

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Letitia H. Verdin, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES ANTHONY DURHAM,

APPELLANT

APPELLATE CASE NO. 2019-001959

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

NOVEMBER 18-19, 2019 TRIAL: STATE’S EXHIBIT #2 (Body Cam Video)

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

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1 Department and made a report.

2 Q. Thank you. I'm going to ask you a few follow-up
3 questions. I'm going to show you what's been marked as
4 State's exhibit 2. Do you recognize that?

5 A. Yes, ma'am. This is the receipt I had to buy a shower
6 head assembly. This is the receipt where I proceeded to Ace
7 Hardware and purchased that part on our company account.

8 Q. Okay. How do you know that?

9 A. Well, everything that I purchased at this Ace Hardware,
10 you know, I'm a -- I'm on the account, and I have to sign for
11 it. And so this is my signature showing.

12 And also when we purchase any kind of things that we have
13 to purchase from them, we also have to put where this item is
14 going. So if I'm going to whatever apartment complex, that's
15 the purchase order for that complex, and it's also here.

16 Q. Okay. And is there a date and a timestamp on that?

17 A. Yes, ma'am. The date is 5/14/16. And it's at 10:28 am.

18 Q. Okay. So at 10:28 am you purchased this shower head from
19 Ace Hardware?

20 A. Yes, that's correct.

21 Q. And then you proceeded back to the apartment?

22 A. That's correct.

23 Q. Okay.

24 **MS. OWEN:** Your Honor, at this time I would ask to move
25 State's exhibit number 2 into evidence.

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

1 **MR. KING:** Judge, we just don't see the relevance of this
2 receipt. It doesn't go to any element of the offense. The
3 date's been determined, he's testified. It just doesn't seem
4 relevant at all.

5 **THE COURT:** Overruled.

6 **MS. OWEN:** Thank you.

7 (Whereupon State's exhibit 2 was admitted into evidence)

8 Q. All right. Mr. King, I'm just going to back up -- a few
9 questions for you.

10 A. Yes, ma'am.

11 Q. So you got to the apartment based on a service call, is
12 that correct?

13 A. That's correct.

14 Q. Who was in the apartment when you got there?

15 A. There was a gentleman and a young lady.

16 Q. Okay. And where were they when you got to the apartment?

17 A. They were in the living room area. There's a -- when you
18 walk in, there's a sofa there.

19 Q. I'm going to show you what's been marked as State's
20 exhibit 4. Would that be the sofa?

21 A. That's correct.

22 Q. And is that the front door?

23 A. And that is the front door.

24 Q. Okay. So that is the door you would have come in, is
25 that correct?

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

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1 A. That's the door that I came in. Yes, ma'am.

2 Q. And a wider angle of that would be State's exhibit 3, is
3 that correct?

4 A. That's correct.

5 Q. And what view are we seeing of the living room?

6 A. Well, coming in the front door we have the sofa. And
7 what I witnessed, the gentleman is on the sofa and the
8 female's on the sofa. And when I walked in it was like they
9 jumped up, and I kind of turned my head, and the gentleman
10 flipped the thing over, and I was just really out of it then.
11 I didn't -- I kind of like just went -- the bathroom is off
12 there to the left. So I just went to the bathroom and ...

13 Q. I'm going to back you up here.

14 A. Um-hum (affirmative).

15 Q. So you came in the first time in this door and somebody
16 said come in, is that correct?

17 A. Yes, ma'am.

18 Q. Okay. And this is the front door and that's the back of
19 the couch?

20 A. Yes, ma'am.

21 Q. Okay.

22 **MR. KING:** You're on State's 5 now?

23 **MS. OWEN:** State's 5. I apologize.

24 Q. And on the couch were a man and a female?

25 A. Yes, ma'am.

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

1 Q. A juvenile female or an adult female?

2 A. Ma'am?

3 Q. An adult female or a juvenile female?

4 A. A juvenile female. This is -- this is a young -- young
5 lady, under age. And ---

6 Q. Had you been there previously?

7 A. That was the reason I have been there before, previous
8 work orders.

9 Q. Okay.

10 A. And I have noticed that the gentleman and that young lady
11 was there before on previous work orders that I've been there.
12 And I would say that was probably maybe the third work order
13 that I have been on in that house before during regular --
14 regular business hours, but this is the first time I went
15 there during emergency ---

16 Q. Okay.

17 A. --- off, you know, after hours call on the weekend.

18 Q. And while you were there, ---

19 A. Yes, ma'am.

20 Q. --- previously, who was in the home?

21 A. The gentleman and the young lady.

22 Q. Okay. Was her mother ever there or was it always just
23 the male ---

24 A. I came there one time and the mother was there. And the
25 other times that I came and she was there, was just the

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

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1 gentleman and the young lady.

2 Q. Okay. Did you know their names?

3 A. No, ma'am.

4 Q. Did you ever really have any interaction with them?

5 A. No, ma'am. I came in as, you know, strictly professional
6 to come in there to do a service work order. And so my --
7 wasn't any kind of personal contact or anything other than me
8 coming in there to, you know, resolve what maintenance issue
9 that they had at the time.

10 Q. Okay. And this time you came, you knocked on the door
11 the first time you got there?

12 A. Yes, ma'am.

13 Q. Someone said come in, correct?

14 A. Yes.

15 Q. Okay. You came in and you stated you saw the man and the
16 juvenile female on the couch?

17 A. Yes, ma'am.

18 Q. Did you tell them you were going to leave and go get a
19 part?

20 A. Yes, I did. I informed them of that.

21 Q. Okay.

22 A. I told them I had to go get a -- I needed to get a part
23 and, you know, and I'll be back.

24 Q. Okay. And so when you came back, the door was unlocked,
25 is ---

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

- 1 A. Yes, ma'am.
- 2 Q. --- that correct?
- 3 A. That's correct.
- 4 Q. So you would have -- we are looking at State's exhibit 4.
- 5 You would have come in the front door?
- 6 A. Yes, ma'am.
- 7 Q. And the side of the couch would be at the door, the ---
- 8 A. Yes, ma'am.
- 9 Q. --- back of the couch, correct?
- 10 A. The back of the couch.
- 11 Q. Okay. And where was the male sitting on the couch?
- 12 A. The male was sitting on -- if I'm coming in the door, the
- 13 couch is this way, he's on the right end of the couch,
- 14 female's left end.
- 15 Q. Okay. And where is the female when you walk in?
- 16 A. Right there at the -- right there at the couch. The
- 17 lower half.
- 18 Q. Okay. Was she on top of the male?
- 19 A. All I seen was a visual of her there at the lower end of
- 20 the couch with him. And they were engaged. And like I say,
- 21 it was a glance. And because I was -- seen enough. So I
- 22 turned my head and proceeded.
- 23 Q. Okay. When you walked in and you say there was a glance
- 24 -- Mr. King, you're a male, correct?
- 25 A. Yes, ma'am.

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

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1 Q. Do you know what a man's penis looks like?

2 A. Yes, ma'am.

3 Q. Did you see the defendant's penis in this case?

4 A. Yes, ma'am. That's what I processed. Yes, ma'am.

5 Q. What did the minor victim do when you walked in the door?

6 A. They jumped up. And she proceeded to leave as I was
7 headed towards the bathroom. I noticed the blanket thrown
8 over. And that was the way that went.

9 Q. Okay. So you walk in, you see her, what appears to be,
10 over him?

11 A. Yes, ma'am.

12 Q. She jumps up and leaves?

13 A. Yes, ma'am.

14 Q. You see his penis?

15 A. Yes, ma'am.

16 Q. And he throws the blanket over himself?

17 A. That's what I processed.

18 Q. At any point in time did anyone say anything during this?

19 A. No, ma'am. There was no communication. And then I -- I
20 just had such mixed feelings about the whole thing because,
21 you know, it was -- it was almost like a rage thing -- well,
22 not a rage thing for me, but a disgust, I would say, because
23 what I witnessed was, you know, being a father, raising five
24 daughters, you know, it was a -- I just knew it was
25 inappropriate and something needed to be addressed about it.

LARRY KING - DIRECT EXAMINATION BY MS. OWEN

1 Q. At that time did you perceive that the minor child was
2 performing oral sex on the defendant?

3 A. Yes, ma'am. That was my conclusion.

4 Q. When you left the apartment what did you do?

5 A. I went outside and got in the -- got in my work van. And
6 I immediately called my boss because, you know, I wanted, you
7 know, my intentions were to go and report this, but I wanted,
8 you know, to let him know what the situation was, what
9 situation that I had just witnessed and walked in on. And I
10 called him and he agreed that I needed to go report it.

11 And so that's exactly what I did, you know, followed my
12 instinct. And he confirmed that that was the right thing to
13 do. And, you know, was -- morally I felt obligated to do the
14 right thing. And that's what I done.

15 Q. Did your boss force you to go to the police department?

16 A. No, ma'am. The decision was already made within my head
17 to do this because I was just informing him what I was really
18 intending -- what my intentions was. That was my intention,
19 and that's what I was going to do. So it wasn't like he even
20 told me to do it, you know. No, this is where I'm going. And
21 he said, yeah, that's the right thing to do.

22 **MS. OWEN:** Your Honor, I don't have any further questions
23 for this witness. But may counsel and I approach for just a
24 moment?

25 (Whereupon a bench conference was held off the record in

LARRY KING - CROSS-EXAMINATION BY MR. KING

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1 the presence of the jury, but out of their hearing)

2 (Whereupon the bench conference was ended)

3 **THE COURT:** Cross-examination.

4 **MR. KING:** Thank you, Judge.

5 **Cross-examination by Mr. King:**

6 Q. Mr. King, you said you saw -- all you did was glance,
7 correct?

8 A. Yes. I had the visual and that was what I seen.

9 Q. That was your word, it was glance, correct?

10 A. Yes.

11 Q. Okay. And you said it was your conclusion they were
12 having oral sex?

13 A. That's correct. Yes.

14 Q. Okay. And after your glancing conclusion you went in the
15 bathroom, right?

16 A. That's correct.

17 Q. All right. After your glancing conclusion you went in
18 the bathroom and fixed the shower head, right?

19 A. Yes.

20 Q. After you fixed that shower head you left the bathroom,
21 correct?

22 A. That's correct.

23 Q. You left the apartment, correct?

24 A. That's correct.

25 Q. And you left young Miss Land, the young lady you saw, in

LARRY KING - CROSS-EXAMINATION BY MR. KING

1 the apartment, correct?

2 A. That's correct.

3 Q. You made no attempt to get her out of the apartment,
4 correct?

5 A. That's correct.

6 Q. Did you tell them you saw anything?

7 A. No, I didn't.

8 Q. Did you say anything to them?

9 A. When I came back out of there she was no longer in there.
10 She was -- disappeared.

11 Q. Yeah.

12 A. He was still staying on the sofa. And at that time, by
13 her not being in there, I didn't see any immediate danger.
14 And then I felt being that my obligation here is to report it
15 and not to become a police officer and take a matter like that
16 in my own hands.

17 Q. Okay.

18 A. Because that could have got escalated and got -- so my
19 thing, I felt I done the proper -- did the proper thing
20 because, ---

21 Q. Okay.

22 A. --- you know, it wasn't a confrontation for me. I
23 wasn't looking for a confrontation. Wasn't looking for that
24 whole incident.

25 Q. All right. I hear you.

LARRY KING - CROSS-EXAMINATION BY MR. KING

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1 A. Okay.

2 Q. After you left the apartment you do not call law
3 enforcement, correct?

4 A. No.

5 Q. You called your boss, Wallace Martell, is that correct?

6 A. That's correct.

7 Q. Okay. And Mr. Martell told you he was going to call the
8 chief and tell you -- and send you to the police department,
9 correct?

10 A. No, Mr. Martell did not tell me that.

11 Q. Okay.

12 A. Where did ---

13 Q. All right.

14 A. --- you get that information? That is not what I said
15 and that is not what I have on record.

16 Q. Okay. All right. So you just told Mr. Martell you were
17 going to the police department?

18 A. That's correct.

19 Q. Okay. All right. So, Mr. King, all you're telling the
20 jury is that you saw a glance, correct?

21 A. I saw the act being performed. And it was a glance at
22 it, yes. That's correct.

23 Q. It was a glance. So you claim you saw Mr. Durham's pants
24 down, essentially?

25 A. I would assume that if I seen his penis that his pants

LARRY KING - CROSS-EXAMINATION BY MR. KING

1 was down. And I'm not sure that he was wearing pants. I did
2 not have that on record.

3 Q. Okay.

4 A. You're putting a lot of stuff in there.

5 Q. And did the young lady say anything to you?

6 A. No, sir.

7 Q. All right. Now let's back up to the very beginning. You
8 entered the apartment without knocking, correct?

9 A. On the second entry when I came back, that is correct.

10 Q. Mr. King, you talked about how you had been to the
11 apartment three times, correct?

12 A. I've been there progress ---

13 Q. Okay.

14 A. --- previous. Yes, sir.

15 Q. And in those prior situations you never saw any oral sex,
16 correct?

17 A. No, sir.

18 Q. Okay. One time you may have seen the young lady sitting
19 on Mr. Durham's lap, correct?

20 A. Not may have. I have seen that.

21 Q. Okay. All right. Well, I didn't want to put words in
22 your mouth that time.

23 A. Okay. Well, I'm glad you didn't this time.

24 Q. Okay. All right. So you saw the young lady sitting in
25 his lap on a prior occasion?

LARRY KING - CROSS-EXAMINATION BY MR. KING

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1 A. Yes, sir.

2 Q. Okay. All right. Did you expect to see her on his lap
3 again this time?

4 A. No, sir. That wasn't what I -- assumed to see anything.
5 I assumed to go there and make a service call.

6 Q. Okay. But you didn't knock, correct?

7 A. Prior to the first entry, I did. And it's not
8 unaccustomed for me when I am doing service calls to -- if I'm
9 going to go get parts or if I'm going out to my truck, it's
10 usually -- people just come on in. Everybody's not there to
11 answer the door when they know you're just going to get a part
12 be it at my truck or be it that I'm going to get that. So I
13 did not knock, that's correct, on the second entry.

14 Q. Okay. Well, let's talk about that. You first got to the
15 apartment around ten, correct?

16 A. Yes.

17 Q. Okay. And then you went to Ace Hardware, correct?

18 A. Yes.

19 Q. Which means you had to leave and get in your car, right?

20 A. Yes.

21 Q. And you had to drive -- I assume it's the Ace Hardware on
22 123, right?

23 A. Yes, sir.

24 Q. Where 76 comes in ---

25 A. Yes, sir.

LARRY KING - CROSS-EXAMINATION BY MR. KING

1 Q. --- 123, yes?

2 A. That's correct.

3 Q. Okay. All right. And it looks like State's exhibit 2
4 says you checked out at 10:28, correct?

5 A. Yes, that's correct.

6 Q. And after you purchased this shower head at Ace Hardware
7 you ---

8 A. Five to seven minute drive.

9 Q. I'm sorry?

10 A. Five to seven minute drive.

11 Q. Thank you. That's where I was going. You ---

12 A. Yes, sir.

13 Q. --- got in the car and you drove another five to seven
14 minutes back to the apartment, correct?

15 A. That's correct.

16 Q. All right. So you were gone for about 30 minutes,
17 weren't you?

18 A. No, I would not say I was gone for 30 minutes, more like
19 20 minutes.

20 Q. Okay. All right. Well, 20 minutes. Okay. And then so
21 after that 20 minutes of you going to Ace Hardware, you re-
22 entered the apartment without knocking, right?

23 A. Yes, that's correct. That's where we're at.

24 **MR. KING:** No further questions.

25 **THE COURT:** Anything further?

LARRY KING - REDIRECT EXAMINATION BY MS. OWEN

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1 **MS. OWEN:** Briefly, Your Honor.

2 **Redirect Examination by Ms. Owen:**

3 Q. Mr. King, previously you'd been to the apartment and you
4 saw this minor child sitting on the defendant's lap?

5 A. Yes, ma'am.

6 Q. Did it look inappropriate to you?

7 A. Well, I'm going to be honest. Yes, ma'am, it ---

8 **MR. KING:** Objection to speculation.

9 A. Well, ---

10 **THE COURT:** Overruled.

11 **MS. OWEN:** You can answer.

12 A. Yes, ma'am, it -- I -- I felt it was inappropriate at
13 that time, and it creeped me out. I got a creepy feeling.
14 And the reason why, because I have daughters. And being --
15 raising daughters -- by the time my daughters were -- my own
16 personal daughters were of a certain age, four and five, they
17 wasn't on daddy's lap no more because that wasn't a precedent
18 that I wanted them to see sitting with uncles, or cousins, or
19 brothers or anybody else. So it was protocol for me for that
20 to be inappropriate.

21 Q. Okay. And this time before that you had seen her on his
22 lap, what kind of clothing was she wearing?

23 A. Night clothing.

24 Q. Okay.

25 A. Gown.

LARRY KING - REDIRECT EXAMINATION BY MS. OWEN

1 Q. A nightgown?

2 A. Gown.

3 Q. And she was sitting on his lap?

4 A. And this is not the first time I've been there and it's
5 been like this, a gown thing.

6 Q. Okay. And do you know of approximately how old you
7 thought she was at the time that you went to do the service
8 call that day?

9 A. Yes, ma'am. I, you know, being that I raised kids, I
10 could see that she was -- I figured she was ten, or 11, or 12
11 years old, somewhere in there in that area.

12 Q. Okay. And you thought she was too ---

13 A. And I felt she was kind of, you know, by her being ten or
14 -- this child is kind of too big to be sitting up on daddy's
15 lap.

16 Q. Okay.

17 A. That was my mind-set.

18 Q. When you walked in the apartment the second time, was
19 that ten, 11, 12 year old on top of her father?

20 A. Yes. I would say yes, ma'am. That's what I seen.

21 Q. Did you need more than a glance to see Mr. Durham's
22 penis?

23 A. No, ma'am. That was -- that was the shock that made me
24 turn my head. And my thing is -- my thing is this, and then
25 the -- I think they were more in shock than I was that I

LARRY KING - REDIRECT EXAMINATION BY MS. OWEN

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1 opened that door.

2 Q. Were you able to tell whether or not they knew what you
3 saw?

4 A. No, ma'am. I couldn't tell whether they knew what I saw
5 or not because after that I was -- I really had no contact
6 with them, didn't want to have anymore contact. And by the
7 time I went in the bathroom and processed what I seen and came
8 back out, he was there watching TV on the screen. I kind of
9 just glanced in, she wasn't even in the room.

10 And then the odds of me just saying, you know what, I'm
11 going to go do this work order, and I'm just going to concoct
12 this story that's going to bring me to where I'm at today is
13 ludicrous.

14 Q. Thank you, Mr. King.

15 **MR. KING:** No recross.

16 **THE COURT:** All right, sir. You may come down. Thank
17 you very much. You're excused.

18 A. Thank you, Your Honor.

19 **MS. OWEN:** Your Honor, at the time -- at this time the
20 State rests.

21 **THE COURT:** All right. Ladies and gentlemen, that's all
22 the evidence the State is going to present in this case.
23 There's some matters of law that I need to take up with the
24 attorneys. And so since it's 12:00 I'm going to release you
25 now for the lunch hour.

1 I'm going to ask you to be back at 2:00. A little
2 extended lunch hour. I've got to talk to the, as I say, take
3 up some legal matters with the attorneys. And we'll be ready
4 for you at 2:00. Please don't discuss the case among
5 yourselves while you're in the jury room, with anyone else
6 over the lunch hour. So you're now excused til 2:00 for
7 lunch.

8 (Whereupon the jury exited the courtroom at 12:02 pm)

9 **THE COURT:** All right. Any motions?

10 **MR. KING:** Judge, at this time on behalf of Mr. Durham
11 we'd move for a directed verdict. I believe the directed
12 verdict is based on the existence of evidence. Here all the
13 State has presented is Mr. King's testimony, which has been
14 completely contradicted by the alleged victim. All he had was
15 a glance that he made an assumption on. At this point that
16 evidence is merely speculation for the jury. And we would
17 respectfully ask you to grant a directed verdict.

18 **THE COURT:** What's the State's position?

19 **MS. OWEN:** Your Honor, I believe Mr. King is accurate in
20 the fact that there is a determination of whether there is the
21 existence or non-existence of any evidence whatsoever, Your
22 Honor. And I believe that we have put in the record an
23 eyewitness to this case. He is a credible, non-biased
24 witness.

25 I realize you don't go to the weight of the evidence,

1 Your Honor, but he is an eyewitness to the case. And he was
2 able to say exactly what he saw, on what date he saw it, and
3 give an accurate account of what he saw. And I believe at
4 this time it would be proper to submit that to the jury, Your
5 Honor.

6 **THE COURT:** All right. As to the motion for directed
7 verdict, I feel the evidence goes beyond that of mere
8 conjecture or suspicion that there's evidence either direct or
9 circumstantial or some combination of both which may
10 reasonably tend to prove the guilt of the defendant or from
11 which that guilt might be logically and reasonably deduced if
12 that evidence is taken in the light most favorable to the
13 State. So I must respectfully deny the motion for a verdict
14 -- directed verdict.

15 **MR. KING:** Thank you, Judge.

16 **THE COURT:** All right. Now, I'd like to advise your
17 client of his constitutional rights.

18 **MR. DeJONG:** Do you mind if I step up here, Your Honor,
19 so you can hear me?

20 **THE COURT:** No. Come on.

21 **MR. DeJONG:** Your Honor, I have advised him of his
22 constitutional rights. I have advised him of his right to
23 testify. I've advised him of his right not to testify.

24 And I will share with Your Honor over the years I've
25 always told my clients, I've explained the rights, we don't

1 make that decision until the State rests. So I'm certainly
2 offering him for your voir dire, Your Honor, but I would like
3 -- and he shared with me Saturday that he does not want to
4 testify. I don't know if that's still the case or not. So I
5 would ask for some brief recess so I may discuss it.

6 **THE COURT:** Let me -- let me go forward.

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

8 **THE COURT:** All right. Mr. Durham, at this time I'm
9 going to explain certain of your rights. Do you understand?
10 If you do not understand anything I say, please let me know.
11 If you want me to explain anything in more detail, please let
12 me know. Do you understand?

13 **MR. DURHAM:** I do, sir.

14 **THE COURT:** We've now reached the stage of this trial
15 where you may present your defense. You have the right to
16 claim the protections given to you by the Fifth Amendment to
17 the Constitution of the United States.

18 This Amendment states in part; No person shall be
19 compelled in any criminal case to be a witness against
20 himself. This means that you cannot be required to testify in
21 this case. You have the right to testify on your own behalf,
22 however, no one can make you testify. This is a personal
23 right. And no one can waive that right except you.

24 If you decide to testify you'll be subject to the same
25 rules that govern other witnesses in this -- other witnesses.

1 And you may be examined and cross-examined on any relevant
2 issue in this case. In addition, if you have any convictions
3 involving dishonesty or false statement or for crimes
4 punishable by imprisonment for more than one year and this
5 Court determines that the probative value of admitting this
6 evidence outweighs its prejudicial effect to you, the
7 solicitor will be able to introduce your record to attack your
8 credibility.

9 If you decide to testify, this decision on your part must
10 be freely, and voluntarily and intelligently made with
11 knowledge of the protections given to you by the Fifth
12 Amendment to -- by the Fifth Amendment and the consequences of
13 your decision to testify. If you decide not to testify, I
14 will instruct the jury that they cannot give the fact that you
15 did not testify any consideration whatsoever and that there is
16 absolutely no prejudice to you because you did not testify.

17 It's left entirely up to you whether or not to testify.
18 You may talk with your attorney, your family and friends, or
19 anyone else, but the final decision will be left entirely up
20 to you. Do you understand what I have explained to you?

21 **MR. DURHAM:** I understand completely, sir.

22 **THE COURT:** You have any questions about what I've
23 explained to you?

24 **MR. DURHAM:** No, sir.

25 **THE COURT:** Have you discussed with your lawyer whether

1 or not you should testify?

2 **MR. DURHAM:** I did once before.

3 **THE COURT:** All right. Do you wish to talk to your
4 lawyer anymore at this time?

5 **MR. DURHAM:** Yes, I do, sir.

6 **THE COURT:** Okay. We're going to recess until about ten
7 minutes til two at which time I'll expect your answer.

8 **MR. DURHAM:** Yes, sir.

9 **THE COURT:** All right. Thank you ---

10 **MR. DURHAM:** Thank you ---

11 **THE COURT:** --- very much.

12 **MR. DURHAM:** --- very much, sir.

13 **MR. DeJONG:** Thank you so much, Your Honor.

14 **THE COURT:** Stand at ease til 1:50.

15 **MS. OWEN:** Thank you, Your Honor.

16 (Whereupon court was in recess at 12:08 pm)

17 (Whereupon court reconvened at 1:55 pm)

18 **THE COURT:** Be seated, please. All right. Mr. DeJong.

19 **MR. DeJONG:** Yes, Your Honor.

20 **THE COURT:** I told your client I would expect an answer
21 from him. Mr. Durham, do you choose to testify? I can hear
22 you.

23 **MR. DURHAM:** Okay.

24 **THE COURT:** You can stand right there.

25 **MR. DURHAM:** No, sir. No, sir.

1 **THE COURT:** Not going to testify?

2 **MR. DURHAM:** No, sir.

3 **THE COURT:** All right. Thank you very much.

4 **MR. DURHAM:** You're very welcome, sir.

5 **THE COURT:** All right. The State ready to proceed?

6 **MS. OWEN:** We are, Your Honor.

7 **THE COURT:** Defense ready to proceed?

8 **MR. KING:** We are, Your Honor. And we will not be
9 presenting a defense. And we'll just rest as soon as the jury
10 is out here.

11 **THE COURT:** Do you want to rest in front of the jury?

12 **MR. KING:** If that's acceptable with Your Honor.

13 **THE COURT:** Sir?

14 **MR. KING:** If that's acceptable to Your Honor, we'd like
15 to do that.

16 **THE COURT:** Well, then I'd -- then I would have to send
17 them back ---

18 **MR. KING:** Okay.

19 **THE COURT:** --- for you to present any motions -- any
20 further motions. If you tell me you're going to rest, you can
21 present any motions you have at this time.

22 **MR. KING:** All right.

23 **THE COURT:** I will advise the jury that you've rested or

24 ---

25 **MR. KING:** Okay. That's fine.

1 **THE COURT:** Is that all right?

2 **MR. KING:** Yes, sir. So at this time the defense would
3 rest, Your Honor. And we would renew our motion for a
4 directed verdict and all of our other prior motions and
5 objections.

6 **THE COURT:** All right. Thank you. What's the State's
7 position?

8 **MS. OWEN:** Your Honor, the State would respectfully
9 request that you deny the directed verdict motion and all
10 other motions that have previously been denied, Your Honor. I
11 believe we have put evidence into the record sufficient to go
12 to the jury on the matter of fact for them to decide whether
13 they believe these allegations happened or not.

14 We presented Mr. King, who was a direct eyewitness to the
15 incident in question along with the body camera videos showing
16 statements made by the defendant and his demeanor and all
17 other -- I realize everything else is circumstantial, Your
18 Honor, but I believe the eyewitness is enough.

19 **THE COURT:** All right. Well, I respectfully deny the
20 defense's motion.

21 Now, are there any requests for jury charge?

22 **MR. KING:** I have one, Your Honor. I'll hand it up.

23 **THE COURT:** All right. Please do.

24 **MR. KING:** It's just a reasonable doubt charge, Your
25 Honor.

1 **THE COURT:** All right.

2 **MR. KING:** We'd ask that you do not define reasonable
3 doubt. I've pretty much given the normal reasonable doubt
4 charge, but removed any of the hesitate to act or firmly
5 convinced language out of it. I think we picked 12 well
6 qualified reasonable people and reasonable people know what
7 reasonable doubt is. So we would respectfully request that
8 charge.

9 **THE COURT:** All right. Well, let me look at it and let
10 me look -- let the State look over it.

11 (Pause)

12 **THE COURT:** Just give me a few minutes.

13 (Pause)

14 **THE COURT:** What's the State's position?

15 **MS. OWEN:** Your Honor, we would request that you charge
16 the firmly convinced language that is normally part of a jury
17 charge. I don't know that the jury is going to understand
18 what reasonable doubt is without some sort of defining
19 guideline. And I believe the firmly convinced language that
20 is normally charged is appropriate in this case.

21 **THE COURT:** I'm trying to compare this with my standard
22 reasonable doubt charge. I think the firmly convinced
23 language is just omitted from this.

24 The proposed language says if based under consideration
25 of the evidence you find the defendant is guilty of the crimes

1 charged beyond a reasonable doubt, you must find the defendant
2 guilty. Whereas, my language would say if based on your
3 consideration of the evidence you're firmly convinced that the
4 defendant is guilty of the crime charged, you must find the
5 defendant guilty. And that if, on the other hand, is the
6 same.

7 I don't see much difference.

8 **MS. OWEN:** There's not, Your Honor. I'm just -- I think
9 firmly convinced is normally the language we use. And it
10 gives the jury a little more of something -- obviously we have
11 told them in openings that the burden is not absolutely
12 possible for them to understand ---

13 **THE COURT:** Well, this ---

14 **MS. OWEN:** --- they just need to be firmly convinced.

15 **THE COURT:** I mean, my standard charge says there are
16 very few things in the world we know with absolute certainty.
17 Criminal cases do not require proof that overcomes every
18 possible doubt, which is the same thing as this.

19 What's -- I mean, what's the difference, Mr. King, in
20 what I told you is my normal charge versus the language of
21 your proposed charge? It's only that one sentence, I believe.

22 **MR. KING:** Yeah. Your proposed charge probably has
23 something up closer to the top of that paragraph that talks
24 about firmly convinced, I believe.

25 **THE COURT:** The what?

1 **MR. KING:** I think at the top of your paragraph you're
2 talking about, there's usually something that says reasonable
3 doubt, the kind of doubt that leaves you firmly convinced ---

4 **THE COURT:** Yeah. Well, yes. And my normal -- the
5 hesitate to act, is that what you're objecting to?

6 **MR. KING:** Well, I don't like hesitate to act, and I
7 don't like firmly convinced.

8 **THE COURT:** Okay.

9 **MR. KING:** I think the jury of reasonable people, they
10 should know what reasonable doubt is. Firmly convinced and
11 hesitate to act seem to lessen the burden and give the jury
12 something that they can just kind of latch onto and say, oh,
13 well, this is reasonable doubt. I think the jury needs to go
14 back to the jury room and they need to feel what reasonable
15 doubt is based on the evidence of whether the State's met
16 their burden.

17 **THE COURT:** I'm sort of at a crossroads.

18 **MS. OWEN:** Your Honor, in my experience juries -- I've
19 had multiple juries to come back and ask for a definition of
20 reasonable doubt.

21 **THE COURT:** I know that.

22 **MS. OWEN:** I like to think that everyone knows what that
23 means, however, all of our jurors are not in the legal field.
24 They don't deal with this language every day. They don't
25 understand all the burdens. I mean, I think we have to define

1 that for them.

2 **THE COURT:** Okay. Well, I don't -- I don't think it's
3 error to charge my standard charge.

4 **MR. KING:** If I may, Judge. I'll agree with you, it's
5 not error, it's within your discretion.

6 **THE COURT:** Okay. Well, I get in old habits.

7 **MR. KING:** I understand.

8 **THE COURT:** And your co-counsel probably can explain that
9 to youthful lawyers about ---

10 **MR. KING:** I understand.

11 **THE COURT:** --- if it worked one time, it's probably
12 going to work again. So I respectfully -- and I understand
13 what you're saying, but I feel my charge is standard, it's
14 tried and true, and I see no reason to change it at this late
15 date, but I appreciate your comments.

16 Now, -- go ahead.

17 **MR. KING:** May I make a copy of my request as a Court's
18 exhibit for the record?

19 **THE COURT:** Here, I'll do it.

20 **MR. KING:** Thank you, Judge.

21 (Whereupon Court's exhibit 4 was marked)

22 **THE COURT:** You have presented no evidence, is that
23 correct?

24 **MR. KING:** Correct, Your Honor.

25 **THE COURT:** And I expect and you expect that the State

1 will open in full, correct?

2 **MS. OWEN:** Yes, Your Honor.

3 **THE COURT:** And you will be giving closing argument.

4 **MR. KING:** That's correct, Your Honor.

5 **THE COURT:** Okay. Then let -- ready to proceed?

6 **MS. OWEN:** Yes, Your Honor.

7 **THE COURT:** Ready to proceed, Mr. King?

8 **MR. KING:** I am, Your Honor.

9 **THE COURT:** All right.

10 **MS. OWEN:** Your Honor, just for my own clarification, I
11 assume that you're already aware, but the only request that we
12 had was the standard charge on an expert, as in expert
13 testimony.

14 **THE COURT:** I've got it.

15 **MS. OWEN:** That was all. Thank you.

16 **THE COURT:** And a standard charge on direct and
17 circumstantial?

18 **MS. OWEN:** Yes, Your Honor.

19 **THE COURT:** All right. I've added testimony of children.
20 Any comment?

21 **MR. KING:** Your Honor, I'm not familiar with that one,
22 Judge.

23 **THE COURT:** Well, let me read it to you. During this
24 trial you've heard testimony from a child. Where a witness is
25 a child you must determine, as with any witness, whether that

1 testimony is believable. In deciding believability you may
2 consider not only matters that I've discussed with you, but
3 you may also consider the age of the child, the child's
4 ability to observe and remember facts, and the child's ability
5 to understand and answer questions.

6 Because young children may not fully understand what's
7 happening here, it's up to you to decide whether the child
8 understood the seriousness of appearing as a witness at this
9 criminal trial, whether the child understood the questions,
10 whether the child has a good memory and whether the child
11 understands the difference between lying and telling the
12 truth.

13 In addition, young children may be influenced by the way
14 the questions are asked. It's up to you to decide whether the
15 child understood the questions asked.

16 **MS. OWEN:** Your Honor, I would respectfully object to
17 that, and I'll give you my reasoning behind that. We are not
18 allowed to go into whether a child can tell a truth or a lie
19 in forensic interviews or whether anyone else can comment on
20 that. And I think that kind of jury charge elicits the fact
21 that we are telling the jury this witness in particular, you
22 need to pay close attention to, not everybody.

23 And does that mean that this child is telling the truth
24 or a lie? I think we tell them that when we ask them to come
25 in with their common experience and to make their own

1 determinations based on the credibility of each witness. But
2 in regards to highlighting the child testimony in particular,
3 I think that is a fine line here of us telling them we can't
4 tell you we believe them or don't believe them, but we can
5 charge you on that.

6 **THE COURT:** Okay.

7 **MR. KING:** Judge, the defense doesn't feel comfortable
8 with that charge either.

9 **THE COURT:** All right. That's good enough for me.

10 **MR. KING:** We appreciate the offer, though.

11 **MS. OWEN:** Thank you, Your Honor.

12 **THE COURT:** All right. Bring the jury, please.

13 (Whereupon the jury entered the courtroom at 2:10 pm)

14 **THE COURT:** Good afternoon, ladies and gentlemen. We're
15 now ready to conclude the trial.

16 While you were out the defendant has decided to rest his
17 case. You will hear no more evidence in this case. The
18 remaining portion of the trial will consist of the final
19 arguments, summations by the attorneys, afterwhich I will
20 instruct you on the law of South Carolina as it applies to
21 this case.

22 As I told you at the beginning of this trial, the
23 defendant is under no obligation to present any evidence
24 whatsoever. The State's -- the burden of proof is always on
25 the State. And that's where we are now.

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1 We'll now have the final arguments of counsel, and then I
2 will explain to you the law of the State of South Carolina as
3 it applies to this case. Ms. Owen, you may proceed.

4 **MS. OWEN:** Thank you, Your Honor.

5 Ladies and gentlemen of the jury, it hasn't even been a
6 full 24 hours that you've been seated on this jury. And when
7 you first came in here yesterday you all took an oath to
8 listen, to take into account everything that's said and go
9 back into that jury room and deliberate on whether you believe
10 Mr. Durham is guilty or not guilty of criminal sexual conduct
11 in the second degree with a minor.

12 Everything that you've heard is the conclusion of the
13 evidence today. It's been a short trial, but that's what we
14 have. And I'd like to walk through some of the things that
15 we've presented to you from our perspective.

16 You heard that on May 14th of 2016 Larry King was just
17 doing his job. He was on call for his company for maintenance
18 that weekend. He did maintenance for apartments in Clemson.
19 He still does. And he got a call about a plumbing issue,
20 which they code as an emergency.

21 He goes over to Mr. Durham's apartment that he lives in
22 with his wife and step-daughter, **Minor** age 11. Mr. King
23 told you he'd been there before. He'd seen **Minor** in what
24 appeared to be a nightgown sitting on Mr. Durham's lap
25 previously. He thinks it's weird. He doesn't call the

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1 police, though. There's nothing going on that he can observe
2 or that he would say.

3 And today is no different. He comes in, they tell him
4 there's a problem with the shower. He goes in to look at the
5 shower, and while he's in there he states that **Minor** and Mr.
6 Durham are sitting on the couch. He tells them he's going to
7 Ace Hardware and he'll be back.

8 He leaves. He says it's a five to seven minute drive,
9 and he's in Ace Hardware about 20 minutes. He has a copy of
10 the receipt with the timestamp on it, 10:28. He pays for the
11 shower head and he's got a five to seven minute drive back.

12 This time, though, he doesn't knock. He doesn't knock
13 because he is the maintenance man and he has already been
14 there and told them he is coming back. And what does he walk
15 in on? **Minor** 11 year old, on top of her father. She
16 jumps up and runs. He sees Mr. Durham's penis, at which point
17 he whips the blanket over himself and no one says anything
18 because he is in shock.

19 What has he just walked into? All he's doing is his job.
20 He didn't ask for that. He had no idea that this was going to
21 happen. He also had no idea that three years later this case
22 would still be pending and he'd be up on this witness stand
23 testifying.

24 Mr. King told you that he saw what he thought was an 11
25 year old -- or ten, 11 or 12, he wasn't sure, but he knew she

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1 was a child, performing sex -- oral sex on her father. He
2 said, it was just a glance. But what more did he need to see?
3 He is a grown man. He told you he knows what a penis looks
4 like. He is a grown man.

5 He is not going to continue to stare at another man's
6 private parts. And Mr. Durham doesn't give him the
7 opportunity because he pulls the blanket over it as fast as he
8 could while this victim takes off running to the back room and
9 he doesn't see her again.

10 And why doesn't he do anything right then? He's in
11 shock. He also knows that if he confronts him, this situation
12 could escalate very quickly. You got to see Mr. Durham's
13 demeanor on that body camera video. A confrontation in this
14 man's own apartment was not what Mr. King was looking for. So
15 he does the next best thing, he goes straight to the police
16 department and files an immediate report because he has just
17 seen sexual abuse.

18 Ladies and gentlemen, Miss Land is today 15. And she
19 denies that this happened. She doesn't have to tell you
20 because someone else did. She denies this happened. And at
21 the end of her testimony yesterday Mr. King asked her if she
22 was scared to be here. She said she wasn't scared for
23 herself, she was scared for what could happen to him or her
24 mother.

25 Mr. Durham has been her father since she was a child. He

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1 has lived in her home and raised her like his own daughter.
2 She loves him. She may not love what he did, and she may not
3 be able to get up here and tell you what happened, but she
4 still loves him.

5 Shauna Galloway-Williams testified about some -- or
6 dynamics surrounding child sexual abuse. She told you that
7 children have fear of consequences and that might be why they
8 delay disclosing, or why they never disclose, or why they deny
9 sexual abuse happened or why they recant after they have told.
10 And she gave you some examples of those consequences, fear of
11 having to leave the home, fear of disrupting the home, fear of
12 hurting the other parent. This case meets those factors.

13 **Minor** didn't want to disrupt her home life. She loves
14 her mom and dad. He has lived with him -- them since she was
15 three years old. She doesn't want to hurt mom. Mom's on
16 disability from a car accident. She doesn't work. It's the
17 three of them. She also told you yesterday that she does
18 prefer now that it's just her and mom.

19 Ladies and gentlemen, there might be no DNA in this case.
20 We tried to set a clear time-line for you. The Ace Hardware
21 ticket says 10:28. We know it's a five to seven minute drive
22 back. Mr. King arrives at the police station at 11:12 am.
23 Law enforcement arrives to the apartment at 11:45, we believe,
24 am. It might be 11:49. That gives the defendant over 30
25 minutes to talk to **Minor**, to come up with a story, to explain

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1 what the maintenance man could have possibly seen, if he saw
2 anything. It also gives him time to shower, to change
3 clothes.

4 We have no idea what they did in that time-frame. So we
5 don't expect there to be any other evidence. We don't expect
6 there to be DNA. We don't expect there to be used condoms or
7 anything out and about because that is not the allegation in
8 this case.

9 Ladies and gentlemen, I ask you to think about who has
10 something to lose in this case. Mr. King doesn't. He just
11 came to work on May 14th of 2016 and walked in on a sexual
12 assault. And he did what he thought was right by reporting
13 it.

14 When you go back in that jury room, we didn't put a lot
15 into evidence, but you'll have the opportunity to view a few
16 of the photos. You'll have an opportunity to review the body
17 camera videos, if you like, and the Ace Hardware receipt.

18 But I ask you to think about what you've heard, how on
19 the body camera video Mr. Durham acknowledges the maintenance
20 man came twice and he and **Minor** were on the couch. But he
21 couldn't tell you who opened the door. He couldn't tell you
22 what they were watching on TV. The details that would matter,
23 he doesn't give law enforcement.

24 And **Minor**, she comes in here and tells you we were on
25 the couch both times the maintenance man came in. She says

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1 she was tickling her dad. But Mr. King was very clear, there
2 was no tickling. He saw a grown man's penis and an 11 year
3 old over it. And he saw them in the act. He saw her
4 performing oral sex on Mr. Durham. And that, ladies and
5 gentlemen, is a violation of the South Carolina code of laws.

6 This child was 11 years old. They live in Pickens
7 County. And Mr. King observed her performing oral sex on the
8 person she loves, one of two she appears to love most. So I
9 ask you to take all that into consideration when you go back
10 into that jury room and find James Durham guilty of sexually
11 assaulting **Minor**

12 **THE COURT:** Mr. King.

13 **MR. KING:** May it please the Court?

14 **THE COURT:** Yes, sir.

15 **MR. KING:** Thank you, Judge. Ms. Owen.

16 Some denials are accurate. That's what you heard from
17 the State's expert, some denials are accurate. And that's
18 what we have here. We have a consistent story from day one
19 that this did not happen. All right.

20 Now, the State has the burden of proving Mr. Durham
21 guilty beyond a reasonable doubt. What's reasonable doubt?
22 Y'all are reasonable people. We picked you because you're
23 reasonable people, okay? But I'll give you three tools to
24 use, okay? Reasonable doubt comes from, one, the evidence,
25 two, conflicts between the evidence, and, three, a lack of

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1 evidence.

2 So let's talk about number one, the evidence. I started
3 this trial with saying that this was a lie that got out of
4 control. It was gossip. That wasn't fair to Larry King, and
5 I apologize. What he said he saw was he glanced and drew a
6 conclusion. It was a quick look, and he drew a conclusion
7 because he went in there with an assumption that there was
8 something inappropriate going on in that apartment. It was
9 because he had seen her sit in his lap before, seen a daughter
10 sit in a father's lap.

11 Now, his evidence was further that he was gone for 20
12 minutes at least. And I guess that includes both the drive
13 time there and the drive time back, right? He was gone for 30
14 minutes. This wasn't a quick trip out to the truck and back
15 in. This was an extended trip away from the apartment.

16 He came back and did not knock. When anybody opens a
17 door, the front door in particular, without you expecting them
18 after 30 minutes of being gone, everybody's going to be
19 surprised. And that's what happened to Mr. Durham and the
20 young Miss Land. They were surprised because he walked in the
21 front door without knocking. They weren't trying to cover
22 anything.

23 He glanced and he made a conclusion. And unfortunately
24 it was the wrong conclusion. And you can see that he made the
25 conclusion because he glanced, he saw something, thought it

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1 was wrong, went to the bathroom, repaired the shower and
2 thought about it. He took time to say, what did I see? And
3 then finally he decided he saw something inappropriate. And
4 that's when he just left.

5 He left and that's -- and he called the police. Well,
6 no, excuse me. He called his boss. He didn't call the
7 police. He didn't drive to the police department. He called
8 his boss and talked about it with his boss, further convinced
9 himself he saw something inappropriate. And then he went to
10 the police. That's the evidence we have. He drew a
11 conclusion after a quick glance.

12 Now, the second tool is conflicts between the evidence.
13 Young Miss Land's testimony was in direct conflict from Larry
14 King's. The State's expert talked about that she's in
15 essentially a state of denial because she fears -- fear, or
16 guilt, or shame, she wants to keep her family together.

17 But over the course of these last three years she's had
18 all of that changed that the State's expert claims she's
19 worried about, and she still stuck to her story. At first
20 when the police arrived she denied it to Sergeant Link. She
21 denied it twice actually because she reenacted it and denied
22 it to Sergeant Link.

23 She went to the hospital. At the hospital she was taken
24 to a room by herself with the nurse. Her mom was kept out.
25 DSS was already there and involved. The change has already

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1 happened. She still denied it.

2 Then she was placed in her pastor's home for six months
3 where she said she was happy and she was okay. She continued
4 to deny it to DSS, to her mother. Eventually DSS put her back
5 with her mother where she is today. She's still denying it.

6 She is not under any threat that her family's going to be
7 broken up further because the State's already broken it up.
8 She took the witness stand over here and she was upset. She
9 cried. We had to stop a few times.

10 Why was she upset? She was upset because the State has
11 been expecting something out of her for the last three years
12 she cannot give them. They expect and demand from her to say
13 that Mr. Durham molested her, but she can't say it because it
14 didn't happen. That's why she was upset. She's under a lot
15 of pressure and expected to say something that simply did not
16 happen. The conflict is between her truth and Larry King's
17 conclusion. All right.

18 The third tool is lack of evidence, right? **Minor**
19 never said -- **Minor** I apologize. I can't say her name.
20 Miss -- young Miss -- young Miss Land, she's never said this
21 happened. It's the lack of evidence, right?

22 Mr. Durham never confessed. You watched the body-worn
23 camera. He said, no, this didn't happen. His daughter was
24 dragged out of his apartment, he wasn't allowed to talk to
25 her. He said he wasn't drinking, he wasn't doing drugs. The

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1 last assumption of bad actions that they could possibly accuse
2 him of would be molesting his daughter.

3 That's what any reasonable person would do, jump to that
4 conclusion and then be angry because it wasn't true. And he
5 was very angry. But he stopped -- not stopped, but he
6 explained it didn't happen.

7 The repairman came, he didn't understand why they were
8 there. When you don't understand what's going on, when you
9 don't have answers and people are asking you for answers to
10 tell you something -- to tell them something that didn't
11 happen, you become upset, you become angry. That's what
12 happened to Mr. Durham. It's a lack of evidence.

13 Larry King also lacks evidence. He lacked action. He
14 walked into an apartment that he claims a child was performing
15 oral sex on a grown man and he continued to do his job?
16 That's a lack of evidence. That's a lack of action.

17 Finally, lack of evidence, there's no DNA. They
18 collected his clothes. They tested his clothes. They don't
19 have any evidence to say that her DNA was in his underpants,
20 basically. They took his underpants, his shorts and his
21 shirt. Her DNA was not on it. All right.

22 Some denials are accurate. Yeah, some denials are
23 accurate. You got three tools for reasonable doubt. The
24 evidence -- conflicts between the evidence and a lack of
25 evidence.

CHARGE OF THE COURT

1 We've seen that the State has fallen far short of their
2 burden of reasonable doubt. They've not been able to prove
3 their case because we have an honest 15 year old girl
4 testifying in front of all of you that this did not happen.
5 She just wants this to end and the State to stop expecting
6 something out of her that she cannot give.

7 Mr. Durham and I, we both know that you will stick to
8 your oath and give him all of the rights he is due including
9 at this very minute he is innocent. I'd ask you to remember
10 that when you go back to your jury room. As you deliberate,
11 he is still innocent. Until and unless you all decide
12 otherwise, he is the innocent Mr. Durham, and I ask you to
13 remember that.

14 Again, please use the tools I've given you for reasonable
15 doubt. Reasonable doubt comes from the evidence, a lack of
16 evidence and conflicts between -- I said that wrong.
17 Evidence, conflict between that evidence and a lack of
18 evidence.

19 We ask you to consider the case. It's a rough case, I
20 know that, because of the allegations, but it's an easy case
21 because she's told you. She's truthful. She's not worried
22 about anything that happens to her because nothing happened.
23 She has no reason to lie. We ask you to return a verdict of
24 not guilty. Thank you.

25 **THE COURT:** All right. Mr. Foreman, ladies and gentlemen

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1 of the jury, you've now heard all the testimony in this case.
2 You've heard the arguments of both the State and the
3 defendant. And you'll take with you to the jury room all the
4 evidence in this case that's been introduced. Now I must
5 explain the law to you as it applies to this case.

6 I remind you that during this trial you and I have
7 certain duties to perform. As the trial judge it's been my
8 responsibility to preside over the trial of the case. And I
9 also have the duty to rule on the admissibility of the
10 evidence offered during the trial. You are to consider only
11 the competent evidence before you.

12 During this trial you -- I was going to say if there was
13 any testimony ordered stricken from the records, you must
14 regard [sic] that testimony, but we didn't have any stricken
15 testimony to my recollection.

16 You are only to consider the testimony which has been
17 presented from this witness stand and any exhibits which may
18 be part of the record in the case and any stipulations of
19 counsel.

20 I have the additional duty to charge you the law
21 applicable to this case. And as the presiding judge I'm the
22 sole judge of the law of this case. It's your duty as jurors
23 to accept and apply the law as I now state it to you. If you
24 already have any idea as to what the law is or what the law
25 ought to be and does not agree with what I now tell you the

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1 law is, you must abandon this idea because you're sworn to
2 accept the law and apply the law exactly as I state it to you.

3 In every case tried before this Court -- before a jury,
4 the jury becomes the sole and exclusive judge of the facts. A
5 trial judge cannot intimate, state, comment or make any
6 comment to a trial jury about the facts in the case.

7 Since you, the jury, are the sole judges of the facts,
8 you are to infer -- not to infer from anything that I've said
9 during the progress of this trial in ruling upon the
10 admissibility of evidence or otherwise or anything I say now
11 during the course of this instruction to you that I have any
12 opinion about the facts of this case. The law does not allow
13 me to have an opinion about the facts in this case.

14 This is a matter solely for you, the jury, to determine.
15 As jurors it's your duty to determine the effect, value,
16 weight and truth of the evidence presented during the trial.

17 Now, as you know, the indictment charges the defendant
18 with criminal sexual conduct with a minor in the second
19 degree. I'm going to explain more about that in just a
20 minute.

21 I remind you of the fact that the defendant was arrested,
22 charged and indicted in this case is not evidence in this
23 case, cannot be considered by you as evidence of guilt in this
24 case, nor does it create any presumption or inference of
25 guilt. This document is simply the formal written instrument

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1 which contains the charge made against the defendant. It's
2 the formal document by which the case is brought into this
3 court.

4 And the defendant has pled not guilty to this indictment.
5 And that plea puts the burden on the State to prove the
6 defendant guilty. A person charged with committing a criminal
7 offense in South Carolina is never required to prove himself
8 or herself innocent.

9 I charge you that's an important rule of law that the
10 defendant in a criminal case, no matter what the seriousness
11 of the crime may be, will always be presumed innocent of the
12 crime for which the indictment was issued unless guilt has
13 been proven by evidence satisfying you of that guilt beyond a
14 reasonable doubt. And this presumption of innocence does not
15 end when you begin your deliberations, but it accompanies the
16 defendant throughout the trial until you reach a verdict of
17 guilt based on evidence satisfying you of that doubt [sic]
18 beyond a reasonable doubt.

19 It has been said that the presumption of innocence is
20 like a robe of righteousness placed about the shoulders of the
21 defendant which remains with the defendant until that has been
22 stripped from the defendant by evidence satisfying you of the
23 defendant's guilt beyond a reasonable doubt. The presumption
24 of innocence is not a mere legal theory, not just a legal
25 phrase. It is a substantial right to which every defendant is

CHARGE OF THE COURT

1 entitled unless you, the jury, are satisfied from the evidence
2 of the defendant's guilt beyond a reasonable doubt.

3 Well, what is a reasonable doubt in law? A reasonable
4 doubt is the kind of doubt that can cause a person to hesitate
5 to act. Let me just repeat that. A reasonable doubt is the
6 kind of doubt that would cause a reasonable person to hesitate
7 to do something. The State has the burden of proving the
8 defendant guilty beyond a reasonable doubt.

9 Some of you may have served as jurors in civil cases
10 where you were told it's only necessary to prove that a fact
11 is more likely true than not true such as by the greater
12 weight or preponderance of the evidence, but in criminal cases
13 the State's proof must be more powerful than that. It must be
14 beyond a reasonable doubt. Proof beyond a reasonable doubt is
15 doubt that leaves you firmly convinced of the defendant's
16 guilt.

17 Now, there are very few things in this world that we know
18 with absolute certainty. And in criminal cases the law does
19 not require that proof overcomes every possible doubt. If,
20 based on your consideration of the evidence, you're firmly
21 convinced that the defendant is guilty of the crime charged,
22 you must find the defendant guilty. And if, on the other
23 hand, you think there's a real possibility that the defendant
24 is not guilty, you must give the defendant the benefit of the
25 doubt and find him not guilty.

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1 Now, there are two types of evidence which are generally
2 presented during the trial. They're called direct evidence
3 and circumstantial evidence. Direct evidence is the testimony
4 of a person who claims to have actual knowledge of a fact,
5 such as an eyewitness. It is evidence which immediately
6 establishes the main fact to be proved.

7 Circumstantial evidence, on the other hand, is evidence
8 indicating the existence of a fact. It is evidence which
9 immediately establishes collateral facts or other facts from
10 which the main fact may be inferred. Circumstantial evidence
11 is based on inference and not on personal knowledge or
12 personal observation.

13 But the law makes absolutely no distinction between the
14 weight or value to be given either direct or circumstantial
15 evidence. Nor is a greater degree of certainty required of
16 circumstantial evidence than of direct evidence. You should
17 weigh all the evidence in this case. And after weighing all
18 that evidence, if you're not convinced of the guilt of the
19 defendant beyond a reasonable doubt, you must find the
20 defendant not guilty.

21 Now, necessarily, you must determine the credibility of
22 the witnesses who've testified in this case. Credibility
23 simply means believability. It becomes your duty as jurors to
24 analyze and evaluate the evidence and determine which evidence
25 convinces you of its truth.

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1 In determining the believability of witnesses who've
2 testified in this case you may believe one witness over
3 several witnesses or several witnesses over one witness. You
4 may believe a part of the testimony of a witness and reject
5 the remaining part of the testimony of that same witness.

6 You may believe the testimony of a witness in its
7 entirety or reject the testimony of a witness in its entirety.
8 You may consider whether any witness has exhibited to you any
9 interest, bias, prejudice or other motive in this case. You
10 may also consider the appearance and manner of the witness
11 while on the witness stand.

12 Now the Rules of Evidence, that is the rules which govern
13 court proceedings, ordinarily do not permit witnesses to
14 testify about their opinions or conclusions. An exception to
15 this rule exists for witnesses we call expert witnesses,
16 witnesses who by education, experience -- and experience have
17 become in some art, science, or profession, or calling may
18 state an opinion as to relevant and material matter in which
19 the witness claims to be an expert and may also state the
20 reasons for that opinion.

21 You should consider any expert opinion received in this
22 case like any other evidence and give it the weight you think
23 it deserves. If you decide that the opinion of an expert
24 witness is not based on sufficient education or experience, or
25 if you conclude that the reasons given in support of the

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1 opinion are not sound, or that the opinion is outweighed by
2 other evidence, you may disregard the opinion entirely. An
3 expert witness' testimony is to be given no greater weight
4 than that of other witnesses simply because the witness is an
5 expert.

6 Now, in order to establish criminal liability, criminal
7 intent is required. For example, the mental state required to
8 be proven by the State for some particular crime might be an
9 alleged purpose, an intent, knowledge or recklessness, or
10 criminal negligence. Criminal intent must be proven by the
11 State beyond a reasonable doubt.

12 Criminal intent is always a matter that must be
13 determined by the jury from the circumstances surrounding the
14 situation. There's no way to prove intent to a mathematical
15 certainty. There's no way medical science can dissect a
16 person's brain and determine what the person had in mind.

17 So the law says that criminal intent may be inferred from
18 the circumstances shown to have existed at the time and place
19 of the event. And this is how you make a determination of
20 whether or not the element requiring intent was present.

21 Not necessary to establish intent by direct and positive
22 evidence, but intent may be established by inference in the
23 same way as any other fact taking into consideration the acts
24 of the parties and all facts and circumstances of the case.
25 In other words, criminal intent is a mental state, a conscious

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1 wrongdoing. It's up to you to determine what the defendant
2 intended to do based on the circumstances shown to have
3 existed at the time and place of the event.

4 Criminal intent can arise from action or failure to act.
5 It may also result from negligence, recklessness, or
6 indifference to duty or to consequences that are considered by
7 the law to be the equivalent of criminal intent.

8 Now the defendant is charged with second degree criminal
9 sexual conduct with a minor. The State must prove beyond a
10 reasonable doubt that the defendant engaged in a sexual
11 battery with the victim. A sexual battery is sexual
12 intercourse, cunnilingus, fellatio, anal intercourse or any
13 intrusion, however slight, of any part of a person's body into
14 that or of an object into the genital or anal openings of
15 another person's body except when the intrusion is
16 accomplished for medically recognized purposes.

17 The State must also prove beyond a reasonable doubt that
18 the defendant was at least 11 year old -- years old, but not
19 more than 14 years old at the time of the sexual battery.
20 Consent, willingness, or indifference, or ignorance on the
21 part of the minor, if any, as to what was taking place does
22 not in any way affect the charge of criminal sexual conduct
23 with a minor because an unmarried woman under the age of 14
24 cannot legally consent to any form of sexual battery.

25 Now I want to emphasize this last point, this last

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

6 The defendant has a constitutional right to remain
7 silent. And the assertion of this right must not be
8 considered by you in your deliberations. I repeat, under your
9 oath you are to draw no conclusion whatsoever from the fact
10 that the defendant in this case did not testify. The fact
11 that this defendant did not testify should not even be
12 discussed in the jury room.

13 The burden of proof, as I have stated to you in these
14 instructions, is on the State. The State -- the defendant is
15 not required to prove his innocence. The burden of proof
16 remains on the State to prove guilt beyond a reasonable doubt.

17 Now, ladies and gentlemen, you'll take to you -- to the
18 jury room with you the evidence that's been presented in this
19 case and a form -- jury verdict form, which I will send in to
20 you with the evidence.

21 There are obviously two possible verdicts on this verdict
22 form. They are not guilty and guilty. There's no particular
23 -- no significance in the order in which I state these
24 possible verdicts. It's simply one must be stated first.

25 Your verdict must not be based on sympathy or prejudice or any

CHARGE OF THE COURT

1 other fact not in evidence in this case. Ladies and
2 gentlemen, all 12 of you must agree on a verdict. In other
3 words, the verdict must be unanimous.

4 Mr. Foreperson, Mr. Foreman, when the jury arrives --
5 agrees at a verdict, I'm going to ask you to knock on the jury
6 room -- sign the indictment, sign the verdict form as
7 indicated on the form, then knock on the jury room door at
8 which time we will receive your verdict back in the courtroom.

9 Now, I'm going to ask you to return to the jury room. Do
10 not begin your deliberations until you're told by the clerk or
11 the bailiff to do so. There's some matters which I must
12 discuss with the attorneys and collect the evidence to give to
13 you. Once you receive the evidence and the form of the
14 verdict, you may begin your deliberations. Thank you very
15 much, ladies and gentlemen. You may retire to the jury room.

16 (Whereupon the jury exited the courtroom at 2:47 pm)

17 **THE COURT:** Any exceptions or objections to the charge?

18 **MS. OWEN:** None from the State, Your Honor.

19 **MR. KING:** None from the defense, Your Honor. It was
20 very thorough.

21 **THE COURT:** All right. Now, I neglected to address this
22 earlier. I can send the indictment back to the jury. On the
23 face of the indictment there's a place for the verdict. Or I
24 can prepare, which I should have done before now, but we're
25 doing -- it's done right now, a verdict form, whichever you

1 prefer. Any objection to using the indictment?

2 **MR. KING:** I prefer a verdict form, personally, Judge.

3 **MS. OWEN:** I'll be happy with whatever you decide, Your
4 Honor.

5 **THE COURT:** All right. Let me -- we're going to print it
6 and show it to you.

7 **MR. KING:** It's thorough.

8 **THE COURT:** Approved?

9 **MS. OWEN:** Approved.

10 **MR. KING:** Thank you, Judge.

11 **THE COURT:** All right. Let's collect the evidence.

12 (Pause)

13 **THE COURT:** All right. Any objection to dismissing the
14 alternate at this time?

15 **MS. OWEN:** Not at this time, Your Honor.

16 **MR. KING:** None from the defense, Your Honor.

17 **THE COURT:** All right. I've had lawyers say I don't want
18 to dismiss them until I know the jury's deliberating. And
19 bring Ms. 166 back in. We're still in order.

20 (Pause)

21 **THE COURT:** Have a seat a minute. We're trying to figure
22 out whether we need you tomorrow.

23 (Whereupon the jury began deliberating at 2:51 pm)

24 (Pause)

25 **THE COURT:** This may be the last time you ever get called

1 Ms. 166. But, as you certainly are aware, you were an
2 alternate on this case. I will tell you honestly that it's
3 amazing how many times we need alternates. It's amazing how
4 many times the car breaks down, or grandma gets sick, or the
5 baby's got a cold, or any number of things. Matter of fact, I
6 honestly believe in some counties there are sick grandmas that
7 people rent to get out of jury duty, but that's fanciful.

8 But thank you very much for your service. Obviously you
9 can't sit in on the deliberations. We may need you later in
10 the week as the clerk's telling me. We're going to ask you to
11 call in tomorrow, I mean, tonight after 6:00 and there'll be
12 some instructions on the phone -- on the tape recording.

13 But I do want to thank you. This -- I've said many
14 times, this system can do without me, it can do without these
15 lawyers, but it can't do without you. You're such an
16 important part of the judicial system of this County and this
17 State. We appreciate your service. Thank you very much.
18 You're now free to go. Do you need a work -- do you need any
19 work excuse or something like that?

20 **JUROR 166:** No, sir. I'm self-employed. So ...

21 **THE COURT:** Okay.

22 **THE BAILIFF:** She wants to stay in the courtroom, Your
23 Honor.

24 **THE COURT:** That's fine.

25 **JUROR 166:** Is that okay?

1 **THE COURT:** Oh, yes, certainly. Please do. Depending on
2 the outcome, I'll ask everybody if they'd like to stay or not.
3 All right. Let's stand at ease til we hear from the jury.

4 **MS. OWEN:** Thank you, Your Honor.

5 (Whereupon court was in recess at 2:55 pm)

6 (Whereupon court reconvened at 3:13 pm)

7 **THE COURT:** They want to watch the video. Get a laptop
8 and somebody ---

9 **MS. OWEN:** Do you know which video or do they want to
10 watch ---

11 **THE COURT:** 6.

12 **MS. OWEN:** 6. Was that her ...

13 **MADAM COURT REPORTER:** Ables.

14 **MS. OWEN:** Ables. Okay. Yes, we have a laptop, Your
15 Honor.

16 **THE COURT:** Now, we need somebody to operate it.

17 **MS. OWEN:** Sure.

18 **THE COURT:** Well, let's get somebody ---

19 **MS. OWEN:** Can you -- if you ---

20 **MR. KING:** We can pull it up and just send it in and hit
21 play.

22 **MS. OWEN:** Yeah. If you can grab State's 6, we can put
23 it in the computer.

24 (Whereupon Court's exhibit 5 was marked)

25 **THE COURT:** Ms. Owen, I'm going to send my law clerk in

1 ---

2 **MS. OWEN:** Sure.

3 **THE COURT:** --- just to turn it on.

4 (Whereupon court was in recess at 3:16 pm)

5 (Whereupon court reconvened at 4:40 pm)

6 **THE COURT:** Thank you. Be seated. Approach the bench.

7 (Whereupon a bench conference was held off the record)

8 (Whereupon the bench conference was ended)

9 (Whereupon Court's exhibit 6 was marked)

10 **THE COURT:** There was a recent case regarding an Allen
11 charge out of Greenville, but the holding, as I recall, did
12 not say anything about -- as a matter of fact, I have it here,
13 State v. Taylor. It didn't discourage giving the Allen
14 charge, but it directed the, I mean, the Court's decision was
15 based on the specific Allen charge that was given to the jury
16 in Greenville. And I don't think that that case -- I'm sure
17 that case did not in any way affect the Allen charge which I
18 have been using -- standard Allen charge for years.

19 I'm not sure if either of you are familiar with it, but
20 it's a June 2019 case out of Greenville. But I reviewed it,
21 not for this, but just my normal practice. And I don't think
22 it applies to what is generally considered the Allen charge.
23 All right. Bring the jury.

24 (Whereupon the jury entered the courtroom at 4:45 pm)

25 **THE COURT:** All right. Ladies and gentlemen of the jury,

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1 I have your note, which indicates that you've been unable to
2 reach a decision at this point. Is that correct, Mr. Foreman?

3 **MR. FOREMAN:** Yes, Judge.

4 **THE COURT:** Well, let me just have a few minutes of your
5 time. When any matter is in dispute it's always or seldom
6 easy for two people to agree when a matter is in dispute. So
7 when 12 people must agree, and we understand it, it becomes
8 more difficult.

9 In most cases absolute certainty cannot be reached or
10 expected. However, you have a duty to make every reasonable
11 effort to reach a unanimous verdict. In doing this you should
12 consult with one another, express your own views and listen to
13 the opinions of your fellow jurors. I'll ask you to tell each
14 other how you feel and why you feel that way and discuss your
15 differences with open minds.

16 Now, although the verdict of a jury must be unanimous,
17 every one of you has a right to your own opinion. The verdict
18 you agree to must be your own verdict, the result of your own
19 convictions. And you should not give up your firmly held
20 beliefs merely to be in agreement with your fellow jurors.

21 The majority should consider the minority's position.
22 The minority should consider the majority's position. You
23 should carefully consider and respect the opinions of each
24 other and re-evaluate your position for reasonableness,
25 correctness and impartiality.

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1 You must lay aside all outside matters and examine the
2 questions before you based on the law and evidence in this
3 case. If you do not agree on a verdict in this case, I must
4 declare a mistrial.

5 In that case it does not mean that anybody wins. It just
6 means that sometime in the future I will try this case or some
7 other judge will try this case with some other jury where you
8 now sit. The same participants will come and the same lawyers
9 will come and ask basically the same questions and get
10 basically the same answers, and we will go through this entire
11 process again.

12 Now you were selected in the same manner and from the
13 same source that any future jury will be. And there's no
14 reason for me to suppose that the case will ever be submitted
15 to 12 more intelligent, impartial, conscientious or competent
16 jurors than you and that more or clearer evidence will be
17 produced on one side or the other.

18 So what I'm going to do at this time is dismiss you for
19 the day, it's 5:00 anyway, and ask you to return to the jury
20 room in the morning and start fresh, consider my comments that
21 I've just given to you and attempt, if you will, Mr. Foreman,
22 ---

23 **MR. FOREMAN:** Yes, sir.

24 **THE COURT:** --- to reach a verdict. I hope you all will
25 respect that instruction. All right.

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1 Thank you very much, ladies and gentlemen. I'm going to
2 dismiss you now until 9:30 in the morning. When you return to
3 the courthouse in the morning I'm going to ask you to return
4 to the jury room just like you did today and resume your
5 deliberations once all 12 of you are present. But don't start
6 your deliberations until all 12 are present. Thank you very
7 much.

8 (Whereupon the jury exited the courtroom at 4:50 pm)

9 **THE COURT:** Any objections or exceptions to the Allen
10 charge?

11 **MS. OWEN:** None from the State, Your Honor.

12 **MR. KING:** None from the defense, Your Honor.

13 **THE COURT:** All right. We'll adjourn til 9:30 in the
14 morning.

15 (Whereupon court was in recess at 4:51 pm)

1 Wednesday, August 20, 2019:

2 (Whereupon all jurors were present in the jury room and
3 began deliberations at 9:30 am)

4 (Whereupon court reconvened at 9:51 am)

5 **THE COURT:** All right. Be seated. Counsel.

6 (Whereupon a bench conference was held off the record)

7 (Whereupon the bench conference was ended)

8 (Whereupon Court's exhibit 7, jury question, was marked
9 and sent back to the jury with the Court's written response)

10 (Whereupon Court's exhibit 7 was returned to the Court
11 with the jury's written answer)

12 **THE COURT:** All right. Stand at ease.

13 (Whereupon court was in recess at 9:58 am)

14 (Whereupon court reconvened at 11:19 am)

15 **THE COURT:** The jury has advised the Court they are
16 unable to make a decision. After an Allen charge last night
17 they have indicated to the Court that they are deadlocked and
18 cannot reach a decision. Therefore, I hereby declare a
19 mistrial in this case, and I'm going to release the jury.
20 Anything from counsel at this time?

21 **MS. OWEN:** Nothing from the State, Your Honor.

22 **MR. KING:** Nothing from the defense, Your Honor.

23 **THE COURT:** All right. Bring the jury, please.

24 (Whereupon Court's exhibit 8 was marked)

25 (Whereupon the jury entered the courtroom at 11:20 am)

VERDICT OF THE JURY

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1 **THE COURT:** Mr. Foreman, your note indicated that the
2 jury is still deadlocked. Is that correct?

3 **MR. FOREMAN:** Yes, sir.

4 **THE COURT:** All right. Well, as I explained to you last
5 night, I have declared a mistrial based on your note. And the
6 State will proceed, the defendant will proceed, we'll move on
7 to the next step. We don't -- I don't know what that will be.

8 But I do want to take this opportunity -- I know this --
9 you don't deliberate for as long as you've deliberated without
10 really trying to come to some agreement. And I understand
11 that.

12 But I also understand that when people have convictions
13 they're not -- they should maintain their convictions and not
14 vote either guilty or not guilty just to satisfy the group.
15 And it's apparent to me that that has -- what's been taking
16 place in the jury room. And I respect that. And these
17 lawyers respect that.

18 And we know it's difficult to, especially in cases where
19 there's not a lot of physical evidence, it's extremely
20 difficult to come to a conclusion unanimously. And I don't
21 think that any of you should feel bad about the way this
22 turned out. You've all done your duty. You've all done what
23 we asked you to do.

24 And sometimes this happens. This has happened -- in my
25 career it's happened many -- I won't say many times, but it

VERDICT OF THE JURY

1 happens. And I understand it. So I do -- I want to thank you
2 for your service. It's just the way it is and we can't -- I
3 can't do anything about it. And you can't do anything about
4 it. But I do appreciate your efforts in this regard.

5 I hope if you're called upon in the future to come and
6 serve as jurors in Pickens County that you'll do so gladly and
7 not think back about this as any bad or unfortunate
8 experience. It's just part of the system. It happens. And I
9 appreciate your efforts in this regard and so do the
10 attorneys.

11 So with that in mind, thank you very much for your
12 service. You're now dismissed. If you need work permits,
13 they'll take care of you. Good luck to all of you. Thank you
14 very much. Oh, oh, oh, wait, wait, call in tonight.

15 **JUROR:** What? We have to call in?

16 **JUROR:** Great.

17 **THE COURT:** Please call in.

18 **JUROR:** Really?

19 **JUROR:** Really?

20 **THE COURT:** I'm only following -- I'm only following
21 instructions. If it was up to me -- I have a feeling that
22 there's not going to be any other -- any need for your
23 services this week, but I've been cautioned just to ask you to
24 call in to be sure. All right. Thank you very much.

25 **JUROR:** Thank you, sir.

1 (Whereupon the jury exited the courtroom at 11:23 am)

2 **THE COURT:** Any motions?

3 **MS. OWEN:** Yes, Your Honor. My only request would be
4 that we're going to leave bond up to you, but now Mr. Durham
5 is off bond.

6 **THE COURT:** Well, what was his bond? Mr. King, what was
7 his bond? Do you know?

8 **MR. KING:** I believe it was a twenty thousand dollar
9 (\$20,000.00) bond.

10 **THE COURT:** Well, I think he's going to have to post
11 again.

12 **MR. KING:** Would you consider giving him a PR bond this
13 time?

14 **MS. OWEN:** Your Honor, I would respectfully request that
15 we not do that. Mr. Durham failed to appear for multiple
16 court appearances. He was actually in the LEC for a few
17 months for a family court bench warrant this spring. And I
18 don't know that he would be compliant if he had a PR bond.

19 **THE COURT:** Well, I can reduce it. I'll reduce it to a
20 ten thousand dollar (\$10,000.00) surety bond, but we need a
21 surety.

22 **MR. DeJONG:** Yes, Your Honor.

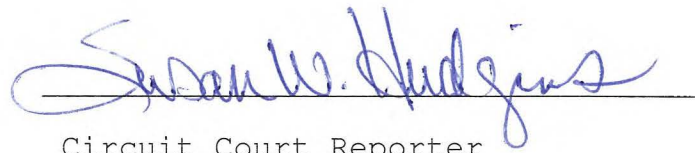
23 **THE COURT:** Plus the fact that there was some allegation
24 that he lives in Georgia or has some residence in the State of
25 Georgia.

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 excerpt of 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 Pickens County, South Carolina, on the 19th - 21st day of August 2019.

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

February 8, 2020



Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
 THE STATE)
)
 -VS-)
)
 James Anthony Durham,)
)
 DEFENDANT.)
 _____)

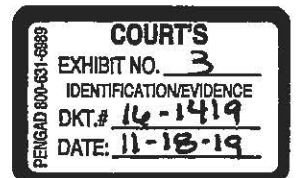
IN THE COURT OF GENERAL SESSIONS

Indictment: 2016GS3901419

STIPULATION

The Following time periods of State’s Exhibit # 2 (Officer Ross Ables Body Worn Camera) have been muted as agreed upon by the parties in this case:

- 12:04:51 – 54
- 12:08:05 – 07



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DOCKET NO. 2016-GS-39-^{CCL} 1419

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

OCT 11 2016 TERM 2016

THE STATE

vs.

JAMES ANTHONY DURHAM

MINISTRIAL DECLARED

*THIS 21ST DAY OF
AUGUST 2019.*

*G. R. [Signature]
CIRCUIT COURT JUDGE*

Indictment for

0396

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE (11-14)

VIOLATION § 16-03-0655(B)

WITNESSES

Brenda Link

Clemson Police Department

5/15/2016

ARREST WARRANT NUMBER
2016A3920200111

ACTION OF GRAND JURY

TRUE BILL

NOV 11 2016

[Signature]
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE
(11-14)

At a Court of General Sessions, convened on

OCT 11 2016

the Grand Jurors of Pickens

County present upon their oath:

That JAMES ANTHONY DURHAM did in Pickens County, on or about the 14th day of May, 2016, commit a sexual battery on Z.A.L., who was fourteen years of age or less but who was at least eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South Carolina Code of Laws (1976) as amended.

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

Courtney C. Jambiesk
SOLICITOR BAR # 100158

COUNTY OF Pickens VS. STATE

James Anthony Durham

AKA:

Race: BLACK Sex: M Age: 41

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

INDICTMENT/CASE#: 2016GS3901419

A/W#: 2016A3920200111

Date of Offense: 5/14/2016

S.C. Code § : 16-03-0655(B)

CDR Code #: 0396

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SENTENCE SHEET NOV 25 2019

60-20 (15)

CONVICTED OF SC Court of Appeals

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

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: Owen, Megan Moricle 100822 SC Bar# Defendant Daniel King 102292 DE JONG, JOHN W. SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 13 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by 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: \$ days/hours Public Service Employment

Payment Terms: Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

Set by SCDPPPS Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund

Recipient: Other:

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso (Public Def/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$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) \$ 3.75.

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: Howard P. Wilborn Jr. Court Reporter: Cheryl Smith

Presiding Judge: [Signature] Judge Code: 2102 Sentence Date: 11/19/19

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,

s/Susan B. Hackett

Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

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This 9th day of September, 2020.