is charged, a person is arrested is not to be  
17       considered by you in your deliberations. That does  
18       not create any inference whatsoever. These are  
19       merely the formal papers that brings this matter  
20       before the court. And in this matter, the Defendant  
21       comes in here -- he has pled not guilty to these  
22       charges and he comes in here with that presumption of  
23       innocence, which I'll go over in a little more detail  
24       with you in just a few minutes.

25       Now, there are multiple charges here. And let

1 me tell you how you're supposed to analyze those  
2 multiple charges. Each indictment charges a separate  
3 and distinct offense. You must decide each  
4 indictment separately, and then on the evidence and  
5 the law which applies to that particular charge. And  
6 that's to be uninfluenced by your analysis on any  
7 other indictments. So, in other words, you may --  
8 the Defendant may be convicted on all the charges,  
9 acquitted of all the charges, maybe indicted on some  
10 and acquitted on some. It's totally what you feel  
11 appropriate based on your analysis of each indictment  
12 separately. Then I will go over this with you in a  
13 few minutes. The verdict form ask, basically, a  
14 question as to each indictment. And I'll go over  
15 that at the conclusion of my charge.

16 Now, the Defendant, as I said, has pled not  
17 guilty to these indictments and that plea puts the  
18 burden on the State to prove the Defendant guilty. A  
19 person charged with committing a criminal offense in  
20 South Carolina is never required to prove himself  
21 innocent. I charge you this is an important rule of  
22 law that a defendant in a criminal trial, no matter  
23 how serious, will always be presumed innocent of that  
24 crime for which indictments were issued unless guilt  
25 has been proven by evidence satisfying you of that

1       guilt beyond a reasonable doubt. His presumption of  
2       innocence does not end when you begin your  
3       deliberation, it ends when you determine that he is  
4       guilty beyond a reasonable doubt under of these  
5       charges. Until that point, that presumption is  
6       retained. And this isn't merely a legal theory, this  
7       is just something that lawyers throw around, this is  
8       an important foundation of our judicial system. It's  
9       a substantial right which every defendant has when  
10      they come into the courtroom.

11             Now, what is reasonable doubt? Some of you may  
12      have served on juries in civil case or been involved  
13      in civil cases and that's under a standard called  
14      preponderance of the evidence, or greater weight.  
15      That is a much lesser standard, that does not apply  
16      here. Here, the standard that the State has to prove  
17      on each element of each charge is beyond a reasonable  
18      doubt. Reasonable doubt is the kind of doubt that  
19      would make a reasonable person hesitate to act.  
20      Prove beyond a reasonable doubt is proof that leaves  
21      you convinced, firmly convinced of the Defendant's  
22      guilt. Of course, there are very few things in this  
23      world that we know with absolute certainty. And in  
24      criminal cases, the law does not require proof that  
25      overcomes every possible doubt. If based on your

1 consideration of the evidence, you are firmly  
2 convinced of the Defendant's guilt of the crimes  
3 charged, then you must find him guilty of those  
4 crimes. If on the other hand, you think there is a  
5 real possibility that the Defendant is not guilty,  
6 then you must give the Defendant the benefit of that  
7 doubt and find him not guilty. Facts and  
8 circumstances that merely place upon the Defendant a  
9 grave suspicion of the crime charged, that merely  
10 raises a speculation and conjecture of his guilt is  
11 not sufficient to authorize a conviction.

12 Now, there are two types of evidence which you  
13 may consider in a trial. That's direct evidence and  
14 circumstantial evidence. Direct evidence directly  
15 proves the existence of a fact and does not rely on  
16 any deduction. Circumstantial evidence is a proof of  
17 chain of facts that indicate the existence of a  
18 particular fact. Now, crimes may be proven by  
19 circumstantial evidence and the law makes no  
20 distinction between the weight that is to be applied  
21 to circumstantial or direct. It's the same standard.  
22 However, to the extent that the State relies on  
23 circumstantial evidence, all of the circumstances  
24 must be consistent with each other and when taken  
25 together point conclusively to the guilt of the

1       accused beyond a reasonable doubt. If these  
2       circumstances merely portray the Defendant's behavior  
3       as suspicious, the proof has failed. The State has  
4       the burden of proving the Defendant guilty beyond a  
5       reasonable doubt and that rests upon the State  
6       whether they rely on direct evidence, circumstantial  
7       evidence, or a combination of the two.

8       Now, necessarily, you must determine the  
9       credibility of witnesses who have testified in this  
10      case. Credibility simply means believability. It  
11      becomes your duty to analyze and evaluate each  
12      witness and determine which piece of evidence  
13      convinces you of the truth. In determining the  
14      believability of witnesses who testified in this  
15      case, you may believe one witness over several  
16      witnesses, you may believe several witnesses over one  
17      witness. You may accept part of the testimony and  
18      reject another portion. Or you may accept the  
19      testimony in its entirety or reject it in its  
20      entirety. In other words, it's up to you to  
21      determine what weight you are to give each testimony  
22      and each piece of evidence. And you may consider --  
23      in determining believability or credibility, you may  
24      determine whether any witnesses has exhibited any  
25      bias, any interest, prejudice or other motive in the

1 case. You may also consider the appearance and  
2 manner of a witness when they testified.

3 Now, as I told you when particular witnesses  
4 were qualified as experts, that there's a little bit  
5 of a difference of what they can testify about.  
6 Because as I said to begin with, the rule does not  
7 allow witnesses to give their opinions about certain  
8 things. They must rely on just their senses and tell  
9 what they saw, they heard, they smelled, they felt.  
10 When a person has been qualified as an expert,  
11 though, they can testify about opinions based on  
12 their education and experience in the area which they  
13 claim to be an expert and they may also state the  
14 reasons for those opinions.

15 Now, you should consider any expert opinion  
16 received the same as any other evidence and you need  
17 to give it the weight that you think it deserves. If  
18 you decide that the opinion of an expert is not based  
19 on sufficient education and experience or if you  
20 conclude the reasons given in support of that opinion  
21 are not sound or that the opinion is outweighed by  
22 other evidence, then you may disregard that opinion  
23 in its entirety. An expert witness' testimony is not  
24 to be given any greater weight than any other witness  
25 merely by the fact that he's an expert or she's an

1 expert. Further, you're not required to accept an  
2 expert's opinion even though it may not be  
3 contradicted.

4 Now, I also instruct you and I emphasize because  
5 this is a very important point, the fact that the  
6 Defendant did not testify is not a factor for you to  
7 consider. Everyone that comes into this court has  
8 that absolute right to remain silent. They --  
9 because the burden is on the State. The fact that  
10 the Defendant exercised his right to remain silent in  
11 this matter is not to be considered by you in your  
12 deliberations. I repeat, under the oath that you  
13 took, you're to infer no inference from this. In  
14 fact, that should not even be a part of your  
15 discussion during your deliberations. Because based  
16 on the burden, the Defendant is not required to prove  
17 anything in this matter. He's not required to prove  
18 he's innocent. That burden is clearly on the State  
19 to prove beyond a reasonable doubt the elements.

20 Intent, in order to establish criminal  
21 liability, criminal intent is required. For example,  
22 the mental state required to be proven by the State  
23 for a particular crime might be purpose, intent,  
24 knowledge, recklessness or criminal negligence.  
25 Criminal intent must be proven by the State beyond a

1 reasonable doubt. Criminal intent is always a matter  
2 that must be determined by the jury from the  
3 circumstances surrounding the situation. There's no  
4 way to prove to a mathematical certainty. There's no  
5 way to dissect a person's brain to determine intent.  
6 So therefore, you must rely on the circumstances and  
7 the evidence presented to determine criminal intent.

8 It is not necessary to establish intent by  
9 direct and positive evidence, but intent may be  
10 established by inference. The same way as any other  
11 fact, you take into consideration the acts of the  
12 parties and all the facts and circumstances.

13 Criminal intent is mental statement, a conscious  
14 wrongdoing. It is up to you to determine what the  
15 Defendant intended to do based on the circumstances  
16 shown to have existed. Criminal intent can arise  
17 from action or failure to act. It may arise from  
18 negligence, recklessness or indifference to duty or  
19 consequences that is considered by the law to be  
20 equivalent to criminal intent.

21 Now, you've heard evidence that the Defendant  
22 may have committed a bad act not subject to the  
23 particular charge that you were considering. This  
24 testimony, if you conclude is true, may only be  
25 considered by you on the question of intent, motive,

1 identity, common scheme or plan, absence of mistake  
2 and for no other reason and no other purpose. You  
3 may give this evidence the weight and value, if any,  
4 which you find -- if any, which you find it should  
5 have on the issues of intent, motive, identity,  
6 common scheme or place or absence of mistake. You  
7 must not consider evidence of the commission of  
8 another offense or bad act not the subject of a  
9 conviction as proof of the Defendant's guilt of the  
10 charges which he's before you today.

11 Now, let me talk about the particular elements  
12 of the crimes which are being charged. The Defendant  
13 is charged with three separate counts of first degree  
14 criminal sexual conduct with a minor. The State must  
15 prove beyond a reasonable doubt that the Defendant  
16 engaged in a sexual battery with the victim, who was  
17 less than 11 years old at the time of the alleged  
18 incident. Now, sexual battery is sexual intercourse,  
19 cunnilingus, fellatio, anal intercourse or any  
20 intrusion, however slight, or any part of a person's  
21 body or any object into the genital or any anal  
22 openings of another person's body except when the  
23 intrusion is accomplished for medically recognized  
24 treatment or diagnostic purposes.

25 The State must then prove beyond a reasonable

1 doubt that the sexual battery occurred at the time  
2 that the victim was less than 11 years old. Consent,  
3 willingness, indifference or ignorance on the part of  
4 the minor, if any, as to what was taking place does  
5 not in any way affect the charge of criminal sexual  
6 conduct with a minor because such a person under the  
7 age of 14 cannot legally consent to such acts.

8 There's also a separate indictment for lewd act  
9 on a minor. These elements are different than the  
10 ones I just described to you. And for the charge of  
11 lewd act on a minor, the State must prove beyond a  
12 reasonable doubt that the Defendant was over the age  
13 of 14. Next, the State must prove the Defendant  
14 willfully and lewdly committed or attempted a lewd or  
15 lascivious act with the body or it parts of a child  
16 under the age of 14 years with the intent to arouse,  
17 appeal to or gratify the lust, passions or sexual  
18 desires of the Defendant or the child. Willfully  
19 means voluntarily and intentionally with a specific  
20 intent to do something that you that the law  
21 prohibits. Lewd means obscene, lustful, indecent or  
22 lecherous. Lascivious means tending to incite lust,  
23 lewd, indecent, obscene or tending to deprave the  
24 morals in respect to sexual relations. So, those are  
25 the elements of each of those charges.

1           Now, Mr. Foreman, I'm going to, at this point,  
2           hand you a verdict form and I'm going to go through  
3           this form with you.

4           Ms. Simms, if you could hand that to the  
5           foreman.

6           All right, I'm going go through this form with  
7           you because this is the verdict form which you will  
8           be answering the questions on. Now, the first -- top  
9           part of it is merely the caption and the indictment  
10          numbers and that's just kind of -- it says, Verdict  
11          Form. You need to answer each of these questions,  
12          again, independently.

13          First question is, as to the charge of criminal  
14          sexual conduct with a minor, first degree, under  
15          Indictment 2017-GS-23-7926, allegedly digital  
16          penetration of the vagina, we, the jury, unanimously  
17          find the Defendant, Richard Kenneth Galloway, and you  
18          check one. If you find the State has met its burden  
19          beyond a reasonable doubt on that charge, you would  
20          check guilty. If you find the State has not met its  
21          burden, then you would check not guilty.

22          Then the same analysis would go to the second  
23          question as to the charge of criminal sexual conduct  
24          with a minor first degree under Indictment  
25          2017-GS-23-7927, alleging oral sex, we, the jury,

1           unanimously find the Defendant, Richard Kenneth  
2           Galloway, then you'd go through the same analysis,  
3           either check guilty or not guilty.

4           And as to the third, the charge of criminal  
5           sexual conduct with a minor first degree under  
6           Indictment 2017-7928, alleging sexual battery at 307  
7           North Highway 25 bypass, we, the jury, unanimously  
8           find the Defendant, Richard Kenneth Galloway, again,  
9           the same analysis. Guilty or not guilty.

10          And as to the fourth one, and that's Indictment  
11          for lewd act under 2017-7929, you would then make the  
12          same analysis and either check guilty or not guilty.  
13          When you've completed all four questions, then you  
14          will let the bailiff know. You will sign the form  
15          and date it.

16          Let me tell a couple things. First of all,  
17          there's no significance whether it has guilty or not  
18          guilty first, they have to be in some order. Now,  
19          your verdict must be unanimous. That means all 12 of  
20          you must decide on the verdict. Your verdict cannot  
21          be based on sympathy, passion, prejudice, emotion,  
22          anything that's not in the evidence. And I would  
23          also advise you that all the evidence that you will  
24          have to consider is in the record. There can be no  
25          additional evidence presented at this point. A lot

1 of times jurors will come back and ask a specific  
2 fact question. Well, that's your job. We cannot  
3 answer factual questions. A lot of times, we will  
4 have juries come back and say there was a reference  
5 to a document or a form or a report, and they'll ask  
6 to see that, or a photograph. Again, we cannot give  
7 you additional information that is not already placed  
8 in the record. So, you must base your decision on  
9 what is into evidence now.

10 Now, if you have any questions, then what you  
11 will do --

12 Mr. Foreman, one of your duties as foreman, in  
13 addition to leading the discussion, is if you have a  
14 question, you will write that on a piece of paper,  
15 sign and date it and you will give it to the bailiff.  
16 Now, when I get that question, there's two ways I can  
17 respond. It may be that I can respond on a piece of  
18 paper after consultation with the attorneys and send  
19 it back to you at that point. It may require me to  
20 bring you back out here and have additional  
21 instructions. And I will let you know one way or the  
22 other on that. So, if you have any questions at any  
23 point, then you will put that on a piece of paper.

24 Now, let me talk to my alternates. First of  
25 all, you've sat here now for three days, but,

1 unfortunately, you're not able to participate in the  
2 deliberations or be in the room. But that doesn't  
3 mean your role in this has not been extremely  
4 important because if any of the other jurors had not  
5 been able to continue serving for whatever reason,  
6 then one of you would have had to step in. And  
7 that's very important because if we didn't have you,  
8 then we would have had a mistrial. I always like to  
9 tell people it's kind of like the Super Bowl and  
10 you're the backup quarterback. If they're not ever  
11 needed, they're there if needed, but they may not  
12 actually get to play. But your role is very  
13 important, but under our rules, you're not able to  
14 participate.

15 All right. At this point, I'm going to send you  
16 back to your jury room. I can't give you the signal  
17 quite yet to deliberate because I have to go over  
18 with the attorneys to make sure that I haven't left  
19 anything out or I've misstated something. So, you'll  
20 go back to your jury room. But your signal that you  
21 can begin -- the bailiff will tell you that you can  
22 deliberate, but you will get all the evidence, she'll  
23 bring those back, and the verdict form. At that  
24 point, the alternates will step out of the room.  
25 Once the alternates have stepped out of the room, you

1       have received the evidence and the verdict form, then  
2       you can begin deliberations. If there is something I  
3       need to correct or add to that, then I'll bring you  
4       back out just for that purpose.

5               So, at this point, I ask you to go back to your  
6       jury room, but do not deliberate until you get the  
7       signal.

8               (WHEREUPON, the jury left open court at  
9       approximately 4:19 p.m.)

10       THE COURT: All right, any objections or  
11       exceptions by the State?

12       MR. HOLLOWAY: No, sir.

13       THE COURT: Anything from the defense?

14       MR. SHIPMAN: Your Honor, I may have misheard  
15       this, but when you were giving the circumstantial  
16       evidence instruction, did you say that each  
17       circumstance must be proven beyond a reasonable  
18       doubt? I believe it was all couched in reasonable  
19       doubt language, but I didn't quite catch how it was  
20       phrased, Your Honor. Could have been too busy trying  
21       to read a clock.

22       THE COURT: Yeah, when taken together, points  
23       conclusive to the guilt of the accused beyond a  
24       reasonable doubt.

25               I did make one change in it that my clerk

1 noticed. The old law -- it doesn't really matter in  
2 this case, the old law says under age of 14, our  
3 current law says under the age of 16. I changed  
4 that, but it doesn't matter in this particular case  
5 because that difference. But that's why I changed  
6 that.

7 Do you want to put on the record your objection  
8 on the closing?

9 MR. SHIPMAN: Yes, sir, Your Honor. I believe  
10 that was the language, asking the jury to rely on an  
11 improper character based inference there, which would  
12 go afoul of 403 and also shifting the burden away  
13 from the facts onto [indiscernible.]

14 THE COURT: All right. And that was presented  
15 during the closing on sidebar and I overruled that  
16 objection.

17 All right, anything else then? Y'all check the  
18 exhibits and make sure we've got everything. If not,  
19 then we'll send this back to the jury.

20 MR. SHIPMAN: Your Honor, if I need to, I renew  
21 all my objections and my directed verdict motions.

22 THE COURT: All right. Make sure the exhibits  
23 are all there. I don't think there was a whole bunch  
24 to it.

25 All right. Send them back.

1 (WHEREUPON, deliberations began at approximately  
2 4:14 p.m.)

3 (WHEREUPON, court was in recess awaiting a  
4 verdict.)

5 (WHEREUPON, Court's Exhibit No. 4 was marked for  
6 identification only.)

7 THE COURT: They have a question.

8 All right. I think the answer may be in my  
9 charge. We have a question, which I marked as  
10 Court's Exhibit No. 4. It says, Clarify what  
11 penetration means. Is there a difference between  
12 fondling and digital penetration?

13 Whatever, May 16th -- and I guess -- I mean, it  
14 really is kind of -- I think it's covered under the  
15 sexual battery portion that says sexual intercourse,  
16 any intrusion, however slight, of any part of a  
17 person's body or any object in the genital or anal  
18 openings of another person. Since fondling didn't  
19 apply, I really don't define that. I always have  
20 this kind of dilemma here, once we come up how we  
21 want to respond, a lot of times what I've done is  
22 just printed a portion of that part of the charge,  
23 attached it to a note and send it back as opposed to  
24 having them come out.

25 MR. SHIPMAN: Your Honor, I'd be a little leery

1 of answering that question too directly because it  
2 could be a commentary on the facts.

3 THE COURT: Well, my thought is kind of defining  
4 what criminal sexual conduct with a minor, which was  
5 my charge.

6 MR. SHIPMAN: I mean, it's verbatim from the  
7 charge.

8 THE COURT: The problem is the -- yeah, I think  
9 the answer is the elements of criminal sexual  
10 conduct, as I've read.

11 MR. SHIPMAN: Your Honor, I think they're asking  
12 maybe about sexual battery. I don't know if that --  
13 it may not be necessary to recharge the entire  
14 offense.

15 THE COURT: Just the sexual battery. I think I  
16 need to put it in context. It's not very long. And  
17 I guess, do y'all have problem if I send it back or  
18 do y'all want me to bring them out here and charge  
19 them?

20 MR. HOLLOWAY: Your Honor, I don't have a  
21 problem. I think it's typically easier if they have  
22 a copy of what the law is back with them, especially  
23 with that question.

24 THE COURT: Do you have any objection?

25 MR. SHIPMAN: I don't have any objection to

1           that.

2           THE COURT: I'll let y'all look at it before  
3           I...

4           MR. SHIPMAN: Your Honor, I think if they have  
5           them back there, they might fixate on some things and  
6           lead their discussions awry. If you wouldn't mind  
7           recharging them in person.

8           THE COURT: Judge Verdin sends her entire charge  
9           back.

10          MR. SHIPMAN: Well, I mean, Your Honor, I think  
11          they would lock in on the CSC portion of the charge.

12          THE COURT: That is the charge here.

13          MR. SHIPMAN: I understand, Your Honor.

14          THE COURT: All right, I'll bring them back in.  
15          I'm just going to read the entire -- I'm going to  
16          say -- I'm going to say to answer your question, I  
17          think I need to go through the elements of criminal  
18          sexual conduct, then I'm just going to respond.

19          All right. Tell them if they're ready, we'll  
20          have them come on in and I will recharge them.

21          (WHEREUPON, the jury came into open court at  
22          approximately 4:41 p.m.)

23          THE COURT: All right. Mr. Foreman, I received  
24          a question from you that says, Clarify what  
25          penetration means. Is there a difference between

1 fondling and digital penetration?

2 I think the most appropriate way to respond to  
3 that is for me to go over with you just the elements  
4 of first degree criminal sexual conduct. So, let me  
5 go through that and I think that should answer your  
6 question, as much as we can answer it.

7 The State must prove beyond a reasonable doubt  
8 that the Defendant engaged in sexual battery with the  
9 victim, who is less than 11 years old. Sexual  
10 battery is sexual intercourse, cunnilingus, fellatio,  
11 anal intercourse or any intrusion, however slight, of  
12 any part of a person's body or any object into the  
13 genital or anal openings of another person's body,  
14 except when the intrusion is accomplished for  
15 medically recognized treatment or diagnostic  
16 purposes.

17 So, those are the elements of criminal sexual  
18 conduct with a minor first degree. So, I hope that  
19 answers your questions. All right. At this time,  
20 I'll ask that you continue your deliberations. If  
21 you have any more questions, then please let know.

22 (WHEREUPON, the jury left open court at  
23 approximately 4:43 p.m.)

24 THE COURT: All right. Exceptions or objections  
25 from the State?

1 MR. HOLLOWAY: No, sir.

2 THE COURT: From the defense?

3 MR. SHIPMAN: None, Your Honor.

4 THE COURT: All right. Until the next question.

5 (WHEREUPON, deliberations continued.)

6 (WHEREUPON, court was in recess awaiting a  
7 verdict.)

8 (WHEREUPON, Court's Exhibit No. 5 was marked for  
9 identification only.)

10 THE COURT: All right. Now, that Mr. Galloway  
11 is in here. The question is, What are the events for  
12 2017-GS-23-7926 and 2017-GS-23-7928?

13 And I believe based on -- they attempted to ask  
14 the bailiff a question and he said no, you need to  
15 write your question down. I think what he indicated  
16 was that there was some confusion were they separate  
17 events or same events for these two different  
18 indictments. That's when he said no, you've got to  
19 write your question down. So, obviously, they're  
20 confused about if the events are separate events,  
21 separate locations or something along those lines. I  
22 don't really know how to respond to that.

23 MR. SHIPMAN: The Defense's position would be  
24 that you cannot constitutionally respond to that  
25 under prohibition on comments on the facts.

1 THE COURT: Well, I think that my response is  
2 that you must consider each indictment separately as  
3 I indicated and you must base your decision on the  
4 facts that were presented at trial.

5 MR. HOLLOWAY: Your Honor, what -- and again, I  
6 think that is very fair. They have been read -- I  
7 mean, they're allowed to be reread the indictments,  
8 correct? Because that was one of the notice parts  
9 was that we had discussed this was why distinguished  
10 these indictments ever so slightly. That's not  
11 reading any new facts, that's not giving them any new  
12 facts. That is -- these are the indictments that are  
13 in front of them and they have to use the facts that  
14 they heard at trial to decide the result -- the  
15 verdict of those indictments.

16 MR. SHIPMAN: Your Honor, do they have the  
17 indictments?

18 THE COURT: They do not have the indictments,  
19 but we read to them in the initial stage.

20 MR. HOLLOWAY: Your Honor, which one --

21 THE COURT: It was 26 and 28.

22 MR. HOLLOWAY: 26 and 28? 26 says, by digitally  
23 penetrating vagina and 28 says, commit a sexual  
24 battery. But 28, Your Honor, is obviously 307 North  
25 Highway 25 bypass.

1           THE COURT: I could reread those indictments and  
2 just say you must consider each indictment separately  
3 and base your decision on the facts and evidence  
4 that's been presented.

5           MR. SHIPMAN: I think that's fair, Your Honor.

6           THE COURT: All right. All right. I'm going to  
7 bring them in for that purpose.

8           (WHEREUPON, the jury came into open court at  
9 approximately 5:36 p.m.)

10          THE COURT: All right, sorry to bring y'all back  
11 out, but I felt like this was the most efficient way  
12 in responding to your question. I will tell you, I  
13 cannot answer specific factual questions or comment  
14 on the facts, so that's why I'm responding to you  
15 this way.

16          The question is, What are the events for  
17 2017-GS-23-7926 and 2017-GS-23-7928?

18          What I'm going to do is read those two  
19 indictments to you. Then as I told you in my charge,  
20 you're to consider each indictment separately and  
21 you're also to make your determination based on the  
22 evidence that has been presented.

23          So, 79 -- I'm sorry, 2017-7926 says, That  
24 Richard Kenneth Galloway did in Greenville County,  
25 between the first day of January 1988 and the 17th

1 day of November, commit a sexual battery on Complainant, who  
2 was less than 11 years of age by digitally  
3 penetrating her vagina.

4 On Indictment 2017-7928, that says, That Richard  
5 Kenneth Galloway did at 307 North Highway 25 bypass  
6 in Greenville County, between the first day of  
7 January 1988 and the 17th day of November 1989,  
8 commit a sexual battery on Complainant, who was less than 11  
9 years of age.

10 All right. So, those are the indictments and,  
11 again, you must consider those separately. And  
12 return to your deliberations. Also, I realize the  
13 time. You know, at this point, I'm going to have to  
14 take -- I'd like y'all to deliberate further. I  
15 realize that we're getting late in the day. So, if  
16 anybody has any issues or needs to make any  
17 arrangements, Mr. Foreman, if you'll let me know, you  
18 know, if somebody has a serious problem with  
19 continuing on.

20 So, all right, with that, continue deliberations  
21 and let me know if you have any additional questions.

22 (WHEREUPON, the jury left open court at  
23 approximately 5:39 p.m.)

24 THE COURT: All right, any objections or  
25 exceptions to the additional charge from the State?

1 MR. HOLLOWAY: No, sir, Your Honor.

2 THE COURT: From the defense?

3 MR. SHIPMAN: No, Your Honor.

4 THE COURT: All right.

5 (WHEREUPON, deliberations continued.)

6 (WHEREUPON, court was in recess awaiting a  
7 verdict.)

8 (WHEREUPON, Court's Exhibit No. 6 was marked for  
9 identification only.)

10 THE COURT: All right, another question. Can we  
11 have the dates for 7926, dash, 7927, dash, 7928,  
12 signed Foreman.

13 I mean, my response to that is you have to rely  
14 on the evidence as presented.

15 MR. SHIPMAN: That's fair, Your Honor.

16 THE COURT: I'm just going to write that on this  
17 piece of paper.

18 Any objection from the State on that? I mean, I  
19 don't think we can give them -- obviously, we can't  
20 give them any information. No additional charge will  
21 help them.

22 MR. HOLLOWAY: Can't we -- that's all right, I'm  
23 not in disagreement. I'm just trying -- what was the  
24 question?

25 THE COURT: Can we have the dates for, and it

1 has each of the indictments?

2 MR. HOLLOWAY: That was that -- I guess, what  
3 I'm saying, Your Honor, that jury charge that  
4 proposed -- and I certainly respect the Court's  
5 ruling. I think the charge was just that -- we did  
6 not include the charge. It's not required that it's  
7 a specific date. The only thing I would ask is that  
8 they be reminded that CSC in the first degree  
9 requires that the victim be under the age of 11 and  
10 lewd act requires that the victim be under the age  
11 of, I believe it's 16, Your Honor. But I think it  
12 might have been in old law under 14.

13 THE COURT: I mean, they just ask for the dates.  
14 I think the response to the question was I cannot  
15 give them specific factual information and they have  
16 to rely on the evidence as presented.

17 MR. HOLLOWAY: Okay. Yes, sir. I guess if they  
18 ask -- because I guess the dates are close to the  
19 dates that were presented in the testimony. So,  
20 hopefully, they won't ask for that. They may. They  
21 may ask to listen to portions of the testimony.

22 All right. My response is I'm not able to  
23 provide factual information. You must consider  
24 evidence presented during the trial. All right.

25 MR. HOLLOWAY: Yes, sir, I don't have any

1 disagreement with that.

2 THE COURT: Any objection from the Defense?

3 MR. SHIPMAN: None, Your Honor.

4 (WHEREUPON, deliberations continued.)

5 (WHEREUPON, Court was in recess awaiting a  
6 verdict.)

7 THE COURT: All right, I think that in light of  
8 your -- I think -- there's another question, you may  
9 have been right on that.

10 (WHEREUPON, Court's Exhibit No. 7 was marked for  
11 identification only.)

12 THE COURT: They sent in response to our  
13 question that we asked -- it's still an issue, we  
14 want to make sure we properly address the previous  
15 question. We asked them to be more specific on the  
16 previous question. And they sent back -- I think  
17 y'all interpreted this right. Need dates indictment  
18 7926 and 7928. Can we have a copy of the  
19 indictments?

20 I don't want to send the indictments back there.

21 MR. HOLLOWAY: Your Honor, can we just --

22 THE COURT: Can I write 7926 dates between  
23 January 1st, '88 and November 17th, '89?

24 MR. SHIPMAN: Is that the same date for both,  
25 Your Honor?

1 THE COURT: Yes.

2 MR. HOLLOWAY: Your Honor, which were the ones  
3 we're talking about again?

4 THE COURT: It's 7926 and 7928.

5 MR. HOLLOWAY: Okay. Yeah.

6 THE COURT: So, it's the two criminal sexual,  
7 it's not the lewd act. I mean, I don't want to --  
8 I'm going to say as indicated on the indictments, the  
9 indictments contains the following dates and then put  
10 7926, January 1st, '88 -- or between January 1st, '88  
11 and November 17th, '89.

12 Any objection to that from the State?

13 MR. HOLLOWAY: No, Your Honor.

14 THE COURT: From the Defense?

15 MR. SHIPMAN: Your Honor, I just raise an  
16 objection this is continued back and forth. I think  
17 they've got the facts and I think they need to  
18 deliberate. Preserve that for the record, Your  
19 Honor.

20 THE COURT: Okay. But other than that, do you  
21 have --

22 MR. SHIPMAN: No, I mean, that's date range as  
23 they are on the indictments, but still subject to my  
24 objection.

25 THE COURT: All right. Y'all want to look at my

1 response? Subject to Defense's objection.

2 MR. SHIPMAN: Yes, sir, Your Honor.

3 THE COURT: All right.

4 (WHEREUPON, deliberations continued.)

5 (WHEREUPON, Court was in recess awaiting a  
6 verdict.)

7 (WHEREUPON, Court's Exhibit No. 8 was marked for  
8 identification only.)

9 THE COURT: I did have one that had six  
10 questions before they ever began deliberating, so  
11 this is not unusual.

12 If we can't decide on one of the four charges,  
13 what happens? We're in agreement on three of the  
14 four. Also, write down definition of digital  
15 penetration.

16 So, obviously, that's a good clue on which one  
17 they're still having problems with. Signed by the  
18 foreman. You know, we have several ways I think to  
19 address this. One, is we ask them to continue  
20 deliberating on that fourth charge and read them an  
21 Allen charge on that particular -- related to that  
22 particular charge. Or if y'all -- I don't know if  
23 y'all can consent to going with dismissing or  
24 something, whatever the fourth one is. I don't know.  
25 I mean, that's just -- or having them return without

1 reading an Allen charge on that one.

2 MR. HOLLOWAY: Your Honor, I think that --

3 THE COURT: Y'all want to look at it -- yeah,  
4 look at it and see.

5 MR. HOLLOWAY: For the purposes of the  
6 indictment, the indictment is obviously a notice  
7 document. They have the elements. I think there's  
8 some confusion over the additional language in that  
9 indictment versus just sexual battery.

10 THE COURT: Right. The problem is the  
11 indictment doesn't really track the statute.

12 MR. HOLLOWAY: And I don't disagree. This is --  
13 it's a confusing -- I mean, the thing was when I  
14 thought about it, I didn't want -- I guess I could  
15 have put sexual battery by using with his hands on  
16 her --

17 THE COURT: No, no, let's figure out how to  
18 address this.

19 MR. HOLLOWAY: I think -- the State's position,  
20 Your Honor, is that indictment is not the elements of  
21 the offense. The indictment is a notice document and  
22 the elements of the offense are what are supposed to  
23 be proven.

24 THE COURT: I guess what we need -- I mean, I  
25 can again define -- you know, give them the

1 definition, say this is the -- what you have to go  
2 by, the definitions under the statute and here's what  
3 it is and then do an Allen charge if they're saying  
4 they're deadlocked.

5 MR. SHIPMAN: Your Honor, I don't think they've  
6 said they're deadlocked. They said they can't  
7 decide. I don't think it's time for the dynamite  
8 charge yet.

9 MR. HOLLOWAY: Your Honor, my thought would be  
10 it is the responsibility of the State to prove all  
11 elements of the charge for which has been indicted  
12 beyond a reasonable doubt. The charge that has been  
13 indicted is criminal sexual conduct in the first  
14 degree. The following are the elements to the charge  
15 that has been indicted. Then it would be these are  
16 the elements.

17 THE COURT: And I guess then I'll say if they do  
18 continue and they're not able to -- what I think I  
19 need to respond that they need to get back -- you  
20 know, I don't want it -- I'm trying to think how to  
21 respond to that question without it being an Allen  
22 charge.

23 MR. SHIPMAN: Yeah. I mean --

24 THE COURT: I guess what I can do is -- okay,  
25 I'm going to read the statute these are the elements

1       that the State has to prove. If you have any more  
2       questions. And just say I'm not in a position at  
3       this point to respond to the other questions.

4           MR. SHIPMAN: You know, I think if you just  
5       said, you know, read the elements and then say  
6       continue with your work or something like that.  
7       Rather than to say I'm not in a position because I  
8       think something further could be coming --

9           THE COURT: Okay. I don't want -- I'll do it  
10      along those lines. I guess we need to ask them about  
11      supper.

12           THE BAILIFF: They won't take it after  
13      7 o'clock.

14           THE COURT: I mean, it sounds like you've got a  
15      verdict one way or the other on three of the four.

16           MR. HOLLOWAY: Your Honor, I mean, I know  
17      that -- I think I know where the Defense stands, but  
18      the Court has proposed earlier sending the charge  
19      back with the jury.

20           THE COURT: I think I need to respond a little  
21      more, though, than the charge.

22           All right. Let's bring them out.

23           (WHEREUPON, the jury came into open court at  
24      approximately 6:49 p.m.)

25           THE COURT: All right. I have received another

1 question. I apologize for some confusion. As I --  
2 let me see if I can clear this up. I know we have  
3 read the indictment to you, but the actual charge  
4 which the State has the burden of proving the  
5 elements of first degree criminal sexual conduct with  
6 a minor. All I can -- you know, I have -- those are  
7 the elements that the State has to prove beyond a  
8 reasonable doubt. So, I'm just going to review those  
9 with y'all again.

10 The State must prove beyond a reasonable doubt  
11 that the Defendant engaged in a sexual battery with  
12 the victim, who was less than 11 years old. A sexual  
13 battery is sexual intercourse, cunnilingus, fellatio,  
14 anal intercourse or any intrusion, however slight, of  
15 any part of a person's body or of any object into the  
16 genital or anal openings of another person's body,  
17 except when the intrusion is accomplished for  
18 medically recognize treatment or diagnostic purposes.

19 All right. So, that is in response to -- you  
20 wanted the definition of digital penetration. But  
21 that's the element of first degree criminal sexual  
22 conduct with a minor, which is the indictment.

23 As to the remaining portions, I'm just going to  
24 ask you to continue -- based on this additional  
25 charge to continue deliberations. And I know it's

1 getting late and you need to give me some directions,  
2 Mr. Foreman, if y'all are going to be deliberating  
3 for a while, do we need to get some supper ordered?  
4 It's going to take a while for that. At this point,  
5 we just ask you go back and give me some directions  
6 if y'all want to continue to deliberate and reach  
7 verdict on that. All right. Thank you.

8 (WHEREUPON, the jury left open court at  
9 approximately 6:52 p.m.)

10 THE COURT: All right. Any objection or  
11 exception to the additional charge from the State?

12 MR. HOLLOWAY: No, sir, Your Honor.

13 THE COURT: From the Defendant?

14 MR. SHIPMAN: No, Your Honor.

15 THE COURT: All right. Until the next question.

16 Be at ease.

17 (WHEREUPON, deliberations continued.)

18 (WHEREUPON, Court was in recess awaiting a.  
19 verdict.)

20 THE COURT: All right. This is the Allen  
21 charge.

22 MR. SHIPMAN: Are they deadlocked?

23 THE COURT: All right.

24 (WHEREUPON, Court's Exhibit No. 9 was marked for  
25 identification only.)

1 THE COURT: We are not unanimous on  
2 2017-GS-23-7926. Both parties are not willing to  
3 change. It looks like we will remain hung. Verdicts  
4 have been arrived on the other three indictments.

5 I guess the question is do we waive the right  
6 for Allen charge and have them present their verdicts  
7 or do we give them an Allen charge and --

8 MR. SHIPMAN: Your Honor, can we hear the  
9 verdicts?

10 THE COURT: Hear the verdicts, then decide?

11 MR. SHIPMAN: Yes. I think the Allen charge in  
12 this scenario, they may go back and compromise. I  
13 don't know which way it's going, Your Honor, but they  
14 may decide to split the vote. You know, they've also  
15 given the 10 to two numbers, I object to the Allen  
16 charge.

17 THE COURT: But they don't say which way and I  
18 tell them we don't want to know which way. All  
19 right, I mean, we can just say we accept the three  
20 verdicts already in existence and waive the Allen  
21 charge. Otherwise, we have to read them the Allen  
22 charge on the fourth charge.

23 MR. SHIPMAN: Would you repeat that?

24 THE COURT: I guess we can either waive the  
25 Allen charge and just have them present the verdict

1 on the three that are there that they've already  
2 reached a verdict on, or we can read them an Allen  
3 charge as to the final charge.

4 MR. SHIPMAN: I think on the final one that  
5 they're not going to change.

6 THE COURT: Well, the one -- that's the fourth  
7 indictment.

8 MR. HOLLOWAY: Your Honor, can I have a minute?

9 THE COURT: Yeah.

10 MR. HOLLOWAY: Okay. Thank you.

11 THE COURT: All right.

12 MR. HOLLOWAY: Your Honor, the State would  
13 respectfully request that we read the jury the Allen  
14 charge.

15 THE COURT: All right, tell me we've got some  
16 additional instruction to give them. I guess the --  
17 normally, I say if you haven't reached a verdict, I  
18 must declare a mistrial. I think I need to say as to  
19 that particular charge. Because I don't want them to  
20 think that the whole case is a mistrial.

21 MR. SHIPMAN: Your Honor, I object to the Allen  
22 charge based on the fact that they given the split  
23 out and that it would put undue pressure on the  
24 remaining two for the other charge.

25 THE COURT: All right. Okay. I've never dealt

1 with that, they didn't tell us which way.

2 All right. Bring the jury in.

3 (WHEREUPON, the jury came into open court at  
4 approximately 7:11 p.m.)

5 ALLEN CHARGE

6 THE COURT: All right. Ladies and gentlemen, we  
7 are required when -- you've indicated that you're  
8 deadlocked on one of the indictments. And I'm  
9 required by law to give you some further instructions  
10 in that regard. Then after I give you this, I'm  
11 going to ask you to return, but I have to give you  
12 further instruction at this point.

13 But, ladies and gentlemen, you stated that you  
14 have been unable to agree on a verdict on one of the  
15 indictments. And as I instructed you earlier, the  
16 verdict must be unanimous. When a matter is in  
17 dispute, it isn't always easy for two people to  
18 agree. So, when 12 people must agree, it becomes  
19 even more difficult. In most cases, absolute  
20 certainty cannot be reached or expected. However,  
21 you have a duty to make every reasonable effort to  
22 reach a unanimous verdict. In doing this, you should  
23 consult with one another, express your own views and  
24 listen to the opinion of your fellow jurors. Tell  
25 each other how you feel and why you feel that way.

1 Discuss your differences with open minds. Although,  
2 the verdict of the jury must be unanimous, every one  
3 of you has the right to your own opinion. The  
4 verdict you agree to must be your own verdict, the  
5 result of your own convictions and you should not  
6 give up your firmly held beliefs merely to be in  
7 agreement with your fellow jurors. The majority  
8 should consider the minority's position and the  
9 minority should consider the majority's position.  
10 You should carefully consider and respect the  
11 opinions of each other and reevaluate your position  
12 for reasonableness, correctness and impartiality.  
13 You must lay aside all outside matters and reexamine  
14 the question before you base the law and evidence in  
15 this case. If you do not agree on a verdict on this  
16 indictment, then I would have to declare a mistrial  
17 on that indictment.

18 In that case, it's not that anybody wins on that  
19 indictment, I'm limiting it to that indictment. It  
20 means we have to address that at some future point.  
21 And at that time, the same lawyers would come in, the  
22 same questions and same answers and go through the  
23 process again.

24 So, at this point, I'm just going to ask that  
25 you return and, you know, let me know if are able to

1 reach a verdict. If you can't, you just need to let  
2 me know.

3 (WHEREUPON, the jury left open court at  
4 approximately 7:13 p.m.)

5 THE COURT: All right. Exceptions from the  
6 State?

7 MR. HOLLOWAY: No, Your Honor.

8 THE COURT: The Defendant, other than --

9 MR. SHIPMAN: As previously noted, specifically,  
10 the language about my argument concerning the  
11 majority and vice versa, in particular exception to  
12 that, Your Honor.

13 THE COURT: All right. I take that straight  
14 from a case.

15 MR. GOLDSTEIN: I believe it is, Your Honor. I  
16 believe that's how cases get made.

17 THE COURT: All right.

18 (WHEREUPON, deliberations continued.)

19 (WHEREUPON, Court was in recess awaiting a  
20 verdict.)

21 (WHEREUPON, Court's Exhibit No. 10 was marked  
22 for identification only.)

23 THE COURT: No movement is going to happen.  
24 Three out of four reached.

25 All right. Bring the jury in.

1 All the exhibits and all the --

2 THE BAILIFF: Yes, sir.

3 (WHEREUPON, the jury came into open court at  
4 approximately 7:18 p.m.)

5 THE COURT: All right, Mr. Foreman, it's my  
6 understanding and based on the various notes and all  
7 that y'all have reached a verdict on three of the  
8 four, but that you did not reach a verdict on the  
9 fourth one?

10 MR. FOREMAN: Correct.

11 THE COURT: If you can hand the verdict to the  
12 bailiff.

13 All right. And just for clarification, number  
14 2017-GS-23-7926 is the one that you could not reach a  
15 verdict?

16 MR. FOREMAN: Correct.

17 THE COURT: All right. As to the remaining  
18 portions, I find that it is improper.

19 Publish the verdict.

20 VERDICT

21 THE CLERK: Your Honor, in this case of  
22 2017-GS-23-7926, 7927, 7928, 7929, The State vs.  
23 Richard Kenneth Galloway, number two, as to the  
24 charge of criminal sexual conduct with a minor in the  
25 first degree, under Indictment 2017-GS-23-7927,

1       alleging oral sex, we, the jury, unanimously find the  
2       Defendant, Richard Kenneth Galloway, not guilty.  
3       Number three, as to the charge of criminal sexual  
4       conduct with a minor in the first degree, under  
5       Indictment 2017-GS-237928, alleging sexual battery,  
6       at 307 North Highway 25 bypass, we, the jury,  
7       unanimously find the Defendant, Richard Kenneth  
8       Galloway, guilty. Number four, as to the charge of  
9       lewd act upon a child, under Indictment  
10      2017-GS-23-7929, we, the jury, unanimously find the  
11      Defendant, Richard Kenneth Galloway, guilty. These  
12      are signed by Mr. Trasp, foreperson.

13           Ladies and gentlemen, if you agree these are the  
14      verdicts you reached in your deliberations room,  
15      please raise your right hand.

16           (WHEREUPON, all members of the jury raised their  
17      right hand.)

18      THE COURT: All right, anything further from the  
19      jury from the State?

20      MR. HOLLOWAY: No, sir, Your Honor.

21      THE COURT: Anything further from the Defendant?

22      MR. SHIPMAN: Your Honor, poll the juror,  
23      please.

24      THE COURT: Poll the jury, please.

25      THE CLERK: The verdict that was just published

1 was the verdict you reached in the jury room. I ask  
2 you, was it your verdict then and is it your verdict  
3 now? When I call your name, please answer yes or no.

4 Sean Trasp.

5 MR. TRASP: Yes.

6 THE CLERK: James Hicks.

7 MR. HICKS: Yes.

8 THE CLERK: Jason Withrow.

9 MR. WITHROW: Yes.

10 THE CLERK: Ronald Gwinn.

11 MR. GWINN: Yes.

12 THE CLERK: Elizabeth Walters?

13 MS. WALTERS: Yes.

14 THE CLERK: Gregory Peebles.

15 MR. PEEBLES: Yes.

16 THE CLERK: Liesel Schwab.

17 MS. SCHWAB: Yes.

18 THE COURT: Jonathan Hayes.

19 MR. HAYES: Yes.

20 THE CLERK: Guy Seymour.

21 MR. SEYMOUR: Yes.

22 THE CLERK: Susan Poulton.

23 MS. POULTON: Yes.

24 THE CLERK: Jacquelyn Muse.

25 MS. MUSE: Yes.

1 THE CLERK: Mark Newman.

2 MR. NEWMAN: Yes.

3 THE CLERK: Thank you.

4 THE COURT: All right, anything further from the  
5 jury before they're released?

6 MR. SHIPMAN: No, Your Honor.

7 THE COURT: I'll hear motions in a few minutes.

8 All right, ladies and gentlemen, thank you for  
9 your deliberations. I realize this has been a long  
10 day for y'all. I appreciate your dedication to that.  
11 If you'll go back in your jury room, I'll step back  
12 there and discuss just very briefly. I know  
13 everybody needs to go. I'll step back there in just  
14 a minute. Thank you.

15 (WHEREUPON, the jury left open court and was  
16 excused for the day at approximately 7:22 p.m.)

17 THE COURT: Mr. Holloway, do you have --

18 MR. HOLLOWAY: We're going to print it off right  
19 now.

20 THE COURT: Okay, I've got to talk to the jury.  
21 When I come back, I'll hear any motions. I know  
22 they're ready to go.

23 (WHEREUPON, a short break was taken.)

24 THE COURT: All right. I guess our next step,  
25 I'll be glad to hear any motions from the Defense.

1 MR. SHIPMAN: Your Honor, I renew all my  
2 previous objections and move for a new trial based on  
3 cumulative error, specifically all the extraneous  
4 incidents that came in. I believe from the  
5 deliberations and verdicts that were reached, they  
6 have were confused by the facts. So, Your Honor, I  
7 believe that Mr. Galloway did not get a fair trial on  
8 that basis and I move for a new trial, respectively.

9 THE COURT: All right. And I think I'm going to  
10 deny that and find that was properly before the jury.

11 For sentencing -- before we do that. Now, I  
12 just -- we actually found an old code after we were  
13 waiting, it talked about lewd act. It says lewd act  
14 is -- looks like the version that we're under, a lewd  
15 act is punishable by fine or imprisonment or both in  
16 the discretion of the court. Then there's the  
17 statute that says there no maximum sentence, he's  
18 going to find it, then the maximum is 10 years.

19 MR. HOLLOWAY: Your Honor, I think zero to 15,  
20 respectfully.

21 THE COURT: Do you have something?

22 MR. HOLLOWAY: I've got a charge that says lewd  
23 act [indiscernible] -- so I don't have anything  
24 better than that, but it says just --

25 THE COURT: The actual statute says fine or

1       imprisonment in the discretion of the court. I mean,  
2       we found one of the old books.

3               MR. SHIPMAN: Your Honor, my understanding of  
4       the old unclassified before we went to a Class A  
5       through F, whatever, you know, was that nothing -- in  
6       discretion of the court and the general practice was  
7       10 years.

8               THE COURT: And that's what I had thought. And  
9       I don't know -- I know you have checked violent and  
10      most serious here, but I'm not sure -- I know those  
11      designations weren't around at the time of this. I  
12      don't think this came around until -- things being  
13      classified as violent and serious or most serious is  
14      when everybody started complaining these people were  
15      spending more time in jail. So, I don't know -- and  
16      I don't know how SCDC will treat these or not. But I  
17      don't think at the time that we're talking about here  
18      that these were designated as most serious and  
19      violent. Do you have anything?

20              MR. HOLLOWAY: No, Your Honor. I figure it  
21      would get sorted out.

22              THE COURT: That's something y'all should have  
23      sorted out before we started this trial.

24              MR. HOLLOWAY: SCDC is pretty good at it, sir.

25              THE COURT: I always had the impression you call

1 four times and get five different responses.

2 All right, we'll proceed with sentencing. I'm  
3 going to -- since it's a general, I'm going to  
4 consider the maximum of 10 years.

5 All right, I'll be glad to hear from y'all.  
6 Y'all want to stand up.

7 SENTENCING

8 MR. SHIPMAN: Your Honor, would you like us at  
9 the podium?

10 THE COURT: Yes.

11 MR. SHIPMAN: Your Honor, first of all, I would  
12 just like to ask you to consider the age of these  
13 crimes -- or excuse me, the age of the allegations  
14 that these convictions stem from. Your Honor, we  
15 went to trial because he pleads not guilty. You  
16 know, whatever happened back then, he's a different  
17 man today than he was then. He's nearly 70 years old  
18 now.

19 THE COURT: Let me stop you before because I  
20 want you make sure you have the last word. I'll be  
21 glad to hear from the State and anything from the  
22 victim? Because I want y'all to be able to have the  
23 last word.

24 Under 17-25-20, it says that, If no special  
25 punishment provided for a felony, then period of not

1 less than three months, no more than 10 years.

2 17-25-20.

3 MR. HOLLOWAY: Your Honor, on CSC first?

4 THE COURT: No, that's under lewd act.

5 MR. HOLLOWAY: Yes, sir, he was found guilty of  
6 CSC first degree.

7 THE COURT: But also -- I'm just talking about  
8 specific lewd act.

9 MR. HOLLOWAY: Oh, okay.

10 THE COURT: No, I'm not talking about that. You  
11 had 15 on the lewd act. I'm saying I think the  
12 maximum is 10 years based on the statute at that  
13 time.

14 MR. HOLLOWAY: Yes, sir, whatever you need to do  
15 on that, sir.

16 THE COURT: I'll be glad to hear from the State  
17 and victims. If you want to say anything, it's up to  
18 you.

19 MR. HOLLOWAY: Your Honor, all I'd like to put  
20 on the record -- and I'll let **Complainant** figure out  
21 what she wants to do. All I'd like to put on the  
22 record, Your Honor, is that this man was convicted of  
23 involuntary manslaughter in 1969. He was convicted  
24 of assault with a deadly weapon --

25 MR. SHIPMAN: Your Honor, we actually object to

1       that.  There's -- he was sentenced under federal  
2       system and was originally given a 15 year sentence  
3       under the Armed Career Criminals Act.  His case was  
4       later overturned under Johnson because there was some  
5       discrepancy about that particular charge that he's  
6       addressing now that stems from North Carolina.  So, I  
7       don't know the exact nature of that.  I haven't been  
8       able to get those documents from North Carolina.  But  
9       I would ask you -- if you are going to consider that  
10      prior conviction, consider it in those terms.

11           MR. HOLLOWAY:  Your Honor, I do have  
12      documentation from North Carolina on the involuntary  
13      manslaughter.  1976, Your Honor, conviction for  
14      assault with a deadly weapon.  Your Honor, there's  
15      another conviction for a weapons charge under North  
16      Carolina statute.  There's a conviction in the 90's  
17      for a drug charge, possession of less than one gram  
18      of cocaine base.  And then, in 2005, in December of  
19      2005, Mr. Galloway was committed to the Federal  
20      Bureau of Prison under Title 18 United States Code  
21      1922(g) for being a felon in possession of a firearm.  
22      He was released in February of 2016, Your Honor.  And  
23      very subsequent, shortly thereafter, is when  
24      Complainant sent these letters.

25           Complainant would you like to address the Court?

1 THE VICTIM: No.

2 MR. HOLLOWAY: Are you sure? You've been  
3 waiting a long time for this.

4 THE VICTIM: Regardless of who he is now, I  
5 still live with who he was then. And if his life is  
6 changed and given over to God, he can still do  
7 ministry in prison. That's all I have.

8 THE COURT: Thank you. I'm sorry for what  
9 you've been through.

10 All right.

11 MR. SHIPMAN: Your Honor, may it please the  
12 Court. Just to address a couple of those prior  
13 convictions. My understanding of the manslaughter,  
14 the involuntary manslaughter, was that there was  
15 something with a car wreck back in 1969, Your Honor.  
16 I don't know all the ins and outs of that. As far  
17 as -- I don't know have paperwork here with me today,  
18 but I believe there was some error from the clerk in  
19 North Carolina about which Richard Galloway was  
20 convicted of what and that was part of the reason his  
21 federal sentence was ended -- or, you know, commuted  
22 and then undone under U.S. v. Johnson.

23 As to Mr. Galloway's personal life, he and I  
24 have spoken. I've had this case for almost two years  
25 now, so he and I have met quite a lot. I've found

1 him to be amiable, intelligent. He said that he --  
2 you know, he changed a lot on the last prison  
3 sentence that he was going through as far as who the  
4 person he was. And, you know, I believe he has been  
5 genuine about that, Your Honor. You know, I've  
6 spoken to members of his family, his sister, his  
7 brother-in-law, who's been here all week. He's  
8 become a part of their lives again. And his sister  
9 and Mr. Holcomb sitting back there have been married  
10 for going on 50 something years, I believe. So, this  
11 is tight nit group up there that he's been a part of  
12 and he's really turned over a new leaf, Your Honor.  
13 He's joined a church. He's getting on in age now, as  
14 you can tell. He's had some heart problems and other  
15 medical issues that he's had to have tended to while  
16 he's in jail.

17 You know, this has been a trying week. So, Your  
18 Honor, Richard and I, we've gotten along always. We  
19 haven't always seen eye to eye on what's to be done  
20 with the case, but I think he and I have had a  
21 personal understanding about who are his people. And  
22 whatever he's done in the past, I believe he's  
23 different now than what he was because he admits of  
24 the things that he did do in the past as far as the  
25 fighting and the drugs and things of that nature,

1 Your Honor. And I don't think that's who he is  
2 anymore. I think that he really changed on that last  
3 bid that he had in the federal penitentiary. He  
4 won't be further -- I don't know if he were to be  
5 released -- he's got the remainder of the federal  
6 probationary sentence left to serve. I don't know  
7 how they toll the time on the fed probation time.  
8 He's been here in the county jail, obviously, for a  
9 better part of two years.

10 THE COURT: Yeah, how much time was that?

11 MR. SHIPMAN: When he got out, he had a year --  
12 or three years of supervision. Now, I don't know if  
13 that's been tolled or what. But I ask you to  
14 consider that, you know, he's going to be -- he'll be  
15 somewhere around.

16 MR. HOLLOWAY: Your Honor, he's been in the  
17 county detention center since December 22nd of 2016  
18 for a total of 409 days.

19 MR. SHIPMAN: Your Honor, I believe he spent a  
20 few months in Asheville before he got here as well.  
21 To talk about the federal time that he did, he was  
22 initially sentenced under the Armed Career Criminal  
23 Act under Title 18 U. S. code.

24 THE COURT: I'll save your breath, I'm not going  
25 to consider that.

1 MR. SHIPMAN: Your Honor, I'd ask you to  
2 consider the lapse of time, the changes that he has  
3 made and I'd ask you to consider that he's spent most  
4 of the last decade behind bars already. So, I ask  
5 you to give him a chance to live on the outside.  
6 And, you know, probably spend the twilight of his  
7 life back home with his friends in North Carolina,  
8 which is going to be very far away from Missouri,  
9 Your Honor.

10 THE COURT: All right. Anything you want tell  
11 me, Mr. Galloway?

12 MR. GALLOWAY: Yes, sir. Yes, sir. Yeah, I  
13 spent 10 and a half years and these charges, that's  
14 all I got out on. This violent charges, that ain't  
15 never happened. Because that's -- the clerk of court  
16 in Transylvania County says it ain't me. It wasn't  
17 me, that's why I got out. But I got out, I got saved  
18 and I got baptized. I joined a church. And I don't  
19 miss, I don't miss church. I live for God now, you  
20 know. I'm willing to testify for Jesus Christ any  
21 time I can, you know. I put all that stuff behind  
22 me.

23 THE COURT: All right. Anything else you want  
24 me to consider?

25 MR. SHIPMAN: Actually, Your Honor.

1 Mr. Holcombe, would you like to say anything?

2 THE COURT: State your name for the record.

3 MR. HOLCOMBE: Since Richard got out --

4 THE COURT: State your name.

5 MR. SHIPMAN: State your name so they can write  
6 your name down for the record.

7 MR. HOLCOMBE: My name is Robert Holcombe. I'm  
8 Richard's brother-in-law. I'm from North Carolina.  
9 Several years ago, Richard got saved while he was in  
10 prison. Since he got out, he's been a devoted  
11 Christian. He's helped the community, elderly  
12 people, everything. Everything the church needs  
13 doing, he helps to do it. Richard is not the same  
14 man he was 30 years ago. So, I ask you to please be  
15 lenient with him.

16 THE COURT: All right. Anything else?

17 MR. SHIPMAN: Nothing further, Your Honor.

18 THE COURT: All right, on criminal sexual  
19 conduct 2017-7928, sentence of the Court is 30 years,  
20 credit for 409 days served. On lewd act with a  
21 minor, that's 10 years, credit for 409 days served.  
22 Those are consecutive. Good luck to you,  
23 Mr. Galloway.

24 All right, court's adjourned.

25 MR. HOLLOWAY: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA           )  
COUNTY OF GREENVILLE           )

I, APRIL P. HERRON, Official Court Reporter for  
the Thirteenth Judicial Circuit of the State of South  
Carolina, do hereby certify that the foregoing is a true,  
accurate and complete Transcript of Record of the  
proceedings had and evidence introduced in the trial of  
the captioned case, relative to appeal, in the Court of  
General Sessions for Greenville County, South Carolina, on  
the 14-16 day of May, 2018.

I do further certify that I am neither of kin,  
counsel nor interest to any party hereto.

March 31, 2018

A handwritten signature in cursive script, reading "April P. Herron", written over a horizontal line.

APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 RICHARD GALLOWAY, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2017-GS-23-07928 & 07929

TRANSCRIPT OF RECORD

OCTOBER 4, 2018  
PICKENS, SOUTH CAROLINA

BEFORE:

THE HONORABLE PERRY H. GRAVELY

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

BRANDI HINTON  
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

CHRISTOPHER SHIPMAN, ESQ.

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

CERTIFICATE OF REPORTER -----

11

EXHIBITS

| <u>NO</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVIDENCE</u> |
|-----------|--------------------|-----------|-----------------|
|-----------|--------------------|-----------|-----------------|

(No Exhibits Were Presented During This Hearing)

1           **THE COURT:** This is State versus Richard Galloway,  
2 motion for reconsideration. First, Mr. Galloway, I want to  
3 apologize for the -- one, the difficulty we had in  
4 scheduling. And that is mostly my fault and not your  
5 attorney's. Your attorney has been very diligent in trying  
6 to get this scheduled, but due to my schedule and everything  
7 else. And so I do apologize for that.

8           And, secondly, I know there was some confusion about --  
9 an order was issued at the same time we were trying to  
10 schedule this. So, again, that was something -- our fault,  
11 and I apologize for any misunderstanding on that. So with  
12 that being said, I'll be glad to hear from you, Mr. Shipman.

13           **MR. SHIPMAN:** Your Honor, I think the basis of the  
14 motion is, you know, I think at the end of this trial, it  
15 was a three-day-long trial. We didn't get out of the  
16 courtroom, I don't think, until close to 10:00 that night.  
17 I was hoping after some, you know, after having some time to  
18 sleep on it that we could reconsider this forty year  
19 sentence.

20           The allegations are alleged to have occurred in, I  
21 think, 1989 and 1990. So it's nearly thirty years old. Mr.  
22 Galloway's sixty-nine now, about to be seventy, I believe.  
23 He's currently housed at Lee Correctional Institution. And  
24 I don't need to, you know, tell you all of what's been going  
25 on down there.

1 I think, you know, I've read some reports about, you  
2 know, the assaults and killings in the prison system has  
3 nearly quadrupled in the last couple of years. And so  
4 there's a problem there with his age and his -- the offense  
5 he's in there for, Your Honor.

6 I believe it would pose a substantial risk to him long-  
7 term. And I think at his age, a forty year sentence, even  
8 though I think he's technically eligible for parole under  
9 the old system prior to the Truth in Sentencing Act, the  
10 likelihood him of -- the likelihood of him making it to that  
11 age in the prison is extremely remote.

12 And considering the delay and, you know, the different  
13 man he is now than he was back then and also the lengthy  
14 federal sentence he served in between these incidents, I  
15 believe, you know, I stated, and it's hard for me to  
16 understand, he over-served. And his attorney in the federal  
17 system was telling me that he served -- over-served anywhere  
18 between two and ninety-six months depending on the  
19 guidelines because he was miscategorized as a career  
20 criminal.

21 And he basically was released after having maxed out  
22 that sentence shortly before he was picked up on these  
23 charges. I think he'd been out of the prison for about six  
24 to nine months, in that range.

25 And I'd ask you to consider that, you know, he's

1 already served a lengthy amount of time, his age, his  
2 health. And I don't think he's a physical risk to anyone  
3 going forward.

4 And I'd ask you to consider a reduced sentence, Your  
5 Honor, something in the range of -- I believe we asked for  
6 home -- a lengthy period of home incarceration at the time.  
7 I don't think, you know, you'd probably -- I don't believe  
8 you're probably leaning that far, but I'd ask you to  
9 consider cutting this down, perhaps, to five to ten years in  
10 the Department of Corrections, Your Honor.

11 **THE COURT:** Remind me, is this the one where there were  
12 three separate charges and they found him guilty on one --  
13 not guilty on one and were hung on the other ones?

14 **MR. SHIPMAN:** There were four charges, Your Honor.  
15 There were three counts of criminal sexual conduct with a  
16 minor in the first degree and one count of lewd act on a  
17 child. He was convicted of lewd act, first degree,  
18 acquitted on the first degree and then hung on the first  
19 degree.

20 **THE COURT:** All right.

21 **MR. SHIPMAN:** And I ---

22 **THE COURT:** I remember it was a very unusual ---

23 **MR. SHIPMAN:** Yes, Your Honor. And I think the jury  
24 had a hard time with this. And I think, you know, through  
25 the nature of the testimony and the length of this, and my

1 suspicion is that they, you know, kind of struck a  
2 compromise verdict back there because it was basically two  
3 to two.

4 **THE COURT:** And his sentence -- my sentence was?

5 **MR. SHIPMAN:** Forty years, Your Honor.

6 **THE COURT:** Forty?

7 **MR. SHIPMAN:** Yes, sir.

8 **THE COURT:** All right. I'd be glad to hear from the  
9 State.

10 **MS. HINTON:** Thank you, Your Honor. I know you know  
11 this, but just for the record, Brandi Hinton for the State.  
12 I'm standing in for Justin Holloway. This was his case.  
13 However, he is now with the U.S. Attorney's Office. So he  
14 cannot be here for this hearing.

15 First of all, Mr. Galloway is parole eligible on May  
16 the 15th of 2025. So if he was paroled on that date, that  
17 would essentially be a seven year sentence.

18 Your Honor, I think what the motion was couched as is a  
19 cruel and unusual punishment motion. And that was based on  
20 his age, his frail condition and his lack of incidences  
21 since 1989.

22 However, he was arrested and convicted in 1992 on PWID  
23 controlled substance, possession of a weapon of mass  
24 destruction and PWID marijuana. And then he was again  
25 convicted of a weapons charge in federal court in either

1 2005 or 2007. I couldn't really tell from his sentencing  
2 sheet. And I believe that that is what they're asking for  
3 you to consider as an over-served sentence.

4 Your Honor, the standard for whether something is a  
5 cruel and unusual punishment is set out in Furman v.  
6 Georgia, which is a United States Supreme Court case, 408  
7 U.S. 238. Essentially what that case said is that purpose  
8 of the Cruel and Unusual Punishment Clause was to require  
9 the legislature to write penal laws that are evenhanded,  
10 nonselective and nonarbitrary and to require judges to see  
11 to it that general laws are not applied sparsely,  
12 selectively or spottily to unpopular groups.

13 So the history of the Cruel and Unusual Punishment  
14 Clause was that this was used back when people defected from  
15 England and they were being improperly punished for that.  
16 So that was the reason why that was included in the Bill of  
17 Rights.

18 But it did set out a test for the court to consider  
19 whether or not something is cruel and unusual punishment.  
20 And it says the essential predicate is that the punishment  
21 must not by its severity be degrading to human dignity.

22 So you are to consider whether the severe punishment is  
23 obviously inflicted in a wholly arbitrary fashion, whether a  
24 severe punishment is clearly and totally rejected throughout  
25 society and whether it is patently unnecessary. And it

1 encourages the court that the test will usually be a  
2 cumulative one.

3 So if a punishment is unusually severe, if there's a  
4 strong probability that it is inflicted arbitrarily, if it  
5 is substantially rejected by contemporary society and if  
6 there's no reason to believe that it serves any penal  
7 purpose, then it possibly violates the Cruel and Unusual  
8 Punishment Clause.

9 I think it's inappropriate to guess what the jury was  
10 doing back there. They could have just as easily come very  
11 quickly to a guilty verdict. Obviously, they were hung on  
12 one. So that could have been the length of the discussions  
13 back there.

14 Given the fact that he is given credit under the old  
15 law, then that forty year sentence is not a true forty year  
16 sentence. Given the nature of the allegations, we think  
17 that it does not violate the Cruel and Unusual Punishment  
18 Clause, and, in fact, it is appropriate as ordered.

19 **THE COURT:** All right. Mr. Shipman.

20 **MR. SHIPMAN:** Your Honor, I think the thing I would  
21 take exception to is the penal purpose of this given his  
22 age. You know, as true a forty year sentence that there is,  
23 it's -- that determines when he'd become eligible for  
24 parole, he'd have to serve one-third of that. And that's  
25 why he's -- well, I don't know how it was under the old

1 statute, Your Honor, but that -- the percentage of that is  
2 -- that forty is what determines the parole eligibility.

3 And 2025 is seven years from now. He'll be seventy-  
4 six. I think the actuarial tables for inmates in prison  
5 would suggest that he won't be around for his parole hearing  
6 at that time, Your Honor. That's essentially a life  
7 sentence. And so I'd ask you to consider reducing his  
8 sentence based on that.

9 **THE COURT:** Well, I mean, first of all, like I said, I  
10 think my consideration was that it was under the old system  
11 in realizing that, you know, basically he would be getting a  
12 substantial basic, you know, assistance there as far as  
13 reducing the time.

14 You know, it's -- I know that it is very difficult in  
15 the Department of Corrections. And, unfortunately, there's  
16 nothing I can do about that. But I don't believe that  
17 there's a basis for any change in this sentence. So good  
18 luck to you, Mr. Galloway.

19 **MR. SHIPMAN:** Thank you, Your Honor.

20 (Hearing Ended at 10:38 am)

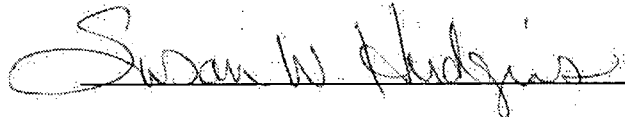
21 (End of Requested Transcript of Record)

## Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 4th day of October 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 30, 2018

A handwritten signature in cursive script, reading "Susan W. Hudgins", written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

The State,

v.

Richard Kenneth Galloway,

Defendant.

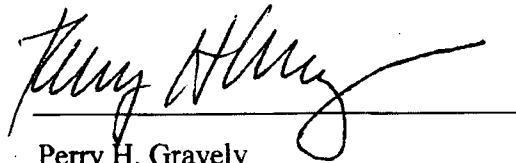
IN THE COURT OF COMMON PLEAS.  
THIRTEENTH JUDICIAL CIRCUIT

Warrant/Indictment Nos.:  
2016A2330207788; 2016A23307789;  
2016A2330207787; 2016A2330207786

**ORDER DENYING DEFENDANT'S  
MOTION TO RECONSIDER SENTENCE**

This matter comes before the Court upon Defendant's Motion to Reconsider the Court's sentence imposed after the Defendant's conviction for first degree criminal sexual conduct with a minor and lewd act upon a child. After reviewing the Defendant's Motion, the Court held a hearing on October 4, 2018. The Court has carefully considered the Defendant's arguments; however, the Court does not believe there is a basis for reducing the sentence. Therefore, the Defendants' Motion to Reconsider is denied.

**IT IS SO ORDERED.**



Perry H. Gravely  
Presiding Judge

Pickens, South Carolina

October 4, 2018

**WITNESSES**

Robert Joseph Perry

Greenville County Sheriffs Office

12/22/2016

**ARREST WARRANT NUMBER**  
2016A2330207786

**ACTION OF GRAND JURY**  
**TRUE BILL**

FOREMAN GRAND JURY

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*

*Date:*

DOCKET NO. 2017-GS-23-<sup>JWH</sup>

007928

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

**September TERM 2017**

**THE STATE**

**vs.**

**RICHARD KENNETH GALLOWAY**

0385 ✓

**Indictment for**

**CRIMINAL SEXUAL CONDUCT WITH A MINOR**  
**FIRST DEGREE**

**VIOLATION § 16-03-0655(A)(1)**

**ENTERED**  
**ACCT**

**RECEIVED**  
OCT 09 2018  
SC Court of Appeals

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on

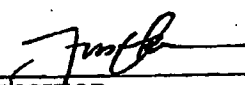
SEP 26 2017

the Grand Jurors of Greenville

County present upon their oath:

That RICHARD KENNETH GALLOWAY did at 307 N. Highway 25 Bypass, in Greenville County,  
between the 1<sup>st</sup> day of January, 1988 and the <sup>17<sup>th</sup> day of Nov 1989</sup> ~~31<sup>st</sup> day of July, 1990~~, commit a sexual battery on Complainant  
who was less than eleven years of age. This is in violation of §16-03-0655(A)(1) [formerly §16-03-  
0655(1)] 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.

  
SOLICITOR

BAR # 100639

**WITNESSES**

Robert J. Perry

Greenville County Sheriffs Office

12/22/2016

**ARREST WARRANT NUMBER**  
2016A2330207788

**ACTION OF GRAND JURY  
TRUE BILL**

**FOREMAN GRAND JURY**

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*  
Date:

**DOCKET NO. 2017-GS-23-✓ 007929**  
JWH

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

**September TERM 2017**

**THE STATE**

**VS.**

**RICHARD KENNETH GALLOWAY**

**Indictment for**

**2468**

**LEWD ACT UPON A CHILD**

**VIOLATION § 16-15-0140**

**ENTERED  
ACCT**

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on ✓

SEP 26 2017

the Grand Jurors of Greenville

County present upon their oath:

That RICHARD KENNETH GALLOWAY did in Greenville County, between the 1<sup>th</sup> day of January, 1988, and the 31<sup>st</sup> day of July, 1990, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of Complainant, a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-0140 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.

  
SOLICITOR

BAR # 100639

## STATE OF SOUTH CAROLINA

COUNTY OF Greenville  
STATE VS.  
Richard Kenneth Galloway

AKA:

Race: WHITE Sex: M Age: 68DOB: 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  
TO: Sex, Crim Sex Cond, 1st Deg W/Min <11 Yr

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2307928A/W#: 2016A2330207786Date of Offense: 5/11/1989S.C. Code §: 16-03-0655(A)(1)CDR Code #: 0385

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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:

*[Signature]*

Solicitor

100639

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 30 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: 5/16/18☒ 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 SCDOC.☐ The Defendant is to be placed on the 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 (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)  | \$100   | \$ 100 |
| § 14-1-211(A)(2) (DUI Surcharge)    | \$100   | \$     |
| § 56-5-2995 (DUI Assessment)        | \$12    | \$     |
| § 56-1-286 (DUI Breath Test)        | \$25    | \$     |
| Proviso (Public Def/Probation)      | \$500   | \$     |
| § 14-1-212 (Law Enforce. Funding)   | \$25    | \$ 25  |
| § 14-1-213 (Drug Court Surcharge)   | \$150   | \$     |
| § 50-21-114 (BUI Breath Test Fee)   | \$50    | \$     |
| § 56-5-2942(J) (Vehicle Assessment) | \$40/ea | \$     |

3% to County (if paid in installments)

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: Herron

SCCA/217 (04/2018)

\_\_\_\_\_ 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,

Proviso requires \$500 be paid to Clerk  
during probation and shall be collected before  
any other fees.

Presiding Judge *[Signature]*Judge Code: 2755Sentence Date: 5-16-18

## STATE OF SOUTH CAROLINA

COUNTY OF Greenville  
STATE VS.Richard Kenneth Galloway

AKA:

Race: WHITE Sex: M Age: 68DOB: 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  
TO: SEX / LEWD ACT, COMMITTING OR ATTEMPTING

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2307929A/W#: 2016A2330207788Date of Offense: 11/11/1988S.C. Code § : 16-15-140CDR Code #: 2468

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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:

Julio  
Solicitor

100639

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 10 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: 5/16/18☒ 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 SCDOC.☐ The Defendant is to be placed on the 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 (Domestic  
Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$        plus 20% fee: \$               days/hours Public Service Employment.

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |                |
|----------------------------------------|---------|----------------|
| § 14-1-206 (Assessments 107.5 %)       | \$      | \$             |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ <u>100</u>  |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$             |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$             |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$             |
| Proviso (Public Def/Probation)         | \$500   | \$             |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ <u>25</u>   |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$             |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$             |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ca | \$             |
| 3% to County (if paid in installments) | \$      | \$ <u>3.75</u> |

TOTAL

\$ 128.75Clerk of Court/ Deputy Clerk Paul B. WickmanCourt Reporter: Heron

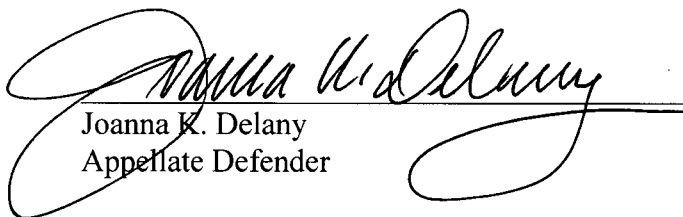
SCCA/217 (04/2018)

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,  
Proviso requires \$500 be paid to Clerk  
during probation and shall be collected before  
any other fees.Presiding Judge       Judge Code: 2755Sentence Date: 5-16-18

## 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,



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This 19th day of March, 2020.

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