STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge
Appellate Case No: 2018-001754

THE STATE, Respondent,

vs.

WILLIAM LEE CARPENTER, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court properly admitted evidence, including the photograph of Appellant's girlfriend covered in feces and the computer searches, because the State had to demonstrate the intent behind Appellant's actions and that the actions were of a lewd and lascivious nature. Further, the admission of the evidence is entirely harmless given the extensive testimony by Appellant regarding his own fetishes and sexual interests which went far beyond that admitted by the State.

II. The trial court did not abuse its discretion in removing a family member from the courtroom during one of the victim's testimony because, as the court explained, it was the least disruptive means of making the courtroom more conducive for the child victim's testimony.

STATEMENT OF THE CASE

The Greenville County Grand Jury indicted Appellant on four counts of first degree criminal sexual conduct (CSC) with a minor, two counts of exposing another to HIV, two counts of third degree CSC with a minor, and two counts of unlawful conduct. (Indictments) He proceeded to trial before the Honorable Letitia H. Verdin and a jury between September 10-13, 2018. The jury found him guilty as charged. (T.579; R.579). He was sentenced to a total of thirty years in prison with sentences for each charge to run concurrent. (T.585; R.585). This appeal follows.

STATEMENT OF FACTS

The two child victims told horrific stories of abuse at the hands of the person they called "the monster," their grandfather. (T.247; 293; R.247; 293). The female and male child victim were siblings living with their grandfather, their grandfather's girlfriend, and other family members. At the time of trial the female child victim was only eleven years old and male child victim was only twelve. (T.243; 290; R.243; 290).

According to the female child victim, her grandfather vaginally raped her on his couch while her grandfather's girlfriend held her down by her shoulders. (T.248-249; R. 248-249). The rape ended with her crying that she wanted to go to her room. On a second occasion, Appellant's girlfriend again held down the child victim while Appellant digitally penetrated his granddaughter. (T.250; R.250).

Finally, she explained that Appellant "put his poop on my and my brother's back." Appellant called the two children to his room and put "his poop" on their back. They then had to scrub it off of each other with a rag. (T.250-251; R.250-251). The female child victim did not understand why her grandfather was smearing feces on her back, but she felt "grossed out."

According to the male child victim, his grandfather "put a syringe in my butt" and sprayed water into his anus. (T. 295-296; R.295-296). As a result of Appellant putting the enema into the child, the male child victim defecated. After the "poop came out," the male child victim's grandfather "rubbed it all over" the male child's back. (T.296-297; R.296-297). After smearing feces on the child's back, Appellant anally raped his grandson. (T.297; R.297). Finally, the male child victim explained that his grandfather made him urinate in a bottle and then "made me drink my own pee." (T.297-298; R.297-298).

ARGUMENT

I. The trial court properly admitted evidence, including the photograph of Appellant's girlfriend covered in feces and the computer searches, because the State had to demonstrate the intent behind Appellant's actions and that the actions were of a lewd and lascivious nature. Further, the admission of the evidence is entirely harmless given the extensive testimony by Appellant regarding his own fetishes and sexual interests which went far beyond that admitted by the State.

Appellant contends the trial court erred in admitting evidence and testimony related to his coprophilia because it violates Rules 403 and 404(b), SCRE, and was not relevant in this case. Initially, several portions of Appellant's arguments on appeal are not properly preserved for review on appeal. Additionally, the testimony and other evidence was necessary due to the unusual sexual behavior exhibited by the defendant and the claims by the victims which would not be understood by a jury and deemed outlandish without the admission of the evidence. As a result, the trial court properly allowed the State to present limited evidence demonstrating Appellant utilized feces and urine in his sexual activities.

Preservation

Initially, the State notes that much of Appellant's arguments are not properly preserved for review on appeal. Much of the discussion regarding the admission of the photograph and searches performed by Appellant occurred during a pretrial hearing. During that hearing, Appellant objected on grounds of relevance, Rule 403 and Rule 404(b). (9/6T.26-36; S.R.26-36). At the beginning of trial, the evidence was again briefly discussed. The trial court reminded Appellant: "I certainly acknowledge that you need to continue to preserve that objection to this." (T.27; S.R.27). Appellant recognized this need. (T. 28; S.R.28).

As to the admission of the search terms and results, Appellant never renewed his objection. He did renew his objection, as will be discussed next, to the admission of the photograph. However, after he objected to the photograph and after further testimony by Investigator Perry, the State sought to admit the searches performed by Appellant. At no time during this testimony did Appellant renew his objection. It was incumbent on Appellant to raise an objection when the actual testimony was presented to the jury and to raise any specific issues related to that testimony he wished to preserve for review on appeal. See State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) ("In most cases, '[m]aking a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced.'"); State v. Kirton, 381 S.C. 7, 43, 671 S.E.2d 107, 125 (Ct. App. 2008) (same); see also, State v. Floyd, 295 S.C. 518, 521, 369 S.E.2d 842, 843 (1988) ("Trial judges must not be held, conclusively, to preliminary rulings made without benefit of all the pertinent and relevant evidence.").

When the State sought to admit the photograph at issue on appeal, Appellant specifically objected stating: "Your Honor, we previously objected for **relevance** and -- under **Rule 403**, and renew **those** previous grounds." (T.161; R.161)(emphasis added). As a result, he abandoned his objection to the evidence under Rule 404(b) because he did not renew that objection and specifically limited his objection to relevance and Rule 403. Any argument related to the admission of the photograph, or any other evidence, on the basis of Rule 404(b) is not preserved for review on appeal. See Forrester, 343 S.C at 642, 541 S.E.2d at 840; see also, State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding a defendant may not argue

one ground at trial and another on appeal). As a result, the only issues preserved are relevance and Rule 403 as they relate to the admission of the photograph.

Merits

On the merits, the State submits both the photograph and testimony were properly admitted to rebut any possible defenses raised by Appellant and to demonstrate Appellant's intent and motive regarding the use of the enema on the male victim and the smearing of the feces on both child victims was of a sexual nature even though that is against the common sense and understanding of the jury. The evidence was highly probative and, while certainly graphic and disgusting, not unduly prejudicial in light of the nature of the crime for which Appellant was accused.

First, the evidence was relevant and probative because the average person would never believe someone obtained sexual gratification from anything to do with feces or urine—an element of the offense of third degree CSC with a minor the State was required to prove. In this case both the third degree CSC with a minor charges related to the smearing of feces on the children. In order to establish third degree CSC, section 16-3-655(C) provides:

> A person is guilty of criminal sexual conduct with a minor in the third degree if the actor is over fourteen years of age and the actor wilfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the **intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor** or the child.

S.C. Code Ann. § 16-3-655(C) (Supp. 2018) (emphasis added).

The prior act of Appellant's girlfriend photographed in a sexual manner while covered in feces demonstrates that the use of feces arouses, appeals to, or gratifies the lust, passion, or sexual desires of Appellant. No average juror would believe that seeing someone smeared in

feces or the smearing of feces on the backs of children could be sexually gratifying. The relevance and high probative value of the photograph demonstrating Appellant's use of feces with his girlfriend in a sexual manner came from the disabusing the jury of the notion that the behavior was not of a sexual nature.

As the Appeals Court of Massachusetts explained coprophilia (a disorder defined by a marked interest in excrement or the use of feces for sexual gratification) "is a sexual fetish that is well beyond the common experience of jurors, and even discordant with common sense . . . ." Com. v. Lawton, 976 N.E.2d 160, 170 (Mass. App. Ct. 2012). In Lawton, prosecutors sought to have an expert define and describe coprophilia in an attempt to explain the victim's testimony that the defendant repeatedly tried to get the victim to defecate either in his hand or in a bag. The trial court admitted the testimony and the appellate court affirmed indicating: "As the judge properly noted during pretrial proceedings, [the expert's] testimony would be important to refute any suggestion that the victim had made up an outlandish thing that has never been known to happen." Id.

This case is very similar to Lawton. The children's descriptions of the abuse center around their grandfather smearing feces on them. To call this behavior unusual is a brobdingnagian understatement. The jury needed a point of reference to understand that the children's stories were believable and to place them in the sexual context necessary to convict for third degree CSC with a minor.

Appellant maintains this testimony is prohibited by State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998). In Nelson, the State sought to admit a number of toys, tapes of children's shows, storybooks, photographs of young children, and statements made by the defendant that he fantasized about children. Over the defendant's objection, the trial judge ruled the evidence was

probative of whether the defendant was a pedophile. The court found that pedophilia was "not of a 'character issue' but a 'personality characteristic.'" Id. at 5, 501 S.E.2d at 718.

The South Carolina Supreme Court found the evidence was solely admitted to show propensity to commit the crimes against the minor victims. The argument that motive or intent was shown through the evidence was found to be "a cleverly disguised way of asserting Petitioner committed the crimes because he has a propensity to commit sexual offenses." Id. at 12, 501 S.E.2d at 722. The evidence admitted in Nelson demonstrated Nelson was a pedophile, and the only reason the Court found to admit evidence Nelson was a pedophile was to show his propensity to commit crimes against children.

This case is clearly distinguishable because the State is not seeking to admit evidence which demonstrates a "character issue" or a "personality characteristic." In Nelson, the offered evidence was relevant only to show that the defendant was a pedophile. The fact that the defendant was a pedophile spoke only to his propensity to commit the charged offense, and evidence thereof was inadmissible. In the instant case, the evidence is being admitted because the average person would never believe anyone would obtain sexual gratification from smearing feces on another person; however, this is exactly what the State sought the jury to find.

In deciding Nelson, the Court relied in part on State v. Smith, 617 N.E.2d 1160 (Ohio App. 1992), cert. denied, 612 N.E.2d 1244 (1993), from the Ohio Court of Appeals. In Smith, the Ohio Court of Appeals found "the question of motive is generally relevant in all criminal trials, even though the prosecution need not prove motive in order to secure a conviction." Id. at 1172 (quoting State v. Curry, 330 N.E.2d 720 (Ohio 1975)). The Ohio Court then found the admission of the prior bad act evidence was not necessary to establish the general motive behind the crime of gross sexual imposition because the defendant's motive or intent was not a material

issue in the trial. In the instant case, unlike Nelson or Smith, the motive behind smearing feces on another person is not clearly identifiable to the average juror. The photo of Appellant's girlfriend covered in feces in a sexual manner demonstrated and was highly probative of proving his motive for smearing feces on the children was also sexual in nature.

The Nelson Court also cited to People v. Bagarozy, 522 N.Y.S.2d 848 (N.Y. App. Div. 1987), a case involving the oral sodomy of underage youths. The Court in Bagarozy explained:

> In many cases, the requisite criminal intent is readily inferrable from the act itself. Where, however, the nature of the act is equivocal and a particular intent cannot be inferred, extrinsic proof is admissible to negate the existence of an innocent state of mind. In such cases, evidence of other similar acts is permitted under the intent exception.

Id. at 854 (citations omitted). The Court continued: "The rationale underlying the admission of such proof is that the successive repetition of similar unlawful acts tends to reduce the likelihood of the actor's innocent intent on the particular occasion in question." Id. (citation omitted). The Court in Bagarozy, like the South Carolina Supreme Court in Nelson, found the actions of the defendant were not equivocal so evidence of intent or motive was not necessary. In the instant case, as discussed extensively above, the behaviors of Appellant were very equivocal. The smearing of feces on another person is not so unequivocally sexual in nature as to not require proof of the intent behind Appellant's behaviors. Instead, this case is the clear exception to Nelson, Smith, and Bagarozy in which additional evidence is necessary so the jury can completely understand what has taken place and what it is being asked by the State to find Appellant did in order to convict him.

Additionally, as noted above, one of the elements the State is required to prove in order to establish third degree CSC with a minor is that the acts were done with the "intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child." S.C.

Code Ann. § 16-3-655(C). In all criminal prosecutions, "[t]he government must prove beyond a reasonable doubt every element of a charged offense." Victor v. Nebraska, 511 U.S. 1, 5, 114 S.Ct. 1239, 127 L.Ed.2d 583 (1994) (citing In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)); see Dervin v. State, 386 S.C. 164, 168, 687 S.E.2d 712, 713 (2009) ("Due process requires the State to prove every element of a criminal offense beyond a reasonable doubt." (citing State v. Brown, 360 S.C. 581, 595, 602 S.E.2d 392, 400 (2004))). If the argument Nelson stands for the proposition the State need not prove intent during its case in chief is accepted, then the State is in effect entitled to a directed verdict on an issue. The South Carolina Supreme Court recently confronted a similar situation in State v. Odom, where the Court found taking judicial notice of a driver's license birthdate "was tantamount to a directed verdict on the element of the accused's age, a practice which is clearly forbidden." State v. Odom, 412 S.C. 253, 267, 772 S.E.2d 149, 156 (2015). As one of the elements the State is required to prove is that Appellant smeared feces on the children with the intent to arouse or satisfy his sexual gratification, the State is allowed and required to put forth the evidence presented in this case.

Additionally, the State sought to prove a sexual battery occurred when Appellant inserted an enema into his grandson. A sexual battery includes the insertion of an object. However, there is also an exception in the statute: "'Sexual battery' means . . . any intrusion, however slight, of any part of a person's body **or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.**" S.C. Code Ann. § 16-3-651(h) (Supp. 2018). The insertion of an enema has a clear medically recognized basis for treatment of constipation. The State had to prove the insertion of the enema by Appellant into the grandson was not for purposes of treatment, but was instead a sexual battery being committed on the child. Appellant's online

searches for enemas and their use in sexual activities was highly probative evidence tending to prove the State's theory that the insertion of the enema was a sexual battery and not a medically recognized treatment that is an exception to the definition.[1]

The photo of Appellant's girlfriend covered in feces in a sexual posture as well as the searches on Appellant's computer were directly relevant to the charges brought against Appellant and were highly probative of the first degree CSC with a minor related to the male child victim having an enema placed in his anus as well as both third degree CSC with a minor charges related to Appellant's smearing of feces on the backs of both children. Appellant could have raised the medical purposes exception to a sexual battery as a defense to the first degree CSC charge related to the insertion of the enema. Additionally, he could have asserted the claims of the children regarding the smearing of feces was so outlandish it should not be believed. The evidence was properly admitted because it was highly probative and established Appellant's intent in committing the crimes against his grandchildren.

Harmless Error

Additionally, any error in the admission of the evidence was entirely harmless in light of the extensive testimony by Appellant. During his direct examination, Appellant's counsel mentioned the photograph and then asked: "I don't want to embarrass you further, but I want to talk to you a little bit about your sex life and your sex history." (T.433; R.433). The testimony that was elicited and presented by Appellant after that question went far beyond anything necessary to address the picture and rendered any possible error in the admission of any of the State's evidence harmless. See State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003) (admission of improper evidence is harmless where the evidence is merely cumulative to other

[1] It is significant to note that the jury was charged the definition of sexual battery and was charged the medically recognized treatment exception. (T.572; R.572).

evidence.); State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) (any error in admission of evidence cumulative to other unobjected to evidence is harmless).

Appellant testified:

> A I am a bisexual, submissive bottom.
> . . . .
> Q When you say "submissive," what does -- what does it mean to be a submissive?
> A I like to give up control to someone I can trust. I have a whole world out there that feels like you have to control all of the world around you all the time. My release comes from turning over that control to a dominant figure that I can trust, and doing what they say and following their instructions . . . .
> Q Do you have any interest in dominant sex?
> A No. I am strictly a submissive.
> Q When you say you are a "bottom," what does that mean?
> A That means if there's any penetration going on, I want it to be me.
> . . . .
> Q When did you first get involved in sexual activity where feces or urine would have been incorporated?
> A 20 years ago or so.
> Q Did it just start all of a sudden all of the time?
> A No. I just -- I had a lover that was into it. He introduced me into it some. As a submissive, that is one more form of subjugation and degradation that shows I'm willing to give up and subjugate myself to whatever that dominant wants.
> Q And I don't know -- again, talking about personal things, that submissiveness, are you just in general -- do you like waste products, feces and urine? Or is it something else?
> A I mean, it's -- I'm submissive in any matter of whatever the dominant tells me to do. That's just another part of the subjugation and degradation that goes along with a submissive experience.

(T.434-436; R.434-436). Appellant's discussion clearly went well beyond anything the State put into evidence. His testimony did not stop there, but continued to describe in great detail the creation of the photo admitted by the State:

> Q So the government showed us this picture that was on your telephone. Let's start -- I'm not going to make -- not going to look at it again, but that was a picture you had on your cell phone; right?

A Yes, sir.

. . . .

Q Okay. Now that picture is a little bit different from what you've been describing because you are not in a submissive role there, are you?

A No -- well, I am, cause it was something she had requested and she wanted as the dominant partner. She had seen me experience it and seen the enjoyment I got out of it and was curious about it. So she asked me and told me to do it for her so that she could experience it one time.

Q What was -- what was the part of that that made -- that fulfilled you?

A Pleasing her.

Q Pleasing her. And that picture was on a Sunday at your house during the time that William and Dalina and all the kids lived there; right?

A Yeah.

Q Where did that take place?

A In my bathroom.

Q Would you have locked the doors to your bedroom?

A Oh, yeah. My bedroom door had a key deadbolt on it. So once we locked it on the inside, it wasn't -- and it was a Sunday morning. Everybody was asleep. We were quiet. We were in my bathroom quietly.

Q When that was over, did you immediately turn the shower on and clean up?

A Oh, yeah. We stood up, took a shower, got dressed, and went on about our day.

(T.437-439; R.437-439). Clearly, Appellant's testimony went far beyond what the State did and was entered without a reservation of his objection related to the admission of any evidence related to the photo, the computer searches, feces, or enemas. Accordingly, the admission of the State's evidence, even if in error, was entirely harmless.

II. The trial court did not abuse its discretion in removing a family member from the courtroom during one of the victim's testimony because, as the court explained, it was the least disruptive means of making the courtroom more conducive for the child victim's testimony.

Appellant maintains the trial court erred in requiring his brother-in-law to step out while the female child victim testified. The trial court did not abuse its discretion in asking one person to step out, while maintaining an otherwise open courtroom, during the testimony of the child victim. The action was done to protect the psychological well-being of the child as well as to foster a more conducive environment for her testimony. Additionally, the closure was not a complete closure, but only a partial closure, which properly considered both the interest in closure as well as the defendant's right to a public trial.

The Sixth Amendment provides that in a criminal prosecution, the accused shall enjoy a public trial. U.S. Const. amend. VI. The Fourth Circuit Court of Appeals has explained:

> Today, the constitutional right to a public trial remains grounded in the belief that judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret proceedings, and that contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power. The central aim of a criminal proceeding [is] to try the accused fairly and the public trial guarantee serves the purpose of ensuring that judge and prosecutor carry out their duties responsibly . . ., encourag[ing] witnesses to come forward[,] and discourag[ing] perjury. Hence, [t]he right to a public trial is not only to protect the accused but to protect as much the public's right to know what goes on when men's lives and liberty are at stake, for a secret trial can result in favor to as well as unjust prosecution of a defendant.

Bell v. Jarvis, 236 F.3d 149, 165 (4th Cir. 2000) (internal quotation marks and citations omitted). However, the right to a public trial is not absolute. See Waller v. Georgia, 467 U.S. 39 (1984).

In Waller, the entire courtroom was closed to all members of the public. The United States Supreme Court held that the right to a public trial may give way if:

> (1) the party seeking to close the hearing advances an overriding interest that is likely to be prejudiced,
>
> (2) the closure is no broader than necessary to protect that interest,
>
> (3) reasonable alternatives to closing the proceeding are considered by the trial court, and
>
> (4) findings adequate to support the closure are made by the trial court.

See Waller, 467 U.S. at 48. Again, Waller only is applicable in the instance of a complete courtroom closure. In the instant case, we only have one individual asked to leave the courtroom and it stayed open to the remainder of the public.

Courts have found Waller does not represent the standard for a partial closure as opposed to the complete closure which occurred in that case. "The Second, Eighth, Ninth, Tenth, and Eleventh Circuits have all found that Waller's stringent standard does not apply to partial closures, and have adopted a less demanding test requiring the party seeking the partial closure to show only a 'substantial reason' for the closure." United States v. Osborne, 68 F.3d 94, 98–99 (5th Cir. 1995). The Fifth Circuit joined them in Osborne, and the First Circuit agreed in Bucci v. United States, 662 F.3d 18, 23 (1st Cir. 2011). The Ninth Circuit specifically found a judge may order a partial courtroom closure if: (1) there is a substantial reason for the partial closure, and (2) the closure is "narrowly tailored to exclude spectators only to the extent necessary to satisfy the purpose for which it was ordered." United States v. Sherlock, 962 F.2d 1349, 1357 (9th Cir. 1989).

The Sixth Circuit Court of Appeals has found the vast majority of the analysis of Waller inapplicable to a partial closing as opposed to a complete closing of the courtroom. The Court has stated: "The only principle from Waller that was clearly established for purposes of the partial closure here was the general one that the trial court must balance the interests favoring

closure against those opposing it." Drummond v. Houk, 797 F.3d 400, 404 (6th Cir. 2015). Looking at the rationale of the partial closure cases, the Courts have nearly unanimously determined "partial closures do not implicate the same fairness and secrecy concerns as total closures." See Osborne, 68 F.3d at 99.

In the instant case, the trial court properly balanced the interests of the defendant to an open and public trial, with the sensitivity of the testimony of the victim and the ability for an eleven year old victim to testify at trial. The trial court acknowledged the existence of other possible remedies, including the victim testifying by closed circuit television from another room. Instead, the court chose the option that was clearly the least disruptive means and created the least imposition on anyone, especially the defendant.

The trial court was clearly concerned with the child victim's ability to testify. He was informed the child victim was bothered by the person's presence and in order to safeguard the child victim's welfare while she testified, he asked the brother-in-law to step out for the single witness. The United State Supreme Court has found safeguarding the psychological well-being of a minor to be a compelling interest. Globe Newspaper Co. v. Superior Court for Norfolk Cty., 457 U.S. 596, 607, 102 S. Ct. 2613, 2620, 73 L. Ed. 2d 248 (1982). It should also be noted that South Carolina has a statutory requirement for the circuit court to properly consider the witness testifying: "The circuit or family court must treat sensitively witnesses who are very young, elderly, handicapped, or who have special needs by using closed or taped sessions when appropriate." S.C. Code Ann. § 16-3-1550 (Supp. 2018).

Further, when looking at the test enunciated by the Ninth Circuit, the trial court clearly utilized the narrowest means possible to satisfy that purpose when he asked a single person to exit the courtroom—allowing all other members of the public and especially the defendant to

remain—for a single witness—as opposed to excluding the brother-in-law or others from additional testimony. The trial court properly balanced all relevant factors and did not abuse its discretion in asking the brother-in-law to step out for a single witness' testimony.

Even considering the factors of Waller, the trial court did not abuse her discretion. She found an overriding interest in ensuring the proper testimony of an eleven year old child victim and safeguarding the welfare of that child during her testimony. Second, as discussed above, the closure was no broader than necessary excluding a single person for a single witness. Third, the court discussed alternatives including the possible testimony of the child victim by closed circuit television or in another room. The court properly excluded that remedy because of the impact on the defendant and chose the means that created the least imposition. As a result, the trial court properly considered the circumstances and the possible remedies to allow the child victim to testify without possible issue related to the presence of the brother-in-law. Appellant "was not subjected to 'secret proceedings' or to the 'persecution' sought to be prevented by the public trial guarantee." Bell, 236 F.3d at 174; see also, Woods v. Kuhlmann, 977 F.2d 74, 77 (2d Cir. 1992) (finding the exclusion of members of the defendant's family only during the victim's testimony was proper). Accordingly, this Court should find the trial court did not abuse her discretion.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent filed April 24, 2020, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).
This 24th day of April, 2020.

WILLIAM M. BLITCH, JR.
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