

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

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AUG 25 2014

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

MARK STANLEY PETERS,

PETITIONER.

APPELLATE CASE NO. 2014-001507

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Mark Stanley Peters, Appellant.

Appellate Case No. 2012-205886

Appeal From Pickens County
G. Edward Welmaker, Circuit Court Judge

Unpublished Opinion No. 2014-UP-187
Heard March 5, 2014 – Filed May 7, 2014

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia, for Respondent.

PER CURIAM: Mark Peters appeals his convictions for committing a lewd act upon a minor, arguing the trial court erred in qualifying Shauna Galloway-Williams (Williams) as an expert in "counseling children who are victims of sexual abuse and their family members." We affirm.

Expert witness testimony must meet the "threshold foundational requirements of qualification[] and reliability." *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009). The qualification of a witness as an expert and the subsequent admission of that witness's opinion testimony are matters within the sound discretion of the trial court. *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). "The trial court's decision to admit expert testimony will not be reversed on appeal absent an abuse of discretion." *Id.* "[B]oth expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect." *State v. Schumpert*, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993). However, "[t]he rules of evidence do not allow witnesses to vouch for or offer opinions on the credibility of others." *State v. Kromah*, 401 S.C. 340, 357 n.5, 737 S.E.2d 490, 499 n.5 (2013). "Further, even though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others. It is undeniable that the primary purpose for calling a 'forensic interviewer' as a witness is to lend credibility to the victim's allegations." *Id.* at 358, 737 S.E.2d at 499.

As we read Peters' objection to Williams's qualification as an expert at trial, his objection was premised upon the fact that Williams had not met the victims and knew nothing about the facts of the case. In *State v. Weaverling*, 337 S.C. 460, 473, 523 S.E.2d 787, 794 (Ct. App. 1999), this court addressed a case similar to Peters' wherein a defendant challenged behavioral evidence testimony in a sex abuse case in which the expert had never interviewed or met the victim. In *Weaverling*, the trial court qualified a social worker as an expert in "the field of victims of sexual abuse." *Id.* The expert's knowledge of the case was limited to her discussions with the State. *Id.* The *Weaverling* court surveyed case law from this state and other jurisdictions and concluded the testimony was admissible notwithstanding the expert's failure to interview the child. *Id.* at 474-75, 523 S.E.2d at 794. Ultimately, the *Weaverling* court held "[t]here is no requirement the sexual assault victim be personally interviewed or examined by the expert before the expert can give behavioral evidence testimony. The fact that the expert does not personally interview the victim bears on the weight of the behavioral evidence not on its admissibility." *Id.* at 475, 523 S.E.2d at 794.

We find no error in Williams's qualification as an expert. Williams testified she was a licensed professional counselor, with a bachelor's degree in psychology and a master's degree in counseling. She stated most of her training included working specifically with children and families in situations where there were allegations of abuse and neglect. She attended training seminars regarding sexual abuse survivors and worked on multiple cases involving sexually abused children.

Although Williams testified she conducts forensic interviews as a part of her job duties, she confirmed she did not conduct a forensic interview in this case. Furthermore, the State did not proffer her as an expert forensic interviewer of children, and Peters repeatedly argued Williams did not conduct a forensic interview.¹ The State did not call Williams as a forensic interviewer to lend credibility to the victims' allegations. *See Kromah*, 401 S.C. at 358, 737 S.E.2d at 499. In fact, Williams never directly or indirectly commented on the credibility of the victims' accounts of the alleged sexual assaults.

Instead, Williams's testimony simply explained the effects a sexual trauma may have on a child's subsequent behavior following the trauma. We find the probative value of her testimony outweighed any alleged prejudicial effect. Moreover, the fact that Williams had never met either of the victims in this case, nor had she met any of the parties involved, goes to the weight of her testimony, not its admissibility. *Weaverling*, 337 S.C. at 475, 523 S.E.2d at 794.

The trial court did not abuse its discretion in qualifying Williams as an expert or admitting her testimony. Accordingly, the trial court is

AFFIRMED.

HUFF and THOMAS, JJ., and CURETON, A.J., concur.

¹ To the extent Peters argues error on appeal resting on the lack of reliability of Williams's testimony, we find that argument is not preserved for review. Peters objected only to the qualification of Williams as an expert based on her unfamiliarity with the facts; he never objected to the reliability of Williams's testimony as it relates to her expertise in the area of counseling children who suffered sexual abuse. *See State v. Hicks*, 330 S.C. 207, 216, 499 S.E.2d 209, 214 (1998) (holding an issue must be *raised to* and ruled on by the trial court to be preserved for appellate review).

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MARK PETERS,

APPELLANT

APPELLATE CASE NO. 2012-205886

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

Opinion No. 2014-UP-187

PETITION FOR REHEARING

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APPELLATE COUNSEL

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MAY 22 2014

SC Court of Appeals

Petitioner seeks rehearing pursuant to Rule 221(a), SCACR because this Court may have overlooked the fact that State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (1999), upon which it relied in its opinion, is no longer good law as to the admission of expert testimony. Further, in Weaverling the Court noted that "Weaverling has not challenged Mooney's testimony by claiming the record lacked sufficient evidence to support her expert opinion in this case." State v. Weaverling, 337 S.C. 460, 474 523 S.E.2d 787, 794 (1999). Here, appellant has challenged the ruling qualifying witness Galloway-Williams as an expert in the field of "counseling children who

are victims of sexual abuse and their family members” since she was not qualified to testify as an expert, and her opinion about child sex abuse cases in general would not assist the jury as required by rule where she had not met any of the parties involved in the case, and her testimony did not satisfy the requirements for scientific or other technical evidence under the South Carolina Rules of Evidence.

In Weaverling, the Court also held that “After a witness has been qualified as an expert, any challenge to the adequacy of the expert’s knowledge goes to *the weight of the testimony*, rather than its admissibility.” State v. Weaverling, 337 S.C. 460, 474 523 S.E.2d 787, 794 (1999). (emphasis added). See, also, State v. Henry, 329 S.C. 266, 278, 495 S.E.2d 463, 468-469 (Ct.App. 1997)(if a witness is better qualified than the jury she is qualified to give expert testimony), which is also no longer good law.

In State v. White, 382 S.C. 265, 272-273, 676 S.E.2d 684, 687-688 (2009), our Supreme Court rejected these outdated principles of expert testimony writing:

[O]n appeal the State has persisted with the argument that reliability need not be shown for the admission of nonscientific expert testimony. Because the court of appeals in this case has approvingly cited State v. Morgan, 326 S.C. 503, 485 S.E.2d 112 (Ct.App.1997) in support of the State's position, we believe clarification of the analytical framework for the admissibility of nonscientific expert testimony is warranted.

At oral argument, the State argued this Court need not concern itself with the issue of reliability because the case *only* involves nonscientific expert testimony. Presumably, the State relies on the court of appeals' decision in State v. Morgan, which held “[i]f the expert's opinion does not fall within [the] Jones [standard for scientific expert testimony], questions about the reliability of an expert's methods go only to the weight, but not admissibility, of the testimony.” Morgan, 326 S.C. at 513, 485 S.E.2d at 118. This is an incorrect statement of law.

We overrule Morgan to the extent it suggests that only scientific expert testimony must pass a threshold reliability determination by the trial court prior to its admission in evidence. **The familiar tenet of evidence law that a continuing challenge to evidence goes to “weight, not admissibility” has never been intended to supplant the gatekeeping role of the trial court in the first instance in assessing the admissibility of expert testimony, including the threshold determination of reliability. Nonscientific expert testimony must satisfy Rule 702, both in terms of expert qualifications and reliability of the subject matter.** (emphasis added).

Courts are often presented with challenges **on both fronts-qualifications and reliability**. The party offering the expert must establish that his witness has the necessary qualifications in terms of "knowledge, skill, experience, training or education." Rule 702, SCRE. With respect to qualifications, a witness may satisfy the Rule 702 threshold yet the opponent may still challenge the amount or quality of the qualifications. It is in this latter context that the trial court properly concludes that "defects in the amount and quality of education or experience go to the weight to be accorded the expert's testimony and not its admissibility." State v. Myers, 301 S.C. 251, 256, 391 S.E.2d 551, 554 (1990). Turning to the reliability factor, a trial court may ultimately take the same approach, but only after making a threshold determination for purposes of admissibility.

State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) is often cited for the gatekeeping role of the trial court with regard to expert testimony under Rule 702, as well as the standard reliability factors for scientific evidence. The foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the Council¹ factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony. We have set forth above foundational requirements for Rule 702 expert testimony concerning dog tracking evidence.

We do not pretend to know the myriad of Rule 702 qualification and reliability challenges that could arise with respect to nonscientific expert evidence. Consequently, we offer no formulaic approach that will apply in the generality of cases. Yet the trial court in the discharge of its gatekeeping role in determining admissibility must initially answer the always present threshold questions of qualification and reliability.

State v. Kromah, 410 S.C. 340, 737 S.E.2d 490 (2013), also makes it apparent that Weaverling can no longer be good law. Here, on the second day of trial, the state called Shauna Galloway-Williams (hereinafter Williams). Williams was the executive director of the Julie Valentine Center, which was formally the Greenville Rape Crisis and Child Abuse Center. Williams said she conducted forensic interviews and did "clinical work" there. R. 136, ll. 3-24.

Williams testified that a forensic interview *was not* performed in this case. She had never met with either of the alleged victims. R. 137, ll. 1-13.

¹ The State v. Council factors for scientific expert testimony are: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures.

Williams had a Bachelor's degree in psychology, and a Master's degree in counseling. She said her training focused on forensic interviews with "ties to sexual and child abuse." She would admit on cross-examination that she attended a seminar in 2008 put on by the National College of District Attorneys. The seminar was "Child Abuse Summit, Working Together to Improve Child Abuse Prosecutions." R. 137, l. 11 – 138, l. 9; R. 156, l. 21 – 157, l. 8.

Williams said she had testified in criminal court eleven times and family court thirty times. The solicitor asked the judge to qualify Williams as an expert "in the field of counseling children who are victims of sexual abuse and their family members." R. 138, ll. 16-22.

The judge asked Defense Counsel Quinn if he had any *voir dire* or objection. Defense Counsel Quinn testified he **objected to her qualifications**, and he wanted to *voir dire* the witness. Counsel then asked Williams if she had ever been qualified in a case where she did not meet with the children or parties. Williams responded: "At least one other time in General Sessions." R. 138, l. 20 – 139, l. 10. Defense counsel then stated his objections:

I do not believe she's qualified to testify in this case, because she's not able to assist this jury with any question before them, as she has not met any of the people involved in the case. And as I believe the standard for a juror - - I'm sorry, for an expert, *they may testify to scientific, technical or other specialized knowledge that will assist the trier of fact to understand the evidence or determine the fact at issue. She is not aware of any of the evidence in the case or any of the facts in issue.*

R. 139, ll. 14-23. (emphasis added)

The solicitor said Williams could assist the jury in understanding why children delay in disclosing or make partial or accidental disclosures. R. 140, ll. 1-7. The judge then ruled that, based upon her education and experience, she was qualified as a witness **and that the subject matter was beyond the ordinary knowledge of a juror and he believed her testimony would be reliable.** R. 140, ll. 8-21.

Williams then testified in the presence of the jury that the vast majority of children do not disclose sexual abuse after it happens. "The statistics say about **eighty percent** of children don't tell right after something has happened . . . but the main reason . . . **is fear.**" R. 141, l. 7 – 142, l. 25.

(emphasis added). The following occurred on direct examination of Williams:

Ms. Barwick: In your experience, is it common or uncommon for children to be sexually abused by somebody they know and trust?

Williams: Yeah. It's very common, more likely than not, about **eighty percent** of the time, children are being abused by someone they know, they love and they trust.

R. 149, ll. 18-23. (emphasis added).

Williams was asked whether children fear "things like people at school finding out?" She answered that "children fear that other people are going to find out what happened." Williams testified that accidental disclosure means that children give out pieces of what occurred, and "we don't expect that when they finally do tell, that we're going to get all the details on all the specifics right away." R. 143, l. 22 – 146, l. 10.

Williams said when the perpetrator was part of the child's life this involved "relationship dynamics." R. 148, ll. 10-13. She said her organization recommended that there be no contact between the child and the person they accused of abuse. R. 148, l. 24 – 149, l. 17.

Williams also opined that children were **not "sophisticated liars."** She added that some children are "groomed" for sexual abuse and that grooming can start by touching, tickling children, "and getting close to the private area . . . as sort of testing the waters to see how close they can get to that . . . how that child's going to respond. R. 151, l. 19 – 153, l. 12. Williams said her figures that eighty percent of children do not initially disclose abuse that occurred were "**substantiated cases of abuse.**" R. 154, l. 7 – 155, l. 9. (emphasis added).

This Court should grant rehearing because Weaverling, on which the decision turns, is no longer good law. White teaches that admissibility is no longer hinges on whether the “expert” knows more than the jury. The mantra that “it goes to the weight of the evidence and not the admissibility of the evidence” and not the admissibility of the evidence has been properly overruled. Further, in Weaverling, the qualifications of the expert were not at issue. Moreover, the Attorney General acknowledged during an oral argument before this Court that their office discourages solicitors from using forensic interviewers because they are going to be challenged as inevitably bolstering the credibility of the complaining witness.

What occurred in this case will be the next attempt to bypass the Supreme Court’s ruling in Kromah to continue to bolster the testimony of the minor by calling the forensic interviewer by another name and throwing out incredible “statistics” such as the ones used in this case. This case, most respectfully, needs to be resolved under the modern correct legal standard for expert qualifications and testimony. The witness in this case was not qualified to impart anything that was admissible to assist the jury.

Petitioner cited to the case of In State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012), in his brief where the Court determined that the judge erred by leaving the reliability determination for the jury. As petitioner argued in his brief and at oral argument the testimony Williams gave would have to be admissible in every child sexual abuse allegation trial if the judge was correct in admitting it since she did not meet the alleged victims.

Finally, the reasoning of the Kentucky Supreme Court in Mitchell v. Commonwealth, 777 S.W2d 930 (Ky. 1989) regarding the “child sexual abuse accommodations syndrome” is in line with the logic of our Supreme Court in Kromah. This syndrome involved delay of disclosure in abuse, secrecy, helplessness, entrapment and accommodation, and retraction. The alleged victim in

Mitchell told Richard Welch, who held a Masters degree in clinical social work, that she did not report the sexual abuse immediately because she was afraid.

The Kentucky Supreme Court held that the state had failed to prove that the "so called Sexual Abuse Accommodation Syndrome" had attained a scientific acceptance. Mitchell v. Commonwealth, 777 S.W.2d at 932. The Court noted there was no testimony that sexual abuse by persons other than the accused could have produced the same symptoms in the victims.

The Kentucky Court also noted there was no testimony that all children who are sexually abused exhibited these symptoms, nor was there testimony that children who have not been sexually abused do not exhibit similar elements of the syndrome. The Court found reversible error because: (1) there was no medical testimony that the syndrome is a generally accepted medical concept and, (2) the testimony had no substantial relevance to the issue of the defendant's guilt or innocence. Mitchell v. Commonwealth, 777 S.W.2d at 933.

This Court should grant rehearing and respectfully decide this case under the modern correct legal standard set forth by our Supreme Court in White, Kromah and Tapp,

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

This 22nd day of May, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

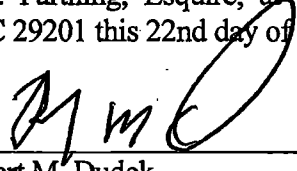
MARK PETERS,

APPELLANT

APPELLATE CASE NO. 2012-205886

CERTIFICATE OF SERVICE

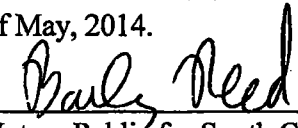
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 22nd day of May, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 22nd day
of May, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.

The South Carolina Court of Appeals

The State, Respondent,

v.

Mark Stanley Peters, Appellant.

Appellate Case No. 2012-205886

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ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Luff J.

Paul A. Thomas J.

Jasper W. Curreton A.J.

Columbia, South Carolina

cc: Robert Michael Dudek
Mark Reynolds Farthing
Alan McCrory Wilson

FILED

June 13, 2014 *wt*

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

G. Edward Welmaker, Circuit Court Judge

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AUG 25 2014

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

MARK PETERS,

APPELLANT

APPELLATE CASE NO. 2012-205886

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 MARK STANLEY PETERS,)
)
 DEFENDANT.)
 _____)

2010-GS-39-00846, 00847

DECEMBER 13 AND 14, 2011

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

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ATTORNEY FOR THE STATE

THOMAS QUINN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

Minor #1 - Direct Examination by Ms. Barwick

1 THE WITNESS: Minor #1

2 Minor #1

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. BARWICK:

6 Q. All right. Ms. Minor #1 if you'll scoot up a little
7 closer to that microphone so we can hear you. It'll get
8 loud so don't yell too hard, okay? Minor #1 how old are
9 you?

10 A. Fifteen.

11 Q. What's your date of birth?

12 A. [REDACTED] [REDACTED]

13 Q. Okay. Who do you live with?

14 A. My stepmom and my dad.

15 Q. Okay. Any dogs or anything like that?

16 A. No.

17 Q. You a little nervous being here today?

18 A. Yes.

19 Q. Why is that?

20 A. Because I didn't want to see him.

21 Q. Is today the first time that you have seen him?

22 A. Uh-huh (affirmative.)

23 Q. Yeah? Do you recognize him? What's his name?

24 A. Mark Peters.

25 Q. Okay. How did you meet Mr. Peters? How do you know

1 him?

2 A. He's my best friend's dad.

3 Q. Who's your best friend?

4 A. Gabby P.

5 Q. You and Gabby hang out anymore?

6 A. Uh-uh (negative).

7 Q. When do you think you first met Gabby?

8 A. The school year of 2006.

9 Q. How did y'all meet?

10 A. Just being at school. I was new to that school and so
11 was she and we just became friends.

12 Q. Say in the spring of 2009, before all of this
13 occurred, how often do you think you and Gabby would see
14 each other outside of school?

15 A. On the weekends and sometimes on weekdays.

16 Q. So in a week, how many times do you think you would
17 see her outside of school?

18 A. Probably three.

19 Q. Three?

20 A. Then plus on weekends.

21 Q. All right. Did you stay the night a lot over there?

22 A. Uh-huh (affirmative).

23 Q. How often do you think you would stay the night?

24 A. Usually every time I went over there.

25 Q. Can you tell the jury a little bit about your

1 relationship with Gabby and her family? What kind of
2 things that you would do together?

3 A. I went to Florida with them for Thanksgiving. And we
4 would go to Carowinds. And we were just really close.
5 They was like my second family.

6 Q. So it's fair to say y'all are pretty close?

7 A. Yes.

8 Q. Did you enjoy your time over at their house?

9 A. Yes.

10 Q. What kind of things would you do over there?

11 A. We would swim. They had a pool. And just play. They
12 had neighbors and we'd play with them and just hang out.

13 Q. Were a lot of kids over at the house?

14 A. Most of the time, yes.

15 Q. Who did Gabby live with?

16 A. Mark, Jackie and MacKenzie.

17 Q. And who's Jackie?

18 A. Mark's wife.

19 Q. And who's MacKenzie?

20 A. Mark's daughter.

21 Q. Is Gabby Mark's daughter too?

22 A. Yes.

23 Q. Do you remember back in late April 2009 getting picked
24 up from school by Ms. Jackie?

25 A. Yes.

~~Minor #1~~ - Direct Examination by Ms. Barwick

1 Q. And what did y'all do that weekend?

2 A. We went to Carowinds. And Friday and Saturday we went
3 to Carowinds and I spent the night both nights. And when
4 we came back, that night we went to church with Gabby's
5 neighbors. And when we came back that night we got ready
6 for bed and that's when I woke up and he was touching me.

7 Q. Okay. Well, before we get into the details of that,
8 Sunday night when you got back from church, what did y'all
9 do?

10 A. Mark was kind of drunk. He was being really loud and
11 he was wrestling with Gabby and he was -- tried to with me,
12 but he was kind of tickling me and stuff, but I didn't let
13 him because I didn't feel very comfortable. And then we
14 ---

15 Q. You went to bed?

16 A. Yes.

17 Q. Okay. I'm going to show you some of these -- don't
18 pay any attention to Mr. Cleveland putting that screen up
19 because we're going to need this in a second. I'm going to
20 show you this picture. And what is that a picture of?

21 A. Gabby's room.

22 Q. Does it kind of accurately show where things were
23 positioned in her room?

24 A. Yes.

25 Q. And what about this, where is that a picture of?

Minor #1 - Direct Examination by Ms. Barwick

1 A. Jackie's room.

2 Q. Does that accurately display the positioning of
3 everything in her room?

4 A. Yes, ma'am.

5 Q. I'm going to ask you the same thing with this one.

6 What is that a picture of?

7 A. The basement.

8 Q. Does it accurately reflect the basement?

9 A. Yes.

10 Q. The last one, what is that a picture of?

11 A. The outline of the house.

12 Q. Does it accurately reflect the inside of that home?

13 A. Yes.

14 Q. Not too many details on it, huh?

15 A. Uh-uh (negative).

16 Q. Do you want some water?

17 MS. BARWICK: Your Honor, at this time, the State
18 would like to introduce Exhibits Number 1 through 4 into
19 evidence.

20 THE COURT: Any objection?

21 MR. QUINN: None, thank you.

22 THE COURT: Without objection, Exhibits 1 through
23 4 are admitted into evidence and may be published to the
24 jury.

25 (WHEREUPON, State Exhibit Number 1 through 4 were

Minor #1 - Direct Examination by Ms. Barwick

1 admitted into evidence.)

2 Q. Is all of that about right?

3 A. Yes.

4 Q. Okay. The night that we're talking about, which
5 bedroom did you sleep in?

6 A. Gabby's room.

7 Q. And is that where Gabby's room is in the house?

8 A. Yes, ma'am.

9 Q. When you went into Gabby's room, what is that thing
10 right there?

11 A. That's where I laid. I was on a pallet on the floor.

12 Q. So was that like a bed or what was that, some
13 blankets?

14 A. Yes.

15 Q. Blankets?

16 A. Blankets.

17 Q. Okay. When you slept over at Gabby's house, is that
18 where you usually slept?

19 A. Yes, ma'am.

20 Q. That night would have been a Sunday night?

21 A. Uh-huh (affirmative).

22 Q. Did you have school the next morning?

23 A. Yes, ma'am.

24 Q. But you were allowed to stay there over on school
25 nights?

Minor #1 - Direct Examination by Ms. Barwick

- 1 A. Yes.
- 2 Q. Was that unusual or anything?
- 3 A. No.
- 4 Q. Up until this point of the evening, was anything
- 5 unusual?
- 6 A. No.
- 7 Q. When you went to bed on that -- what did you call it,
- 8 a pallet?
- 9 A. Uh-huh (affirmative).
- 10 Q. Which way was your head facing?
- 11 A. Towards the closet, like right there.
- 12 Q. Okay. And where were your feet?
- 13 A. Down there.
- 14 Q. You said you woke up in the middle of the night?
- 15 A. Yes, ma'am.
- 16 Q. What made you wake up?
- 17 A. Mark was touching me.
- 18 Q. Was the TV on?
- 19 A. Yes, ma'am.
- 20 Q. Where was Gabby?
- 21 A. Laying in her bed.
- 22 Q. Which way was her head?
- 23 A. Towards the wall.
- 24 Q. Will you use your little pointer for me. Was she
- 25 laying the way she was supposed to with the pillows and

- 1 everything?
- 2 A. Yes.
- 3 Q. Okay. And was she sleeping?
- 4 A. Yes, ma'am.
- 5 Q. What kind of sleeper would you characterize her as?
- 6 A. Very heavy. She's a heavy sleeper.
- 7 Q. Okay. Usually?
- 8 A. Uh-huh (affirmative).
- 9 Q. That night when you woke up and you said Mr. Peters
- 10 was touching you, where was he touching you?
- 11 A. On my private area and on my stomach.
- 12 Q. When you say your private area, do you mean your front
- 13 private area or your back private area?
- 14 A. My front private area.
- 15 Q. How were you laying?
- 16 A. I was laying on my left side with kind of my leg poked
- 17 out and he was just touching me.
- 18 Q. Okay. Was it above clothing or under clothing?
- 19 A. Above clothing.
- 20 Q. Do you happen to remember what he was wearing at that
- 21 point?
- 22 A. I know that he was wearing shorts and they had like
- 23 grey plaid on them.
- 24 Q. Okay. How was he positioned when he was touching you?
- 25 A. He was on one knee, kind of knelt down, just on one

Minor #1 - Direct Examination by Ms. Barwick

1 knee.

2 Q. Okay. Like if someone were to propose to someone,

3 kind of like that?

4 A. Yes.

5 Q. Okay. And did you say anything when he was touching

6 you?

7 A. He asked me did I want him to leave. Did I want --

8 did he want me to come -- did he want me -- for him to come

9 back. And I said, no, I want you to leave me alone.

10 Q. Is that the same kind of voice you used?

11 A. Yes.

12 Q. About that same loudness?

13 A. Yes.

14 Q. Okay. And what did he do or say?

15 A. He ran his fingers through my hair and then he just

16 got up and shut the door and walked out.

17 Q. Okay. So the door was open or shut when he came in?

18 A. It was shut.

19 Q. Okay. And when he was touching you, was it open or

20 shut?

21 A. It was shut.

22 Q. Do you know where he went to when he left the room?

23 A. No, ma'am.

24 Q. Okay. Well, what did you do at that point?

25 A. I was really scared and I didn't know what to do so I

Minor #1 - Direct Examination by Ms. Barwick

1 sat there and prayed. And then he came back and that's
2 when he was naked.

3 Q. How soon after he left do you think he came back?

4 A. It was just a couple -- probably just a minute.

5 Q. When he came back in, did he come all the way into the
6 room?

7 A. No, he just stood at the doorway.

8 Q. Okay. Is that the doorway up in the top left corner?

9 A. Yes, ma'am.

10 Q. And was the TV still on?

11 A. Yes, ma'am.

12 Q. Did you get a close look at him when he was naked?

13 A. Yeah. I could tell that he was because of his tan
14 line.

15 Q. Okay. And where were you when he came back in the
16 room?

17 A. I then flipped over to my other side, so I was faced
18 towards the TV.

19 Q. Did he say anything when he came back in?

20 A. He asked me what I was watching. And I said, Lockwood
21 Eric. And he was like, laying in the bed with Derek? And
22 I just didn't say anything. And then he said that I could
23 come downstairs with him and I didn't answer him.

24 Q. Okay. Why didn't you answer him?

25 A. Because I didn't want to.

Minor #111 - Direct Examination by Ms. Barwick

1 Q. When he said, laying in bed with Derek, did you know
2 what he meant back then?

3 A. Then, no. But now, looking back on it, I know that,
4 like, perverted.

5 Q. When he asked you if you came downstairs and you
6 didn't say anything, what happened after that?

7 A. He just stood there for, probably like forty seconds,
8 and then he just shut the door and then he went downstairs
9 because I heard the basement door shut. And that's when I
10 got up and went into Jackie's bedroom.

11 Q. Where does the Defendant normally sleep?

12 A. Downstairs.

13 Q. Is that -- is it a two-story home or is it a first
14 story with a basement?

15 A. It's a first story with a basement.

16 Q. So he sleeps in the basement?

17 A. Yes.

18 Q. Does he have his own room?

19 A. Yeah, kinda.

20 Q. And where does Ms. Jackie sleep?

21 A. In her bedroom.

22 Q. And where's that, on the first floor or in the
23 basement?

24 A. First floor.

25 Q. And there's a door to the basement, you said?

Minor #1 - Direct Examination by Ms. Barwick

1 A. Yes, ma'am.

2 Q. And you heard it shut?

3 A. Yes.

4 Q. Did you go straight to Jackie's room?

5 A. Yes.

6 Q. Did you wait -- how long do you think -- did you wait
7 at all after he left before you jumped up to go to Ms.
8 Jackie's room?

9 A. Yeah, just a second to make sure that he was really
10 down there and then I just got up and went in there.

11 Q. And is that where Ms. Jackie's room is, the master
12 bedroom?

13 A. Yes.

14 Q. Was her door open or shut, do you remember?

15 A. It was open.

16 Q. Does she normally keep it open?

17 A. Yes.

18 Q. And that's a bedroom?

19 A. Yes, ma'am.

20 Q. Would this have been -- let me get my bearings. Would
21 this have been the door to the hallway?

22 A. Yes.

23 Q. And that's the door to what?

24 A. The bathroom.

25 Q. She has her own bathroom?

Minor #1 - Direct Examination by Ms. Barwick

- 1 A. Yes.
- 2 Q. Are there any bathrooms down in the basement?
- 3 A. Uh-huh (affirmative).
- 4 Q. When you went into Ms. Jackie's room, what did you do
- 5 or say?
- 6 A. I kind of -- I just shook her a little bit and I just
- 7 said Mark came in there touching me. And then she said
- 8 that he came in there with her, too.
- 9 Q. Okay. When you came in and told her Mark had been
- 10 touching you, did you say -- did you give her details? Did
- 11 you say where he touched you?
- 12 A. I don't remember. I just know I told her that he was
- 13 in there touching me.
- 14 Q. And what was her first reaction, what was the first
- 15 thing that she said?
- 16 A. She was like, oh, my god. And then she said that he
- 17 came in there trying to touch her, too.
- 18 Q. And did she say what happened with that?
- 19 A. When she said that, she said that she might have
- 20 thought that he would have come in there too.
- 21 Q. Came in where?
- 22 A. Came in Gabby's bedroom.
- 23 Q. Okay. Did she say why she thought that?
- 24 A. No.
- 25 Q. And then what did she do?

Minor #1 - Direct Examination by Ms. Barwick

1 A. She told me to get in the bed with MacKenzie, and she
2 went downstairs to Mark's room.

3 Q. Okay. When you say in the bed with MacKenzie, where
4 was MacKenzie?

5 A. She was laying in the bed.

6 Q. Whose bed?

7 A. Her's.

8 Q. Jackie's bed or MacKenzie's bed?

9 A. Jackie's bed.

10 Q. So she was laying in Jackie's bed when you came in the
11 room?

12 A. Yes, ma'am.

13 Q. When -- and Jackie said, get in the bed with
14 MacKenzie? And then what did Jackie do?

15 A. She went downstairs.

16 Q. To the basement?

17 A. Yes.

18 Q. Did you hear anything going on down there?

19 A. No.

20 Q. Once she went down to the basement, then what
21 happened?

22 A. She came back up there and she told me that she was
23 sorry that this has happened. And then she -- then Mark
24 came up right after that and they were arguing and she said
25 that -- she's like, well, do you want to go home? And Mark

Minor #1 - Direct Examination by Ms. Barwick

1 said, I'll take her home. And Jackie's like, no, you
2 won't. You're not doing anything with her. And so I just
3 sat there. I really didn't ...

4 Q. Well, let me ask you this. How long was Jackie back
5 upstairs before Mark came up the stairs?

6 A. Just a minute. Enough time for her to tell me that
7 she was sorry that that happened.

8 Q. And what was he wearing when he came back up?

9 A. The same shorts that he had on when he touched me.

10 Q. Did he have a shirt on?

11 A. No.

12 Q. Did he have shoes or socks on?

13 A. I don't remember.

14 Q. When he came back up the stairs, where were you?

15 A. I was in Jackie's bed.

16 Q. Was MacKenzie still in the bed?

17 A. Yes.

18 Q. Was MacKenzie sleeping?

19 A. Yes.

20 Q. And they're arguing. After they argued, what
21 happened?

22 A. Mark went into the restroom and he -- I guess he was
23 fixing to use the bathroom, and Jackie got up and slammed
24 the door. And she said, there you go using the bathroom in
25 front of her. And then he opened the door back up and used

Minor #1 - Direct Examination by Ms. Barwick

1 the restroom. And then he came back out and then he told
2 me that he was sorry if he thought anything -- if I thought
3 anything that happened. And he come over there and picked
4 MacKenzie up and went downstairs.

5 Q. So he used the bathroom with the door open?

6 A. Yes.

7 Q. And how many other bathrooms are in the house?

8 A. Two.

9 Q. Okay. So is there a main bathroom?

10 A. In the hallway.

11 Q. And then there's Jackie's bathroom?

12 A. Yes. And then there's one downstairs.

13 Q. So three bathrooms?

14 A. Yes.

15 Q. And you said there's one in the basement, right?

16 A. Yes, ma'am.

17 Q. And does he have a bedroom down in the basement?

18 A. Yes.

19 Q. Okay. So after he used the restroom, what happened?

20 A. He came over there and got MacKenzie and went
21 downstairs.

22 Q. What did he do with MacKenzie?

23 A. He took her downstairs with him.

24 Q. Okay. What did Ms. Jackie do?

25 A. She just told me that he was not going to bother me

1 anymore. And we just sat there. We was ending up going to
2 sleep but then after Mark went downstairs, Gabby came in
3 there. And she just kind of looked at me funny and she
4 was, like, why are you in the bed with my mom? And Jackie
5 said, she had a bad dream.

6 Q. Had you ever slept in the bed with Ms. Jackie before?

7 A. No.

8 Q. So was that unusual?

9 A. Uh-huh (affirmative).

10 Q. So what happened after Gabby came in there?

11 A. She laid down on the floor at the foot of the bed and
12 we just ended up going to sleep.

13 Q. When Mr. Peters left, did he leave the door open to
14 the bedroom?

15 A. I don't remember.

16 Q. Do you remember Ms. Jackie doing anything with the
17 bedroom door?

18 A. No, ma'am.

19 Q. Okay. And after he left, did you go to sleep or what
20 happened after that point?

21 A. Well, I tried to go to sleep. I would wake up every
22 time I'd hear a noise or anything. But I tried.

23 Q. How come you told Ms. Jackie that you didn't want to
24 go home?

25 A. Because I was scared. I didn't know what was going to

- 1 happen next. I was just really scared.
- 2 Q. What were you scared of?
- 3 A. Mark doing it again.
- 4 Q. The next day, did you go to school?
- 5 A. Yes.
- 6 Q. Who took you to school?
- 7 A. Jackie.
- 8 Q. Did you tell anyone at school?
- 9 A. No.
- 10 Q. How come?
- 11 A. Because we had the -- me and Gabby had the same
- 12 friends and I just didn't want to bring it up. I'd just
- 13 rather tell one of my parents than to tell people at
- 14 school.
- 15 Q. What did you think your parents would say?
- 16 A. I really didn't know. I didn't really think about it.
- 17 I was just scared.
- 18 Q. Scared of Mark?
- 19 A. Uh-huh (affirmative).
- 20 Q. What were you scared of Mark for?
- 21 A. Because I was scared he was going to do it again.
- 22 Q. Did you come home after school that day?
- 23 A. Uh-huh (affirmative).
- 24 Q. And when you got home, did you do anything?
- 25 A. Well, I called my stepmom, like normal as I do

1 whenever I get home, and I just -- she asked -- she did --
2 this is what she said, that she could tell there was
3 something wrong in my voice. And she just started asking
4 questions, like did me and Gabby have an argument?

5 Q. Right. After she asked you these questions, did your
6 mom come home from work?

7 A. Yes, ma'am.

8 Q. And did you tell your mom what Mark had done to you?

9 A. Uh-huh (affirmative).

10 Q. Did you tell her where and when it happened?

11 A. Yes.

12 Q. After you had that discussion with your mom, what
13 happened at that point?

14 A. Well, she called my dad and told him that he needed to
15 come home and told him a little bit what happened. And
16 then he said to call the police. So we did.

17 Q. Did you speak with a Sheriff's Deputy?

18 A. Yes, ma'am.

19 Q. Was he wearing a uniform?

20 A. Yes.

21 Q. You told him what happened?

22 A. Yes.

23 Q. Did you give them a statement?

24 A. Uh-huh (affirmative).

25 Q. You wrote something down for him?

1 A. Yes.

2 Q. And you told everything that happened?

3 A. Yes.

4 Q. Do you remember about what time all of this happened
5 was?

6 A. It was 12:43.

7 Q. How do you know it 12:43?

8 A. Because I remember when I went in there and ---

9 Q. Went in where?

10 A. When I went in Jackie's room and woke her up, she had
11 a clock beside her bed.

12 Q. Where would the clock be in her room?

13 A. On that square.

14 Q. What does that square represent?

15 A. The table.

16 Q. A little bedside table?

17 A. Yes, ma'am.

18 Q. Did you want Mark to take you home that night when he
19 offered?

20 A. No.

21 Q. How has all of this made you feel?

22 MR. QUINN: Objection, relevance.

23 THE COURT: What's the relevance?

24 MS. BARWICK: Your Honor, it shows the impact on
25 her. They can judge the truthfulness of her testimony from

Minor #1 - Cross Examination by Mr. Quinn

1 that.

2 THE COURT: I sustain the objection.

3 MS. BARWICK: No further questions.

4 THE COURT: You may cross-examine the witness,
5 Mr. Quinn.

6 CROSS-EXAMINATION

7 BY MR. QUINN:

8 Q. Ms. Minor #1 may I call you Minor #1 or would you prefer I
9 call you Ms. Minor #1

10 A. You can call me Minor #1

11 Q. Okay. Now, Minor #1 the night that all of this
12 happened, Mark was drunk. Isn't that right?

13 A. Yes.

14 Q. Had you seen him that drunk before?

15 A. Many times.

16 Q. And would you say he had a drinking problem?

17 A. I really don't know. Like he always drank, so, I
18 mean, I guess.

19 Q. But you'd seen him drunk on other occasions?

20 A. Yes.

21 Q. All right. Now, when you went to bed that night,
22 describe this pallet on the floor for me.

23 A. Okay. It was just two blankets on the floor and then
24 a pillow and one to cover up with.

25 Q. Okay. And when you say to cover up with, was that a

1 sheet or blanket or what did you cover up with?

2 A. A blanket.

3 Q. And this was April. Was it still cold then?

4 A. I don't remember.

5 Q. Okay. Because this is two years ago, roughly, isn't

6 that right?

7 A. Yes.

8 Q. And you had traveled with the Peters family before?

9 A. Yes.

10 Q. I think you said Gabriel was your best friend?

11 A. Uh-huh (affirmative).

12 Q. You had spent -- you say almost every time you went

13 over you spent the night?

14 A. Yes.

15 Q. And you went over fairly frequently, isn't that right?

16 A. Yes, sir.

17 Q. And there hadn't been any difficulty with you and Mr.

18 Peters before, had there?

19 A. No.

20 Q. Or with Gabby?

21 A. No.

22 Q. Or MacKenzie?

23 A. No.

24 Q. Okay. Now, you're laying on the floor, and I know

25 I've seen these pictures. How close are you really to

- 1 Gabby? Within reach?
- 2 A. Uh-uh (negative). Two ---
- 3 Q. Do it with me, okay?
- 4 A. All right.
- 5 Q. This close or do I come closer or move further away?
- 6 A. Further. About right there.
- 7 Q. And do you agree that -- and I know you're taller that
- 8 you were -- that maybe she was two steps away or one step
- 9 away?
- 10 A. Probably two or three.
- 11 Q. Okay. It would take you a second to take two or three
- 12 steps?
- 13 A. Yes.
- 14 Q. And I know she's a heavy sleeper, but did you make any
- 15 effort to wake her up that night?
- 16 A. No.
- 17 Q. You didn't go over and shake her or poke her bed or
- 18 anything?
- 19 A. No.
- 20 Q. And you knew where Ms. Peters slept because you got up
- 21 and went to her room in a few minutes after that. Did you
- 22 go to Ms. Peters' room after the first time you say Mark
- 23 came up?
- 24 A. No.
- 25 Q. And was she a heavy sleeper or was she a light

1 sleeper, Ms. Peters?

2 A. She was a light sleeper.

3 Q. All right. So if you had yelled out, even if Gabby
4 had slept through it, Ms. Peters might have heard it. Is
5 that fair to say?

6 A. Yes.

7 Q. And what about MacKenzie, what kind of sleeper is she?

8 A. I don't know.

9 Q. Okay. And she's sleeping with her mother across the
10 hall. Isn't that right?

11 A. Yes.

12 Q. And when you went in to talk to Jackie, did MacKenzie
13 wake up also?

14 A. No.

15 Q. So MacKenzie may have been a bit of a heavier sleeper?
16 Is that a fair statement?

17 A. Yes.

18 Q. Okay. Jackie wasn't drunk that night, was she?

19 A. No.

20 Q. And she, in fact, tried to help you and talked with
21 you and did whatever you needed her to. Is that right?

22 A. Yes.

23 Q. Did you ask Jackie to take you home that night?

24 A. No.

25 Q. Do you have a cell phone?

1 A. No.

2 Q. Okay. You didn't have a cell phone with you?

3 A. No.

4 Q. Is there, or do you remember, is there a phone in
5 Gabby's room?

6 A. Yes.

7 Q. Did you use the phone in Gabby's room to call your
8 parents?

9 A. No.

10 Q. And I believe you said you didn't tell anybody at
11 school that you wanted to -- that you'd rather wait and
12 tell your parents. Is that right?

13 A. Yes, sir.

14 Q. You had the chance to tell your parents that very
15 night. Isn't that right?

16 A. Yes, sir.

17 Q. And do you think your parents would have woken up if
18 their phone had rung?

19 A. I don't -- yeah, probably.

20 Q. But you didn't call them?

21 A. No.

22 Q. And how far away do you live from where the Peters
23 were living?

24 A. Probably seven, ten minutes.

25 Q. Okay. So a little bit of a -- too far to walk? Is

Minor #1 - Cross Examination by Mr. Quinn

1 that fair to say?

2 A. Yes.

3 Q. Okay. And at your age in the middle of the night, you
4 weren't going to start walking home?

5 A. No.

6 Q. Did you ask Jackie to take you home?

7 A. No.

8 Q. And you didn't tell anybody at school during the day?

9 A. No.

10 Q. You didn't go to a guidance counselor or any teacher?

11 A. No.

12 Q. And I'm sorry, I don't have a child your age anymore.

13 My kids are older. At some point they teach you about safe
14 touching and bad touching and how to report it. Had you
15 had that education before this happened?

16 A. Yes.

17 Q. And don't they tell you at school you should go to a
18 guidance counselor or principal or somebody that you trust
19 and tell them about it?

20 A. I did. My mom. I trust her.

21 Q. But you didn't tell anybody at school, did you?

22 A. Uh-uh (negative).

23 Q. Did you not trust anybody at school?

24 A. I just didn't want them to know.

25 Q. And did you and your mom go to see a doctor at Easley

Minor #1 - Cross Examination by Mr. Quinn

1 Pediatrics? And I'll wait a moment because you're going to
2 have to answer out loud.

3 A. Yes.

4 Q. And was that partly to see if they would allow you to
5 be home schooled?

6 A. Uh-huh (affirmative.)

7 Q. You have to answer out loud for me?

8 A. Yes.

9 Q. Okay. But I thought nobody at school knew?

10 A. Well, after -- I didn't tell anybody, but we went back
11 to school and talked to my Assistant Principal and my
12 Guidance Counselor, me and my stepmom did.

13 Q. The same day or later?

14 A. The next day, so Tuesday.

15 Q. So school did find out at some point?

16 A. Yes.

17 Q. And so you didn't want to go back to school after that
18 because of what kids might have said or just because it was
19 out there. Is that right?

20 A. Yes.

21 Q. Okay. Now, what were you wearing when you went to bed
22 that night?

23 A. Basketball shorts and a shirt.

24 Q. And when you say a shirt, a T-shirt?

25 A. A T-shirt.

1 Q. And do you remember, were you wearing any
2 undergarments?

3 A. A bra and underwear.

4 Q. Socks or shoes, do you remember?

5 A. I don't remember.

6 Q. Let me see if I can find this. Can you see that? And
7 if it's not pointed right, tell me and I'll move it.

8 A. You need to turn it around?

9 Q. Like that?

10 A. No. Yeah.

11 Q. So when Mark came in, I understand your head was
12 toward the door. Is that right?

13 A. Yes.

14 Q. Okay. And which way were you turned?

15 A. On my left side.

16 Q. So you would have been facing Gabriel?

17 A. Yes. But she was facing the wall.

18 Q. Well, then you would have been facing her bed. Let me
19 say it that way?

20 A. Yes.

21 Q. Okay. So your head would be facing this direction?

22 A. Yes, but my feet were down there.

23 Q. Your feet were down here.

24 A. Yes. And my head was there.

25 Q. Head's up here. You're turned on your left side, so

Minor #1 - Cross Examination by Mr. Quinn

1 you're facing -- you're looking in that direction?

2 A. Yes.

3 Q. And where was Mark kneeling?

4 A. By my side.

5 Q. Okay. But on which side of you now? Here or over

6 here by the TV?

7 A. By the TV.

8 Q. So he's kneeling on this side. So he's behind you?

9 A. Yes.

10 Q. Okay. And when you say he was touching you, was he

11 reaching around you?

12 A. Well, no, because I had my leg cocked up on my other

13 side so he was just like ...

14 Q. Behind you?

15 A. Yes.

16 Q. Okay. And you're doing this. Tell me how -- did he

17 attempt to put his hand into your pants?

18 A. No.

19 Q. Did not move your shorts. Is that right?

20 A. No.

21 Q. Did not move your underwear?

22 A. No.

23 Q. Did not remove any of your clothing?

24 A. No.

25 Q. None of your clothing was torn?

- 1 A. No.
- 2 Q. Damaged in any way?
- 3 A. No.
- 4 Q. And you still had the blanket over you?
- 5 A. At that time, I don't remember.
- 6 Q. So you don't know where the blanket went that you had
- 7 -- you said you had two under you and one over you?
- 8 A. Yes, sir.
- 9 Q. But you don't know where that blanket went to?
- 10 A. No.
- 11 Q. Okay. So you may have had the blanket over you?
- 12 A. I don't remember.
- 13 Q. Okay. And so when you say he was touching your
- 14 vaginal area, was he touching your bottom, or your legs or
- 15 your back or where was he touching you?
- 16 A. He was touching my vagina area, that part. He wasn't
- 17 rubbing it. He was just like doing his fingers like this.
- 18 Q. Just doing his fingers like this?
- 19 A. Uh-huh (affirmative.)
- 20 Q. And for how long?
- 21 A. Until I woke up and I realized what was going on.
- 22 Q. And I know you don't know how long that might have
- 23 been because you were asleep. But are you someone who
- 24 would sleep through somebody touching you or do you wake up
- 25 fairly quickly?

Minor #1 - Cross Examination by Mr. Quinn

1 A. I woke up fairly quickly.

2 Q. So is it fair to say that he probably wasn't doing
3 this very long?

4 A. Yes.

5 Q. And did he touch you in any other sexual manner?

6 A. He was rubbing my stomach while he was touching my
7 private area.

8 Q. So Mark Peters is kneeling down touching you from the
9 back and the front?

10 A. Kinda, yes.

11 Q. Well, your stomach area, you mean your front. Isn't
12 that right?

13 A Yes.

14 Q. Okay. And so he's touching you from your back and
15 your front, is the way you describe it.

16 A. Uh-huh (affirmative.)

17 Q. And you say you turned over quickly?

18 A. Uh-huh (affirmative.)

19 Q. Why wouldn't you have scooted away from him?

20 A. I don't understand what you're saying.

21 Q. Well, if he's behind you -- if I'm behind you and
22 messing with you, why wouldn't you just go forward and move
23 away from him? Why would you turn around and turn toward
24 him?

25 A. I don't know. I was scared. I didn't realize what

1 was happening.

2 Q. So you didn't even realize this was sexual?

3 A. When I woke up and he was kneeling right there, yeah.

4 Q. You did know it was sexual?

5 A. Uh-huh (affirmative.)

6 Q. So when you say on this Derek thing that there was
7 some conversation about a television show, and you later
8 realized he was a perv, you didn't realize that that night,
9 though?

10 A. No.

11 Q. And in these two years, have you come to realize other
12 things that didn't happen that night?

13 A. What do you mean?

14 Q. What I mean is, you were asked to give a statement to
15 the police. Isn't that correct?

16 A. Uh-huh (affirmative).

17 Q. And you did, you gave a written statement to the
18 police. Is that correct?

19 A. Yes.

20 Q. This was on April 27th, 2009. So the next or the same
21 day, is that correct?

22 A. That's the next day.

23 Q. Okay. But after you went to school. Let's put it
24 that way. Is that fair to say?

25 A. Uh-huh (affirmative.)

Minor #1 - Redirect Examination by Ms. Barwick

1 Q. On Monday, is that right?

2 A. Uh-huh (affirmative.)

3 Q. Okay. And I hope, and I'm asking you, did the police
4 tell you, tell us everything that happened. We need to
5 know everything. Did they ask you that?

6 A. Yes.

7 Q. And did they ask you to tell them the truth?

8 A. Yes.

9 Q. And so you did just that, to the best of your ability,
10 the day it happened. Is that right?

11 A. Yes.

12 Q. Then why does your statement not have anything about
13 Mark supposedly apologizing to you?

14 A. I don't know.

15 Q. Don't you think that would have been very important to
16 tell the police, that the man you were accusing said he was
17 sorry for doing it?

18 A. Yes. It was important, but I don't know why I didn't.

19 Q. Okay. Gabby was your best friend. Is that correct?

20 A. Yes.

21 Q. And you trusted Ms. Peters, you trusted Jackie. Isn't
22 that right?

23 A. I trusted Mark too.

24 Q. And didn't you call Ms. Peters your second mom
25 sometimes?

Minor #1 - Redirect Examination by Ms. Barwick

1 A. Sometimes, yes.

2 Q. And looking back on this conversation about a
3 television show, Life with Derek or whatever that is, you
4 now realize it was perverted, I think is your word. Is
5 that right?

6 A. Yes.

7 Q. And when you told him, no, I want you to leave me
8 alone, did he, in fact, do that?

9 A. Yes.

10 Q. And when he came back, you said he was naked?

11 A. Yes.

12 Q. Did he touch you when he came back in any way?

13 A. No.

14 Q. And you told the police everything that happened. Is
15 that right?

16 A. Yes.

17 MR. QUINN: I don't have any other questions.

18 THE COURT: Any redirect?

19 MS. BARWICK: Yes, sir.

20 **REDIRECT EXAMINATION**

21 **BY MS. BARWICK:**

22 Q. Gabby [sic], do you need some water?

23 A. No.

24 Q. Did you want to talk to Gabby about her father
25 molesting you?

Minor #1 - Redirect Examination by Ms. Barwick

1 A. Yes, but Jackie asked me not to, to let her tell her.

2 Q. Did Gabby ever ask you what happened?

3 A. Yes.

4 Q. And what did you tell her at first in response?

5 A. At first, when she asked me about it, she said ---

6 MR. QUINN: Your Honor, I would object. I don't
7 believe this is redirect. I was not asking -- I don't
8 believe I asked ---

9 MS. BARWICK: Your Honor.

10 MR. QUINN: --- any questions about whether later
11 they discussed it.

12 MS. BARWICK: Your Honor, during his cross-
13 examination he said that Gabby was right there and you
14 never made any attempt to tell her about what happened, and
15 I'm just addressing that right now.

16 MR. QUINN: Right there.

17 THE COURT: Well, I think that's beyond the scope
18 of -- you can certainly ask her about talking with Gabby
19 that night.

20 MS. BARWICK: It was the very next morning, Your
21 Honor, and he ask the question if she ask -- or if talked
22 to Gabby about it. And she's answering that question. But
23 I understand Your Honor's ruling.

24 THE COURT: Yes.

25 MS. BARWICK: Thank you, Your Honor.

1 Q. Were you specifically ever asked by law enforcement
2 when they came out to take your statement if the Defendant
3 said anything to you while in Jackie's room?

4 A. I don't remember.

5 Q. And will you come off the stand for just a second
6 because there's a microphone right there. And come down
7 next to me and use the same tone of voice and the same
8 loudness you used with him that night when you said, I want
9 you to leave me alone.

10 A. I want you to leave me alone.

11 MS. BARWICK: No further questions.

12 THE COURT: All right. Thank you, ma'am. You
13 may return to your ---

14 MS. BARWICK: May she be excused, Your Honor?

15 THE COURT: Without objection, the witness may be
16 excused. You may call your next witness.

17 MS. BARWICK: The State would call Ruth Jones to
18 the stand.

19 THE CLERK: Place your left hand on the bible and
20 raise your right hand.

21 Do you solemnly swear or affirm the testimony you're
22 about to give is the truth, the whole truth and nothing but
23 the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Have a seat. State your name for the

1 record, please.

2 THE WITNESS: Ruth Jones.

3 RUTH JONES,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. BARWICK:

7 Q. Ms. Jones, who are you? Are you ---

8 A. Minor #1 stepmother.

9 Q. Okay. And how long have you been her stepmother?

10 A. Pretty much since she was born.

11 Q. How long have you known her, since she was born?

12 A. Since she was born.

13 Q. Where do you work?

14 A. Greenville Hospital System.

15 Q. And do you know the Defendant?

16 A. Yes.

17 Q. And how do you know him?

18 A. He was my daughter's best friend's father.

19 Q. Okay. And how long -- or how long have you known him?

20 A. Since 2007.

21 Q. And since you've known him, how often do you think

22 Minor #1 and his children would play together?

23 A. Since they became best friends in 2007, I would say
24 about the spring of 2007, she's spent quite a lot of time
25 over there. She would go over there almost every weekend

1 and sometimes even on school nights. So they were real
2 close and she went on some family trips with them, as well.

3 Q. Okay. Back on the weekend of August -- I'm sorry,
4 April 26th, 2009, did you give [Minor #1] permission to go
5 anywhere with the Defendant and his family?

6 A. Yes, I did. They were going to Carowinds for Friday
7 night and Saturday. And so they actually went and picked
8 her up from school because I had them on the list for
9 picking her up from school. And they picked her up early
10 on Friday. They went to Charlotte and I think they were
11 going to Carowinds that night and then they went to
12 Carowinds the next morning and then they came back home
13 Saturday.

14 Q. I don't know if there's something going on with the
15 microphone a little bit. If you could maybe scoot up to
16 it, maybe it will stop some of that. Did she stay the
17 night -- did [Minor #1] stay the night with Mr. Peters and his
18 family on Sunday night?

19 A. Yes, she did.

20 Q. When -- did you hear anything from [Minor #1] that night
21 or anything like that?

22 A. I talked to [Minor #1] on Sunday evening before they went
23 to church with the neighbor's children.

24 Q. And with Mr. Peters' children?

25 A. Yes.

1 Q. Okay. And did you hear from Ms. Jackie at all that
2 night?

3 A. No.

4 Q. What about the next morning, did you hear from Ms.
5 Jackie?

6 A. No.

7 Q. Did you hear from **Minor #1**

8 A. No.

9 Q. Did **Minor #1** go to school like normal?

10 A. Yes, ma'am.

11 Q. Did anything out of the ordinary happen that afternoon
12 when she got home from school?

13 A. Well, every afternoon when **Minor #1** would get home from
14 school about 4:10, 4:15, she would get home and she would
15 call me at work to let me know that everything was okay and
16 that she was home.

17 Q. Is that what she normally did?

18 A. Everyday, uh-huh (affirmative).

19 Q. And she did that on the 27th of April?

20 A. Yes, ma'am.

21 Q. And tell me about that phone conversation. Don't tell
22 me anything that **Minor #1** told you, but just tell me the gist
23 of that phone conversation.

24 A. When I answered the phone, I just -- we always, how
25 was your day, you know, did you have a good day, you know,

1 tell me about it. But this day was a little different
2 because **Minor #1** was -- I could tell -- I could always tell
3 when something was wrong with my children and I could tell
4 that her voice wasn't right. And so her voice sounded a
5 little crackly and I could tell that she was upset about
6 something.

7 Q. Okay. And did you ask her what was wrong?

8 A. I did.

9 Q. At first, did she tell you?

10 A. Uh-uh (negative).

11 Q. Did she eventually tell you in the same phone
12 conversation?

13 A. After I kept prying. I continued to ask her. I just
14 thought ---

15 Q. What do you mean by prying?

16 A. I just kept asking questions because I figured her and
17 Gabby, like I said, were best friends, and they were
18 continually having little spats and stuff. So I said, did
19 you and Gabby have a little spat? And she said, no. So I
20 continued to ask her about other people in the house, did
21 Jackie say something to hurt your feelings? Because I
22 could tell something was wrong just by her voice. She
23 said, no. And I just continued to ask. And then I asked
24 her was it Mark. And she didn't say anything. And then I
25 could tell that she was starting to cry and I told her,

1 I'll be right home.

2 Q. Did you come right home?

3 A. I did.

4 Q. Did you come home faster than normal?

5 A. Yes, I did.

6 Q. In the back of your mind, what were you thinking?

7 MR. QUINN: Objection.

8 THE COURT: What's the basis of your objection?

9 MR. QUINN: It's not relevant.

10 THE COURT: I'll sustain the objection.

11 Q. Why were you coming home in a hurry?

12 A. Because there was something wrong with my daughter and

13 I knew that. Something was wrong and I was afraid of what

14 it might have been.

15 Q. So when you got home, did you see Minor #1

16 A. I did. She met me at the door.

17 Q. She met you at the door?

18 A. Uh-huh (affirmative).

19 Q. And when she met you at the door, did you ask her what

20 was wrong?

21 MR. QUINN: Objection to the leading nature of
22 the question.

23 THE COURT: Let her rephrase the question.

24 Q. What did you do when you got home?

25 A. She met me at the door, and she just, and she just

1 hugged me and then she started crying.

2 Q. Okay. Then what happened?

3 A. And so I asked her, I said, what happened? So we went
4 to my bedroom and sat down on the bed. And I was holding
5 her because she was upset. She was very, very upset and
6 she was crying. And then she began to tell me what had
7 taken place.

8 Q. Okay. Did she tell you -- did she disclose any sexual
9 abuse to you?

10 A. Yes, she did.

11 Q. She did?

12 A. Yes, she did.

13 Q. Did she say where it happened?

14 A. She said it happened in Gabby's room where she was
15 sleeping.

16 Q. Did she say when it happened?

17 MR. QUINN: Objection to the leading nature of
18 the question.

19 THE COURT: Overruled.

20 Q. Did she say when it happened?

21 A. She did. She said over in the night after they had
22 went to bed.

23 Q. What did you do in response to this?

24 A. Well, after getting her calmed down and holding her
25 and myself getting upset and crying after she told me what

1 he had did to her, I immediately called her father at work
2 and had him -- told him we needed him to come straight
3 home. And then I called the police and had a police
4 officer to come out.

5 Q. Okay. And did a police officer come out?

6 A. Yes, ma'am, he did.

7 Q. Did he take a statement from **Minor #1**

8 A. He did.

9 Q. Were you there when he was asking her the questions?

10 A. Yes, I was.

11 Q. Okay. Do you remember if he specifically asked her
12 any questions regarding anything that the Defendant might
13 have said to her in Jackie's room?

14 MR. QUINN: Objection. That's hearsay and it's
15 leading.

16 THE COURT: Restate your question.

17 Q. Did you hear the officer ask Jackie questions -- I'm
18 sorry -- **Minor #1** questions?

19 A. I did.

20 Q. And did he specifically ask her any questions about
21 anything the Defendant said?

22 A. Yes, he did.

23 Q. Okay. Did he specifically ask her about anything he
24 said inside of the bedroom, inside of Jackie's bedroom?

25 A. Yes.

1 Q. Okay. What did he ask?

2 A. He asked her if he had said anything to her? And she
3 said that ---

4 Q. Okay. You can't say what she said. I'm sorry. But
5 let's go back to this a little bit. Did you receive any
6 calls from Mr. or Mrs. Peters that Sunday evening?

7 A. No.

8 Q. Any that Monday morning?

9 A. No.

10 Q. Any that Monday afternoon?

11 A. About the time that [Minor #1] normally gets home from
12 school and I would get home from work, my phone was like,
13 yes, there was continuous calls from the Peters' home. And
14 several messages were left on my phone from the mom, Jackie
15 Peters, and then from Gabby, wanting [Minor #1] to call them as
16 soon as possible.

17 Q. Were any of them for you to call them as soon as
18 possible?

19 A. No.

20 Q. Were any of them trying to explain what happened?

21 A. No.

22 Q. Was [Minor #1] the only one who explained to you what
23 happened?

24 A. Yes.

25 Q. After this incident, have you seen any changes in

1 [Minor #1]

2 A. I've seen quite a lot of changes in [Minor #1] and her
3 demeanor and how she acts towards people. She was a --
4 always afraid. I've had to sleep with her at night because
5 of bad dreams. She's came and slept with me in my bed.
6 I've just ---

7 Q. What about her sleeping patterns, have they stayed the
8 same or changed?

9 A. They have changed.

10 Q. Since this incident, does she continue to stay the
11 night at peoples' homes?

12 A. No. She just recently has started going to a friend's
13 house to stay the night because she's afraid.

14 Q. Back in the spring of 2009, was [Minor #1] physically
15 developed all the way or ---

16 A. No, she wasn't.

17 Q. Describe her development physically?

18 A. She had started getting very small boobs.

19 Q. So she wasn't fully developed at this time?

20 A. No.

21 Q. Did you end up taking [Minor #1] to Easley Pediatrics?

22 A. Yes, ma'am.

23 Q. When was that?

24 A. That was the next day after -- this was on Monday, so
25 this would have been Tuesday, the 28th or 29th of April.

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Ruth Jones - Direct Examination by Ms. Barwick

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1 Q. So the day after she told you what happened?

2 A. Yes.

3 Q. And what was the purpose of taking her to the doctor?

4 A. Because I was concerned for her. I knew that, you
5 know, that it would be hard for her to go to school and be
6 around -- because they both had the same set of friends.
7 And I knew it would be hard for her to face them once the
8 word had gotten out that something like this had happened
9 to her. And I just didn't want her to have to go through
10 anymore than she ---

11 Q. So how does that have to do with anything with the
12 doctor? What was the purpose of going to the doctor?

13 A. The purpose of going to the doctor was to get a
14 medical leave so that I could home school her for the rest
15 of the year.

16 Q. Okay. So you did home school her?

17 A. Yes.

18 Q. And the reason behind the home schooling is because?

19 A. I didn't want her to be subjected to going to school
20 and ridicule from other children, just having to face all
21 of that after what she'd already been through.

22 MS. BARWICK: No further questions.

23 THE COURT: You may cross-examine the witness.

24 MR. QUINN: I don't have any questions, Your

25 Honor. Thank you.

Minor #2 - Direct Examination by Ms. Barwick

1 THE CLERK: Have a seat. You might want to pull
2 the chair up closer to the microphone. State your name for
3 the record, please.

4 THE WITNESS: Minor #2

5 Minor #2

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MS. BARWICK:

9 Q. Hey, Minor #2 how are you?

10 A. Good.

11 Q. Did you have a good lunch?

12 A. Yes.

13 Q. What did you have?

14 A. A chicken sandwich.

15 Q. Where did you go?

16 A. Arby's.

17 Q. Who do you live with?

18 A. My mom and my stepdad.

19 Q. Okay. Is your dad here today, too?

20 A. Yes.

21 Q. Who lives with him?

22 A. No one.

23 Q. Let me ask you this question. Do you remember back in
24 December or November of 2008?

25 A. Yes, ma'am.

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Minor #2 - Direct Examination by Ms. Barwick

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- 1 Q. Do you know the Defendant, Mr. Peters?
- 2 A. Yes, ma'am.
- 3 Q. How do you know him?
- 4 A. Because I met them when I moved in.
- 5 Q. Okay. Where were you living back then?
- 6 A. With my dad.
- 7 Q. Okay. And where does -- where did Mr. Peters live
- 8 back then in relation to your dad?
- 9 A. Beside us.
- 10 Q. How close do you think y'all were in distance, from
- 11 his house to your house?
- 12 A. I don't know.
- 13 Q. Were you next door neighbors or was he quite a ways
- 14 down the road?
- 15 A. Next door neighbors.
- 16 Q. Okay. Did you like to go over to their house?
- 17 A. Yes, ma'am.
- 18 Q. What kind of things would you do over at their house?
- 19 A. Play games and ---
- 20 Q. Did you ever go swimming?
- 21 A. Yes.
- 22 Q. Who were you friends with over at his house?
- 23 A. MacKenzie.
- 24 Q. Back then do you remember how old MacKenzie was?
- 25 A. Like five.

- 1 Q. Was she younger than you?
- 2 A. Yes.
- 3 Q. How old are you now?
- 4 A. Eleven.
- 5 Q. When is your birthday?
- 6 A. [REDACTED] [REDACTED]
- 7 Q. So you would have been around eight years old back
- 8 then?
- 9 A. Yes, ma'am.
- 10 Q. Do you remember -- how often do you think you would go
- 11 over to Mr. Peters' house to play with MacKenzie?
- 12 A. A lot.
- 13 Q. Did you recognize Minor #1 from over at the house, too?
- 14 Do you know Minor #1
- 15 A. Yeah.
- 16 Q. Would you be able to just recognize her or you just
- 17 remember playing with her?
- 18 A. Remember playing with her.
- 19 Q. It's been a while since you've seen her last?
- 20 A. Yeah.
- 21 Q. Did you play a lot with Minor #1 or more with MacKenzie?
- 22 A. More with MacKenzie.
- 23 Q. How often do you think you played with Minor #1 Or was
- 24 she just over there?
- 25 A. She was over there.

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Minor #2 - Direct Examination by Ms. Barwick

1 Q. Is that because she was older than you?

2 A. Yeah.

3 Q. Back in November or December of 2008, do you remember
4 staying the night over at Mr. Peters' house?

5 A. Yes, ma'am.

6 Q. Do you remember anything happening that night?

7 A. Yes.

8 Q. Where were you sleeping that night?

9 A. Down in the basement.

10 Q. Were you sleeping with anyone?

11 A. Yes, ma'am.

12 Q. Who?

13 A. MacKenzie.

14 Q. And where were y'all sleeping in the basement?

15 A. On the mattress.

16 Q. Was it like an air mattress?

17 A. Yes, ma'am.

18 Q. Would you consider it like a queen air mattress or a
19 twin or king?

20 A. Queen.

21 Q. Queen. All right. I'm going to show you how to use
22 this. It's like a laser, okay? See how it does it. Just
23 push the red button. Will you show the jury with your
24 laser on Exhibit Number 4 where in the basement the air
25 mattress was?

- 1 A. About right there.
- 2 Q. Kind of in front of the couch?
- 3 A. Uh-huh (affirmative.)
- 4 Q. All right. Was anybody else down in the basement?
- 5 A. Yes.
- 6 Q. Who was in the basement?
- 7 A. Like, Mark Peters.
- 8 Q. Okay. Where did he sleep?
- 9 A. In the room in the basement.
- 10 Q. Can you use your little laser pointer up there to show
- 11 us? In his bedroom?
- 12 A. Yeah.
- 13 Q. Okay. Where was everyone else sleeping?
- 14 A. Upstairs.
- 15 Q. Who else was there that night?
- 16 A. Gabby, my sister Kaitlyn, and Jackie.
- 17 Q. Is Kaitlyn older or younger than you?
- 18 A. Older.
- 19 Q. Do you know how old she is right now?
- 20 A. Fourteen.
- 21 Q. So she would have been twelve or eleven back then?
- 22 A. Yes, ma'am.
- 23 Q. Where was Kaitlyn sleeping? If I were to show you the
- 24 house, would you be able to point to it for me?
- 25 A. Uh-huh (affirmative.)

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Minor #2 - Direct Examination by Ms. Barwick

- 1 Q. Where was she sleeping?
- 2 A. Right there.
- 3 Q. In Gabby's room?
- 4 A. Uh-huh (affirmative).
- 5 Q. And where was Jackie sleeping?
- 6 A. (Pointing).
- 7 Q. Whose room is that?
- 8 A. Jackie's.
- 9 Q. Does Mark sleep in there?
- 10 A. No, ma'am.
- 11 Q. When -- do you remember being woken up in the middle
- 12 of the night?
- 13 A. Yes, ma'am.
- 14 Q. What woke you up?
- 15 A. Mark touching me.
- 16 Q. Where was he touching you?
- 17 A. In my private and like on my chest.
- 18 Q. Okay. When you say your privates, do you mean your
- 19 front or your back?
- 20 A. My front.
- 21 Q. Okay. Under or over your clothing?
- 22 A. Both.
- 23 Q. And when his hand was on your private, what was he
- 24 doing with his hand?
- 25 A. Like moving it around.

- 1 Q. Did he kiss you at all?
- 2 A. Yes, ma'am.
- 3 Q. Where did he kiss you?
- 4 A. Like on my chest and all.
- 5 Q. Okay. Did he ever attempt to kiss you on your
- 6 privates?
- 7 A. Probably some.
- 8 Q. What were you doing when he was doing this?
- 9 A. Acting like I was asleep.
- 10 Q. What was MacKenzie doing?
- 11 A. Sleeping right beside me.
- 12 Q. Did she ever wake up?
- 13 A. No, ma'am.
- 14 Q. Did you ever say anything while he was doing it, to
- 15 him?
- 16 A. No.
- 17 Q. The whole time you were pretending to be asleep?
- 18 A. Yes.
- 19 Q. How come you were pretending to be asleep?
- 20 A. I don't know.
- 21 Q. What were you feeling when he was doing that? Did you
- 22 know what he was doing?
- 23 A. No.
- 24 Q. Did you know why he was doing that?
- 25 A. No.

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Minor #2 - Direct Examination by Ms. Barwick

1 Q. Did you notice anything about the way he was
2 breathing?

3 A. Yeah. He was breathing hard.

4 Q. Okay. So you heard him breathing?

5 A. Yes.

6 Q. How were you laying? Were you on your front or your
7 back or your side?

8 A. My back.

9 Q. Did he ever touch your hair?

10 A. Yes.

11 Q. What did he do with your hair?

12 A. He went through it.

13 Q. Can you show me on yourself how he did it?

14 A. Like this.

15 Q. How was he positioned when he was touching you?

16 A. On one knee.

17 Q. Will you come down and show me how he was doing it?

18 You can just show me his position.

19 A. Like that.

20 Q. That's how he was?

21 A. Uh-huh (affirmative.)

22 Q. Okay. Thank you. How long do you think he was
23 touching you?

24 A. For probably like half an hour or so.

25 Q. And the whole time you were pretending to be asleep?

- 1 A. Yes.
- 2 Q. Were you able to see him at all?
- 3 A. Not that much.
- 4 Q. How come?
- 5 A. Because my eyes were like hardly open.
- 6 Q. So you had them open a little bit?
- 7 A. Yeah.
- 8 Q. What made him leave?
- 9 A. I don't know.
- 10 Q. Did you hear anything when he left?
- 11 A. A door close.
- 12 Q. Which door?
- 13 A. His door.
- 14 Q. After he shut his door, what happened?
- 15 A. I ran upstairs to Gabby's room.
- 16 Q. And why did you run in there?
- 17 A. Because my sister was in there.
- 18 Q. Okay. Once you got into Gabby's room, what did you
- 19 do?
- 20 A. I woke up my sister.
- 21 Q. Where was your sister sleeping in Gabby's room?
- 22 A. On the floor.
- 23 Q. Maybe I'll show you this. Will you use your pointer
- 24 again to show where on the floor in Gabby's room?

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Minor #2 - Direct Examination by Ms. Barwick

- 1 A. Probably like right there.
- 2 Q. So kind of around this area?
- 3 A. Yeah.
- 4 Q. Were you able to wake her up?
- 5 A. Yes, ma'am.
- 6 Q. Was everyone else in the -- was Gabby asleep?
- 7 A. Yeah.
- 8 Q. Everyone else in the house asleep?
- 9 A. Yes.
- 10 Q. When you woke your sister up, did you tell her
- 11 anything?
- 12 A. No.
- 13 Q. How were you acting when you woke her up?
- 14 A. Scared.
- 15 Q. Were you scared?
- 16 A. Yes.
- 17 Q. What were you scared of?
- 18 A. I didn't know what he would do.
- 19 Q. Were you crying or anything?
- 20 A. Yeah.
- 21 Q. And did your sister see you crying?
- 22 A. Yes, ma'am.
- 23 Q. Did you tell her anything?
- 24 A. No.
- 25 Q. Not about what happened, but did you tell her anything

- 1 that you wanted to do or not want to do?
- 2 A. I wanted to go home.
- 3 Q. How come you wanted to go home?
- 4 A. Because I was scared.
- 5 Q. What did your sister do?
- 6 A. She asked Mark and Jackie if we could go home.
- 7 Q. Did your sister go and get Jackie or did Jackie just
- 8 come in on her own?
- 9 A. She came in on her own.
- 10 Q. Did you sister go and get Mark or did he just come in
- 11 on his own?
- 12 A. Come in on his own.
- 13 Q. Did you ask them to go home?
- 14 A. Yes.
- 15 Q. Did they let you go home?
- 16 A. No.
- 17 Q. Why weren't you allowed to go home?
- 18 A. Because they said it was too dark and my parents were
- 19 probably asleep.
- 20 Q. Do you remember about what time it was?
- 21 A. No.
- 22 Q. Did you sleep there that night?
- 23 A. No -- where?
- 24 Q. Did you sleep at Mr. Peters' house that night?
- 25 A. Yes.

Minor #2 - Cross Examination by Mr. Quinn

1 MS. BARWICK: No further questions.

2 THE COURT: You may cross-examine the witness.

3 MR. QUINN: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 **BY MR. QUINN:**

6 Q. Did you tell Ms. Peters that you had had a bad dream?

7 A. No.

8 Q. Did you tell your mom the next day about it?

9 A. No.

10 Q. Your dad?

11 A. No.

12 Q. Anybody at school?

13 A. No.

14 Q. In fact, you didn't tell anybody about this until your
15 dad came and asked you, isn't that right?

16 A. Yes.

17 Q. Had you already heard about **Minor #1** saying that
18 something had happened to her?

19 A. No.

20 Q. You hadn't heard anything about it?

21 A. No.

22 Q. And since then have you talked to **Minor #1** or talked to
23 the police about this?

24 A. The police.

25 Q. Have you talked to **Minor #1** about it?

1 A. No.

2 Q. And did the police have you give a statement, write
3 out what happened?

4 A. No.

5 Q. Did they have a tape recorder and ask you to tell them
6 what happened on tape?

7 A. No.

8 Q. Set up a camera, you know, audio tape you, take a
9 picture of you?

10 A. No.

11 Q. Did you talk to the police about this case?

12 A. Yes.

13 Q. Both one officer in a uniform and then a detective, a
14 female detective?

15 A. Yes.

16 Q. And did they ask you to tell them the truth and tell
17 them what happened?

18 A. Yes.

19 Q. And did you?

20 A. Yes.

21 Q. And did you try to tell them the truth as well as you
22 could?

23 A. Yes.

24 Q. Why didn't you tell anybody the next day?

25 A. Because I was scared.

Minor #2 - Cross Examination by Mr. Quinn

1 Q. You were scared of Mark and what he might do, is that
2 right?

3 A. Yes.

4 Q. And so you know your mama would protect you. Isn't
5 that right?

6 A. Yes.

7 Q. And your dad will protect you?

8 A. Yes.

9 Q. A police officer will protect you?

10 A. Yes.

11 Q. And you didn't tell any of those people anything about
12 this?

13 A. No.

14 Q. Now, the Solicitor says that this happened in November
15 or December of 2008. Do you know when it happened?

16 A. No.

17 Q. Do you have any idea what month this might have
18 happened or what year?

19 A. No.

20 Q. Do you know what day of the week it might have
21 happened?

22 A. No.

23 Q. Do you remember, did you get up and go to school the
24 next day? Or do you know?

25 A. No.

Minor #2 - Cross Examination by Mr. Quinn

1 Q. No, you don't remember, or no, you didn't go to
2 school? I'm sorry.

3 A. I don't -- I didn't go to school.

4 Q. Okay. So it was probably a weekend or a holiday?

5 A. Yeah.

6 Q. And you didn't really know **Minor #1** is that right?

7 A. No.

8 Q. She was Gabby's friend, not you and MacKenzie's
9 friend?

10 A. Yeah.

11 Q. Now, when Mark came into the bedroom, was he naked?

12 A. No.

13 Q. And you were downstairs in the basement. Is this the
14 picture of the basement?

15 A. Yes.

16 Q. Okay. And isn't there a TV sort of over here in the
17 basement?

18 A. Yes.

19 Q. And this room that doesn't have any writing on it, is
20 that Mark's office?

21 A. Yes.

22 Q. And this is his bedroom?

23 A. Yes.

24 Q. And you and MacKenzie were sleeping out here where the
25 television was and where it's gotten written, couch, in

1 that big room?

2 A. Yes.

3 Q. And how close was MacKenzie? You two were sharing a
4 bed?

5 A. Yeah.

6 Q. And so when Mark came in, did he kneel on the bed?

7 A. No.

8 Q. Okay. He kneeled next to it?

9 A. Yes.

10 Q. And so all you had to do was lean over and shake
11 MacKenzie and she would have woken up?

12 A. Yeah.

13 Q. And could you tell, had Mark been drinking?

14 A. No.

15 Q. You couldn't tell or he had not been drinking, do you
16 know which one?

17 A. I couldn't tell.

18 Q. Okay. So he didn't get close enough that you could
19 smell his breath?

20 A. No.

21 Q. Now, if I was to tell you that in the police
22 statements there's nothing about you hearing Mr. Peters
23 breathing, does that sound right or wrong?

24 A. I heard him breathing.

25 Q. Do you remember if you told the police that?

Minor #2 - Cross Examination by Mr. Quinn

1 A. I don't remember.

2 Q. And if I told you there's nothing in the police
3 statements about him touching your hair, would that sound
4 right or wrong?

5 MS. BARWICK: Your Honor, she doesn't know what's
6 in the police report.

7 THE COURT: Well, she made a statement. You can
8 certainly ask her about her statement and let her see the
9 statement and examine her ---

10 MR. QUINN: The problem is she didn't.

11 THE COURT: She did not make a statement?

12 MR. QUINN: Well, she made an oral statement.

13 THE COURT: All right.

14 MR. QUINN: And that's why I'm trying to inquire.

15 THE COURT: I'll allow the question.

16 MR. QUINN: Thank you.

17 Q. Do you remember if you told the police or not anything
18 about him touching your hair?

19 A. I don't know.

20 Q. And do you remember if you told them anything about
21 him getting down on one knee next to you?

22 A. No.

23 Q. And is it fair to say that all of this happened very
24 quickly? That the incident you're describing happened
25 quickly?

1 A. Not really.

2 Q. Did it take a long time or just a little time?

3 A. What?

4 Q. For this to happen? What you're talking about that
5 you say happened on the night at Mr. Peters' house. Did it
6 take five minutes?

7 A. (No verbal response.)

8 Q. That's all right. I withdraw the question. And you
9 said your eyes were partly open. Is that right?

10 A. Yes.

11 Q. You told your sister all about this, told Jackie about
12 this, and yet nobody took you home or called your parents?

13 A. No.

14 Q. And you say you were probably eight about then. Is
15 that right, eight or nine?

16 A. Yes.

17 Q. And you knew how to use a phone, isn't that right?

18 A. Yes.

19 Q. Did you have your own cell phone yet?

20 A. Yes.

21 Q. And did you use your cell phone and call your parents?

22 A. No.

23 Q. Didn't call and ask them for a ride?

24 A. No.

25 MR. QUINN: I don't have anything else. Thank

1 you.

2 THE COURT: Any redirect?

3 MS. BARWICK: Yes, sir, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. BARWICK:

6 Q. [REDACTED] Minor #2 did he kneel down on the floor or on the air
7 mattress?

8 A. The floor.

9 MS. BARWICK: Nothing further.

10 THE COURT: Thank you. You can step down, young
11 lady. You may call your next witness.

12 MS. BARWICK: The State calls Kaitlyn [REDACTED] to
13 the stand.

14 THE CLERK: Place your left hand on the bible and
15 raise your right hand.

16 Do you solemnly swear or affirm the testimony you're
17 about to give is the truth, the whole truth and nothing but
18 the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: State your name for the record,
21 please.

22 THE WITNESS: Kaitlyn.

23 KAITLYN [REDACTED]

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MS. BARWICK:

2 Q. Kaitlyn, how old are you?

3 A. Fourteen.

4 Q. And what's your date of birth?

5 A. [REDACTED] [REDACTED]

6 Q. So you would have been about eleven or twelve back in
7 the fall of 2008?

8 A. Yes.

9 Q. Do you remember staying the night at the Peters'
10 residence?

11 A. Yes.

12 Q. During that time? Did you stay the night there with
13 your sister [REDACTED] Minor #2?

14 A. Yes.

15 Q. How often do you think y'all would go over there and
16 play?

17 A. Almost all the time.

18 Q. Okay. Where were you living at the time?

19 A. Right next door.

20 Q. Okay. With your sister and your dad?

21 A. Yes.

22 Q. Who would you play with when you went over there?

23 A. Gabby.

24 Q. Okay. Is that the older daughter?

25 A. Yes.

- 1 Q. Who would **Minor #2** play with when she went over there?
- 2 A. MacKenzie.
- 3 Q. Did you ever see **Minor #1** over there?
- 4 A. A couple of times.
- 5 Q. Did **Minor #2** every really interact with **Minor #1**?
- 6 A. Yes.
- 7 Q. What was the extent of their interaction?
- 8 A. Just they would talk a little bit.
- 9 Q. Were they close?
- 10 A. Not really.
- 11 Q. Were you close with Gabby?
- 12 A. Yes.
- 13 Q. **Minor #2** pretty close with MacKenzie?
- 14 A. Yes.
- 15 Q. That night that all of this happened that we're here
- 16 about, where were you sleeping?
- 17 A. In Gabby's room.
- 18 Q. Okay. And your sister was sleeping where?
- 19 A. Downstairs in the basement.
- 20 Q. That night do you remember anything out of the
- 21 ordinary happening?
- 22 A. Just that **Minor #2** came upstairs crying.
- 23 Q. When you say she was crying, was it just a kind of
- 24 silent cry, what kind of crying was it?
- 25 A. She was crying hysterically and she looked scared.

1 Q. Okay. Well, when she was crying, what did she say, if
2 anything?

3 A. She didn't talk.

4 Q. Okay. Did she say what she wanted?

5 A. She wanted to go home.

6 Q. Okay. And did Mark or Jackie hear that she wanted to
7 go home?

8 A. They did, but they wouldn't let us.

9 Q. Okay. How many times did y'all ask to go home, if you
10 had to guess?

11 A. Probably around three times.

12 Q. And they said no each time?

13 A. Uh-huh (affirmative).

14 Q. At any point did you offer to take **Minor #2** home?

15 A. Yes.

16 Q. What was -- how did that come about?

17 A. I asked if we could call just to see if they were
18 awake. And if so, then I would walk her over.

19 Q. But no phone call was made to your parents that night?

20 A. No.

21 Q. Did Mr. Peters come into Gabby's room when **Minor #2** was
22 in there?

23 A. Yes.

24 Q. Did Ms. Peters?

25 A. Yes.

1 Q. And did you go and get either of them, do you
2 remember?

3 A. I woke up Gabby to go get her mom, but Mark came up on
4 his own.

5 Q. Did Gabby go and get the mom?

6 A. Yes.

7 Q. But Mark came up on his own?

8 A. Yes.

9 Q. After your sister was crying, do you know how she
10 slept after that? Did she sleep?

11 A. She stayed up there and I stayed up with her, and I
12 remember her sleeping in the room with me.

13 Q. Okay. And was her sleep -- did she go right back to
14 sleep or how was that?

15 A. It took a while before she could go to sleep.

16 Q. Okay. Was Jackie still in the room when [Minor #2] was
17 trying to go back to sleep?

18 A. No.

19 Q. Where did she go?

20 A. She went back to her room?

21 Q. Where was Mark after your sister was trying to fall
22 back asleep?

23 A. I'm not sure. I think he went back downstairs.

24 Q. But he left the room?

25 A. Uh-huh (affirmative).

1 MS. BARWICK: No further questions.

2 THE COURT: Mr. Quinn.

3 MR. QUINN: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 **BY MR. QUINN:**

6 Q. Kaitlyn, to leave the house can you leave from the
7 downstairs?

8 A. You would go upstairs and then -- once you come up
9 from the stairs, you would go this way and then the door's
10 right there.

11 Q. Okay. So you could not walk straight out from
12 downstairs? You had to go up one flight?

13 A. There was a door downstairs where you could go around
14 beside the pool and there would be a fence right there you
15 could go through.

16 Q. So you could walk straight out of the house from
17 downstairs?

18 A. Yes.

19 Q. And y'all lived next door. Is that right?

20 A. Yes, sir.

21 Q. Could you throw a rock and hit your house from their
22 house?

23 A. If you threw hard enough.

24 Q. All right. I mean, could an adult throw a rock that
25 far and hit the house?

- 1 A. Possibly.
- 2 Q. Okay. So it wasn't very far. Is that fair to say?
- 3 A. Yes, sir.
- 4 Q. Yet MacKenzie -- I'm sorry. Yet, your sister did not
- 5 get up and walk out the door and go next door, did she?
- 6 A. No.
- 7 Q. She comes up and gets you, her older sister. Is that
- 8 right?
- 9 A. Yes.
- 10 Q. Okay. And you describe her as crying hysterically.
- 11 Is that right?
- 12 A. Yes.
- 13 Q. Did you ask your sister whether she took her cell
- 14 phone and called your parents?
- 15 A. She did not have a telephone.
- 16 Q. Did you have a cell phone?
- 17 A. Yes, but not with me.
- 18 Q. And is there a phone in Gabby's room where you were
- 19 sleeping?
- 20 A. Not that I can remember.
- 21 Q. Is there a phone in Jackie's room?
- 22 A. Yes.
- 23 Q. Okay. Did you use that phone to call your parents?
- 24 A. No.
- 25 Q. Because they, the Peters, supposedly told you not to

1 do that, right?

2 A. Yes.

3 Q. Which you must have thought was bad advice, right?

4 A. Yeah.

5 Q. And so the next morning, you went to your parents and
6 said, you're not going to believe, the Peters wouldn't even
7 let us call you during the night. You went and told them,
8 right?

9 A. I don't remember.

10 Q. Did you wait until everybody went back to bed and then
11 walk out of the house yourself and go next door and get
12 your parents?

13 A. No.

14 Q. Even though you described your sister as crying
15 hysterically and looking scared, you didn't walk next door
16 to get help?

17 A. No.

18 Q. When did this happen?

19 A. I don't remember.

20 Q. And do you know, did you see Mr. Peters that night?

21 A. Yes.

22 Q. And could you tell, was he impaired in any way?

23 A. I don't know.

24 Q. Thank you.

25 MR. QUINN: I don't have any other questions.

1 THE COURT: Anything in redirect?

2 REDIRECT EXAMINATION

3 BY MS. BARWICK:

4 Q. Do you remember what time of night that was?

5 A. Probably around midnight.

6 Q. Do you remember giving a statement to Ms. Burgess? Do
7 you remember giving a statement at all?

8 A. Uh-uh (negative).

9 Q. A written statement?

10 A. No.

11 Q. Is that your handwriting?

12 A. Yeah.

13 Q. Do you think reading that might help you remember what
14 time it was?

15 A. Uh-huh (affirmative.)

16 Q. What time was it?

17 A. One o'clock, around 1:00.

18 Q. Morning?

19 A. Uh-huh (affirmative).

20 MS. BARWICK: Nothing further.

21 THE COURT: All right. Thank you, young lady.

22 You may step down.

23 MS. BARWICK: May she be excused, Your Honor?

24 THE COURT: Any objection?

25 MR. QUINN: None.

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1 THE COURT: Without objection, the witness may be
2 excused.

3 MS. BARWICK: And, Your Honor, the State forgot
4 to ask if [Minor #2] could be excused, as well. Could
5 she be excused?

6 THE COURT: She may be excused, without
7 objection.

8 MS. BARWICK: The State would call Shane Gunter
9 to the stand.

10 THE CLERK: Place your left hand on the bible and
11 raise your right hand.

12 Do you solemnly swear or affirm the testimony you're
13 about to give is the truth, the whole truth and nothing but
14 the truth, so help you God?

15 THE WITNESS: Yes, ma'am.

16 THE CLERK: Have a seat. State your name for the
17 record, please.

18 THE WITNESS: Shane Gunter.

19 SHANE GUNTER,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. BARWICK:

23 Q. Mr. Gunter, is [Minor #2] your daughter?

24 A. Yes, ma'am.

25 Q. You know the Defendant?

- 1 A. Yes.
- 2 Q. How long have you known him?
- 3 A. Approximative five years.
- 4 Q. How do you know him?
- 5 A. Neighbor.
- 6 Q. When you say neighbor, what's the distance we're
- 7 talking about from his old house to your house?
- 8 A. Front door to front door, approximately a hundred
- 9 yards.
- 10 Q. So you could look at his house?
- 11 A. Uh-huh (affirmative).
- 12 Q. Do you remember back around early May of 2009,
- 13 watching a particular news program?
- 14 A. Yes, ma'am.
- 15 Q. What do you remember seeing on the news?
- 16 A. That he'd been arrested for some kind of a sexual
- 17 assault.
- 18 Q. When you saw that on the news, what did you do?
- 19 A. I looked it up on-line and printed the article out and
- 20 then read it to each of four oldest daughters.
- 21 Q. Let's talk about the timing of all this. What made
- 22 you want to print out that article and show it to your
- 23 daughters?
- 24 A. Because four of them that are old enough stayed over
- 25 there, constantly playing, swimming, and I just felt real

1 insecure about what could have happened over there.

2 Q. So your daughters spent a fair amount of time over
3 there?

4 A. Uh-huh (affirmative).

5 Q. Did they enjoy their time over there for the most
6 part?

7 A. They seemed like it.

8 Q. Is Kaitlyn -- in the group of four girls, is Kaitlyn
9 the oldest or youngest or where does she ---

10 A. She's the oldest.

11 Q. And what about **Minor #2**

12 A. **Minor #2** is the middle one.

13 Q. And the two other daughters, are they younger than

14 **Minor #2**

15 A. Yes.

16 Q. What do you think their age difference is, if you had
17 to guess? I know it's hard to keep up.

18 A. Alyssa's five. Kelsey's nine.

19 Q. Now, yeah.

20 A. And **Minor #2** is eleven.

21 Q. Okay. So when you saw the news article on TV -- or
22 when you saw the news program on TV, did you immediately go
23 print the news article? What was the timing there?

24 A. I don't remember if it was right then or if it was the
25 next day or whatever it was, but ---

- 1 Q. Do you know when you showed your daughters that news
2 article?
- 3 A. I'm not positive, but I'm thinking it was that night.
- 4 Q. Okay. And did you show them each individually or as a
5 group?
- 6 A. Individually.
- 7 Q. Who did you ask first, do you remember?
- 8 A. Uh-uh (negative).
- 9 Q. Did you ask all four of the little girls?
- 10 A. All of them except for the baby.
- 11 Q. And what was their reaction?
- 12 A. Kaitlyn really didn't have an expression. Haley
13 didn't have an expression, nor did Kelsey. And when I
14 asked **Minor #2** she kind of teared up, seemed like she was
15 withholding something.
- 16 Q. Okay. When you showed her that article, did you ask
17 her any questions when you showed it to her?
- 18 A. No.
- 19 Q. Okay. You just showed her the article or did you ---
- 20 A. Well, I read it to her.
- 21 Q. Okay. And she started crying?
- 22 A. Yeah.
- 23 Q. And did you do anything in response to your daughter
24 crying?
- 25 A. I just asked her if something like that had been done

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1 to her over there, and she answered, you know, yes. And
2 then I called the Pickens County Sheriff.

3 Q. Okay. So you called the Sheriff's office. Was that
4 the next day?

5 A. Yes, ma'am.

6 Q. When you called the Sheriff's Office out there, did
7 they talk to you?

8 A. Uh-huh (affirmative).

9 Q. **Minor #2**

10 A. Uh-huh (affirmative).

11 Q. Kaitlyn?

12 A. I'm pretty sure they talked to Kaitlyn. I think
13 that's it.

14 Q. And you let them know what you had observed?

15 A. Uh-huh (affirmative).

16 Q. After you spoke with law enforcement, did Detective
17 Burgess ever come out to your house?

18 A. Yes, ma'am.

19 Q. And who did she talk to?

20 A. I know she talked to **Minor #2** I'm not sure if she
21 talked to Kaitlyn or not.

22 Q. Did the Defendant and his wife eventually move from
23 being your next door neighbors?

24 A. Yes.

25 Q. After this incident?

1 A. Yes.

2 Q. How long after?

3 A. I want to say approximately five or six months.

4 Q. We've seen **Minor #2** today, but two years ago or two and
5 a half years ago, how would you say she was
6 developmentally? Do you think she'd started developing yet
7 or ---

8 A. No, I don't think she did. No.

9 Q. Okay. I know that's a weird question for you and I
10 apologize. Have you seen any changes in **Minor #2** behavior
11 since then?

12 A. At first we did.

13 Q. What were some of those things?

14 A. She was real standoffish. With like my father and
15 some other individuals in the family, men, that she was
16 familiar with. She just ---

17 Q. She was standoffish with them?

18 A. Uh-huh (affirmative).

19 Q. Anything change about her sleeping patterns?

20 A. She had some nightmares and couldn't go to sleep,
21 things of that nature.

22 Q. What about staying the night, how does she feel about
23 that now?

24 A. For several months, she wouldn't go nowhere but just
25 me or her mother's. That was about it.

1 Q. Is she getting better now?

2 A. A little bit.

3 Q. Before this incident, did you ever seen any problems
4 with her just wanting to come home in the middle of the
5 night, crying to go home or anything like that?

6 A. No.

7 Q. Tell me a little bit about growing up. Did she stay
8 the night at a lot of different places growing up?

9 A. Well, she stayed with me primarily, but she was pretty
10 accustomed to going to her mother's every weekend. She's
11 kind of used to spending the night, you know, either at my
12 house or her grandmother's.

13 Q. Right. Did the Defendant call you that night saying
14 that your daughter wanted to come home?

15 A. No.

16 Q. Did Ms. Jackie call you that night?

17 A. No.

18 Q. If they had called you, would you have let her come
19 home?

20 A. Of course.

21 Q. How far of a walk is it?

22 A. I mean it's ---

23 Q. Less than a hundred yards?

24 A. --- less than a hundred yard and there's a gate
25 between the two houses, so, I mean ...

1 Q. Would you have come and got her or how would that have
2 worked?

3 A. Yeah. I would have walked across the yard and get
4 her.

5 MS. BARWICK: Nothing further.

6 THE COURT: You may cross-examine the witness.

7 **CROSS-EXAMINATION**

8 **BY MR. QUINN:**

9 Q. Didn't your daughter spend the night after this
10 incident, supposedly?

11 A. No, sir.

12 Q. At the Peters' house? No? When did this happen?

13 A. I'm sorry. Could you repeat the question?

14 Q. When did it happen?

15 A. To the best of my knowledge, it was right after
16 Thanksgiving and just before Christmas when I found out
17 about it.

18 Q. That's when you found out about it?

19 A. That's when I was told.

20 Q. And didn't you tell the officers that you thought your
21 daughter was just going through a phase when she wouldn't
22 go stay with your father or whoever it was?

23 A. No.

24 Q. All right.

25 MR. QUINN: I don't have any other questions.

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1 THE COURT: Any redirect?

2 MS. BARWICK: No, sir.

3 THE COURT: All right. Thank you. You may step
4 down, sir. You may call your next witness.

5 MS. BARWICK: The State would call Detective Rita
6 Burgess to the stand.

7 THE CLERK: Place your left hand on the bible and
8 raise your right hand.

9 Do you solemnly swear or affirm the testimony you're
10 about to give is the truth, the whole truth and nothing but
11 the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Have a seat. State your name for the
14 record, please.

15 THE WITNESS: Rita Burgess.

16 RITA BURGESS,

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MS. BARWICK:

20 Q. Detective Burgess, where do you work?

21 A. Pickens County Sheriff's Office.

22 Q. How long have you been working there?

23 A. Next month will be twenty-one years.

24 Q. What's your current title?

25 A. I'm a detective sergeant in the juvenile division of

1 investigations.

2 Q. How long have you been doing that?

3 A. Probably six or seven years.

4 Q. What do your duties being a detective in the juvenile
5 division entail?

6 A. I investigate any complaint that comes in involving a
7 juvenile, whether they're the victim or the suspect. I
8 also do internet crimes against children.

9 Q. Are you normally the first responder out to the scene
10 or do you get the case later on?

11 A. I normally get the case later on.

12 Q. Tell the jury a little bit about how that works,
13 please?

14 A. Normally, if a citizen calls in with a complaint, a
15 uniformed road deputy will respond and take the initial
16 report. And the next day, or if it's a weekend, we will
17 get the case on that following Monday.

18 Q. Were you the detective on [Minor #1] case?

19 A. Yes, I was.

20 Q. Were you the detective on [Minor #2] case?

21 A. Yes.

22 Q. Let's talk about [Minor #1] case. How did you
23 become involved in that incident?

24 A. I was assigned the case -- we have a meeting every
25 morning and the cases are assigned through rotation, and

1 this case was assigned to me.

2 Q. Okay. When did road patrol first become involved?

3 A. That call initially came in on April the 27th of 2009.

4 Q. At about what time?

5 MR. QUINN: I would object. That's hearsay.

6 THE COURT: I'll overrule the objection.

7 A. That call came in at 4:43 p.m.

8 Q. Okay. Do you know which day of the week that would
9 have been on the 27th?

10 A. I believe I have it documented in my report. April
11 the 27th was a Monday.

12 Q. Okay. And the road patrol officer who went out there
13 was who?

14 A. That was Deputy Eddie Burgess.

15 Q. As part of your investigation, did you review any
16 documents?

17 A. I did.

18 Q. And what documents did you review?

19 A. Well, of course, I had the initial police report that
20 came in. I ---

21 Q. Who wrote that?

22 A. Deputy Eddie Burgess.

23 Q. Okay.

24 A. I also had a report from the Department of Social
25 Services where they conducted an investigation, and I had

1 [Minor #1] written statement.

2 Q. Did you -- when did you start investigating the case?

3 A. The case came to me on April the 28th.

4 Q. Tuesday?

5 A. Tuesday.

6 Q. And did you go and speak with [Minor #1]

7 A. On Tuesday morning, I had a court hearing, and I
8 received a call from her mother -- or actually, her mother
9 came to our office.

10 Q. Okay.

11 A. And I was in court and could not speak with her. And
12 I then called her back once I got out of court.

13 Q. And were you able to speak with [Minor #1] mother?

14 A. I did speak with her mother, yes.

15 Q. And that would have been Ruth Jones?

16 A. Yes.

17 Q. Okay. When you spoke with Ms. Jones, did she tell you
18 what [Minor #1] had told her?

19 A. Yes, she did.

20 Q. And did you ever go out and speak with [Minor #1]

21 A. Not at that point. [Minor #1] was at the doctor's office.

22 Q. Okay. Did you ever go speak with [Minor #1]

23 A. No. I had made arrangements to speak with several
24 people involved, and I did not have the opportunity to
25 speak with her at that point.

1 Q. Okay. And did you eventually present the case for a
2 warrant to the Judge?

3 A. I did.

4 Q. And what did you base that on?

5 A. I based it on probable cause on the original police
6 report, the three or four page written statement that
7 [Minor #1] provided, the statements that were given to DSS, as
8 well as the statement that her mother gave me over the
9 phone.

10 Q. Okay. And was an arrest warrant eventually signed by
11 the Judge?

12 A. Yes, it was.

13 Q. When did the Defendant get arrested on that charge?

14 A. He was arrested on May the 8th.

15 Q. Okay. Did that arrest get made public?

16 A. Yes.

17 Q. It was in the news?

18 A. Yes, ma'am.

19 Q. Did the news article ever mention [Minor #1] name or
20 anything like that?

21 A. No. We do not release a juvenile's name to the media
22 at all.

23 Q. Is that the policy?

24 A. Yes.

25 Q. Okay. So [Minor #1] name was not in the newspaper or

- 1 the news articles?
- 2 A. No, it was not.
- 3 Q. Did another call come in relating to [Minor #2]?
- 4 A. Yes, it did.
- 5 Q. How did you get involved in that case?
- 6 A. Being that I had already been involved with the case
- 7 involving [Minor #1] this case was assigned to me, as well.
- 8 Q. Backing up a little bit, who took [Minor #1] statement?
- 9 A. Deputy Eddie Burgess.
- 10 Q. Okay. Was [Minor #2] case -- when did the call come in
- 11 for that?
- 12 A. That call was reported on May the 9th, 2009.
- 13 Q. The day after the news article was published?
- 14 A. Yes.
- 15 Q. Okay. And what time was that call when it came in?
- 16 A. One thirty-eight p.m.
- 17 Q. Okay. And when that call came in, which road patrol
- 18 officer responded?
- 19 A. Deputy Andy Burgess. I'm sorry. Andy Robinson.
- 20 Q. You might be related to him.
- 21 A. No, we're not related.
- 22 Q. Well, Deputy Robinson responded, right?
- 23 A. That's correct.
- 24 Q. And when did the case get assigned to you on [Minor #2]
- 25 case?

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1 A. I received that case on May the 11th, which was a
2 Monday.

3 Q. Okay. Did you have an opportunity to go speak with
4 **Minor #2**

5 A. Yes, I did.

6 Q. What day did you go speak with her?

7 A. On Monday, May the 11th.

8 Q. When you spoke with her, where was she?

9 A. At her house.

10 Q. Where did you meet with her?

11 A. I met her originally in the kitchen area of the home.

12 And, of course, we want them to be as comfortable as
13 possible, and I asked her where would she like to speak
14 with me, and she wanted me to talk to her in her bedroom.

15 Q. Did you speak with her?

16 A. I did.

17 Q. Did she tell you what happened?

18 A. Yes, she did.

19 Q. Did she disclose any sexual abuse to you?

20 A. Yes, she did.

21 Q. Did she tell you when it happened?

22 A. She gave me a time frame, yes.

23 Q. When did she tell you it happened?

24 A. Between November -- around Thanksgiving in November
25 and Christmas of 2008.

1 Q. Okay. Did she say where it happened?

2 A. Yes, she did.

3 Q. Where did she say it happened?

4 A. In the basement of Mark Peters' home.

5 Q. Did you speak with [Minor #2] sister, Kaitlyn?

6 A. Yes, I did.

7 Q. Okay. And did you get a statement from her, too?

8 A. Yes, I did.

9 Q. When you were speaking to [Minor #2] if you can describe
10 the way she was acting when she was talking about this?

11 A. When I first met with her she was the normal eight-
12 year-old child, showing me around her room and the things
13 that she liked to draw. She was showing me some things --
14 some artwork that she'd done. Then I started talking to
15 her, just pre-interview questions, things about truth and
16 lying, and she knew the difference, to establish, you
17 know, what level she was on as far as being able to
18 interview with me. And then I asked her if she knew why I
19 was there and she said, yes. And I said, I'm here to speak
20 with you concerning your neighbor, Mr. Peters. And at that
21 point she just dropped her head.

22 Q. Okay. All right. Did you eventually go and ask for a
23 warrant on [Minor #2] case as well?

24 A. Yes, I did.

25 Q. When was he arrested on that?

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1 A. I believe on May the 14th is when he was arrested on
2 that charge. Yes, on May the 14th.

3 Q. 2009?

4 A. Yes, ma'am.

5 Q. Which County was Mr. Peters' house in back when this
6 happened?

7 A. Pickens County.

8 Q. Do you happen to know his date of birth?

9 A. I had it in the report. I have his date of birth
10 being [REDACTED] [REDACTED].

11 Q. He was about fifty-two or fifty-three when this
12 happened?

13 A. Yes.

14 MS. BARWICK: No further questions.

15 THE COURT: Mr. Quinn.

16 CROSS-EXAMINATION

17 BY MR. QUINN:

18 Q. Detective, you are not related to Eddie Burgess?

19 A. No, I am not.

20 Q. Did you ask [REDACTED] how she determined when this may
21 have happened?

22 A. I did. She could remember that it was before
23 Christmas, but she could not remember an exact day. So I
24 used -- I think I went back as far as Halloween and she
25 said it was not at Halloween. In children that age, we try

1 to use a specific, you know, a holiday, something that may
2 trigger them in order to get a date and/or a time frame and
3 she said it was after Halloween. So, of course, the next
4 holiday that I went to that she would possibly remember was
5 Thanksgiving, and she said it was not before Thanksgiving.
6 It was after Thanksgiving.

7 Q. So you suggested things to her and she said, yes or
8 no?

9 A. I suggested holidays to her.

10 Q. And did you put in your report everything that she
11 told you that you thought was important to the
12 investigation?

13 A. I put everything in the report that she told me
14 concerning Mr. Peters, yes.

15 Q. Okay. Now, you said that you asked her whether she
16 could differentiate the truth -- I'm sorry differentiate
17 the difference between the truth and a lie, and she was
18 able to?

19 A. Yes, she was.

20 Q. Did you ask her whether she could write at eight years
21 old?

22 A. I did.

23 Q. And was she able to?

24 A. She could write some, but not very good.

25 Q. And so did you ask her to write out a statement?

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1 A. Due to her not having the ability to write out a
2 statement at eight years old, I did not ask her. Had she
3 been capable of doing that, then, yes, I would have.

4 Q. Did you ask her -- you could write the statement for
5 her and then have her sign it?

6 A. Not at eight years old, no.

7 Q. Well, I'm asking you if you did that? You weren't
8 eight years old. Did you ask her if you could write out
9 the statement and have her sign it?

10 A. No, I did not.

11 Q. Okay. But she was able to understand English. You
12 spoke with her?

13 A. That's correct.

14 Q. And so there was no statement taken from the child?

15 A. Not a written statement, no, sir.

16 Q. All right. And have you had the opportunity to review
17 your investigative report before you testified today?

18 A. I actually have it here with me.

19 Q. Okay. And would you agree that in her description to
20 you of what allegedly occurred, there is nothing about Mr.
21 Peters' breathing?

22 A. No, she did not mention that to me.

23 Q. Nothing about touching her hair?

24 A. She did not mention that to me.

25 Q. And you also, in your investigation, spoke with Shane

1 Gunter, isn't that correct?

2 A. I spoke with him by phone, yes.

3 Q. And didn't he tell you, according to your report, it
4 was a phase, they thought, it was phase, she, **Minor #2** was
5 going through but now believed differently? At the bottom
6 of your second full paragraph?

7 A. Okay. What Mr. Gunter said to me was that after
8 **Minor #2** had come home from Mr. Peters' home and they hold
9 told them that she woke up crying to come home, that they
10 believed that this was an incident where she was just going
11 through a phase and did not want to spend the night
12 somewhere.

13 Q. All right. I believe the exact line from your report
14 is, they advised that after this incident they noticed that
15 **Minor #2** didn't want to spend the night anywhere, not even
16 with her grandparents, and they thought it was a phase she
17 was going through, but now believe it was because of the
18 incident?

19 A. That's correct. That's what they told me.

20 Q. So they did tell you that at some point they thought
21 it was a phase that she was going through?

22 A. Yes.

23 Q. And in your twenty-one years, I assume you've
24 interviewed a lot of people?

25 A. Yes, I have.

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Recross Examination by Mr. Quinn

1 Q. And have you ever noticed that sometimes when people
2 lie, they hang their head?

3 A. Sure.

4 MR. QUINN: I don't have any other questions.

5 THE COURT: Any redirect?

6 **REDIRECT EXAMINATION**

7 **BY MS. BARWICK:**

8 Q. People aren't adults, are they? I mean, people are
9 adults. Children are not adults, are they?

10 A. No, they are not.

11 Q. In your experience, do they lie the same way?

12 A. No, not always.

13 Q. Are children sophisticated liars?

14 A. No.

15 MS. BARWICK: Nothing further.

16 MR. QUINN: May I?

17 THE COURT: Yes, sir. Briefly.

18 **RECROSS EXAMINATION**

19 **BY MR. QUINN:**

20 Q. Do you know children that believe in Santa Claus?

21 A. Sure.

22 Q. And if they told you Santa Clause existed, they'd tell
23 you straight up, without any question. Isn't that correct?

24 A. That is true.

25 Q. Because adults tell them that, isn't that right? They

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1 rely on adults?

2 A. Yes.

3 Q. And so children sometimes will say things that aren't
4 true. Isn't that right?

5 A. Everyone will, yes.

6 Q. And does everyone do it differently or do you have
7 some belief of how children do it?

8 A. No, they're all different.

9 Q. And do you have any training in specifically dealing
10 with children, child psychological training or anything
11 like that?

12 A. No, I'm not a psychologist.

13 Q. But do you have any special training dealing with
14 children and the manner in which they tell the truth or
15 mislead people?

16 A. I have had training throughout my twenty-one years,
17 yes. Not specifically on how someone acts when they tell a
18 lie, no.

19 Q. And had you ever met this child before?

20 A. No, I had not.

21 Q. Thank you.

22 THE COURT: Thank you, Officer Burgess. You may
23 step down.

24 MS. BARWICK: Your Honor, could we take a brief
25 break?

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1 THE COURT: Okay. Let's take a short break.

2 Ladies and gentlemen, I'll remind you, don't discuss the
3 case while you're back in your jury room. We'll call you
4 back in just a few moments.

5 (WHEREUPON, the jury exited the open court at
6 approximately 3:03 p.m.)

7 THE BAILIFF: The door's closed, Your Honor.

8 THE COURT: Let's take a short break, a ten
9 minute break.

10 MS. BARWICK: Thank you.

11 (WHEREUPON, the court stood at recess for a short
12 break.)

13 THE COURT: If the jury's ready, you can have
14 them come in, Mr. Evans.

15 (WHEREUPON, the jury entered the open court at
16 approximately 3:44 p.m.)

17 THE COURT: Thank you, Mr. Foreman, ladies and
18 gentlemen. We're now ready to proceed.

19 Solicitor, you may call your next witness.

20 MS. BARWICK: Your Honor, at this time, Deputy
21 Eddie Burgess and Deputy Andy Robinson are both here.
22 They'll simply be repeating anything Detective Rita Burgess
23 has already testified to, but the State would like to
24 tender them to the Defense to cross-examine them if they
25 wish.

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1 MR. QUINN: I have no idea what that is. That
2 doesn't even exist under our rules.

3 THE COURT: All right. Do you want to call the
4 witnesses or not?

5 MS. BARWICK: Under the rule, I believe the
6 State's entitled to tender the witness if the Defense
7 wishes to cross-examine them. We're just making them ---

8 THE COURT: You can call your witnesses and you
9 can ask them whatever questions you want. But if ---

10 MS. BARWICK: Okay. The State will do that, Your
11 Honor. The State would call Deputy Eddie Burgess to the
12 stand.

13 THE CLERK: Place your left hand on the bible and
14 raise your right hand.

15 Do you solemnly swear or affirm the testimony you're
16 about to give is the truth, the whole truth and nothing but
17 the truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Have a seat. State your name for the
20 record, please.

21 THE WITNESS: I am Eddie Burgess with the Pickens
22 County Sheriff's Office.

23 EDDIE BURGESS,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

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1 BY MS. BARWICK:

2 Q. Deputy Burgess, were you the one who responded at
3 [Minor #1] house for an incident or a report of child
4 molestation?

5 A. I did, ma'am.

6 MS. BARWICK: The State has no further questions.

7 THE COURT: Any cross-examination?

8 CROSS-EXAMINATION

9 BY MR. QUINN:

10 Q. Did you subsequently take a statement from [Minor #1]

11 [Minor #1]

12 A. I did, sir.

13 Q. And when you received the call was it actually a call-
14 out for child molestation?

15 A. All they tell us to do is respond to the residence,
16 reference a ten code. And it was for, like a -- I believe
17 it was a sex abuse case. But it could be anything.

18 Q. And when you took the statement from Ms. [Minor] -- have
19 you got a copy of it available to you?

20 A. I do.

21 Q. All right. The statement was taken on September 27th
22 of 2009, is that correct?

23 A. I was out there on 4/27 of 2009 at right around 4:43.

24 Q. And I am so sorry. It is a 4. I'm so sorry. And so
25 it was the same day you got the call?

1 A. Yes, sir.

2 Q. Okay. And is the statement written in Ms. **Minor #1** hand
3 or yours?

4 A. The statement is written in her handwriting, sir.

5 Q. And you asked her to tell you everything that she
6 could about the case. Is that correct?

7 A. I did, sir.

8 Q. And did you give her the opportunity to take her time
9 and write down whatever she wanted?

10 A. I did, sir.

11 Q. And, in fact, the statement is several pages. Isn't
12 that correct?

13 A. Yes, sir.

14 Q. Did you review the statement with her?

15 A. I looked over the statement and asked her to sign the
16 bottom of it.

17 Q. Did you ask her if she had anything she wanted to add
18 to it?

19 A. She told me that she wanted to add something to the
20 bottom of it, and I told her -- after I'd drawn through the
21 end, where it says, the end, I put -- she wrote additional
22 information. And she added something to the bottom of it.

23 Q. And have you had the opportunity to review this
24 statement today?

25 A. I have.

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1 Q. And have you noted that it does not say anything about
2 Mr. Peters supposedly saying he was sorry to her or making
3 any statement?

4 A. It's something in the statement of that, sir. I've
5 got it in my report, but if it's not in the statement then
6 how I would do so, I would interview you first, let you
7 tell me your story, then I'll let you write it, and I'll
8 take what you told and what you wrote, and I put it in the
9 report.

10 Q. And you say that -- well, let me ask it this way. So
11 are you saying it is not in her statement?

12 A. If you will give me just a second, I'll let you know
13 that.

14 Q. Take your time.

15 A. I don't see it in there, sir.

16 Q. And I believe you said that you believed in your
17 report there was something about that. Is that correct?

18 A. Yes, sir.

19 Q. And have you had the opportunity today to review your
20 report?

21 A. Yes, sir.

22 Q. And Officer, can you point out to me where in your
23 report it says that Mr. Peters apologized?

24 A. No. It's not going to be like Mr. Peters apologized,
25 okay?

1 Q. Okay. It's going to be that Ms. Peters' said
2 something about -- let's see. [Minor #1] stated Jacqueline
3 told her she was sorry if anything happened? Or this
4 happened?

5 A. Hang on and I'll read it to you.

6 Q. Okay.

7 A. In my report on page three, the top paragraph, it's
8 going to say that -- it says, Jacqueline woke up and told
9 Mark -- Jacqueline -- said she woke up Jacqueline and told
10 her Mark had came into the girls' room and what she had
11 done and [Minor #1] stated Jacqueline replied, oh, my god. And
12 she went downstairs. And she told her afterwards to lie on
13 the bed and Jacqueline stated -- told her she was sorry
14 this happened and [Minor #1] stated she did not say anything
15 after that.

16 Q. Okay. Officer, you might want to stop there. My
17 question is, did Mr. Peters, according to [Minor #1] apologize
18 and say he was sorry?

19 A. It's not in my report, sir.

20 Q. All right. And it's not in her statement?

21 A. No, I didn't see it in the statement either.

22 Q. Did she tell you that she was uncomfortable with some
23 wrestling with Mr. Peters?

24 A. I don't remember that, sir.

25 Q. And having reviewed her statement, do you remember

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1 anything in her statement about that?

2 A. I just don't remember that, sir.

3 Q. And after your initial report and statement, did you
4 have any further involvement with this case?

5 A. No, sir, I did not. I did not see them afterwards.

6 Q. Thank you, Officer Burgess.

7 THE COURT: Any redirect?

8 MS. BARWICK: No, sir. May he be excused?

9 THE COURT: Without objection, this witness may
10 be excused. Thank you very much.

11 THE WITNESS: Thank you, sir.

12 THE COURT: The State may call its next witness.

13 MS. BARWICK: The State would call Agent Andy
14 Robinson to the stand.

15 THE CLERK: Place your left hand on the bible and
16 raise your right hand.

17 Do you solemnly swear or affirm the testimony you're
18 about to give is the truth, the whole truth and nothing but
19 the truth, so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Have a seat. State your name for the
22 record, please.

23 THE WITNESS: My name is Andrew Travis Robinson.

24 **ANDREW TRAVIS ROBINSON,**

25 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

1 DIRECT EXAMINATION

2 BY MS. BARWICK:

3 Q. Agent Robinson, were you the road patrol deputy that
4 responded to [REDACTED] residence back in the spring
5 of '09, to a report of sexual abuse?

6 A. I was.

7 MS. BARWICK: No further questions.

8 THE COURT: Any cross-examination?

9 MR. QUINN: No, Your Honor. Thank you.

10 THE COURT: All right. Thank you, sir. You may
11 step down, Mr. Robinson.

12 MS. BARWICK: May he be excused, Your Honor?

13 THE COURT: Without objection, the witness may be
14 excused. Call your next witness.

15 MS. BARWICK: The State would call Jackie Peters
16 to the stand.

17 THE CLERK: Place your left hand on the bible and
18 raise your right hand.

19 Do you solemnly swear or affirm the testimony you're
20 about to give is the truth, the whole truth and nothing but
21 the truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: State your name for the record,
24 please.

25 THE WITNESS: Jacqueline Peters.

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1 JACQUELINE PETERS,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MS. BARWICK:

5 Q. Ms. Peters, is the Defendant your husband?

6 A. Yes.

7 Q. How long have y'all been married?

8 A. Sixteen years.

9 Q. How long have y'all known each other?

10 A. Twenty-two.

11 Q. Are you here today because you're under a subpoena to
12 be here?

13 A. Yes.

14 Q. Okay. You don't particularly want to be up here, do
15 you?

16 A. Of course not.

17 Q. What's your date of birth?

18 A. [REDACTED]

19 Q. And your husband's?

20 A. [REDACTED] [REDACTED]

21 Q. So about thirteen years, right?

22 A. Uh-huh (affirmative).

23 Q. And y'all have known each other for twenty-two years?

24 A. Yes.

25 Q. Okay. All right. How many kids do you and he have

- 1 together?
- 2 A. Together, two.
- 3 Q. How old are they now?
- 4 A. Fourteen and eight.
- 5 Q. So about two years ago they would have been twelve and
- 6 six, right?
- 7 A. Uh-huh (affirmative).
- 8 Q. Where are you currently living?
- 9 A. I live in Winter Park, Florida.
- 10 Q. What's your address?
- 11 A. [REDACTED]
- 12 Q. Okay. In Winter Park, Florida?
- 13 A. Uh-huh (affirmative).
- 14 Q. Okay. Do you currently reside with your husband?
- 15 A. No, ma'am.
- 16 Q. Okay. How come?
- 17 A. How come? Because I'm not with him. I'm separated
- 18 from him.
- 19 Q. Okay. You're separated?
- 20 A. Yes, ma'am.
- 21 Q. Where does he live?
- 22 A. I think he is currently living with a friend.
- 23 Q. Okay. Do you know where?
- 24 A. No, ma'am.
- 25 Q. The children don't go and visit him or anything like

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1 that? He doesn't have any visitation?

2 MR. QUINN: Objection, Your Honor, I don't see
3 how this is relevant.

4 A. Yes.

5 THE COURT: Yeah. What's the relevance?

6 MS. BARWICK: Your Honor, it will become relevant
7 if I can speak with you and the Defense attorney up there.

8 THE COURT: All right. We'll have a short
9 conference.

10 (WHEREUPON, Ms. Barwick and Mr. Quinn approached the
11 bar.)

12 Q. All right. Ms. Peters, down in Winter Park, Florida,
13 who lives with you?

14 A. My cousin.

15 Q. Any of your children?

16 A. Yes.

17 Q. Who lives with you?

18 A. My eight-year-old.

19 Q. Where does your older daughter live?

20 A. My fourteen-year-old lives with Mark's parents up in
21 New York.

22 Q. Okay. How long have y'all been separated?

23 A. Over two years.

24 Q. Do you know which month or year you got separated?

25 MR. QUINN: Your Honor, I'm going to object

1 again. I just don't believe any of this is relevant.

2 THE COURT: Sustain the objection at this stage.

3 Q. Okay. Let's move directions for a little bit. Do you
4 remember an allegation being made by [Minor #1] against
5 your husband?

6 A. Of course.

7 Q. Do you remember the night that incident happened?

8 A. Of course.

9 Q. I guess it would be back the end of April?

10 A. It was in April.

11 Q. Of 2009, right?

12 A. Uh-huh (affirmative).

13 Q. Can you tell the jury about that incident, what you
14 know about it?

15 A. We went to Carowinds in South Carolina and went home,
16 everything was fine. And I went to bed. And [Minor #1] spent
17 the night with us -- for years, about four years. She
18 never wanted to be home. So we went to Carowinds, came
19 home. I went to bed. My husband slept downstairs. I
20 slept upstairs, for years, for years.

21 Q. Right. So that's common then?

22 A. Yes, absolutely. [Minor #1] would spend the night. She
23 would sleep on the floor, my fourteen-year-old would sleep
24 on the bed. And that happened, nothing out of the sorts.

25 Q. How often do you think [Minor #1] would come over back

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- 1 before all of this happened?
- 2 A. Oh, my gosh, almost every night.
- 3 Q. Okay.
- 4 A. Uh-huh (affirmative).
- 5 Q. Pretty close with your daughters?
- 6 A. Best friends. She called me mom.
- 7 Q. So she enjoyed her time over at your house?
- 8 A. Yeah. She was there all of the time. She would come
- 9 home, get off the bus, call me to come get her.
- 10 Q. Did y'all take trips together?
- 11 A. Every vacation, every holiday, she was with us.
- 12 Q. Kind of like part of the family?
- 13 A. Absolutely.
- 14 Q. So y'all get home from Carowinds. Which day of the
- 15 week was that?
- 16 A. I want to say it was a Saturday night -- no, it had to
- 17 be a Sunday night. Sunday.
- 18 Q. Okay. So Sunday night?
- 19 A. Uh-huh (affirmative).
- 20 Q. And then I interrupted you. If you want to move on.
- 21 A. Like I said, Mark slept downstairs. His office was
- 22 down there. He went downstairs, I went to the back room,
- 23 the kids went to bed, everything was fine. And it was in
- 24 the middle of the night, **Minor #1** came in, calm as calm can
- 25 be, no tears, no fear, nothing. She said, Mark appeared in

1 the doorway naked and said, would you please come
2 downstairs and have sex with me. And I said, excuse me?
3 And I said, stay right here. Don't move. I went
4 downstairs, and I'm sorry to say, but I did slap him across
5 the face, and I said to him, what's going on? He was fully
6 clothed. He said, I don't know what you're talking about.
7 So I told him. And he said, well, I still don't know what
8 you're talking about. I said, stay down here. I went back
9 up and I said, **Minor #1** sweet baby, do you want to go home
10 to Mommy and Daddy. She said, no. Why? She said, I want
11 to stay here with you. And I said, you sure? And she
12 said, yeah. So she got in the bed. And I, you know,
13 consoled her. And I said, you know, if you want to go
14 home, I can take you home. Mark came back upstairs and
15 used my bathroom. I had the master bedroom. And he turned
16 and he said, **Minor #1** would you like me to take you home.
17 And I said, please do not talk to her. Leave her alone.
18 He left the room, went back downstairs. So once again, I
19 said to him -- or said to **Minor #1** baby, do you want me to
20 take you home? She's like, no, I'm fine. I said, okay.
21 So we went to bed. The next morning she woke up, you know,
22 it was Monday morning and I looked at her once again and I
23 said to her, **Minor #1** you don't have to go to school if this
24 bothers you. You do not have to go to school. I will take
25 you home. She was like, well, why? I said, well, because

- 1 of last night. She proceeded to go into the master
2 bathroom, turn the shower on, got dressed, got in my car,
3 because I brought her to school with my daughter everyday,
4 turned on the radio and my daughter and her sang, and sang
5 and sang, and she went to school. Then the next day after
6 school, the phone rings at four o'clock like it always
7 does, and she said, can I come over? I said, why would you
8 want to come back over? You know, I'm thinking she would
9 be scared. And I said, I don't think it's appropriate.
10 And that's that.
- 11 Q. Okay. After **Minor #1** got in the bed with you ---
12 A. Uh-huh (affirmative).
- 13 Q. --- were you the one who told her to get in the bed
14 and sleep with you?
15 A. She wanted to. Because I asked her, I said, would you
16 like to go home? And she's like, no, I'd rather sleep with
17 you.
- 18 Q. Okay. And she had never slept in your bed before,
19 right?
20 A. No.
- 21 Q. And before y'all went to sleep that night ---
22 A. Uh-huh (affirmative).
- 23 Q. --- you usually don't lock your bedroom door, do you?
24 A. Did I unlock the bedroom door? I shut the bedroom
25 door.

- 1 Q. Okay. And you locked it, right?
- 2 A. Uh-huh (affirmative).
- 3 Q. Okay. And your door normally stays open, doesn't it?
- 4 A. Sometimes it doesn't.
- 5 Q. At nighttime?
- 6 A. Uh-huh (affirmative).
- 7 Q. Was MacKenzie sleeping in the bed with you when [Minor #1]
- 8 came in?
- 9 A. Uh-huh (negative).
- 10 Q. Okay. Did Gabby come in later on?
- 11 A. Yes.
- 12 Q. Okay. Was there any kind of argument going on in your
- 13 room when Mark came back up?
- 14 A. I just told him to leave [Minor #1] alone, plain and
- 15 simple.
- 16 Q. I mean, you said he used the restroom in your bedroom,
- 17 right?
- 18 A. Uh-huh (affirmative).
- 19 Q. And he did that with the door open, didn't he?
- 20 A. Uh-huh (affirmative).
- 21 Q. Did you have anything to say about that to him?
- 22 A. Of course.
- 23 Q. What did you say?
- 24 A. I shut the door.
- 25 Q. You think it's inappropriate for someone to use the

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1 bathroom in front of a child like that?

2 A. Well, where my master bathroom is, you can't see the
3 bedroom. It's way off to the side.

4 Q. Oh, well, why did you shut the door then?

5 A. Because it needs to be shut after these allegations
6 were spoken.

7 Q. All right. So it would be inappropriate to use the
8 bathroom with the door open ---

9 A. Yeah.

10 Q. --- when a child was in there? All right. Did you
11 call law enforcement that night?

12 A. No, ma'am, because they're allegations. And when I
13 went downstairs, he was fully dressed.

14 Q. Allegations enough to make you slap him, though?

15 A. Well, I was angry.

16 Q. Right.

17 A. I mean, I treated Minor #1 like she was my daughter.

18 Q. And you had her sleep in the room and you should have
19 locked the door?

20 A. Well, I was there. And he wasn't going to come back
21 up again.

22 Q. So you took all of those precautions, but you didn't
23 call law enforcement?

24 A. Uh-uh (negative).

25 Q. Did you call her parents?

1 A. No.

2 Q. You never tried to call her parents and tell them what
3 [Minor #1] had said?

4 A. No. If she didn't want to go home, I mean, she wasn't
5 that scared.

6 Q. If your daughter had reported that to one of her
7 friend's parents, wouldn't you have wanted them to call
8 you?

9 A. Yeah.

10 Q. All right.

11 A. But she didn't seem scared or anything, no emotion at
12 all. She just walked in and, you know, and she, she, --
13 also in her statement she said she screamed. She didn't
14 scream.

15 Q. Well, let's talk a little bit about, let's talk a
16 little bit about [Minor #2] case. Do you remember that night
17 in question when she woke up crying?

18 A. Yes.

19 Q. She didn't stay the night after that, did she?

20 A. Yes, she did. I refused not to let her go home due to
21 the fact that I know her father very well, and he bragged a
22 lot that he slept with a gun. And he said if anybody ever
23 knocked on the door in the middle of the night, he would
24 not even look, he would shoot. I am not sending a child
25 into that situation.

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- 1 Q. But she lived with her dad, right?
- 2 A. Huh?
- 3 Q. She lived at her dad's house back then?
- 4 A. Uh-huh (affirmative).
- 5 Q. So she was always at her dad's house?
- 6 A. Negative.
- 7 Q. But she lived there?
- 8 A. Uh-huh (affirmative).
- 9 Q. And so whenever you sent her home, you would be
- 10 sending her to her dad's house.
- 11 A. Not in the middle of the night, I would never in my --
- 12 no, not in the middle of the night.
- 13 Q. All right. Well, let's back up a little bit. When
- 14 she woke up screaming in the middle of the night?
- 15 A. Who?
- 16 Q. **Minor #2**
- 17 A. I was downstairs.
- 18 Q. Downstairs basement or upstairs?
- 19 A. Downstairs basement. I was there for that whole
- 20 situation.
- 21 Q. Okay. Well, let's tell the jury a little bit about
- 22 that situation, what you knew about it.
- 23 A. Okay.
- 24 Q. Tell me about the incident involving **Minor #2**
- 25 A. Well, she woke up in the middle of the night and she

- 1 came upstairs and she said, I want to go home? I said,
2 well, what happened? She said, I'm scared. I said, well,
3 I can't send you home in the middle of the night, knowing
4 that Shane sleeps with a gun on his chest. He made that
5 statement to me, quote unquote, I sleep with a gun on my
6 chest. If somebody knocks on the door in the middle of the
7 night, I will shoot. I'm not sending a nine-year-old home
8 to that situation. Sorry. I said to her, go back to
9 sleep. Everything will be fine. Everything will be fine.
10 Mark went up to her and said, baby, you're going to be all
11 right. Go back to sleep. I was there, witnessed the whole
12 thing. I said to her, you go back to sleep and tomorrow we
13 can get up, use the pool, just like a normal day. Spent
14 the night, woke up the next day, had cereal, put on a
15 bathing suit and we all went swimming.
- 16 Q. Okay. Did she wake up crying?
- 17 A. No.
- 18 Q. No?
- 19 A. She had -- she wanted to go home.
- 20 Q. Okay. And ---
- 21 A. And she was sleeping with my little one. You know,
22 she was there.
- 23 Q. MacKenzie?
- 24 A. Uh-huh (affirmative).
- 25 Q. And this was like November/December, back in 2008,

1 when she woke up crying, right?

2 A. I don't remember the date, to be honest.

3 Q. You don't know if it was before Christmas or anything?

4 A. I don't remember.

5 Q. No. About how long before **Minor #1** made her report did
6 this happen?

7 A. A while.

8 Q. A couple of months?

9 A. Uh-huh (affirmative).

10 Q. Like five months?

11 A. Probably.

12 Q. Five or six months?

13 A. I'm not sure, but it was a while.

14 Q. Around five months?

15 A. Uh-huh (affirmative).

16 Q. All right. So did you maybe call the parents,

17 **Minor #2** parents, the next morning and say, she had a hard
18 time sleeping and wanted to go home?

19 A. No.

20 Q. Okay. Shifting gears a little bit. **Minor #1** had never
21 made any accusation like this to you before?

22 A. Never.

23 Q. And **Minor #2** never made an accusation before this
24 either, did she?

25 A. Those kids always wanted to be at my house, all the

1 time.

2 Q. They enjoyed all of their time there, right?

3 A. All the time. And they always -- after these
4 allegations were said, they wanted to come back, so ...

5 Q. You don't remember saying that [Minor #1] had actually
6 told you that the Defendant touched her vagina area?

7 A. Never.

8 Q. Okay. She never told you that?

9 A. Never.

10 Q. You don't remember telling Michelle Gerald from DSS
11 that she told you that?

12 A. On my kids' life, she never told me that, because I
13 would have went crazy.

14 Q. Okay. So I want to be clear. You never told Michelle
15 Gerald that [Minor #1] told you that your husband touched
16 her on her vagina?

17 A. No. She told me he stood in the doorway.

18 Q. And isn't true that you apologized to [Minor #1] for your
19 ---

20 A. Well, of course.

21 Q. And isn't it true that your husband apologized if
22 [Minor #1] thought he did anything?

23 A. Well, yeah. Of course, the right thing to do is
24 apologize if she's scared.

25 Q. Okay. So he apologized ---

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- 1 A. Well, so did I.
- 2 Q. And the next day while [Minor #1] was at school, you never
3 tried to call her parents?
- 4 A. No.
- 5 Q. And the next day you never tried to call law
6 enforcement or let them know?
- 7 A. No. But she called me up right after school the next
8 day and wanted to come back over, so ...
- 9 Q. What time did she get home from school normally?
- 10 A. She usually gets home about 4:00.
- 11 Q. About four?
- 12 A. Uh-huh (affirmative).
- 13 Q. Did you ask [Minor #1] not to tell Gabby what happened?
- 14 A. No.
- 15 Q. You never asked her that?
- 16 A. No.
- 17 Q. You never told Michelle Gerald that you told [Minor #1]
18 not to talk to Gabby about this?
- 19 A. Well, I think if Gabby was going to find out, it
20 should be through mom and dad, not through [Minor #1].
- 21 Q. So you did tell [Minor #1] not to tell?
- 22 A. I don't recall. But, no, I don't think I -- I don't
23 recall.
- 24 Q. Okay. This whole incident -- you financially depend
25 on Mark, don't you?

1 A. No, ma'am.

2 Q. Back in 2009 when these allegations came out, you did,
3 didn't you?

4 A. Of course.

5 Q. Okay. And how long were you financially dependent on
6 him?

7 MR. QUINN: Objection. I don't know how this is
8 relevant.

9 THE COURT: I overrule your objection.

10 Q. How long were you ---

11 A. I didn't work since I had my last child.

12 Q. Okay. And that child's eight years old?

13 A. Uh-huh (affirmative).

14 Q. Okay. Where do you work now?

15 A. I work at Home Instead.

16 Q. Okay. And why is your youngest daughter -- I'm sorry,
17 why is your oldest daughter staying in New York with the
18 Defendant's parents?

19 MR. QUINN: Objection, relevancy.

20 THE COURT: Overruled.

21 A. Due to the fact that in Winter Park, Florida, they do
22 not have a ninth grade. They have a ninth grade center.

23 My daughter's a straight A student and I'm not sending her
24 on the bus at 5:30 in the morning to go to a ninth grade
25 center. She needs to be in a structured school.

1 Q. Did you tell the DSS worker anything about you would
2 be in a mess if he got charged because ---

3 A. I'd be a mess? Why would I be a mess?

4 Q. If you'll just answer yes or no first, then you can
5 explain it. Did you ever tell the DSS worker that you
6 would be in a mess if he got charged?

7 A. I would be in a bind financially, but I've got plenty
8 of relatives to help support me.

9 Q. But didn't, but didn't you tell her that you would be
10 in a mess because you don't work and you would not be able
11 to handle the household expenses?

12 A. I probably did, but I would work it out. Just like I
13 -- I live by myself now and I do fine.

14 Q. Okay. Did you tell her that, though?

15 A. Maybe. That was three and a half years ago, I don't
16 know. I could have.

17 Q. You said the Defendant doesn't live with you
18 currently, correct?

19 A. The Defendant, no, he doesn't live with me.

20 Q. He doesn't live with you?

21 A. Uh-uh (negative).

22 Q. And isn't it true that you know he lives in the same
23 town as you?

24 A. I don't know if it's the same town or not.

25 Q. And isn't it true that you previously said that he was

1 about thirty or forty minutes away from you?

2 A. Yes, it's a distance.

3 MR. QUINN: Your Honor, I object. I don't know
4 how this is relevant.

5 THE COURT: I overrule your objection.

6 A. Yeah, it's a distance.

7 Q. It's about thirty or forty minutes?

8 A. Uh-huh (affirmative).

9 Q. So you do know where he lives?

10 A. I do know where he lives? He lives by the airport. I
11 know where the airport is.

12 Q. So he would live in Winter Park, Florida with you?

13 A. I don't know if that's Winter Park or not, where the
14 airport is. I think it's Orlando.

15 Q. You got on a plane to come here, right?

16 A. Yeah. In Orlando, not Winter Park.

17 Q. Okay. So the Defendant lives thirty, forty minutes
18 from you?

19 A. Uh-huh (affirmative).

20 Q. And isn't it true that you said before that he lived
21 at Tangerine Avenue?

22 A. I know that was his address, his mailing address.

23 Q. Would it surprise you to know that he lives about less
24 than two miles from you, five minutes?

25 A. That that's where he lives?

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1 Q. Would that surprise you to know that?

2 A. Of course.

3 Q. Would it surprise you to know that he lists his
4 address with the home incarceration bonding company to be
5 your address?

6 A. Uh-huh (affirmative).

7 Q. That would surprise you?

8 A. I had no idea about the bonding thing.

9 Q. Okay.

10 A. He stayed with me for a while.

11 Q. Do you understand anything about the conditions of his
12 bond?

13 A. No. I just know that he's got to answer a phone call.

14 Q. That he has to answer a phone call at his residence?

15 A. Uh-huh (affirmative).

16 Q. Would it surprise you to know that the residence the
17 home incarceration company's been calling is yours?

18 A. That's what I said. He was staying, ---

19 MR. QUINN: Objection.

20 A. --- with a third-party there at all times.

21 THE COURT: What's your objection?

22 MR. QUINN: My objection is relevance and
23 leading, Your Honor.

24 THE COURT: Rephrase your question.

25 MS. BARWICK: A hostile question -- a hostile

1 witness, Your Honor.

2 THE COURT: All right.

3 MS. BARWICK: Can I go ahead and ---

4 THE COURT: You may ask the question again for
5 the answer.

6 MS. BARWICK: Thank you, Your Honor.

7 Q. So you just said that he was staying with you ---

8 A. He was staying with me. He wasn't living there. He
9 was staying there for a while, but we have a roommate. So
10 there was always, always, always a third-party there.

11 Q. Well, obviously, your definition of staying and living
12 is different from mine. What's the difference between
13 staying and living somewhere?

14 A. Because that's your permanent residence if you live
15 there.

16 Q. Well, how long was he staying with you?

17 A. Oh, gosh, maybe eight months.

18 Q. When?

19 A. Oh, my gosh. Up until, probably, two months ago.

20 Q. So ---

21 A. I mean, I left and -- when this all happened, I left
22 and went to New York, but I didn't live in New York. I
23 went to New York.

24 Q. Okay. So two years ago or two months ago would have
25 been September. So for eight months before September, so

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1 February through September, he was living with you, of this
2 year?

3 A. I'm not sure of the dates.

4 Q. So it was this year he was living with you in Florida
5 ---

6 A. Uh-huh (affirmative).

7 Q. --- for eight months?

8 A. Uh-huh (affirmative).

9 Q. And your daughter's in your home, MacKenzie is?

10 A. MacKenzie is, yeah.

11 Q. Didn't DSS tell you not to have the Defendant be in
12 contact with your children?

13 A. I never got anything in writing, no, ma'am.

14 Q. They never told you that -- that's not my question, in
15 writing. Did the DSS worker ever tell you not to allow
16 your husband around your children?

17 A. Absolutely, she -- the statement I got was there
18 always has to be a third-party. And, yes, ma'am, there's
19 always a third-party at that apartment.

20 Q. She never told you to keep them separate and not to
21 allow your children to have contact with the Defendant?

22 A. No.

23 Q. Are you sure about that?

24 A. Yeah. As long as there was a third-party around.

25 MS. BARWICK: No further questions.

1 THE COURT: You may cross-examine the witness

2 CROSS-EXAMINATION

3 BY MR. QUINN:

4 Q. That night that [Minor #1] came to you and woke you up,
5 was Mark drunk?

6 A. Yes.

7 Q. And you say that he apologized that night. Did he
8 apologize to [Minor #1]

9 A. Yes.

10 Q. What did he say?

11 A. I'm sorry.

12 Q. What did he -- oh, I'm sorry.

13 A. I mean, truthfully, word for word, I'm not sure.

14 Q. Did he say he had done anything?

15 A. No.

16 Q. Well, then what was he apologizing for?

17 A. Because she made these allegations.

18 Q. And did the police take a statement from you about
19 either of these cases, a written statement?

20 A. I don't remember. I had so many people talk to me.

21 Q. Okay. And so you don't remember whether you signed a
22 statement or not?

23 A. Uh-uh (negative).

24 Q. Okay. Thank you.

25 THE COURT: Any redirect?

1 **REDIRECT EXAMINATION**

2 **BY MS. BARWICK:**

3 Q. You said he was drunk, right?

4 A. Yes, ma'am.

5 Q. He was drunk and he tried to come in with you first,
6 right, before he went in the room with Gabby?

7 A. I don't recall that.

8 Q. You don't recall telling Gabby that he tried to come
9 in with you first before he went in there?

10 MR. QUINN: Object.

11 THE COURT: What's your objection?

12 MR. QUINN: Outside the scope of cross-
13 examination.

14 THE COURT: I overrule the objection.

15 A. No, I don't remember. That was three years ago. I
16 don't recall that.

17 Q. You don't remember your husband trying to come in with
18 you before going into your daughter's room and these
19 allegations being made?

20 A. No.

21 MS. BARWICK: No further questions.

22 THE COURT: Thank you, ma'am. You may step down
23 from the witness stand.

24 MS. BARWICK: Your Honor, may she be excused?

25 THE COURT: Any objection to this witness being

1 excused?

2 MR. QUINN: None.

3 THE COURT: Without objection. The witness may
4 be excused. The State may call its next witness.

5 MS. BARWICK: The State would call Michelle
6 Gerald, DSS worker.

7 THE CLERK: Place your left hand on the bible and
8 raise your right hand.

9 Do you solemnly swear or affirm the testimony you're
10 about to give is the truth, the whole truth and nothing but
11 the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Have a seat. State your name for the
14 record, please.

15 THE WITNESS: Michelle Gerald.

16 **MICHELLE GERALD,**

17 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

18 **DIRECT EXAMINATION**

19 **BY MS. BARWICK:**

20 Q. Ms. Gerald, where do you work?

21 A. Pickens County Department of Social Services.

22 Q. And how long have you worked there?

23 A. Five years.

24 Q. What's your current position there?

25 A. Child Protective Services Investigator.

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1 Q. How long have you been doing that? Since you've been
2 at DSS, right?

3 A. Yes.

4 Q. Okay. And do you have any kind of supervisor at all
5 at DSS?

6 A. No, I do not.

7 Q. Were you the case worker on Mr. and Ms. Peters' two
8 children?

9 A. Yes.

10 Q. Gabriel Peters and MacKenzie Peters, right?

11 A. That's correct.

12 Q. Okay. After the initial allegations came from **Minor #1**

13 **Minor #1** did you sit down and meet with Mr. and Mrs. Peters?

14 A. I did.

15 Q. Okay. Do you remember when you met with them?

16 A. My initial contact date was actually on April 29th,
17 2009.

18 Q. Okay. So this would have been before the other girl
19 came forward that you met with them?

20 A. Actually, it was within twenty-four hours of her
21 making her disclosure to her family and law enforcement.
22 We also received a report because of his children being in
23 his home.

24 Q. I think I might have confused you with my question.

25 A. Okay.

1 Q. Did you know that a second report had been made by
2 another victim?

3 A. No, I did not.

4 Q. Okay. So when you met with them, you didn't know
5 about the second victim?

6 A. No, I did not.

7 Q. Where did you meet with them?

8 A. At their residence.

9 Q. Okay. Who was there when you met with them?

10 A. Initially, Mrs. Peters was at home alone with
11 MacKenzie. And then before leaving the home, Gabriel
12 Peters and Mr. Peters arrived at the residence.

13 Q. After these allegations came out, what did DSS tell
14 Mr. and Mrs. Peters about the Defendant having contact with
15 the children?

16 A. What is customary in cases of this nature, we usually
17 put a safety plan in place to state that there's to be no
18 unsupervised contact with his own children. Or there was
19 to be no overnight visitation of any other children in
20 their home.

21 Q. Okay. Did you speak with Ms. Peters?

22 A. Yes, I did.

23 Q. I apologize. Did Ms. Peters tell you what Minor #1 had
24 told her?

25 A. Yes.

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1 Q. And what did Ms. Peters tell you [Minor #1] told her?

2 MR. QUINN: Objection. That's hearsay.

3 MS. BARWICK: Your Honor, it's a prior
4 inconsistent statement.

5 MR. QUINN: Not by the Defendant. She's
6 impeaching her own witness.

7 MS. BARWICK: I can do that.

8 THE COURT: I'll allow the question. Overruled.

9 MS. BARWICK: Thank you, Your Honor.

10 Q. What did Ms. Peters say [Minor #1] told her about
11 the abuse?

12 A. Mrs. Peters stated ---

13 Q. About the touching in specific?

14 A. Mrs. Peters said that [Minor #1] woke her in the middle of
15 the night and told her that Mark had touched her vagina.

16 Q. So she actually said, touched her vagina?

17 A. Yes.

18 Q. Okay. And I see you're looking down. Are those your
19 notes you took from that conversation?

20 A. Yes, they are.

21 Q. So I just want to make sure I ask you everything
22 before I let you go. Did you question Ms. Peters why she
23 didn't call law enforcement or the parents? Did she say
24 whether or not she did?

25 A. She stated she did not call law enforcement or

1 [Minor #1] parents.

2 Q. Back on that date, did Ms. Peters say how long they'd
3 been together and how long they'd been married?

4 A. She reported to me that they have been together for
5 twenty-two years, been married for fourteen years.

6 Q. And that was taken how many years ago?

7 A. 2009.

8 Q. So really they've been together for twenty-four years,
9 been married for sixteen?

10 A. Yes.

11 Q. Did Ms. Peters tell you about her financial status and
12 how this would affect her?

13 A. Yes.

14 Q. What did she say?

15 A. I thought I had it highlighted.

16 Q. It might be on your second page, first paragraph, last
17 line?

18 A. Oh, here it is. She stated she would be in a mess.
19 She does not work. She would not be able to handle the
20 household expenses.

21 MS. BARWICK: No further questions.

22 THE COURT: Cross-examination.

23 **CROSS-EXAMINATION**

24 **BY MR. QUINN:**

25 Q. DSS never took this matter to court, did they?

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1 A. No, sir.

2 Q. So there's not an order from a Judge approving what
3 you've described as a safety plan about no contact, is
4 there?

5 A. A safety plan is standard.

6 Q. Right. Well, let's try my question. There's no order
7 from a Judge making this safety plan required, is there?

8 A. No.

9 Q. And I know you're referring to your notes. You spoke
10 with Ms. Peters apparently on April 29th at 3:52. Is that
11 about right?

12 A. That's correct.

13 Q. And you dictated your notes on May 1st, three days
14 later?

15 A. That's correct.

16 Q. At 8:46 in the morning?

17 A. Yes.

18 Q. Did you verbatim take notes as you were speaking to
19 her?

20 A. I did.

21 Q. And do you have those?

22 A. The handwritten notes?

23 Q. Yes?

24 A. I do not.

25 Q. Did you tape record the conversation?

1 A. I did not.

2 Q. Thank you.

3 MR. QUINN: I don't have any more questions.

4 THE COURT: Any redirect?

5 MS. BARWICK: No, sir, Your Honor.

6 THE COURT: Thank you, ma'am. You may step down.

7 MS. BARWICK: May the witness be excused?

8 THE COURT: Without objection, the witness may be
9 excused.

10 May I see the attorneys just for a moment, please?

11 (WHEREUPON, Ms. Barwick and Mr. Quinn approached the
12 bar.)

13 THE COURT: Mr. Foreman, ladies and gentlemen,
14 after talking with the attorneys, as far as scheduling, I
15 think we're going to need to break a little earlier today.
16 Normally, we'd go to five-thirty or so. But because of
17 scheduling conflicts, we need to break now.

18 While you were out earlier we did -- we were able to
19 resolve some matters. I think, for sure, we'll be finished
20 with this case by tomorrow. So it won't run into Thursday,
21 I'm confident. I'm going to let you go for the evening.
22 We've got some more matters we need to take care of
23 concerning some legal issues this afternoon, perhaps first
24 thing in the morning some other matters for the week of
25 Court that I need to take care. So rather than having you

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1 MR. QUINN: Yes, sir. Thank you.

2 THE COURT: Is the State ready?

3 MS. BARWICK: Yes, sir, Your Honor.

4 THE COURT: If our jury's ready, you can have
5 them come in, Mr. Evans.

6 THE BAILIFF: They're not quite ready.

7 THE COURT: Okay. We can wait on them.

8 (WHEREUPON, the jury entered the open court at
9 approximately 9:47 a.m.)

10 THE COURT: Good morning, ladies and gentlemen.
11 We're now ready to proceed with the trial of the case.

12 Solicitor, you may call your next witness.

13 MS. BARWICK: The State would call Shauna
14 Galloway-Williams to the stand.

15 THE CLERK: Place your left hand on the bible and
16 raise your right hand.

17 Do you solemnly swear or affirm the testimony you're
18 about to give is the truth, the whole truth and nothing but
19 the truth, so help you God?

20 THE WITNESS: Yes.

21 THE CLERK: Have a seat. State your name for the
22 record, please.

23 THE WITNESS: Shauna Galloway-Williams.

24 **SHAUNA GALLOWAY-WILLIAMS,**

25 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

1 **DIRECT EXAMINATION**

2 **BY MS. BARWICK:**

3 Q. Ms. Galloway-Williams, where do you work?

4 A. I am the Executive Director of the Julie Valentine
5 Center.

6 Q. Okay. And what is the Julie Valentine Center?

7 A. The Julie Valentine Center was formerly known as the
8 Greenville Rape Crisis and Child Abuse Center until this
9 year, we changed our name. And the Center is a child abuse
10 and sexual assault recovery center. We provide services
11 for children, adults and families who've been impacted by
12 sexual abuse, sexual assault, child abuse.

13 Q. And how long have you been working there?

14 A. I have been working in some capacity or another with
15 the Center for seven years. I've been acting as Director
16 for about three.

17 Q. Okay. And what do your duties entail as the Director?

18 A. Well, as the Director, I do a little bit of
19 everything. I obviously oversee all the operations of the
20 Center, including the fiscal management, programmatic
21 management. I also continue to do some clinical work,
22 which means that I conduct forensic interviews. And I also
23 supervise the clinical staff, as well as the forensic
24 interviewers.

25 Q. Okay. You said forensic interviews, what exactly are

1 those?

2 A. Forensic interviews are investigative interviews.

3 They're fact-finding interviews that are conducted with
4 children where there are allegations of abuse and neglect.

5 And we conduct those at our Center.

6 Q. And a Forensic interview wasn't done in this case,
7 right?

8 A. Not as far as I know.

9 Q. At your Center?

10 A. No.

11 Q. And you've never actually met with either of the
12 children involved in this case, right?

13 A. No.

14 Q. What kind of educational background do you have?

15 A. I'm a Licensed Professional Counselor here in the
16 State of South Carolina. I have a Bachelor's Degree in
17 psychology, as well as a Master's Degree in Counseling.

18 Q. And what kind of specific training have you had as far
19 as counseling children that are victims of sexual abuse or
20 their family members?

21 A. Most of my training has been in specifically working
22 with children and families where there are allegations of
23 abuse and neglect. I've had -- most recently, most of my
24 training has focused on forensic interviewing, which ties
25 in directly to sexual abuse, child abuse, and I've had more

1 than a hundred hours of skills-based training in that area,
2 in addition to numerous other trainings and conferences.

3 Q. Do you have any special license or certificates to
4 counsel in South Carolina?

5 A. I'm a Licensed Professional Counselor.

6 Q. I understand. Have you ever been qualified as an
7 expert in court as being a counselor to children who have
8 been victims of child sexual abuse or their family members?

9 A. Yes.

10 Q. And how many times have you been qualified in court
11 for that?

12 A. I've been qualified in Criminal Court eleven times;
13 I've also been qualified in Family Court thirty times or
14 more. And both of those have been in Greenville and
15 Pickens Counties, in the Thirteenth Circuit.

16 MS. BARWICK: Your Honor, at this time the State
17 would move Ms. Shaunaway -- Shaunaway -- Shauna Galloway-
18 Williams into evidence as an expert.

19 THE COURT: In what field?

20 MS. BARWICK: I'm sorry, Your Honor. In the
21 field of counseling children who are victims of sexual
22 abuse and their family members.

23 THE COURT: Any objection or any voir dire of the
24 witness?

25 MR. QUINN: Both, Your Honor, voir dire first, if

1 I might.

2 THE COURT: All right, sir.

3 VOIR DIRE EXAMINATION

4 BY MR. QUINN:

5 Q. When you say you've previously been qualified, have
6 you ever been qualified in a case where you didn't meet
7 with the children or any of the parties involved?

8 A. Yes.

9 Q. How many times?

10 A. At least one other time in General Sessions.

11 MR. QUINN: I don't have any further voir dire.

12 THE COURT: Any objection to the qualifications
13 of the witness as an expert?

14 MR. QUINN: Yes. I do not believe she's
15 qualified to testify in this case, because she's not able
16 to assist this jury with any question before them, as she
17 has not met any of the people involved in the case. And as
18 I believe the standard for a juror -- I'm sorry, for an
19 expert, they may testify to scientific, technical or other
20 specialized knowledge that will assist the trier of fact to
21 understand the evidence or determine the fact at issue.
22 She is not aware of any of the evidence in the case or any
23 of the facts in issue.

24 THE COURT: What is the nature of her testimony
25 being offered, Solicitor? How can she assist the jury?

1 MS. BARWICK: She can assist the jury in
2 understanding why children delay in disclosing or make
3 partial disclosures. She can also assist the jury in
4 understanding the accidental disclosures. She will talk to
5 them about how these children disclosed. She will also
6 talk about some the things -- why children don't disclose
7 at first and why it's taken a couple of months.

8 THE COURT: All right. Well, weighing the
9 *Crawford* -- excuse me, counsel analysis as really set forth
10 more recently than the *Watson Ford* case, I find that the
11 witness is qualified as an expert and has the requisite
12 knowledge and skill that qualifies an expert in child
13 counseling, based upon her education and experience. I
14 further find that the subject matter in this particular
15 case would be beyond the ordinary knowledge of a juror
16 requiring expert explanation of some of the factors that
17 will certainly come into play in this particular case. I
18 believe the testimony being offered would be reliable based
19 upon the expertise of the witness. I will allow the
20 testimony over your objection. You certainly can cross-
21 examine the witness, Mr. Quinn.

22 You may proceed, Solicitor.

23 MS. BARWICK: Thank you, Your Honor.

24 Q. Has the Solicitor's Office paid you to be here today?

25 A. No.

1 Q. Who pays your salary? I know that's a little bit of a
2 personal question?

3 A. The Julie Valentine Center pays my salary.

4 Q. Okay. Are you here because you're under a subpoena
5 today to be here?

6 A. Yes.

7 Q. That being said, can you tell the jury a little bit
8 about delayed disclosure. And, you know, what's the
9 significance of that and why children delay their
10 disclosure?

11 A. Okay. First off, what's meant by delayed disclosure
12 is when a child does not tell about something happening
13 right away. That's one of the biggest questions that I
14 think people ask is, why don't children tell right after
15 something has happened. The vast majority of children
16 don't. The statistics say that about eighty percent of
17 children don't tell right after something has happened, and
18 there are lots of reasons for that, but the main reason
19 that children report, and even adults who've been abused as
20 children report, is fear. And there are lots of things
21 that they fear. They fear consequences to themselves.
22 They fear that they might get in trouble. They fear that
23 the person that has committed the act against them may get
24 in trouble. They fear what may happen to their family.
25 There are lots of things that children fear losing. They

1 may lose the relationship with this person. Most children
2 when they're abused are abused by someone that they know,
3 they love and they trust. And so although they may the
4 abuse to stop, they don't necessarily want to lose all of
5 those other things that are tied into that, like that
6 relationship with that person. So there are lots of things
7 that they fear. And some of those fears are real and some
8 of those are not necessarily things that have been told to
9 them. Children may also delay disclosure because of
10 threats. They may have been directly threatened or they
11 may have been indirectly threatened. The fact that most of
12 these acts are committed by an adult on a child is an
13 indirect threat in and of itself. Adults always have more
14 power over a child, no matter what role they're in. We
15 teach our children to do what adults tell them to do. And
16 so just by the nature of this act being committed by an
17 adult on a child creates a power differential that a lot of
18 times can have a significant impact on the child. The
19 child may also have really been threatened. This person
20 may have threatened to do something to them, to their
21 family. There's also the indirect threat of, you know, a
22 child may have seen this person be violent or aggressive
23 towards somewhere else and they may internalize that as
24 something that may then happen to them if they tell. So
25 there are a lot of reasons.

1 Q. I know you said something about relationships, and
2 that they fear that they'll lose one of those
3 relationships. What about, say, an eight-year-old or a
4 thirteen-year-old, what kind of relationships are they
5 fearing may be lost because of a disclosure?

6 A. You know, for children, their most important
7 relationships are those with their family, their immediate
8 family, but also their friends. For children, that can be
9 the most important thing in their lives, you know, their
10 peers, and the people that they spend the most time with.
11 And like I said, a lot of times these acts are committed by
12 someone that they're close with and they spend time with
13 and they fear losing any of those relationships. Whether
14 that be, you know, in an instance if it's someone that is a
15 teacher or a leader in their community or church, they fear
16 the loss of being able to participate in that type of
17 group. If it is a family friend, they fear the loss of
18 being able to spend time with that friend or the other
19 friends associated with that. And so that can have a
20 significant impact on whether a child is able to tell or
21 feels confident enough to tell about what's happening.

22 Q. In your experience, have any of the children feared
23 things like people at school finding out or ---

24 MR. QUINN: Objection to the leading nature of
25 the question, particularly to an expert witness.

1 THE COURT: I sustain the objection. Rephrase
2 your question, if you would, please?

3 Q. Do children fear the repercussions at school after a
4 disclosure?

5 MR. QUINN: Objection. That's the same question
6 and it's still leading.

7 MS. BARWICK: I didn't say is that correct or
8 anything. She can answer yes or no.

9 THE COURT: I'll overrule your objection. I
10 believe she's clarified it.

11 Q. Do -- now I forgot how I asked it. Do children at
12 school sometimes fear repercussions of their disclosure?

13 A. Well, in general, I mean, I think children fear that
14 other people are going to find out that this has happened.
15 When a child's been abused, that's something that is done
16 in secrecy. It is something that is embarrassing. Most of
17 the children feel guilt, responsibility and shame about
18 that. It's not something they want other people to know.
19 And for children, their peer group is very important and
20 they worry about what they're going to know or what they're
21 going to tell other people, and that can have a significant
22 impact on their ability to share information.

23 Q. What is meant by an accidental disclosure?

24 A. Accidental disclosures are really what we see more
25 times than not with children. Most children delay

1 disclosure. That means they don't tell right away. And,
2 particularly, with younger children what we see is
3 accidental disclosure. That means they haven't sat down
4 and purposefully and intentionally decided that they're
5 going to tell what happened. Either someone asks them a
6 question because they've noticed that there's a change in
7 behavior or in their mood. Or in the case with younger
8 children, a lot of times, it's a behavior that they're
9 displaying that doesn't appear to be within their
10 developmental level. So, for instance, if you have a
11 younger child who's generally happy-go-lucky, easy-going
12 and all of a sudden they're angry and their mood changes
13 and they're having mood swings and a parent asks them
14 what's going on, they might then tell or they might give a
15 little piece of something to kind of test and see what will
16 happen next. So that's really an accidental disclosure.
17 Q. Okay. So if I'm hear you correct, you're saying that
18 for an accidental disclosure to happen, there has to be
19 some kind of triggering event?

20 MR. QUINN: Objection to the leading nature of
21 the question.

22 THE COURT: I sustain the objection.

23 MS. BARWICK: I'll move on.

24 Q. What about time, how does time affect a disclosure?

25 A. Well, we talk about disclosure being a process. So

1 time plays into that in that we don't expect that,
2 particularly with a child who's delayed disclosure and when
3 there's an accidental disclosure, we don't expect that when
4 they finally do tell, that we're going to get all of the
5 details and all of the specifics right away. Generally,
6 what happens is a child will give a bit of information, and
7 then they'll give a little bit more, and over time, they
8 may give even more than that. Particularly with younger
9 children. As children get older, they begin to have a
10 better understanding of what happened to them. So, for
11 instance, if you have a five or six-year-old who was
12 sexually abused, their understanding of what happened to
13 them as a five and six-year-old is going to be different
14 than when they're twelve. When they're twelve, they may be
15 entering puberty and they have a better understanding of
16 what sexual behavior is, and so they're going to have a
17 better understanding of the gravity and the nature of what
18 happened to them. And they also have better cognitive and
19 language abilities to be able to describe that. So we
20 expect that over time the disclosure may become broader,
21 more specific, which kind of sounds contradictory, but
22 broader in the sense that they're able to give more detail
23 and understanding to it. And then more specific in that
24 they have the language skills to say what has happened.
25 Q. When you say language skills, what do you exactly

1 mean?

2 A. Meaning that they have the words to describe what's
3 happened. That's another reason why a lot of times
4 children don't tell is because they know something's
5 happened to them, they just don't know how to say that it's
6 happened. For children that have no sexual knowledge, they
7 don't know how to talk about sex. And what's happening to
8 them is sexual abuse. And so they don't have those
9 language -- they don't have the words to describe that and
10 that's what I mean by that. Over time, children come to
11 understand that and they develop those skills. What we all
12 can talk about now and how we understand it is very
13 different than when we were five, six, seven, eight years
14 old.

15 Q. And can you tell the jury a little bit more about the
16 partial disclosure?

17 A. About partial disclosure?

18 Q. Yes. How common is that?

19 A. Well, we commonly refer to that as partial disclosure
20 or tentative disclosure. And what that means is, you know,
21 a lot of times when we see a child during a forensic
22 interview or when they first make that accidental
23 disclosure, if someone first starts asking them the
24 questions, they're in this tentative state where they're
25 telling certain things, and they're sort of testing the

1 waters to see what's going to happen next. And they may
2 not be doing that, again, consciously or intentionally.
3 That's just how it is. You know, it's a safety, safety net
4 for them. So they may say -- give you some details, but
5 may not give you all of the specifics. And unless the
6 children are asked directly, sometimes they're not going to
7 give us those details or those pieces of information that
8 we think we need to be able to substantiate that the abuse
9 has occurred. Does that make sense?

10 Q. Yes. Say the perpetrator is part of their life, how
11 would that affect disclosure?

12 A. Well, again, that goes back to the relationship
13 dynamics. And if there were any fears or threats,
14 certainly that could have an impact on whether a child
15 feels safe or secure to tell. If they are fearful of that
16 person, the closer in proximity or the more often they see
17 that person, that could discourage them from telling. So
18 over time and space, you know, the more space and distance
19 between the child and the person that's committed this act
20 on them and the more time that has lapsed, you can expect
21 that the child may be able to provide more information
22 about what's happened and to do that with more confidence
23 than they did previously.

24 Q. If the perpetrator is removed from the child's life,
25 would that affect the disclosure process at all?

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1 A. It can. And it can affect it two ways. But, you
2 know, one of the recommendations that we as clinicians, as
3 forensic interviewers and counselors, whenever there's been
4 an allegation of child abuse, we immediately recommend that
5 there be no contact with that person. And one of the
6 reasons for that is -- the primary reason is for safety, to
7 make sure that the child is not in any sort of imminent
8 danger or risk of being abused again. But we also do that
9 so that we do give the child the opportunity to be able to
10 increase that comfort level, to remove that fear or that
11 threat if that's there. And so sometimes you can expect
12 that the child is going to, like we said earlier, be able
13 to tell more. On the flip side of that, if this child is
14 very close to this person and this is a significant loss to
15 the family, to their friends, sometimes we can expect that
16 children might recant or take their statements back. And
17 so the research shows it on both ends.

18 Q. In your experience, is it common or uncommon for
19 children to be sexually abused by somebody they know and
20 trust?

21 A. Yeah. It's very common, more likely than not, about
22 eighty percent of the time, children are being abused by
23 someone they know, they love and they trust.

24 Q. Can you tell the jury a little bit about the
25 difference between core and contextual details?

1 A. Sure. One of the things when we are looking at
2 children's disclosures and their statements, particularly
3 when we're doing forensic interviews, we're looking at the
4 type of details they're able to give us. And we talk about
5 those in terms of core and contextual. So the core details
6 are the who, what, when, those details that, you know, are
7 just those very specific details that would match up with
8 the timing and other things that may be part of the
9 investigation. The contextual details are those sensory
10 details that we're looking for that would distinguish what
11 a child has experience from what they've been told. So,
12 for instance, the contextual details would be the things
13 that the child remembers hearing, seeing, saying, smelling.
14 It would also be their perception of what happened, the
15 kind of things that, you know, they would not have been
16 able to give you those kind of details based on something
17 someone told them. It's their experience. So those are
18 contextual details.

19 Q. Do children remember the same way adults remember
20 things or recall things?

21 A. Well, I mean, over time our memory changes and how
22 we're able to recall things changes. And so the answer is
23 yes and no. And the way that we are looking at memory
24 again goes back to that core and contextual assessment and
25 the details they're able to provide. You know, we would

1 expect at certain ages that children would be able to give
2 more core details than others and at certain times they'd
3 be able to give different types of contextual details.

4 Q. In your experience with children, are they
5 sophisticated liars?

6 A. What I generally say about children and lying is that
7 children lie, adults lie too. And they generally lie to
8 keep themselves out of trouble. Kids worry that they're
9 going to get in trouble. They don't want to be in trouble
10 and they will do anything to keep themselves from getting
11 out of trouble. So, yes, children lie. But they're not
12 sophisticated liars. And what that means is, they're not
13 able to keep a lie up. They're not able to anticipate what
14 that next question's going to be that they're going to be
15 caught in the lie. So, again, it goes back to looking at
16 core and contextual details. Children aren't able to give
17 all that sensory detail to their lies and to be able to
18 keep that up, so they're not sophisticated liars.

19 Q. Will you please tell the jury a little bit about
20 grooming and what that entails?

21 A. Okay. When we talk about grooming, we talk about --
22 what that means is that someone's sort of preparing a child
23 for abuse or sort of testing the waters with them. Like I
24 said, most children are abused by someone they know, they
25 love and they trust. And so when we talk about grooming,

1 we'd be talking about this person who is already in their
2 life, trying to gain that trust of the child. And so
3 grooming could involve, you know, really developing that
4 relationship with the child, giving the child gifts, giving
5 the child special attention, doing things to really engage
6 a child in their life and to gaining that trust. The other
7 things that could be going on with grooming are sort of
8 getting children comfortable with touch, not just sexual
9 touch, but general touch. You know, it is not uncommon for
10 adults to touch children. We tickle them, we pat their
11 backs, you know, we pat them on the shoulder. When we're
12 talking about grooming, someone who is really trying to
13 gain that child's trust may be doing those kind of touches
14 and then taking it one step further. So, you know,
15 tickling the child, but tickling them and getting close to
16 the private area or, you know, doing it under their clothes
17 or something that, again, is sort of testing the waters to
18 see how close they can get to that -- how that child's
19 going to respond.

20 Q. And in your experience have you ever dealt with
21 children who pretended to be asleep while the sexual abuse
22 happened?

23 A. I had this happen just the other day. A lot of times,
24 children will say that they were asleep when the abuse
25 happens, which most times means they were lying in bed,

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1 they were supposed to be asleep, they were trying to go to
2 sleep, but this incident occurred. So, again, it goes back
3 to their -- how children communicate and their
4 understanding of what's happening, but that's also a
5 protective way of -- for children. It lessens their
6 responsibility. If they say they were asleep, then they're
7 not responsible for what happened. I mean, even though we
8 know that they're not responsible for the abuse. But if
9 they say they're asleep then they had, you know, they did
10 not engage in that behavior. So it's not uncommon for that
11 to happen. And it is one of those things that we as
12 interviewers are aware of and we see it all the time.

13 MS. BARWICK: No further questions.

14 THE COURT: You may cross-examine the witness.

15 **CROSS-EXAMINATION**

16 **BY MR. QUINN:**

17 Q. And so if a forensic interview had been done in this
18 case, that would have been helpful?

19 A. It depends. I mean, I'd have to know the
20 circumstances of the case.

21 Q. Right. You'd actually know something about this case
22 if a forensic interview had been done by you. Isn't that
23 right?

24 A. If I had done the forensic interview, I certainly
25 would know all the details about the case.

1 Q. All right. Do you even know the names of the children
2 involved in this case?

3 A. I don't know the names of the children.

4 Q. And just some of the things you say, you say eighty
5 percent of children don't tell right away?

6 A. Yes.

7 Q. But I assume you believe those eighty percent are
8 telling the truth?

9 A. The eighty percent that disclose?

10 Q. Right?

11 A. Well, that number is based on a research study where
12 they look at children who've disclosed. And of those,
13 those are the children who have been in substantiated
14 cases. So that particular statistic, yes. Those children
15 were substantiated cases of abuse.

16 Q. So all those children are telling the truth?

17 A. In that particular study, yes.

18 Q. And twenty percent of them didn't tell right away. Is
19 that right?

20 A. Eight percent didn't tell right away.

21 Q. I'm sorry. I got it backwards. So twenty percent
22 reported immediately?

23 A. Yes, or soon after.

24 Q. And those twenty percent were telling the truth?

25 A. Yeah. And so in that study there were -- a hundred

1 percent of those individual cases were substantiated cases.

2 And so eighty percent of those did not disclose right away

3 and twenty percent did.

4 Q. So are you saying that the studies say the twenty

5 percent who tell right away are telling the truth?

6 A. What I'm saying, in that particular study, their

7 sample size was taken from children who had substantiated

8 cases of abuse. So there were no children in that study

9 that did not have substantiated cases of abuse.

10 Q. And you talked about delayed reporting. And I believe

11 you said that of the children who tell right away, they're

12 telling the truth?

13 A. No, I did not say that. I don't think the word truth

14 came out of my mouth at all while I was on the stand.

15 Q. Okay. So they may or may not be telling the truth if

16 they tell right away?

17 A. If a child tells right away?

18 Q. Right?

19 A. Yeah. The timing of their disclosure does not

20 determine whether the child's telling the truth or not.

21 And my role as an interviewer or as a counselor is not to

22 determine whether that child is telling the truth or not.

23 Q. And I have been provided -- and let me show you a copy

24 of what, I believe, is your resume?

25 A. That's my CV, yes.

1 Q. And is that, as far as you know, accurate?

2 A. Yes. With the exception of the grammatical errors on
3 there.

4 Q. But I assume it was prepared by you?

5 A. It was.

6 Q. And you worked for six years at the Greenville Mental
7 Health Center. Is that right?

8 A. Yes.

9 Q. And as part of it, you describe that you participated
10 in multi-disciplinary staffing with law enforcement and the
11 Department of Social Services. Is that correct?

12 A. That is correct.

13 Q. And did you, in this case, participate in multi-
14 disciplinary staffing?

15 A. In which case?

16 Q. This case, the one we're trying here today?

17 A. Not that I'm aware of.

18 Q. And also the CV lists seminars or training you've been
19 to. Is that correct?

20 A. Yes.

21 Q. And did you attend a seminar in 2008 titled, Child
22 Abuse Summit, Working Together to Improve Child Abuse
23 Prosecutions?

24 A. Yes.

25 Q. That was put on by the National College of District

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1 Attorneys?

2 A. Yes.

3 Q. And is it fair to say that your agency generally works
4 with the prosecution?

5 A. We work with the Solicitor's Office, with the
6 Department of Social Services and with law enforcement. We
7 are a liaison between those agencies as a child advocacy
8 center, that's our goal.

9 MR. QUINN: I don't have any other questions.

10 THE COURT: Any redirect?

11 MS. BARWICK: No, sir, Your Honor.

12 THE COURT: Thank you, Ms. Galloway-Williams.

13 You may step down.

14 MS. BARWICK: May she be excused?

15 THE COURT: Any objection to this witness being
16 excused?

17 MR. QUINN: None.

18 THE COURT: Thank you, ma'am.

19 You may call your next witness.

20 MS. BARWICK: Your Honor, at this time, the State
21 rests.

22 THE COURT: Mr. Foreman, ladies and gentlemen, we
23 have some legal matters we need to take care of at this
24 time. I'll ask, if you would, go back to your jury room.
25 Don't discuss the case, of course. We'll call you back in

1 just a few minutes when we get these matters taken care of.

2 (WHEREUPON, the jury exited the open court at
3 approximately 10:16 a.m.)

4 THE BAILIFF: The door's closed, Your Honor.

5 THE COURT: All right. Mr. Quinn, I need to talk
6 with your client about his rights to testify and so forth.
7 Any other matters we need to take care of before then?

8 MR. QUINN: Not necessarily before, but I will
9 make a motion for a directed verdict ---

10 THE COURT: All right.

11 MR. QUINN: --- based on the general
12 insufficiency of the State's evidence.

13 THE COURT: All right. I believe, at this stage,
14 of course, I must view all of the evidence in the light
15 most favorable to the non-moving party. I find that
16 there's certainly not a non-existence of evidence. I
17 believe this is a jury matter. Based upon the evidence
18 I've heard, I respectfully deny your motion.

19 Any other matters we need to take care of?

20 MR. QUINN: Nothing from us.

21 THE COURT: If you would come forward, Mr.
22 Peters, with your attorney. If you'd just stand right
23 there beside him.

24 (WHEREUPON, Mr. Quinn and the Defendant approached the
25 bar.)

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1 approximately 10:34 a.m.)

2 THE COURT: Mr. Quinn, you may call your first
3 witness.

4 MR. QUINN: I call Mark Peters to the stand.

5 THE COURT: Sir, if you would come around please,
6 place your left hand on the bible, raise your right hand
7 and be sworn.

8 WITNESS: Yes, sir.

9 THE COURT: Do you swear or affirm the testimony
10 you're about to give the Court will be the truth, the whole
11 truth and nothing but the truth, so help you God?

12 WITNESS: Yes, sir.

13 THE COURT: If you would, please, be seated.
14 Make sure you pull up to the mic so the jury can hear you.

15 MARK STANLEY PETERS,

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. QUINN:

19 Q. Mark, I need for to talk nice and loud so everybody
20 can hear you, okay?

21 A. Yes, sir.

22 Q. Tell me your full name so I can hear loud you're going
23 to talk?

24 A. Mark Stanley Peters.

25 Q. Good. And Mark, do you know Minor #1

- 1 A. Yes, I do.
- 2 Q. And do you know about how long you've known her?
- 3 A. Counting up till today, about six years.
- 4 Q. And did she first come to know your family?
- 5 A. Through my oldest daughter, Gabriella, they were
- 6 friends. They both attended Gettys Middle School together.
- 7 Before that, they attended Crosswell Elementary.
- 8 Q. And how old is Gabrielle today?
- 9 A. Right now, Gabrielle is fourteen.
- 10 Q. And do you know how old **Minor #1** is today?
- 11 A. Sixteen -- no, fifteen, I believe.
- 12 Q. And so in 2009 or '10 they were both two years
- 13 younger, probably?
- 14 A. Yes, sir.
- 15 Q. And what was the relationship between your daughter
- 16 and **Minor #1**?
- 17 A. Very, very close friends. Did everything together,
- 18 hung out numerous times, almost non-stop. Very, very close
- 19 friends.
- 20 Q. And when you say hung out, where would they hang out?
- 21 A. My house.
- 22 Q. And where was your house in relation to the Jones'
- 23 house?
- 24 A. About four miles away. Eight to ten minute trip by
- 25 car.

1 Q. And would [Minor #1] spend the night at your house?

2 A. Numerous times.

3 Q. When you say numerous times, can you give me and the
4 jury an idea of how many times per week, per month, however
5 you want to describe it?

6 A. Per week, probably three, sometimes four days during
7 the week and every weekend. So anywhere from five to six
8 -- five nights a week.

9 Q. And if y'all were out-of-town, did [Minor #1] attend with
10 you or ---

11 A. Most of the time, yes.

12 Q. Now, you've heard -- we've been discussing a weekend
13 in April of 2009.

14 A. Yes, sir.

15 Q. Do you remember, was [Minor #1] with you that weekend?

16 A. Yes, she was.

17 Q. And what did y'all do and who was it that did that
18 together?

19 A. That was the weekend that we drove over to Gettys
20 Middle School and took her out of school, her and
21 Gabrielle, out of school early that day, went up to
22 Carowinds on the border of North and South Carolina. Went
23 to Carowinds Friday, spent the night at the Sleep Inn
24 across the street, got up the following morning, spent the
25 day again at Carowinds. And I'm a little vague on whether

1 we came home Saturday night or we came home Sunday morning.

2 I'm not a hundred percent sure. But I know we spent Friday

3 and Saturday at Carowinds and then came home either

4 Saturday night or Sunday morning and then spent the day at

5 the house.

6 Q. And who is we?

7 A. We being my wife, my youngest daughter MacKenzie, my

8 oldest daughter Gabriella, and **Minor #1**

9 Q. And did all of you come back to the house together?

10 A. Yes.

11 Q. And stayed at your house?

12 A. Yes.

13 Q. And do you remember what y'all did on that Sunday?

14 A. The typical things that we did every Sunday. The

15 girls usually just hung out together. Gabby and **Minor #1**

16 would hang out in their room, watch movies, play games, go

17 outside and play. It was April so I can't remember if

18 there was any swimming going on at that time. I'm not sure

19 if it was warm enough. It probably was for them.

20 Typically, on a Sunday, they would hang out together, do

21 their kind of thing. My youngest daughter would hang out

22 either by herself or with her friends next door. And my

23 wife and I would go about our business on Sunday.

24 Typically, my Sunday consisted of watching sports and doing

25 other odds and ends around the house.

1 Q. And do you remember this specific Sunday in April that
2 we're talking about, I believe the date's the 27th or the
3 26th, but do you remember specifically what you did on that
4 Sunday?

5 A. That Sunday, yeah. I got up, did some -- went out,
6 did some yard work, hung out inside with my wife.
7 Basically just watched television, basically. I think
8 during that time it was April, so it was early baseball
9 season, so I'm sure I was watching Sunday Baseball or some
10 other sporting event on television. That's one of my
11 favorite pastimes.

12 Q. And were you drinking?

13 A. Yes, sir, I was.

14 Q. And did y'all attend church that day?

15 A. I did not, no. I did not.

16 Q. Do you know if anybody left to go to church?

17 A. Yes, the girls left to go to church with the
18 neighbors. That was a frequent thing on Sunday. They
19 would go to church with the neighbor's grandmother.

20 Q. And when you say the girls, which of the girls would
21 go?

22 A. Minor #1 Gabriella, sometimes MacKenzie, depending on
23 who went. I can't remember if MacKenzie went that day or
24 not. I believe she did. I'm not a hundred percent sure.
25 They would go next door, the next door neighbor's

1 grandmother would come and pick them up, take them to
2 church. They would come back, and then come back over to
3 the house.

4 Q. And at some point did the children go to bed?

5 A. Yes.

6 Q. And do you know about what time that might have been?

7 A. Typically, on a school night, my wife would usually
8 send them to bed somewhere around 9:00, 9:30, somewhere in
9 that area, because they had to get up and go to school the
10 next day.

11 Q. And were you involved in sending them to bed that
12 night?

13 A. No, I don't -- at that age, they take care of
14 themselves. They go into the room and turn on the
15 television and watch TV until they fall asleep.

16 Q. And we've heard the description of Gabby's room and
17 Jackie's room being on the same level and you having a
18 bedroom on a different level of the house?

19 A. That is correct.

20 Q. So that is accurate?

21 A. Yes, sir.

22 Q. And where was your bed?

23 A. My bedroom was downstairs. If you walked -- from the
24 upstairs, there's a set of stairs that walk downstairs to a
25 landing, then there was three more stairs and that brought

1 you into what we called our living room down there. It had
2 a fireplace. Next to that was basically what we referred
3 to as the playroom. It had a table for the kids,
4 particularly MacKenzie and her friends to draw on. There
5 was other games and toys down there. Off to the left of
6 that, as you face that room, there was a doorway in there.
7 There was a middle room, that was my bedroom. Off to the
8 side of that was a walk-in closet. And a room attached to
9 that was a room that was basically used as my office, which
10 had a half a bath. Off the side of it is where we had the
11 washer and dryer.

12 Q. After the children went to bed, did you have any other
13 contact with **Minor #1** that night?

14 A. After they went to bed, no. I believe that -- like,
15 when they went to bed, I believe that when I went
16 downstairs I went in to say goodnight to them, which is
17 typical. And I headed back downstairs. When they went in
18 their room for the night, I went in to say good night and
19 then went downstairs, I believe is ...

20 Q. And what's the next time you talked to anyone?

21 A. I remember talking to my wife. She came downstairs.
22 I have no idea what time it was. Other than that, I didn't
23 have a conversation with anybody until the next morning.

24 Q. Do you remember seeing any of the children after they
25 went to bed that night?

1 A. No.

2 Q. And you say you'd been drinking, how much had you been
3 drinking?

4 A. I don't know. Just when I -- I don't have any idea
5 how much. I probably started drinking somewhere around
6 12:00, 1:00 in the afternoon and just throughout the course
7 of the day, whether working out in the yard or doing
8 whatever it was, just coming back and forth and getting a
9 beer as ...

10 Q. And were you impaired in any way or did the alcohol
11 affect you in any way?

12 A. No. This is something that, you know, I don't drink
13 alcohol at all. This is just something I just do on the
14 weekends on a regular basis, just drink beer. Not to the
15 point where I was impaired, where I didn't know where I was
16 or what I was doing, anything like that.

17 Q. So would you describe yourself as drunk?

18 A. Not drunk. Intoxicated, but not drunk. It's kind of
19 hard for me to quantify drunk versus intoxicated. It's
20 very hard for a person to tell themselves whether or not --
21 you know, somebody else can perceive you as being
22 intoxicated. Somebody else can perceive you as being
23 drunk. I don't know how it works for everybody else, but
24 when I drink, I don't perceive myself as being drunk. I
25 just -- I have beer and when it's time for me to -- when

1 I'm done watching sports or whatever, when it's time for me
2 to go lay down, that's basically what I go do. I'll say
3 goodnight to my wife, my youngest daughter, my oldest
4 daughter, and then go downstairs and go to bed.

5 Q. And so were you competent to remember what happened
6 that night?

7 A. Yes, sir.

8 Q. Was there -- and I'm sorry. Let me back up and finish
9 **Minor #1** Did you go up to **Minor #1** in Gabby's room that
10 night?

11 A. Not after I went downstairs.

12 Q. Did you put your hands on **Minor #1** that night?

13 A. Absolutely not.

14 Q. Did you enter her room unclothed?

15 A. Absolutely not.

16 Q. Missing any of your clothing?

17 A. I'd wear shorts to bed in April in the house. I
18 basically run around in a pair of shorts, flip-flops,
19 typically. Sometimes I'll have a T-shirt on and sometimes
20 I won't. It depends on what part of the day, depends if
21 I've been outside or what I've been doing during the course
22 of the day.

23 Q. Do you know why **Minor #1** would make up such a story as
24 she has told here?

25 A. No. I have no idea why she would come forth and say

1 what she said.

2 Q. Let's talk about **Minor #2**

3 A. Or possibly -- could I back that up. Possibly, the
4 only reason I can think of that **Minor #1** would do anything
5 like this would possibly be for attention from people
6 outside of our family. As I said before, as I stated
7 before, **Minor #1** spent a lot of time at our house. As my
8 wife testified earlier yesterday, she referred to my wife
9 as mom. She'd much rather spend time at our house than to
10 spend time at her own house. On several occasions she told
11 my wife, myself and my daughter that she did not have a
12 good home life, didn't like staying over there, liked being
13 over to our house, liked hanging out with my daughter,
14 liked doing the things that we did. I had a very good job
15 at that time, was making very good money, was able to
16 provide my children and any of their friends with just
17 about anything they wanted when they came over, be it
18 cookout, be it using the pool, be it taking them to the
19 store, anything along those lines.

20 Q. Now, let's talk about **Minor #2**

21 A. Yes, sir.

22 Q. Did you know **Minor #2**

23 A. Yes, I did.

24 Q. And how long was she friends with somebody in your
25 family?

1 A. She was friends with Gabriella, I mean, -- excuse me
2 -- she was friends with my youngest daughter MacKenzie,
3 probably from the day they moved in next door. We moved in
4 -- I don't know exactly the time frame, but we moved in in
5 2005 to our house. The Gunters moved in next door, I want
6 to say, four to six months later, occupied that. They had
7 five daughters at that time, Kaitlyn being the oldest,
8 Haley being second, **Minor #2** being third, Kelsey being fourth
9 and then they had the young baby together.

10 Q. And you said they moved in next door. How far was it
11 from your house to theirs?

12 A. Eighty yards, maybe. There was my house and then I
13 had a front yard that was probably about thirty yards to a
14 fence, fenced-in area, where my property ended and his
15 property began. There was a gate there. The property was
16 previously owned by a father who lived in the house that we
17 owned, and his daughter and son-in-law lived next door in
18 the house that the Gunters bought. To the gate was about
19 thirty yards and then probably about another thirty yards.
20 Once you opened up the gate, and got into the yard, it was
21 about another thirty yards to their front porch.

22 Q. And how often would MacKenzie and **Minor #2** play
23 together?

24 A. Almost daily.

25 Q. And did they attend school together, do you know?

1 A. [Minor #2] was a little bit older, but, yes, she did go to
2 the same elementary school, yes, Crosswell Elementary.

3 Q. And did [Minor #2] ever spend the night at your house?

4 A. Oh, numerous times.

5 Q. And, again, can you give the jury an idea of what
6 numerous times means?

7 A. [Minor #2] would come over almost every weekend. It got
8 to be a regular habit with my daughter. She would come and
9 ask if the girls could come over and play. [Minor #2] would
10 come over -- [Minor #2] and Haley were closer friends with
11 MacKenzie. Kaitlyn was closer friends with Gabriella.
12 Kelsey was the youngest. She was very, very good friends.
13 It started out with Kelsey and MacKenzie being very, very
14 close. They used to argue quite a bit as six and five-
15 year-olds would do. [Minor #2] would be more compassionate
16 toward MacKenzie because she was older. So she would hang
17 out and they would do things that didn't require so much
18 conflict.

19 Q. And so how often did [Minor #2] spend the night at your
20 house?

21 A. I'm going to say at least twice a week.

22 Q. Was there ever -- and because I don't have a date,
23 it's difficult, but was there ever an incident where [Minor #2]
24 woke you or your wife up in the middle of the night?

25 A. Didn't wake me up. I remember an incident one night

1 of some ruckus going on upstairs. I'm not a very deep
2 sleeper. If I hear something like a door open, I'll wake
3 up. I heard the door upstairs. I believe I got up out of
4 bed and went upstairs to see what was going on at that
5 particular time. My wife told me, she said, I've got this
6 handled. She's just had a bad dream and now she's talking
7 about she wants to -- she was scared. I believe she was
8 scared or whatever. But, basically, anything to do with
9 the kids like that, I allowed her to handle. I was more
10 the overseer and the provider. My own kids, I would take
11 care of disciplining my own kids, but, you know, the other
12 kids basically if they came over and they did something
13 that was wrong or something that was not correct, basically
14 we would send them home. We'd say, okay, that's enough
15 playing for today. You go home or you go back over to your
16 house. You kids -- my kids stay over here and then we'll
17 take it from there.

18 Q. Prior to her going to your wife that night, had you
19 had any contact with **Minor #2**

20 A. No.

21 Q. Were you accused at that time of doing anything with
22 **Minor #2**

23 A. Absolutely not.

24 Q. And when did that accusation come up?

25 A. The accusation with **Minor #2** didn't come forth until I

1 was arrested for the accusation that [Minor #1] brought
2 up in May. And I can tell you that based on the testimony
3 that I heard, this time frame of after Thanksgiving and
4 before Christmas, I can tell you that after that time frame
5 that [Minor #2] had spent the night over to my house. She
6 stopped spending the night over to our house when the first
7 allegations came out that [Minor #1] came forth with. After
8 that, obviously when it became public, and it came in the
9 newspaper and on television, the Gunters decided,
10 evidently, not to sent their children over there anymore to
11 play.

12 Q. And how often did [Minor #2] stay between the night that
13 she went to Jackie and the accusation?

14 A. I don't have a, I don't have an exact number. You
15 know, I never really quantified that, never really kept
16 track of any type of how long. I know it was just -- it
17 was business as usual was basically how it went. MacKenzie
18 would come home from school, she would come home from
19 school, they would be like -- MacKenzie would be like, can
20 I go over there to play? Or they'd be like, can I come
21 over here to play? They had -- they seemed to favor coming
22 to our house because we had a bigger house, we had the
23 upstairs, plus the downstairs was basically for the
24 children. There's a fireplace down there and there was a
25 television down there. There was a wii entertainment

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1 center down there. There was a playroom down there with
2 all kinds of games, toys, pencils, pens, coloring books,
3 the type of activities that kids that age like to do. Plus
4 there was access, there was access through two doors
5 downstairs. There was access through the door, which I
6 refer to as living room downstairs. There was also access
7 through another door, what we referred to as my office.

8 Q. But did it change at all?

9 A. No.

10 Q. Did you, at any time, that night or any other time,
11 perform any improper act on **Minor #2**

12 A. Absolutely not.

13 Q. Touch her in any improper way?

14 A. No. I played with all the kids. You know, any kid
15 that came over to my house that was a friend of my
16 children, we did all the things. We swam together. We
17 fooled around in the pool. We, you know, did the kind of
18 things that people do in the pool, but nothing, nothing
19 inappropriate and nothing out of context.

20 Q. Did you commit a lewd act on either **Minor #1** or on
21 **Minor #2**

22 A. Absolutely not.

23 Q. Answer any questions the Solicitor may have.

24 **CROSS-EXAMINATION**

25 **BY MS. BARWICK:**

1 Q. That night the incident happened with Minor #1

2 about what time do you think you went to bed that night?

3 A. I don't have a recollection of that. I would just --

4 my bedtime is never based on a time. I know I had to get

5 up the next morning and go to my office and assume my

6 duties as salesman.

7 Q. What time would you wake up to do that?

8 A. That would depend. I had no wake-up time. There was

9 no time that I had to be in my office. It could be any

10 time between 7:00 in the morning, 8:00 in the morning.

11 Q. Okay. You don't remember if it was just after

12 daylight or a couple of hours into the evening or anything

13 like that, what time you went to bed?

14 A. I would say later in the evening, because I was

15 watching sports. I believe that I was watching -- I

16 believe the Yankees were on that night. I believe that

17 when my wife went to bed, she left me up watching the

18 Yankee game.

19 Q. And baseball games, I don't know much about baseball.

20 I'm more of a football fan. But baseball games end

21 probably, what, like 10:30, 11:00 at night?

22 A. It depends on when they started. It was an 8:00 game.

23 It was probably a Sunday evening game so it probably got

24 over about -- it was either a 7:00 or 8:00 game, so it

25 probably game so it probably got over somewhere in the area

1 of 10:00, 10:30.

2 Q. And you went to bed after that?

3 A. Yes, ma'am.

4 Q. So would it be fair to say you went somewhere between
5 ten and midnight?

6 A. That would be a close estimate, yes.

7 Q. [Minor #2] and [Minor #1] they loved coming over to your
8 house, didn't they?

9 A. Yes, ma'am.

10 Q. And they loved your daughters, they liked to play with
11 them?

12 A. Yes, ma'am.

13 Q. They probably even loved you, right?

14 A. They respected me. I don't know if they loved me.
15 You know, they had their own parents, but the love was more
16 directed towards my wife as the nurturing one.

17 Q. Do you think they were fond of you?

18 A. I believe so.

19 Q. Playing in a pool, you played with them often, right?

20 A. Yeah. Anytime we were in the pool we just, you know,
21 diving for sticks, that kind of stuff.

22 Q. And you would wrestle with the girls?

23 A. Absolutely. I treated the kids that came over to my
24 house the same way that I would treat my daughters.

25 Q. So you would wrestle with [Minor #1] and [Minor #2]

- 1 A. In the pool, I would pick them up and toss -- not
2 [Minor #1] so much, [Minor #1] was a little bit older and a little
3 bit bigger for me to pick up and toss around. [Minor #2]
4 Haley, Kelsey, even Kaitlyn, a little bit, ---
5 Q. Right.
6 A. --- they'd come over and we would -- I would pick them
7 up from the shallow end and toss them into the deep end,
8 that kind of stuff.
9 Q. And they would be over there all the time, right?
10 A. Basically, yes.
11 Q. Okay. Almost like part of your family?
12 A. Almost.
13 Q. And would it be fair to say [Minor #1] actually enjoyed
14 coming to your house more than she enjoyed being at her own
15 home?
16 A. That's the perception that I got.
17 Q. Okay. When you say -- I was a little confused on
18 drunk and intoxicated and I want to make sure our
19 definitions are the same. What's the difference between
20 being drunk and intoxicated?
21 A. How somebody perceives you, besides yourself. You
22 know, you can't very well say to yourself, okay, I was
23 drunk.
24 Q. Right.
25 A. I drank beer that day.

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1 Q. Okay. Well, on a scale of one to ten, ten being
2 passed out, drunk, one being sober, what do you think you
3 were?

4 A. A six maybe.

5 Q. A six, okay.

6 A. Six and a half, maybe seven.

7 Q. Do you often get to a six or a seven around your
8 children or their friends?

9 A. Not often. On the weekends was my time to relax. I
10 ran a business out of my office in the basement. I
11 traveled quite a bit, I had the territory in South
12 Carolina, North Carolina, Georgia, Alabama, Mississippi,
13 and Florida.

14 Q. I was just asking about how often you would get drunk
15 or intoxicated in front of your children?

16 A. I don't have a time -- I don't have a number for that.

17 Q. Okay. And would you say you were -- that you were a
18 regular drinker, you'd have a few beers everyday?

19 A. Yes, ma'am.

20 Q. So would you also agree with me that I guess the more
21 someone drinks the more they can drink without being
22 intoxicated?

23 A. I believe so, yes. I believe ---

24 Q. Your tolerance gets up?

25 A. Yes, ma'am.

- 1 Q. And you and your wife are still married?
- 2 A. That's correct.
- 3 Q. Not separated?
- 4 A. Legally. We are separated. We don't live together
- 5 anymore.
- 6 Q. Up until two months ago, you didn't live together?
- 7 A. Four months ago. I believe the date that I moved out
- 8 of the apartment was August 21st, per agreement between ---
- 9 Q. Moved out of which apartment, ---
- 10 A. --- me and her.
- 11 Q. --- her apartment?
- 12 A. Yes, ma'am.
- 13 Q. Didn't you write your GPS company and tell them on
- 14 August 26th that you were changing your address to your
- 15 wife's address?
- 16 A. No, ma'am.
- 17 Q. You didn't change it to **Minor #1** Breeze?
- 18 A. No, ma'am.
- 19 Q. If I were to show you the email that you sent to your
- 20 ---
- 21 A. That I changed it to **Minor #1** -- it was originally **[REDACTED]**
- 22 **[REDACTED]**?
- 23 Q. It was Tangerine Avenue.
- 24 A. No, ma'am. That was my mailing address. If you look
- 25 at the documentation, the documentation for -- that's

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1 presented in front of you says that I resided -- that my
2 calling for Shadow Track Industries was [REDACTED]

3 [REDACTED]

4 Q. And that's your wife's address?

5 A. Yes, ma'am. That was my wife's apartment, yes.

6 Q. And you were living with your wife for about eight
7 months this year?

8 A. I was staying there. We had no idea how long I was
9 going to be in Florida. Originally, we were supposed to
10 move to New York, that's where I was -- we were going to
11 live. I was going to live with my parents and she was
12 going to live across the river. She decided that she
13 wanted to go to Florida. I went to my ---

14 Q. Sir, I'm going to stop you because you aren't really
15 answering my question.

16 A. Sure.

17 Q. My question is merely were you living there for eight
18 months during the year of 2011. And you ---

19 A. Yes.

20 Q. You said staying for eight months?

21 A. Yes.

22 Q. Well, I don't want to -- I'll use your terminology.
23 So you were staying there for eight months in 2011?

24 A. Yes, ma'am.

25 Q. And your wife came downstairs that night [REDACTED] Minor #1

1 disclosed, right?

2 A. Yes, ma'am.

3 Q. And she slapped you?

4 A. So she said.

5 Q. She didn't slap you?

6 A. I have no recollection of being slapped.

7 Q. You told your attorney that you weren't intoxicated
8 past the point of recollection. You don't remember being
9 slapped?

10 A. No, ma'am.

11 Q. Okay. And you came upstairs after she told you what
12 the allegations were, right?

13 A. I came back upstairs, yeah. She came downstairs and
14 from my recollection, yelled at me and said, you know, what
15 are you doing? And I said absolutely nothing.

16 Q. If you'll just answer yes or no and then explain
17 yourself.

18 A. Sure.

19 Q. Did you come back upstairs?

20 A. Yes.

21 Q. So you came back upstairs?

22 A. Yes.

23 Q. After your wife told you what **Minor #1** had said?

24 A. No, she didn't tell me what **Minor #1** had said, she just
25 came downstairs and said, what's going on? And I said,

1 nothing. After that, I don't believe that she had a
2 conversation. I would think -- yes, she did. At that
3 point she did say something about [Minor #1] said that you came
4 back upstairs without any clothes on.

5 Q. Okay. And she also told you that [Minor #1] disclosed
6 that you touched her on her privates?

7 A. No, ma'am. Not ---

8 Q. And then -- I'm sorry. I didn't mean to interrupt
9 you.

10 A. She did not.

11 Q. Okay. And then when you came back upstairs after your
12 wife told you that there had been allegations made that you
13 were naked, you came into your wife's room?

14 A. Yes.

15 Q. And there was an argument between you and your wife?

16 A. Yes.

17 Q. And then you felt it was appropriate to go to the
18 bathroom and use the bathroom in front of a girl who had
19 just seen you naked, with the door open?

20 A. No, ma'am. That was not the intention at all. The
21 intention was just to go to the bathroom.

22 Q. With the door open?

23 A. My bathroom -- the bathroom in the master bedroom sits
24 off to the side. The bed sits over here. When you walk
25 into the bathroom, you have to take a right in order to use

- 1 the bathroom ---
- 2 Q. How many bathrooms --
- 3 A. --- so it's not visible.
- 4 Q. I'm sorry.
- 5 A. Okay.
- 6 Q. How many bathrooms are in your house?
- 7 A. There's three.
- 8 Q. Three bathrooms?
- 9 A. Two and a half.
- 10 Q. Two and a half. Where are they?
- 11 A. There's one in the master bedroom, there's one in the
- 12 hallway and there's one downstairs off of my office.
- 13 Q. And you knew that Minor #1 had just made an accusation
- 14 that she saw you naked upstairs?
- 15 A. No, I didn't know she made an accusation. She had
- 16 just said something about that I had walked back upstairs.
- 17 Q. Naked?
- 18 A. That's what I was told, yes.
- 19 Q. By your wife? So you're upstairs knowing that an
- 20 accusation has been made that you were walking around
- 21 naked, right?
- 22 A. I had just woken -- yes, ma'am.
- 23 Q. Okay.
- 24 A. I had just woken up from sleeping, as well, yes.
- 25 Q. Okay. So you're upstairs after this accusation and

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1 you go to the bathroom with the door open?

2 A. Not consciously, just went to the bathroom.

3 Q. With the door open?

4 A. If that's -- I was told ---

5 Q. In front of a child?

6 A. --- that the bathroom door was open, yes. And my wife
7 got up and closed it.

8 Q. You just said the door was open.

9 A. That's what I was told, that the door was open.

10 Q. Okay. And you came upstairs for the purpose of making
11 her to stop talking. You didn't want her talking anymore
12 about that, did you?

13 A. No. That's not true.

14 Q. And not only did you not want her to tell anymore
15 about what happened, you offered to drive her home, didn't
16 you?

17 A. She was visibly upset and she was in there. And as I
18 walked upstairs I asked what was going on. And my wife had
19 said something to the effect of do you want me to take you
20 home? And she was like, no. And then I offered, I said,
21 well, do you want to go home? And she said, no. I want to
22 stay here.

23 Q. But you offered to take her home?

24 A. I asked her if she wanted to go home.

25 Q. You offered to take her home, did you not?

- 1 A. No, I asked her if she wanted to go home.
- 2 Q. And you offered -- not only did you offer to take her
3 home, you offered to take her home at a level six
4 intoxication, didn't you?
- 5 A. That's your words, ma'am.
- 6 Q. And you apologized to her, too, didn't you?
- 7 A. I did not, ma'am. No, ma'am.
- 8 Q. You didn't apologize to her?
- 9 A. No, I did not.
- 10 Q. Your wife said you apologized to her?
- 11 A. My wife did not say that.
- 12 Q. Your wife didn't testify yesterday that you
13 apologized?
- 14 A. My wife said that she apologized.
- 15 Q. Your wife also said yesterday, and we can review this
16 if you need to ---
- 17 A. If you need to do that.
- 18 Q. Okay. We'll do that. And you never, after this
19 accusation had been made about you running around upstairs
20 naked, you never talked to her parents about it, did you?
- 21 A. Whose parents?
- 22 Q. Minor #1 parents?
- 23 A. Absolutely not.
- 24 Q. Wouldn't you want the parents of one of your child's
25 friends to come and tell you if something like that had

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1 happened?

2 A. My daughter would come and tell me, just as Minor #1

3 did.

4 Q. That's not my question. Wouldn't you want someone to

5 come and tell you that that had happened to one of your

6 daughters?

7 A. No. My daughter would have told me.

8 Q. You wouldn't want them to?

9 A. My daughter would have told me.

10 Q. I don't care ---

11 A. You want, you want -- you're asking me if I want the

12 other parents to come to me ---

13 Q. Yes.

14 A. --- and tell me that?

15 Q. Yes.

16 A. I already would have known.

17 Q. Okay.

18 A. At that particular ---

19 Q. Answer my question because you're not. Would you have

20 wanted your child's friend's parents to come tell you if

21 the same thing had happened to your child, yes or no?

22 A. I'm going to say -- I'm not sure what ---

23 MS. BARWICK: Judge, can you instruct him to

24 answer the question.

25 THE COURT: Do you understand the question, sir?

1 MR. PETERS: Not completely, Your Honor.

2 THE COURT: All right. State your question
3 again, please?

4 Q. If the same thing had happened to your daughter, would
5 you not want her friend's parents to come tell you about
6 what happened?

7 A. I wouldn't expect that, no.

8 Q. Would you want that to happen?

9 A. I'm not sure how to answer that question.

10 MS. BARWICK: Judge.

11 THE COURT: Well, he's answered it. He said he
12 wasn't sure how to answer that.

13 Q. Is that because you don't want to answer that?

14 A. No, ma'am.

15 Q. Okay. And **Minor #2** you came upstairs, too, when she
16 started crying, wanting to go home, didn't you?

17 A. Yes. To see what was going on, yes.

18 Q. Even though you normally don't deal with children like
19 that, your wife does?

20 A. Yeah. I heard the door open so I came upstairs to see
21 what was going on.

22 Q. Okay. And you came upstairs and she wanted to go
23 home, didn't she?

24 A. I believe that's what she was talking to my wife
25 about. I believe that when I came upstairs, most of the

1 conversation was over. I came upstairs and asked my wife
2 what was going on. And she said that she had a bad dream
3 and that she wanted to go home.

4 Q. And you said all of this commotion woke you up, so you
5 could have heard her crying hysterically, couldn't you?

6 A. Could I have heard it? By the time I came upstairs,
7 she was upstairs already.

8 Q. Okay. So when she was upstairs, did you not hear her
9 crying hysterically?

10 A. No, ma'am, I did not.

11 Q. And did you not hear her asking repeatedly to go home?

12 A. No, ma'am, I did not.

13 Q. And did you not call her parents to take her home or
14 for you to walk her across to take her home?

15 A. Absolutely not. Her older sister was there.

16 Q. Okay. So nobody made any attempt to take this child
17 home when she requested repeated?

18 A. She didn't request repeatedly. That's, that's ---

19 Q. How do you know ---

20 A. Huh?

21 Q. --- if you weren't up there?

22 A. Well, you're saying that she requested that
23 repeatedly. You're asking me to say something, yes, that I
24 have no knowledge of.

25 Q. Did anyone offer to take this child home?

1 A. Did anyone offer to take her home?

2 Q. Yes?

3 A. No. My wife told her that she could not take her home
4 at that time.

5 Q. And not only did no one take her home, no one told her
6 parents about it the next day, from your household?

7 A. There was nothing to tell. She wanted to go home.

8 The next day -- she stayed over the next day. She didn't
9 go home the next day. If you remember the testimony from
10 yesterday, she woke up the next day, started playing with
11 MacKenzie, put on her bathing suit, went down to the pool
12 as she normally does. She did not request to go home the
13 following morning when she got up.

14 Q. Isn't it true that the reason that you did not take
15 her home was because you didn't want her to tell her
16 parents about this?

17 A. No.

18 Q. And isn't it true that you had your wife lie for you
19 yesterday?

20 A. No.

21 Q. And isn't it true --

22 A. My wife doesn't lie -- would not lie for me. Believe
23 me.

24 Q. And isn't it true that you didn't want anyone to find
25 out about this and that's why you came upstairs every time?

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1 A. No.

2 MS. BARWICK: No further questions.

3 THE COURT: Any redirect?

4 MR. QUINN: None. Thank you.

5 THE COURT: Thank you, sir. You may step down.

6 MR. PETERS: Thank you, Your Honor.

7 MR. QUINN: And the Defense would rest.

8 THE COURT: Anything in reply?

9 MS. BARWICK: No, sir.

10 THE COURT: Mr. Foreman, ladies and gentlemen,
11 I'll ask you if you would go back to your jury room. We
12 will be ready for the closing statements from the attorneys
13 in just a few moments. I'll then instruct you on the law.
14 We'll take just a short break to get those matters in
15 order. Again, I remind you not to discuss the case while
16 you're back. If you will, retire to your jury room.
17 Everyone else please remain seated.

18 (WHEREUPON, the jury exited the open court at
19 approximately 11:07 a.m.)

20 THE BAILIFF: The door's closed, Your Honor.

21 THE COURT: All right. Any other matters or
22 special requests for charge? We'll have a verdict form for
23 you to look at in just a moment before we give it to the
24 jury?

25 MR. QUINN: Your Honor, at this time, I'd renew

1 my motion for a directed verdict on the same grounds as
2 earlier stated.

3 THE COURT: All right. Again, I believe the
4 evidence is a jury issue as to determine the facts in this
5 case. I respectfully deny your motions.

6 MR. QUINN: And, Your Honor, I don't have a
7 specific request on the charge. I assume, and if I'm wrong
8 about that, I would ask the Court to warn me, but I assume
9 your charge would be similar to Judge Anderson's proposed
10 charge on Lewd Act that was set out -- the elements are set
11 out ---

12 THE COURT: It will do it. It might be
13 streamlined a little bit, but it will substantially have
14 what will be there.

15 MR. QUINN: And, Your Honor, I would ask you to
16 charge as a lesser included offense, assault and battery of
17 the second degree, which is the Code Section 16-3-600. I
18 will tell the Court that obviously this is a novel issue
19 since this Statute has just been enacted. But I believe
20 that assault and battery in the second degree should be a
21 lesser included offense.

22 THE COURT: Solicitor, I'll be glad to hear from
23 you on the request for a lesser included offense.

24 MS. BARWICK: Judge, this crime happened well
25 before the new law even came into effect. And before the

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1 comes in?

2 MR. QUINN: No, sir. Thank you.

3 THE COURT: When they're ready, you can have them
4 come in, Mr. Evans.

5 (WHEREUPON, the jury entered the open court at
6 approximately 11:34 a.m.)

7 THE COURT: Mr. Foreman, ladies and gentlemen,
8 we've reached the stage of the trial now where the
9 attorneys can address you in their closing statements. I
10 told you earlier in opening statements, I also told you for
11 their closing statements, this is not evidence. The
12 evidence has been presented from the witness stand, from
13 the exhibits that have been made a part of the record.
14 While this is not evidence, I, again, urge you to listen
15 carefully as each of the attorneys address you and perhaps
16 give you some valuable insights to assist you in your
17 deliberations to take place soon. After they've addressed
18 you, I'll have an opportunity to instruct you on the law.
19 The case will then be yours to decide.

20 Mr. Quinn, you may address the jury in your closing
21 statement.

22 **CLOSING STATEMENT**

23 **BY MR. QUINN:**

24 Mr. Foreman, ladies and gentlemen of the jury, I
25 didn't think it could get any worse than it was yesterday

1 afternoon, and then this morning the State puts up Shauna
2 Galloway-Williams, who knows nothing about this case.
3 Can't even name the children who were involved in the case.
4 Hasn't done any forensic interviews, which she says are
5 important to learn about a case. Doesn't have any idea,
6 obviously, since she's never met them, if the children are
7 truth-tellers, if she's got questions about their ability
8 to recall, about whether they're recalling it accurately,
9 about whether any of the things she testifies to applies to
10 the case you twelve are supposed to be making a decision
11 on. She says that we do fact-finding investigations at
12 this child advocacy center; we do these forensic
13 interviews. Not in this case, they didn't. That's their
14 investigation. We didn't do it, so we're going to bring in
15 an expert who knows nothing about the case. The Solicitor
16 says, well, do we pay you? And she says, no. But then
17 does, under my questioning says, well, yeah, we work with
18 law enforcement. I go to their seminars. We are in a
19 multi-disciplinary agreement with law enforcement and DSS
20 and that's who we work with. But then her word was, we are
21 a liaison with law enforcement.

22 Two things about Ms. Galloway-Williams, other than she
23 doesn't know anything about this case, one is she tells you
24 children lie. She gets up and starts talking about all of
25 these studies, eighty percent of children report it right

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1 away, twenty percent of children don't. We have this thing
2 where they -- sometimes they tell us all of it at the
3 beginning and they're telling the truth. But if they hold
4 back, they're telling the truth. Everybody was telling the
5 truth in this case. And the Solicitor goes through with
6 her all these things; that there's a delay in reporting if
7 the child says she's asleep; there's no delay in reporting;
8 grooming. And what the Solicitor's going to want to do is
9 get up and say, that doesn't apply in this case. That's
10 why this child did this. That's why this child did that.

11 Now, the Judge is going to tell you, the Judge is the
12 judge of the law, and he already has told you in opening
13 statements, you're the judge of the facts. He's going to
14 tell you that the evidence comes from the witness stand,
15 not from the lawyers. I can't get up and start spouting
16 off evidence and just telling you these are the facts. You
17 may not have heard it before, but just trust me, this is
18 how it works. Well, that's what the Solicitor's going to
19 want to do. Her witness says, I don't know anything about
20 this case. So she's not applying any of these studies to
21 any of the people who have testified. She's not saying any
22 of the things that she knows about, applying any of the
23 people that you twelve have had the opportunity to see in
24 the last two days. So if the Solicitor tries to do it,
25 that's not evidence. It did not come from the witness

1 stand. There was no investigation by Shauna Galloway-
2 Williams.

3 The reason I say yesterday was so bad, is there was no
4 investigation by Detective Burgess. This is the
5 investigating officer for the Pickens County Sheriff's
6 Office, who has never met [Minor #1] She hasn't had
7 enough time apparently. Two years was apparently not
8 enough time to meet the victim in the case to decide
9 whether the victim was telling me the truth, telling me all
10 of the facts, whether I needed to go back for a subsequent
11 interview because it's a child, and maybe I need to talk to
12 her more than once. Do I need to go back to her and say,
13 look, we've heard information from other people in the
14 case. Can you tell me if they're telling me the truth?
15 Did this happen or is this something I need to look further
16 into. She hasn't even met [Minor #1] She goes by a
17 report somebody else does, gets a warrant, he gets
18 arrested, we're done. No interview of Mark Peters,
19 statement from Mark Peters, we're done.

20 She has at least met [Minor #2] and says, in my
21 examination, yes, there are things [Minor #2] testified to that
22 are not in the statement. So she did at least meet [Minor #2]
23 and we'll talk more about [Minor #2] And she says, well,
24 [Minor #2] dropped her head when she was talking to me. And
25 why do you think that meant she was telling the truth?

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1 That's how she knew. She met **Minor #2** once. Never met her a
2 second time, never talked to anybody about her, met her one
3 time, and she dropped her head.

4 Now, there are certain things that you can use to make
5 a decision. The biggest one is your common sense. I don't
6 know how many of you have children. As you know, we get
7 limited information out of them, and you can decide that as
8 jurors. I don't know how many of you have intimate contact
9 with children, whether they're in your home, but if you
10 were a child, I suspect you all were, dropping your head is
11 an indication of telling the truth? Maybe in the Pickens
12 County Sheriff's Office. But every kid I've ever known,
13 and I want you to decide whether every kid you've ever
14 know, if you say, did you do this and they go [indicating].
15 You know the answer is yes. Did you do that and they hang
16 their head. You're not thinking, oh, that poor child, I'm
17 accusing them wrongly. They're going to tell me the truth.
18 The first thing you think is, he raised his head up, he's
19 going to start lying to me or he's going to be crying and
20 saying, I should have told you the truth to start with.
21 But dropping their head, that's a ... That's the
22 investigation. **Minor #2** gave me a statement, it apparently
23 wasn't complete, but she dropped her head.

24 Now we have Jackie Peters to show up. It's an
25 interesting situation. In every case, there's always a

1 screwy little thing that I put a witness on the stand or
2 that anyone says, bring my witness down, put them on the
3 stand, the first thing I'm going to do is I'm going to have
4 my witness walk up here and on the Bible put their hand
5 down and swear to tell the truth and I'm going to put them
6 in the witness stand. That's my witness that I have just
7 sworn on the Bible, and then I'm going to call them a liar.
8 Why would I call a witness to tell jurors that are supposed
9 to make an important decision on Mark Peters' life, that
10 I'm putting a liar on the stand, because that's really what
11 she did. You don't honestly think the Solicitor wants you
12 to believe Jackie Peters, do you? She, in fact, said to
13 Mark this morning, the Solicitor, wasn't Jackie lying for
14 you? Well, it might be an interesting argument if I had
15 put Jackie up. If I'd gotten Jackie on the stand and said,
16 Jackie, tell the jury this story, tell the jury that story,
17 it might be an interesting argument then to say, well, the
18 Defense is lying to you. Look at what they put up, they
19 put up this whack-job, Jackie Peters. I didn't go anywhere
20 near Jackie Peters. The Solicitor put her on the stand. I
21 asked her two or three questions, I was done. Y'all decide
22 whether you want to believe Jackie Peters or not, but the
23 Solicitor doesn't. So what evidence that is supposed to
24 be, I have no earthly idea.

25 Apparently, much like Shauna Galloway-Williams, we're

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1 putting her up and you're supposed to decide -- well, just
2 apply it wherever you'd like. When -- the Solicitor may
3 get up and say, when Jackie helps me, she's telling the
4 truth. When she doesn't help me, she's lying, because
5 she's trying to help Mark. If she was trying to help Mark,
6 why didn't she just get up and say, I don't know. I don't
7 know what you're talking about. You're out of your mind.
8 That's all made up. You're crazy. She didn't say that.
9 But it's not our witness. Apparently, the Solicitor wanted
10 you to believe Jackie Peters is a liar. What do I care?
11 She's not my witness. I'm not asking you to believe her.
12 You can throw her testimony out. Why the Solicitor will
13 ever stand in front of you and say you should believe her,
14 we'll see. And if not, then how is that evidence? How
15 does that help you make a decision? If I just start
16 putting people up and say, you don't know anything about
17 this case, do you? Thank you very much. You don't know
18 anything about this case, do you? Thank you very much.
19 You're a liar, aren't you? Well, thank you very much.
20 That's the evidence. And how, as a lawyer, you put their
21 hand on the Bible and swear them to tell the truth when you
22 know they're not going to, you don't believe they're going
23 to ---

24 MS. BARWICK: Your Honor, I'm going to object to
25 a personal attacks like that.

1 THE COURT: I'll overrule your objection. I'll
2 allow him to make his argument to the jury.

3 CLOSING STATEMENT CONTINUED

4 BY MR. QUINN:

5 The next witness after Jackie Peters was the lady from
6 DSS, Michelle Gerald, I believe is right. And she got up
7 and said that Jackie's a liar, that Jackie didn't do --
8 Jackie told me this and we didn't believe her. I don't
9 remember exactly. But it was all the Jackie Peters case
10 yesterday. It had nothing to do with Mark.

11 Let's talk about what has to do with Mark. I told you
12 when we started we were going to try two cases and that
13 they were not going to be joined, that there are not really
14 any commonalities between these, except that supposedly
15 Mark Peters did two bad things. The Solicitor attempted to
16 say to the witnesses, the children, well, **Minor #1** don't you
17 know **Minor #2**. And she was, like, no, not really. I mean, I
18 sort of do, but she was somebody else's friend. I didn't
19 play with her. I didn't have much to do with her. **Minor #1**
20 and **Minor #2** weren't there together. These accusations
21 didn't happen at the same time, so you're going to be asked
22 to give two separate verdicts. The Judge, I suspect, will
23 give you two different forms, in fact, to say whether Mark
24 Peters is innocent or guilty of these charges. So,
25 unfortunately, we have to discuss them separately. So I'm

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1 going to start with [Minor #2] I have to start somewhere.
2 [Minor #2] doesn't make the allegation at the time
3 it supposedly happens. She doesn't even tell her sister.
4 She doesn't go home, which is next door, the next morning
5 and tell her parents. She doesn't use the phone in Gabby's
6 room to call across and say what happened. I believe
7 [Minor #2] even says she had a cell phone, and she didn't use
8 her cell phone to call her parents and tell them what
9 happened. She says she was afraid of Mark and that she was
10 angry or upset that she wasn't allowed to go home and that
11 Kaitlyn also says that her sister was scared and crying
12 hysterically. We were next door neighbors, a hundred yards
13 apart, and they wouldn't let us call.

14 Now, in your experience, common sense, and I asked
15 her, the children, Kaitlyn, did you go the next morning and
16 say to your parents, they wouldn't let us come home. They
17 wouldn't let us come home, they wouldn't let us call you.
18 We wanted to come home, they wouldn't let us call you.
19 Couldn't you walk out the bottom floor? Yeah, there's a
20 gate, go out the fence, go through the gate, right at my
21 parent's house. Did you wait until everybody was asleep to
22 call your parents? No. Did you wait until everybody was
23 asleep and walk out and go next door? No. It doesn't come
24 up. [Minor #2] continues to go to the house for months because
25 nobody really knows when this happened. The officer and

1 Detective Burgess tried to pin the child down by saying,
2 well, could it have been between these holidays? Could it
3 have been between these holidays? But nobody's got a date
4 for us. Nobody says exactly when it happened. But then
5 [Minor #2] continues to come over. No report from [Minor #2] No
6 report from Kaitlyn. This case came up because the arrest
7 happens with [Minor #1] and the dad, Mr. Gunter, finds
8 out about this. He's a next door neighbor. He's got
9 daughters, he's going to go to them and say, did something
10 happen, has this been a problem for you? Have you been
11 approached by this fellow? Have you been injured by this
12 fellow? He says he talked to all of his daughters. I'm
13 sure he did. He talked to Kaitlyn and he says Kaitlyn had
14 no expression. Why not? If Kaitlyn was hiding something
15 -- keep in mind, Kaitlyn was supposed to be protecting her
16 younger sister. If Kaitlyn is hiding something, why
17 doesn't she have an expression with her father? Why isn't
18 she a little worried that her father's going to yell at her
19 saying, why weren't you protecting your younger sister?
20 When this happened, why didn't you come tell me? She's a
21 baby. We'll forgive her, maybe or maybe not, but you're
22 her older sister. That's why we have you two together is
23 to care for each other and watch out for each other. Why
24 didn't you come and tell me within these months that have
25 gone on, when our daughters were still going over and

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1 nothing happened. But there is no report. Everyone agrees
2 that [Minor #2] report of what supposedly happened has things
3 that have been added to it, that she says things now
4 happened that didn't happen. And Mr. Gunter, under oath,
5 I'm sorry, says that he didn't believe he had said it was a
6 phase about not visiting, but then Detective Burgess says
7 that was the word he used. I don't know why [Minor #2] made up
8 any of this stuff. Thankfully, I don't have to prove it.

9 What I have to tell you is that the evidence does not
10 show beyond a reasonable doubt that this happened. That
11 there is, in fact, no evidence that this happened. The
12 only evidence that's going to be sent back to your jury
13 room are four pages of a diagram of the house. I'm going
14 to tell you that common sense would dictate that to get two
15 children to lie about something is real, real hard. But if
16 you anger the child by saying you can't do something,
17 wouldn't they the next morning, if not before, go to their
18 parents and say, they wouldn't let us come home. They
19 wouldn't let us even make a call, so that it wouldn't
20 happen again, so that they could feel safe and protected.
21 And if [Minor #2] in fact, if this happened, why wouldn't she
22 at least tell her sister? Why not tell anybody about that,
23 or the next morning what happened, so that Kaitlyn could be
24 protected? She doesn't even tell Kaitlyn for months. All
25 this Shauna Galloway-Williams, you don't tell your parents,

1 you're afraid of him, blah, blah, nothing about telling her
2 sister. Why not just tell her sister so they could be
3 protected.

4 The other thing about [Minor #2] recitation is, it
5 suddenly has details that were not in the original
6 statement that match up with [Minor #1] statement.
7 That's how this came out. Mr. Gunter reads about it. And
8 I believe his testimony was that he read it, that being
9 what he had found, to his daughters, more than once. I
10 think he said twice. Not that he read it twice, but twice
11 he said, I read it to my daughters. I read what Mr. Peters
12 was accused of. Since that time, [Minor #2] has added the
13 details that he touched my hair, which is what [Minor #1]
14 testifies to, and that he knelt on one knee next to me,
15 which is what [Minor #1] testifies to. And she adds that I
16 heard him breathing. None of that is in this statement to
17 the police when she does come forward and give any
18 statement. But now today, all of a sudden, she's matching
19 up to [Minor #1] How they learned of those details, I
20 have no earthly idea. Why those details match, why those
21 are the only things added, raises a reasonable doubt in a
22 person's mind. It makes them go, wait a second, it doesn't
23 sound right. There's something wrong here. That's what we
24 call a reasonable doubt. The Judge is going to tell you,
25 reasonable doubt is a doubt, it's a question, that makes

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1 you hesitate to act, that makes you go, wait a second,
2 there's something wrong.
3 [Minor #1] [Minor #1] on the floor in Gabby's room.
4 She describes it as she's laying on, and I believe her word
5 was pallet. She's laying on two blankets with a blanket
6 over her. So Mr. Peters supposedly comes in, kneels next
7 to her, and she doesn't know where the blanket went. So I
8 asked her specifically about the blanket. She didn't know
9 where it went. This is April, were you're covered with a
10 blanket? I think so, but now I don't know what happened.
11 It may not have been on me. And supposedly kneels next to
12 her with one hand that's touching her body and reaches
13 around with the other hand and is rubbing her stomach. And
14 I did not ask her which hands, and perhaps that was an
15 error. But however you're going to try to say that that
16 works out, it is an awkward, at best, proposition to lean
17 down and reach over. And considering her description of
18 the act was this with his fingers. My guess would be, and
19 that's all it is, is that his right hand would have been
20 toward her tail and his left hand would have been around on
21 her stomach, supposedly. So he's reaching down like this,
22 touching her. He does not, according to her, remove any of
23 her clothing, remove any of it aside, put his hands into
24 her pants or into her shorts. She does say that he put his
25 hand under her shirt and rubbed her stomach. That is not a

1 lewd act under our law. You will hear the Judge describe
2 what a lewd act is. That doesn't make it. This with the
3 fingers, unless there is some sexual connotation, it is a
4 lewd and lascivious act with the intention of gratifying
5 sexual desires, unless that is the reason, and if that act,
6 the moving of the fingers for a second, because she says,
7 I'm a light sleeper; I woke up as soon as he touched me; I
8 turned over quickly and said, leave me alone. That is the
9 act they want you to find Mark Peters guilty of beyond any
10 reasonable doubt as a lewd act on a child. She says leave
11 me alone. So what did he do when you said that? He left
12 me alone. Is there any prior difficulties between the two
13 of you? No. Now, she says on the witness stand, I was
14 uncomfortable earlier because he was wrestling with me.
15 That's not in her statement. There's not, in fact, any
16 evidence in her statement or anybody else's statement that
17 they'd been wrestling earlier in the evening or that she
18 had expressed any concerns about being uncomfortable about
19 it. He then supposedly comes back into the room naked.
20 I'm going to come back to that in just a second. She tells
21 nothing at school. Tells her mother what happened; this is
22 an immediate report. So under Shauna Galloway-Williams, I
23 don't know which one of these two girls in these studies is
24 not supposed to be telling the truth, the one who waited or
25 the one who told immediately, but apparently, there's a

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1 study for everything.

2 There's two big problems with Minor #1 recitation.

3 One is that there's no evidence. I hate to keep coming
4 back to that, but this is criminal court. In law school
5 they teach you about there's all kinds of evidence.

6 There's criminal law, civil law, family court, probate, but
7 then there's laws that don't come into a courtroom. We
8 call them God's law in one case and social law. It's just
9 things you're just not supposed to do, okay? You don't ask
10 a girl to the prom and then not show up. That's not a
11 criminal case, but it's a violation of a social agreement
12 that we have, okay? But there are certain things you don't
13 do, all right? You don't touch a child inappropriately.
14 You don't make comments to a child that are inappropriate.
15 You don't expose yourself to a child. That's
16 inappropriate. But that one actually crosses over into the
17 criminal law and then you could be found guilty of indecent
18 exposure. Well, they haven't charged him with indecent
19 exposure. They didn't bring that case to Court. He's
20 probably guilty of indecent exposure, but that case isn't
21 before you today. So don't go looking for something to
22 find him guilty of just because we had to be here and
23 listen to that lawyer, okay? Find him guilty only if it is
24 a lewd act on a minor. And being naked is not an act on
25 anybody. There's no touching, there's no violation. He

1 was in violation of social rules and perhaps indecent
2 exposure, but not of lewd act. So that does not apply or
3 comport with what the Judge is going to tell you the law
4 is.

5 I started by telling you that Mr. Peters is presumed
6 innocent. That in fact is higher than not guilty -- I'm
7 sorry, than not guilty. I said it right. Not guilty can
8 mean, well, he shouldn't have done that. That was stupid.
9 You know, what was he thinking? Innocent means nothing,
10 nothing, perfectly innocent. I'm innocent of being
11 somewhere else right now, okay? But if you didn't know
12 where I was, I may or may not be guilty. But the State has
13 what's called the burden of proof. And in case you think
14 I'm making these things up, listen to the Judge's charge.
15 The Judge is going to tell you about the burden of proof.
16 He's going to tell you the State is required to prove every
17 criminal case beyond a reasonable doubt by evidence, by
18 proof, that satisfies you beyond a reasonable doubt. You
19 heard the State's expert say children lie. That's the
20 State's case. It wasn't a witness I put up. That's their
21 witness that says children lie. It's easy in this case to
22 want to go out and say, you know, something happened,
23 something happened and so we're going to find him guilty.
24 But easy and right can be two different things.

25 In this case, there is no evidence involving Minor #2

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1 None. And the only statement that they give you, they're
2 suddenly going to start saying, well, just her word is
3 enough, has omissions and has additions, that suddenly just
4 match up with [Minor #1] statement perfectly. That's real
5 unlikely with children.

6 Let's assume something happened in [Minor #1] case. The
7 question then is whether it's a lewd act. Let's assume you
8 believe everything the State put up from [Minor #1] that he
9 touched her belly. Not a lewd act under our law. That he
10 touched her bottom or touched her vaginal area, I think is
11 the word the girl may have used or that I may have used in
12 questioning her, she is laying on her side, her left side,
13 according to her. So for him to have, as she said, he came
14 -- and I'm sorry, I'm jumping around -- he knelt behind
15 her, so he would have had to reach over her to touch her
16 stomach and he does this on her bottom near her vaginal
17 area for a second. He couldn't have touched her vagina
18 unless he had spread her legs in some fashion. That simply
19 is not possible if you are laying on your side asleep. If
20 you're laying on your side doing anything, and your legs
21 are together. He doesn't touch her under her clothes. He
22 doesn't remove her clothing. Doesn't, in fact, touch her
23 private areas; whatever you want to use that word to mean.
24 I think we all commonly know what it means and that's the
25 way that [Minor #1] described it. He did not, in fact, touch

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1 any of those areas, skin to skin, under her clothing, by
2 removing the clothing. It is simply not a lewd act. It's
3 not the same. Mark Peters is smart, but getting drunk with
4 kids in your house is about as dumb as a rock. He violated
5 the social compact that we should have when we trust our
6 children to go to somebody else's house. I understand
7 that. Hopefully, Mark understands that, and I feel certain
8 he does, because he's had to face you twelve. But your
9 verdict in this case, if you follow the law as the Judge is
10 going to give it to you, should be not guilty. There is no
11 evidence, other than children whose statements are
12 different today, who their own expert witness tells you may
13 lie. That expert might have been helpful if they had had
14 her meet the children. Maybe then we would know what she
15 thought about these particular children. Maybe if an
16 investigation had been done and **Minor #1** had been met by the
17 investigating officer or somebody had gone back to **Minor #2**
18 later and said, do you remember anything else about this?
19 Has anybody talked to you, has anybody suggested to you
20 what to say? But you don't have any of that. The evidence
21 is missing. Your verdict in both cases, because this is
22 two separate crimes, two separate cases, should be not
23 guilty.

24 THE COURT: Solicitor, you may address the jury
25 in your closing statement.

1 MS. BARWICK: Thank you, Your Honor. Mr Quinn.

2 CLOSING STATEMENT

3 BY MS. BARWICK:

4 It's just slightly good afternoon, not good morning.

5 The Defense's case I can sum up in one word. It's called a
6 red herring. I don't know if any of you have ever heard
7 about that. A red herring is a deliberate attempt to
8 divert attention, a deliberate attempt to divert attention.
9 And he's been feeding y'all red herrings like you're
10 dolphins.

11 This case is -- we're not here today to decide if Ms.
12 Shauanaway -- or Shauna Galloway-Williams should have done
13 a forensic interview. We're not here today to discuss
14 whether Ms. Burgess should have went out and spoken with
15 **Minor #1** We're not here today to judge who I decided to put
16 on the stand to testify. That's not why we're here today.
17 We're here today to discuss the Defendant's behavior. He's
18 the one on trial today. The children, despite Mr. Quinn's
19 better attempts, they're not on trial today or yesterday.
20 The parents of the victims, they're not on trial. The
21 Defendant's on trial. You have to decide when you go into
22 that jury room, did he touch these children or did he do
23 something with the body of these children, in an attempt to
24 arouse or appeal to his own lustful nature.

25 Is it lawful for a person over the age of fourteen to

1 willfully and lewdly commit or attempt to commit a lewd or
2 lascivious act, that's a nasty act, upon or with the body
3 of a child? If he went in that room naked with the intent
4 to look at that child, and by looking at that child's body,
5 with the body of that child, not even touching that child,
6 but naked with the intent to look at that child and to
7 arouse himself, guilty. That's what the Defense attorney
8 just told you in his closing. He's probably guilty of
9 going in there exposing himself or going to the bathroom
10 with the door open. Guilty on **Minor #1** Not much to think
11 about there. Touching the stomach over clothing, under
12 clothing, doesn't matter. It's with the body of a child.
13 Buttoned up jacket, come and touch a child's stomach with
14 the intent of arousing yourself, guilty of lewd act.
15 That's all lewd act is. By that definition, he's guilty.

16 You'll notice that the State put up two officers. The
17 State didn't want to ask them any questions, but the State
18 didn't want you to think the State was hiding anything. We
19 wanted you to have a full appreciation of what happened.
20 That's why the State allowed the Defense to ask whatever
21 questions they needed to. Because if the State hadn't done
22 that, the Defense attorney would be up here arguing why the
23 State didn't do that, and then it would be the State on
24 trial again. We did that so he could ask any questions he
25 wanted.

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1 MR. QUINN: I'm going to object. I don't think
2 she can argue facts that are not accurate. She, in fact,
3 was not going to offer those witnesses until the Court
4 required her to.

5 THE COURT: All right. The jury watched the
6 trial. You may proceed, solicitor.

7 **CLOSING STATEMENT CONTINUED**

8 **BY MS. BARWICK:**

9 So he asked them questions and that was that. The
10 reason the State took those precautions because the State
11 knew the Defense wouldn't have anything else to argue,
12 that's why. And that's why he's bringing up red herrings,
13 because he knew there would not be anything else to argue.

14 Sex crimes against children are a lot different from a
15 lot of the other crimes that get tried here in this
16 courtroom. You know, with DUIs, we have videos. We can
17 see the field sobriety tests. With burglaries, we might
18 have fingerprint analysis. In criminal domestic violence
19 cases, we might have pictures of injuries. As Ms.
20 Shaunaway -- I keep mispronouncing her name. I'm just
21 going to call her Ms. Williams. As Ms. Williams told you,
22 eighty percent of children don't tell until later. And
23 eighty percent of children who get abused are abused by
24 someone they loved and trust. There's no other evidence in
25 these cases because it's takes a child a long time to tell,

1 in **Minor #2** case. And they happen behind closed doors.
2 It's not the kind of crime where the perpetrator goes out
3 in public and does it or tells anybody about it. It's a
4 shameful crime. It happens behind closed doors. The only
5 witness we have are children, any direct witnesses who can
6 give direct testimonies as to that. People oftentimes ask
7 about what's it's like to prosecute these child sex cases.
8 What I say is that it's a crime of shame, guilt and fear.
9 You heard **Minor #1** yesterday when it about broke her heart
10 even thinking about people at school finding out about
11 this. You saw her pain. That's shame, guilt. **Minor #2**
12 pretended to be asleep. Children pretend to be asleep as a
13 protective instinct so that they aren't responsible for
14 what's happening to them. Not that they would ever be.
15 But that's their way of keeping responsibility off their
16 shoulders. There's some shame, some guilt.

17 Let's talk about the fear. Imagining this happening
18 to a thirteen-year-old and she wakes up in the middle of
19 the night. No, she doesn't scoot away, who would? Who
20 would know what to do. They do not write handbooks on what
21 to do if you're being molested that we allow our children
22 to read. What was she supposed to do? She looked to see
23 what was touching her. Let's talk a little bit more about
24 her fear. She didn't go to Gabby. Gabby's a kid. What is
25 she going to do? She went to the one person in that house

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1 she thought would protect her, the only other adult who was
2 not the perpetrator. No protection there. In fact, she
3 allows -- Jackie allows the Defendant to come on up into
4 the room after all of these allegations; goes to the
5 bathroom with the door open. When Jackie ask [Minor #1] do
6 you want to go home and the Defendant said -- what did he
7 say? He said, I'll take you home. Heck no, she didn't
8 want to go home with the Defendant, heck no, she didn't,
9 because she was scared.

10 Let's talk about Gabby's fear -- not Gabby's fear.
11 I'm sorry. [Minor #2] fear a little bit. Eight years old.
12 You know something's not right, but you don't quite know
13 what it is because you don't know about sex yet, you don't
14 know when people get aroused they breathe heavy, you don't
15 know those kind of details. And what do you do?

16 MS. BARWICK: Your Honor, may I approach?

17 (WHEREUPON, Ms. Barwick and Mr. Quinn approached the
18 bar.)

19 CLOSING STATEMENT CONTINUED

20 BY MS. BARWICK:

21 And then to say, well, [Minor #2] had a cell phone. She
22 could go walk a hundred yards to her house. What child is
23 going to walk in the dark to their house in the middle of
24 the night? Why not walk that child home? Imagine that
25 fear that child was feeling when she asked to go home and

1 she wasn't allowed to go home. Imagine that fear.

2 Let's talk about credibility a little bit. You have
3 to judge everybody from this witness stand if they're
4 telling you a truth or a lie. You and I do that everyday,
5 right? You know when someone's telling you something
6 you're like, don't believe that. Okay. This is
7 believable. You can tell by looking at someone by watching
8 their gestures if they're lying. People lie for two
9 reasons. Two. To get out of trouble and to get what they
10 want. What did **Minor #2** and **Minor #1** have to gain from this?
11 They're not in trouble. They loved this family. They
12 enjoyed spending time with this family. They went on trips
13 with this family. They were over there more than at their
14 own house. They were fond of this family. This was their
15 second family. You don't think that they didn't know by
16 telling that this happened to them, you don't think for one
17 second they didn't know that that relationship would be
18 terminated at that point? That's why **Minor #2** didn't tell.
19 She just didn't stay the night. Sure, she kept going over
20 there and playing with her best friends. She just didn't
21 stay the night.

22 And this stage we're talking about, let's put that in
23 context. Ms. Burgess said that what **Minor #2** father had
24 said was, if, you know, before I knew about this, I just
25 figured it was a stage she was going through when she

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1 didn't want to stay the night anymore. The stage began
2 when he touched her. Of course, she didn't want to stay
3 the night anymore. He just didn't know the reason yet.
4 And the Defense made a big deal about Kaitlyn not walking
5 her sister home or not telling anyone or thinking she might
6 be in trouble and didn't have emotion when she told. She
7 didn't know what happened. She just knew her sister cried
8 and wanted to go home one night. She didn't know that
9 she'd been touched. Kaitlyn's not on trial. She didn't do
10 anything wrong. She showed no emotion because she didn't
11 know anything was wrong. She didn't know that something
12 had happened to her sister because her sister didn't tell
13 until her father came and asked her about that.

14 Let's talk a little bit more about their credibility.
15 A big deal was made about **Minor #1** not waking up Gabby and
16 Gabby not waking up. The TV was on and you also heard
17 **Minor #1** say exactly how loud she said that. Children sleep
18 through anything. I know we've all picked up a child out
19 of a car seat and brought them in the house and then put
20 them in bed and they were still sleeping or picked them up
21 off the couch. Children sleep. Kaitlyn, I don't know if
22 you recall her testimony, she said that when **Minor #2** came up
23 into the room screaming and crying, she had to wake Gabby
24 up, because that screaming and crying didn't wake her up.
25 She had to actually wake Gabby up to go get her mother.

1 Gabby's a heavy sleeper. Children are not sophisticated
2 liars. How would [Minor #2] know to talk about some detail
3 about him breathing heavy? How would she know to do that?
4 She doesn't have knowledge of sex or what people do when
5 they get aroused.

6 Also, the Defense wants you to think that the victims
7 put up conflicting stories, that they're adding to this.
8 Disclosure just doesn't happen once, Ms. Williams testified
9 to that. It's a process. Once they start feeling safer,
10 once the Defendant's no longer living right next door,
11 those are the kind of things that help with disclosure.
12 When they age two and a half years. Big difference from
13 eight years old to eleven years old. When they age,
14 they're able to put terms. You heard [Minor #1] testify, I
15 didn't know what he meant when he said -- when I said I was
16 watching life with Derek, and he said laying with Derek,
17 but now I know that it's pretty perverted. That happens
18 when you go from thirteen to fifteen. If someone came up
19 to me and asked me what did you do yesterday? I would
20 probably say, well, I got up, I had some coffee, came into
21 work, struck a jury, did an opening, talked to them, put
22 some witnesses up, gone done with work and went home. What
23 if you said, well, didn't you go to the gym? I'm like,
24 yep, I did go to the gym. It's not because I'm doing an
25 inconsistency, I just didn't think about telling you about

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1 the gym, unless you specifically ask me about it. These
2 children don't know what's relevant to a case. If you ask
3 them what happened, tell me everything that happened, and
4 they write a four-page statement, sure something is still
5 going to be left out. They don't know what's relevant.
6 They are not familiar with sex like adults are. That's why
7 they expanded on it, because specific questions were asked.

8 Let's talk about **Minor #2** father's and **Minor #1**
9 mother's testimony. What purpose would they have to lie?
10 To put their children up on a stand to have to go through
11 this? Do you think their children wanted to go through
12 this? Do you think the parents wanted their children to go
13 through this? No. I'm sure many of us feel some kind of
14 unease having to speak in public. I know when I got up to
15 introduce myself, my stomach had a little bit of
16 butterflies in it and when I did my opening. You don't
17 think these girls felt that same way? Do you have any idea
18 how hard it was for them to get up here and tell you this?
19 Do you think that's something that they wanted? What would
20 they gain? He was gone. He's gone out of their lives for
21 two years, two and a half years. What did they have to
22 gain? Nothing.

23 Ms. Jackie. I'll call her Mrs. Peters. She came in
24 here and the State put her on the stand. And the reason
25 why the State put her on the stand was because the State

1 knew each and every one of you would be asking, if that
2 mother was home and these children told her what happened,
3 there's no way she possibly wouldn't have done something.
4 You saw her yesterday. There's absolutely every way she
5 wouldn't have done something because she had something to
6 lose and she had something she wanted. She's going to lose
7 money. And what did she want? She wanted him to get out
8 of trouble. People lie to get what they want and to get
9 out of trouble. That's what she did yesterday, lie, after
10 lie, after lie. Lies. She didn't know where he lived,
11 didn't even know what State he was in. Oops. Well, now, I
12 know it's thirty to forty minutes away from her home.
13 Well, then she didn't really know anything. And then all
14 of a sudden it's, well, yes, as a matter of fact, he was
15 staying with me for eight months. Eight months. They're
16 not separated. They're living as a married couple with
17 their daughter in the home, who DSS said, no unsupervised
18 visitation. Part of the safety plan. There's a reason for
19 a safety plan. It's to keep children safe. She won't keep
20 her own children safe. She certainly didn't keep these
21 children safe. She told the DSS worker what would happen
22 if charges were made. I would be in a mess and I couldn't
23 support household expenses. She said the reason her child
24 is up in New York is because they don't have ninth grade in
25 Florida, in Winter Park, Florida? What are all the

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1 fourteen year olds doing, just running around, going from
2 eight grade to tenth grade? No, that's not what's going
3 on. What's going on is she probably couldn't financially
4 support her daughter, sent her on up, because she needs
5 that support from him. He had a good-paying job. He was
6 making money. He had his own hours. He could hang around
7 the house, watch the kids. She didn't want to lose that
8 support. That's why she came in here and lied to you. And
9 I know, I know it's hard for you to put your heads around
10 how a mother could do something like this to someone else's
11 children. You know what, there's a quote that comes to
12 mind. And it says something along the lines, and it's by
13 Edmund Burke that, no honest person can be assured of
14 safety unless they are able to believe all possible evil of
15 evil men. What she did to those children by not protecting
16 them was evil. And she did it for him. What she did for
17 him yesterday was lying. That's why the State put her on
18 the stand, so you could see that it is possible for a
19 mother not to do anything. As shameful as that is. She
20 said she didn't report, not to the parents, although she'd
21 want someone to tell her. And the Defendant's lying if he
22 doesn't say that somebody -- he'd want somebody to tell
23 him. Nobody tells their parents, Minor #1 parents. Nobody
24 calls law enforcement. Ms. Jackie said the reason why, it
25 was just allegations. Just allegations? You shut and

1 locked your door that you normally keep open. You slapped
2 your husband in the face. You told the child, I'm sorry.
3 You heard your husband tell the child he was sorry. I
4 challenge you to listen to that, if you don't believe that
5 was what came out Ms. Peters' mouth. Because she said the
6 Defendant apologized. [Minor #1] heard it, Ms. Jackie heard
7 it. That's what was said. So she takes all these
8 precautions, but they're just allegations. She didn't want
9 to tell law enforcement because she didn't want her
10 breadwinner gone. That's why she didn't tell. That's why
11 she didn't call [Minor #2] mother; because she didn't want
12 her breadwinner gone. That's why. She could have easily
13 walked [Minor #2] over to the house or called [Minor #2] father
14 and [Minor #2] father would have come and got her. It would
15 not have been a big deal.

16 Something else she said, was that [Minor #2] incident
17 happened about five months prior to [Minor #1] disclosing.
18 [Minor #1] disclosed at the end of April. That puts my
19 calculations -- I'm not terrific at math -- the end of
20 November, the beginning of December. And she said -- what
21 did she say? She said, well, [Minor #2] acted like everything
22 was fine the next morning. She went into the pool. Who
23 goes swimming at the end of November or the beginning of
24 December? Who does that? Not my kids.

25 Ms. Peters told you that [Minor #1] called her as soon as

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1 she got home from school asking to go over to their house.
2 She also said [Minor #1] got home from school about four
3 o'clock. Let's think about that a little bit. The call
4 came in at 4:43 to law enforcement, that's what Ms. Burgess
5 testified to. It goes exactly with [Minor #1] story. Came
6 home like she does everyday and called her mom to say she's
7 fine. She started crying. [Minor #1] mom said, yep, that's
8 exactly what happened, and I came home. On the way home I
9 was calling my husband. I got home, spoke to [Minor #1]
10 called law enforcement. Times don't lie. They can't lie.
11 And if you also did the calculations, she told the DSS
12 worker about two and a half years ago that she had known
13 the Defendant for twenty-two years, had been with the
14 Defendant for twenty-two years and married to him for
15 fourteen years. Do the math. With her birth date, she was
16 eighteen, he was thirty-one when they began coming
17 together. An eighteen year old being married at thirty-one
18 is certainly financially dependent on someone.

19 I don't know if any of you have ever heard of the
20 term, MO. It's somebody's MO, that's what they do. It
21 stands for some Latin term, modus operandi, a legal term we
22 use as well. That just means how someone operates. The
23 Defendant had a way of operating. He picked girls that
24 were not fully developed. He did it while everyone in the
25 house was asleep. He used their friendship with his

1 daughters to gain an advantage. He groomed them by
2 wrestling, by taking them places, by buying them things.
3 He got down on one knee with each of them. He stroked both
4 of their hair. And he made sure there was an alibi sitting
5 in the bed with him that he had already known that his
6 daughters are very hard sleepers. That is how he operated
7 and that's how he did these two times.

8 What's the purpose of him coming up the stairs when he
9 doesn't even really deal with these children? It was to
10 make them stop talking. That's why he wanted to -- even
11 though I'm six degrees into intoxication, I can take you
12 home. That's why he did that. He wasn't going to drive
13 her home. What he was going to do was put the fear there,
14 put his presence there. At what time is it ever
15 appropriate for a man to use the restroom with the door
16 open and in front of his child's best friend, after she's
17 already made the allegation that he's been upstairs naked.
18 It's never appropriate. That was his way of asserting
19 dominance and saying, this is my house. I touched you,
20 here I am; I'm going to do whatever I want to do.

21 And it's hard, it's hard to believe that something
22 like this can happen. I know we're not use to these terms.
23 I know that we're not use to hearing this stuff from
24 children. Something I want you to think about. How many
25 times have you known children to get in trouble? Tons.

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1 How many times have you known children who don't get what
2 they want? Tons. How many children do you know that make
3 an allegation like this? None, for me. If you'll notice
4 he went further with **Minor #2** than he did with **Minor #1**. And
5 at no point in this discussion am I saying **Minor #2** at
6 fault. But **Minor #1** what did she do? She pulled back and
7 said, I want you to stop. So he left, but he came back.
8 **Minor #2** was pretending to be asleep. He went further with
9 her. She didn't stop, she didn't resist. That's why he
10 went further and that's the only difference between the two
11 girls, is how far he went, just because the girls dealt
12 with it differently. Yesterday Ms. Peters and **Minor #1** both
13 told you what the Defendant said. He said, I am sorry. He
14 said, I'm sorry. It's not an apology. That is an
15 admission. That is him admitting what he did. That's what
16 he did.

17 Beyond a reasonable doubt is not beyond all doubt.
18 Beyond a reasonable doubt, it's not just hesitating to act.
19 It's hesitating to act after you all speak with each other
20 and mull it over. And if there's a reasonable doubt in
21 your mind, turn him loose. But if there is not, you must
22 convict him.

23 The Judge is also going to tell you the difference
24 between circumstantial evidence and direct evidence.
25 They're to be weighed the same. The best way I know how to

1 describe that to you if there's a car accident. One
2 witness hears brakes squealing, one witness sees, after the
3 accident, the damage and, you know, airbag deployed. And
4 another witness hears somebody say, oh, my goodness, you
5 hit me. That's circumstantial. The witness that comes in
6 here and says, I saw a car accident happen. A red car
7 rear-ended a blue car. That's direct evidence. Both need
8 to be weighed the same. Those victims getting up here and
9 telling you what happened, that's your direct evidence.
10 Your circumstantial evidence is everything surrounding the
11 disclosure. And everything that's said up here, despite
12 what Mr. Quinn would like you to think, is evidence. Ms.
13 Williams' testimony is evidence. And as it's evidence, you
14 must consider it.

15 As far as beyond a reasonable doubt, you're at that
16 same car accident location, you hear a horn blow or beep
17 and you hear tires screech, and you hear this loud crash.
18 You look over your shoulder and you see two cars. You
19 don't know -- you have no reasonable doubt that the blue
20 car hit the red car, but you see the blue car behind it and
21 you see the red car in front of it. A car accident
22 happened.

23 You heard two girls testify. At not one point was
24 anything they said contradicted by what they previously
25 were saying; there was just an addition to it. That's your

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1 direct evidence. They're telling you this car accident
2 happened. You can look at them and decide for yourself if
3 they're telling the truth or a lie. Then ask yourselves,
4 what are they gaining from coming in here and telling you
5 anything? They're losing a whole lot, but they're not
6 gaining anything.

7 I appreciate your time. And once you go back into
8 that jury room, listen to each other, bounce ideas off of
9 each other, and at the end, I'm confident you will find him
10 guilty. Thank you.

11 **CHARGE**

12 **BY THE COURT:**

13 Mr. Foreman, ladies and gentlemen, it is now my
14 responsibility to instruct you on the law of the case.

15 In this case the Defendant is been indicted, as I said
16 when we started the case, for committing a lewd act upon a
17 child. Let me remind you that the fact that the Defendant
18 has been arrested, he's been charged, he's been indicted,
19 that's not evidence in the case, can't be considered by you
20 as evidence in the case of any guilt on his part. It
21 doesn't create any presumption or inference of guilt. The
22 indictment is merely the formal charging paper by which the
23 case is brought before this Court for disposition.

24 In this case, there are two indictments. There's two
25 charges. You must consider and decide on each indictment

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1 separately based on the evidence and the law applicable to
2 that indictment, uninfluenced by your decision on the other
3 indictment. In other words, the Defendant can be convicted
4 or acquitted on both or either of the offenses charged.
5 And you'll be asked to write separate verdict forms, fill
6 in separate verdict forms, as to guilty or not guilty on
7 each of the charges.

8 By entering his plea of not guilty, the burden is on
9 the State to prove the Defendant is guilty of the charge.
10 A person charged with committing a criminal offense in
11 South Carolina is never required to prove himself innocent.
12 That's an important rule of law, that in a criminal trial,
13 no matter how serious the charge may be, the Defendant will
14 always be presumed innocent of that crime for which the
15 indictment was issued unless guilt has been proven by
16 evidence satisfying you of that guilt beyond a reasonable
17 doubt.

18 Presumption of innocence doesn't end when you begin
19 your deliberations. It accompanies a Defendant throughout
20 the trial until you have reached a verdict of guilt based
21 upon evidence satisfying you of that guilt beyond a
22 reasonable doubt. Presumption of innocence has often been
23 described as a robe of righteousness that's placed about
24 the shoulders of an individual, remains with that Defendant
25 until it's stripped from him by evidence satisfying you of

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1 that guilt beyond a reasonable doubt. Presumption of
2 innocence isn't a mere legal theory. It's not a legal
3 phrase that's tossed about. It is a substantial right to
4 which every Defendant is entitled unless you, the jury, are
5 satisfied from the evidence of the Defendant's guilt beyond
6 a reasonable doubt.

7 You may ask yourself, what is a reasonable doubt under
8 the law? A reasonable doubt is the kind of doubt that
9 would cause a reasonable person to hesitate to act. Some
10 of you may, in the past, have served as a juror on a civil
11 case where a Judge told you it was only necessary to prove
12 that a fact was more likely true than not true by what was
13 called the greater weight of the evidence or the
14 preponderance of the evidence. In criminal cases, the
15 State's proof is more powerful than that. It must be proof
16 beyond a reasonable doubt. That would be proof that leaves
17 you firmly convinced of the Defendant's guilt.

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

1 give the Defendant the benefit of the doubt and it would be
2 your duty to find him not guilty.

3 Now, I remind you, during the course of the trial you
4 and I have had certain duties to perform. As the Trial
5 Judge, it's been my responsibility to preside over the
6 trial in the case, to rule on the admissibility of evidence
7 offered during the trial. You're to consider only the
8 competent evidence before you, consider the testimony
9 that's been presented from the witness stand, the exhibits
10 that have been made a part of the record and that alone.

11 My job also is to charge you the law that's applicable
12 to this case. As the Presiding Judge, I'm the sole judge
13 of the law. It's your duty as jurors to accept the law and
14 apply the law just as I state it to you. Some of you may
15 already have an idea of what the law is in a case such as
16 this, or maybe even a notion of what the law ought to be in
17 a case like this. If you have such a notion and it's in
18 conflict with what I now tell you the law is, then you must
19 abandon such an idea because you've sworn to accept the law
20 and apply the law exactly as I state it to you now.

21 Every case that's tried in this courtroom before a
22 jury, that jury becomes the sole and exclusive judge of the
23 facts in the case. A Trial Judge can't intimate or state
24 or comment on or make any statement whatsoever to a trial
25 jury about the facts in the case. Since you, the jury, are

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1 the sole judge of the facts, you're not to infer from what
2 I've said during the course of the trial, any rulings I've
3 made on the admissibility of evidence or otherwise,
4 anything I say to you now in the course of this instruction
5 to you, that I have an opinion about the facts. I don't
6 have an opinion about the facts. The Law of South
7 Carolina, our Constitution in South Carolina prohibits a
8 Trial Judge from having any opinion about the facts. It's
9 a matter solely for you, ladies and gentlemen, the jury, to
10 determine and you decide the effect, the value, the weight,
11 and the truth of the evidence presented during the trial.

12 Now, normally, there's two types of evidence. There's
13 direct evidence and circumstantial evidence. Direct
14 evidence is a testimony of a person who claims to have
15 actual knowledge of a fact, such as an eyewitness. It's
16 evidence which immediately establishes the main fact to be
17 proved. And circumstantial evidence is proof of a chain of
18 facts and circumstances that indicate the existence of a
19 fact. It's evidence, in other words, which immediately
20 establishes collateral facts from which the main fact may
21 be inferred. It's based on inference, not upon personal
22 knowledge or observation. The law makes absolutely no
23 distinction between the weight or the value to be given
24 either direct evidence or circumstantial evidence, nor is a
25 greater degree of certainty required of circumstantial

1 evidence than of direct evidence. You should weigh all the
2 evidence in the case and after weighing the evidence, if
3 you're not convinced of the guilt of the Defendant beyond a
4 reasonable doubt, then you must find the Defendant not
5 guilty.

6 Necessarily, ladies and gentlemen, you must determine
7 the credibility of witnesses who've testified in the case.
8 Credibility simply means believability. It becomes your
9 duty as jurors to analyze and evaluate the evidence and
10 determine which evidence convinces you of its truth. In
11 determining the believability of witnesses who've
12 testified, you can believe one witness over several
13 witnesses, you can believe several witnesses over one
14 witness. In your discretion, you can believe part of the
15 testimony of a witness, you can reject the remaining part
16 of the testimony of that very same witness. You can
17 believe the testimony of a witness in its entirety, you can
18 reject the testimony of a witness in its entirety. You can
19 consider whether any witness has exhibited to you any
20 interest or bias or prejudice or other motive in the case.
21 You can consider the appearance of a witness, the demeanor
22 of that witness while on the witness stand. You can ask
23 yourself the question, was that witness straightforward or
24 hesitant in answering? Was the testimony of that witness
25 consistent or inconsistent? Was the testimony of that

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1 witness strengthened or weakened by other evidence or other
2 testimony? It's totally your prerogative, ladies and
3 gentlemen, to determine the credibility of the witnesses
4 who have testified in the case.

5 Ordinarily, the rules of evidence would not permit a
6 witness to testify to opinions or conclusions, but there is
7 an exception to this rule for what we call expert
8 witnesses. And a witness who by education and experience
9 has become an expert in some art or science or profession
10 may state an opinion as to relevant material matter in
11 which that witness claims to be an expert and may also
12 state the reasons for the opinion. You should consider any
13 expert opinion received into evidence, and like other
14 evidence, give it the weight that you think it deserves.
15 If you decide the opinion of the expert is not based on
16 sufficient education and experience or if you conclude the
17 reasons given in support of the opinion are not sound or
18 that the opinion is outweighed by other evidence, you may
19 disregard the opinion entirely. An expert witness'
20 testimony is to be given no greater weight than that of any
21 other witness simply because the witness is an expert.
22 Furthermore, you're not required to accept an expert's
23 opinion, even though it may be uncontradicted.

24 Now, in order to establish criminal liability,
25 criminal intent is required and it must be proven by the

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1 State beyond a reasonable doubt. Criminal intent is always
2 a matter that must be determined by a jury from the
3 circumstances surrounding the situation. There's no way to
4 prove intent to a mathematical certainty. Obviously,
5 there's no way that medical science has developed that we
6 can dissect a person's brain and determine what that person
7 had in mind. Therefore, the law says that criminal intent
8 may be inferred from the circumstances shown to have
9 existed. It's not necessary to establish intent by direct
10 and positive evidence, but may be established by inference
11 in the same way as any other fact, taking into
12 consideration the acts of the parties and all the facts and
13 circumstances of the case. Criminal intent is a mental
14 state. It's a conscious wrong-doing. It's up to you to
15 determine what the Defendant intended to do based upon the
16 circumstances shown to have existed.

17 In this case, and, again, I told you there's two
18 different indictments, two charges, you're to consider each
19 of those independent, one of another, the Defendant is
20 charged with committing a lewd act on a minor. A minor, of
21 course, is a person who has not reached the age of
22 majority, one under the age of eighteen. The State must
23 first prove beyond a reasonable doubt that the Defendant
24 was over the age of fourteen. Next, the State must prove
25 that the Defendant willfully and lewdly committed or

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1 attempted to commit a lewd or lascivious act on or with the
2 body or its parts of a child under the age of sixteen
3 years, with the intent to arouse, appeal to or gratify the
4 lust, passion or sexual desires of the Defendant or of the
5 child. Willfully means voluntarily and intentionally with
6 the specific intent to do something the law forbids. Lewd
7 means obscene or lustful or indecent or lecherous.
8 Lascivious means tending to incite lust, lewd, indecent,
9 obscene or tending to deprave the morals in respect to
10 sexual relations.

11 Now, voluntary intoxication is not a defense to a
12 crime. A person who voluntarily becomes intoxicated is
13 just as responsible for the acts committed while
14 intoxicated as when the person is not intoxicated.

15 Mr. Foreman, I've prepared a verdict form for you. I
16 believe it will be self-explanatory. I have a verdict form
17 for each of the two charges. It simply says that based on
18 the evidence that you find the State has met its burden of
19 proof, then, of course, your verdict would be guilty. If
20 you find it hasn't on each of the two charges, your verdict
21 would be not guilty. There's no significance at all in the
22 order in which one is listed. One has to be listed before
23 the other. Once the jury has reached its decision, Mr.
24 Foreman, you check the appropriate block, sign your name as
25 foreperson and date it on each of the verdict forms, and

1 we'll receive your verdict back here in the courtroom.

2 All twelve of you must agree upon a verdict. The
3 verdict must be unanimous. It can't be based upon sympathy
4 or passion, prejudice, emotion, or any other consideration
5 not in evidence in the case.

6 I remind you that while you're free to ask me any
7 questions concerning the law, it's impermissible for me to
8 answer any questions you have regarding the facts of the
9 case. That's your duty as the sole fact finders.

10 There's a final matter of law that I must take care of
11 with the attorneys. I'm going to ask if you would, please,
12 to go back to your jury room. Don't start your
13 deliberations just yet. We'll take care of this legal
14 matter and hopefully in a few moments I can have the
15 verdict form, the Exhibits, with instructions back for you
16 to begin your deliberations. But don't discuss the case
17 just yet. I'll ask if you would, retire to your jury room
18 at this time.

19 (WHEREUPON, the jury exited the open court at
20 approximately 12:45 p.m.)

21 THE BAILIFF: The door's closed, Your Honor.

22 THE COURT: Any exception to the charge from the
23 State?

24 MS. BARWICK: No, sir.

25 THE COURT: From the Defense?

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1 MR. QUINN: No exceptions or additions.

2 THE COURT: All right. If y'all will make sure
3 the Exhibits are in order. We've got the revised verdict
4 forms. Again, review those if you would.

5 MR. QUINN: That looks fine for me, Your Honor.

6 THE COURT: Okay. If you'll get the verdict
7 forms and the Exhibits and tell the jury they can begin
8 their deliberations. Send me my two alternates out. Let
9 them know that the food is here and they can have the food
10 before they start their deliberations. I still want my
11 alternates out, just in case. Okay?

12 THE BAILIFF: Okay.

13 THE COURT: Have them come out and maybe you've
14 got another room for them to eat their pizza if they want
15 or whatever you have, sandwiches. Just send the alternates
16 out and tell them they can start their deliberations and
17 that you have lunch for them.

18 (WHEREUPON, all Exhibits were delivered to the jury
19 and deliberations commenced at approximately 12:47
20 p.m.)

21 (WHEREUPON, the alternates entered the open courtroom
22 at approximately 12:47 p.m.)

23 THE COURT: Mr. Poole, Mr. Cooper, thank you very
24 much for your services. Your fellow jurors have survived,
25 so we won't need you on this case. They've ordered lunch.

1 have an emotion that you want to share of elation or
2 disappointment, but while the jury is here is not the time
3 to do that. So if anyone feels like they just can't
4 control their emotions when the verdict is announced, then
5 this would be a proper time for you to excuse yourself from
6 the courtroom. You can come right back in after the jury
7 is dismissed and you can find out what the verdict was.
8 But I expect proper decorum from anyone in the audience
9 once the jury verdict is announced. And there will be no
10 outcries of any kind. I want everyone to understand that.
11 If anyone would like to leave at this time, I'll give you a
12 moment to do that. All right. I understand that everybody
13 here then will be accepting of the verdict.

14 You may bring the jury in, Mr. Evans, if they're
15 ready.

16 (WHEREUPON, the jury entered the open court at
17 approximately 2:00 p.m.)

18 THE COURT: Mr. Foreman, I understand the jury
19 has reached a verdict. Is that correct?

20 MR. FOREMAN: Yes, Your Honor.

21 THE COURT: Is it a unanimous verdict as to both
22 charges?

23 MR. FOREMAN: Yes, it is.

24 THE COURT: If you would, please hand the verdict
25 forms to the bailiff.

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1 All right. Madam Clerk, you may publish -- or Mr.

2 Clerk, you may publish the verdict.

3 THE CLERK: This is indictment number 2011-GS-39-

4 846, State of South Carolina versus Mark Stanley Peters.

5 We, the jury, unanimously find the Defendant, Mark Stanley

6 Peters, as to the charge of lewd act upon a child, guilty.

7 Indictment Number 2011-GS-39-847, The State of South

8 Carolina versus Mark Stanley Peters. We, the jury,

9 unanimously find the Defendant, Mark Stanley Peters, as to
10 the charge of lewd act upon a child, guilty.

11 Is this your verdict and still your verdict, so say
12 you all by raising your right hand?

13 (WHEREUPON, all jurors' right hands were raised.)

14 THE CLERK: Thank you very much.

15 THE COURT: Anything else we need from the jury
16 before they're discharged in this case? From the State?

17 MS. BARWICK: No, sir, Your Honor.

18 THE COURT: From the Defense?

19 MR. QUINN: No, Your Honor.

20 THE COURT: Ladies and gentlemen, thank you very
21 much for your service on this case. We have the rest of
22 your fellow jurors outside waiting to come in and be
23 selected for another trial. Didn't know how long you might
24 be participating. If you'd like to get back in the pool,
25 you can certainly do that if you'd like to serve on another

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1 Pickens County, was his employment, which he had originally
2 gotten in the northeast. As you heard, he was -- is
3 married and has two children. I would ask Your Honor to be
4 as reasonable as you can. Obviously, the sentence can be
5 from zero to fifteen years and a fine at the discretion of
6 the Court. I would ask the Court to be as reasonable as
7 you could on the sentencing.

8 THE COURT: Mr. Peters, anything you want to tell
9 me, sir?

10 MR. PETERS: No, sir, Your Honor.

11 THE COURT: This is case 2010-GS-39-846. The
12 sentence of the court is Defendant be committed to the
13 State Department of Corrections for a period of one hundred
14 fifty-five months. Case 847, one hundred fifty-five months
15 to be concurrent to that previously imposed.

16 I wish you the best, Mr. Peters. And I certainly wish
17 the family and the children the very best as they work out
18 of their prison inflicted upon them. Thank you very much.

19 MS. BARWICK: Thank you, Your Honor.

20 MR. QUINN: Thank you, Your Honor.

21 (WHEREUPON, the court stood at recess in this case.)

22

23 (END OF REQUESTED TRANSCRIPT OF RECORD.)

24

WITNESSES

Rita Garner Burgess

Pickens County Sheriff's Office

5/8/2009

ARREST WARRANT NUMBER

1677101

TRUE BILL ACTION OF GRAND JURY
Date MAY 16 2010

Mark F. Smith
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-39-PT

0846

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAY 18 2010 TERM 2010

THE STATE

vs.

MARK STANLEY PETERS

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on

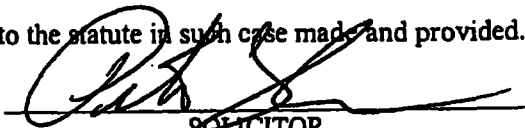
the Grand Jurors of Pickens

MAY 18 2010

County present upon their oath:

That MARK STANLEY PETERS did in Pickens County, on or about the 27th day of April, 2009, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of Minor #1 a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Rita Garner Burgess

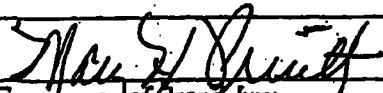
Pickens County Sheriff's Office

5/14/2009

ARREST WARRANT NUMBER

1677105

TRUE BILL ACTION OF GRAND JURY
Date MAY 18 2010


Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-39-PT 0847

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAY 18 2010

TERM 2010

THE STATE

vs.

MARK STANLEY PETERS

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

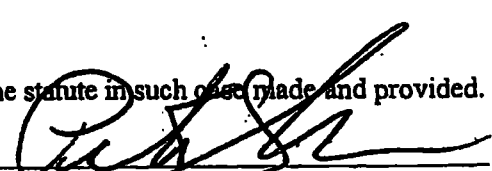
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on MAY 18 2010 the Grand Jurors of Pickens
County present upon their oath:

That MARK STANLEY PETERS did in Pickens County, between November 1, 2008 and December 25, 2008,
being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or
with the body, or its parts, of Minor #2 a child under the age of sixteen years, with the intent of arousing, appealing
to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of
the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

COUNTY OF Pickens
STATE VS.

Mark Stanley Peters

AKA:

Race: WHITE Sex: M Age: 55DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Easley, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

INDICTMENT/CASE#: 2010GS3900846A/W#: I677101Date of Offense: 4/27/2009S.C. Code §: 16-15-140CDR Code #: 2468SENTENCE SHEET 0-15yrs☒ CONVICTED OF or ☐ PLEADSin violation of § 16-15-140

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

2468☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(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:

[Signature]
Barwick, Jenny76128

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 155 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Danette Hanks

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2Sentence Date: 12/14/11

S 244 SOUTH CAROLINA

COUNTY OF Pickens

STATE VS.
Mark Stanley Peters

AKA:

Race: WHITE Sex: M Age: 55

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Easley, SC [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS3900847

A/W#: 1677105

Date of Offense: 11/26/2008

S.C. Code §: 16-15-140

CDR Code #: 2468

SENTENCE SHEET 0-15 yrs

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☐ 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.

Jenny Barwick, Jenny

76128 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 155 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: 2010 GS 39-0846☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

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

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

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Danelle Hanks

SCCA/217 (03/2011)

Presiding Judge

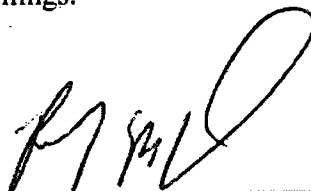
Judge Code: 2

Sentence Date: 12/18/11

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 3rd, 2013



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED COPY

AUG 22 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 22 2013

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

VS.

MARK PETERS,

APPELLANT

Appellate Case No. 2012-205886

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

RECEIVED

OCT 22

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STATEMENT OF ISSUES ON APPEAL

Whether the court erred by qualifying witness Galloway-Williams as an expert in the field of "counseling children who are victims of sexual abuse and their family members" since she was not qualified to testify as an expert, and her opinion about child sex abuse cases in general would not assist the jury as required where she had not met any of the parties involved in the case, and her testimony did not satisfy the requirements for scientific or other technical evidence under the South Carolina Rules of Evidence?

STATEMENT OF THE CASE

Appellant was indicted by the Pickens County Grand Jury for two counts of committing a lewd act upon a child. R. 239. His case was called to trial on December 13, 2011, before the Honorable G. Edward Welmaker, and a jury. Thomas Quinn represented appellant. Jenny Hamaker Barwick represented the state. R. 1.

On December 14, 2011 the jury found appellant guilty on both counts. R. 237, ll. 3-10. Judge Welmaker sentenced appellant to concurrent terms of one hundred and fifty five months imprisonment. R. 238, ll. 11-15.

This appeal follows.

ARGUMENT

The court erred by qualifying witness Galloway-Williams as an expert in the field of “counseling children who are victims of sexual abuse and their family members” since she was not qualified to testify as an expert, and her opinion about child sex abuse cases in general would not assist the jury as required where she had not met any of the parties involved in the case, and her testimony did not satisfy the requirements for scientific or other technical evidence under the South Carolina Rules of Evidence.

Relevant Facts

The state called appellant’s wife, Jacqueline Peters, as a witness. Mrs. Peters had been married to the appellant for sixteen years. They were separated at the time of trial although they stayed in touch. R. 2, ll. 6-10; R. 105, ll. 1-8.

Mrs. Peters remembered the allegation of appellant touching the then thirteen or fourteen-year-old Minor #1 in April, 2009. R. 108, ll. 7-20. Minor #1 was best friends with one of their daughters, Gabby Peters, and Minor #1 “called me Mom.” It was common for Minor #1 to spend the night. “She would sleep on the floor, my fourteen-year-old would sleep on the bed. And that happened, nothing out of the sorts [in April, 2009].” R. 108, l. 13 – 109, l. 6.

Mrs. Peters recalled: “Mark slept downstairs. His office was down there. He went downstairs, I went to the back room, the kids went to bed, everything was fine.” R. 109, ll. 20-23. “In the middle of the night, [Minor #1] came in, calm as calm can be, no tears, no fear, nothing. She said, Mark appeared in the doorway naked and said, would you please come downstairs and have sex with me. And I said, excuse me? And I said stay right here. Don’t move. I went downstairs, and I’m sorry to say, but I did slap him across the face, and

I said to him what's going on? He was fully clothed. He said, I don't know what you're talking about. So I told him. And he said, well, I still know what you're talking about. I said, stay down here." R. 109, l. 20 – 110, l. 8.

Mrs. Peters remembered:

I went back up and I said, [Minor #1], sweet baby, do you want to go home to Mommy and Daddy. She said, no. Why? She said, I want to stay here with you. And I said, you sure? And she said, yeah. So she got in the bed. And I, you know, consoled her. And I said, you know, if you want to go home, I can take you home. Mark came back upstairs and used my bathroom. I had the master bedroom. And he turned and he said, [Minor #1], would you like me to take you home. And I said, please do not talk to her. Leave her alone. He left the room, went back downstairs. So once again, I said to him - - or said to [Minor #1], baby, do you want me to take you home? She's like, no, I'm fine. I said, okay. So we went to bed. The next morning she woke up, you know, it was Monday morning and I looked at her once again and I said to her, [Minor #1], you don't have to go to school if this bothers you. You do not have to go to school. I will take you home. She was like, well, why? I said, well, because of last night. She proceeded to go into the master bathroom, turn the shower on, got dressed, got in my car, because I brought her to school with my daughter everyday, turned on the radio and my daughter and her sang, and sang and sang, and she went to school. Then the next day after school, the phone rings at four o'clock like it always does, and she said, can I come over? I said, why would you want to come back over? You know, I'm thinking she would be scared. And I said, I don't think it's appropriate. And that's that.

R. 110, l. 8 – 111, l. 10.

Mrs. Peters testified: "I treated [Minor #1] like she was my daughter" and Mrs. Peters strongly asserted that [Minor #1] was not telling the truth when she told the police that she was scared or screamed that night. R. 113, l. 14 – 114, l. 14.

Appellant and his wife said that the allegations of another neighbor's daughter, Minor #2, came about after appellant was arrested for committing a lewd act upon Minor #1, and it made the news. Mrs. Peters recalled the night Minor #2 alleged appellant touched her. Mrs. Peters said Minor #2 woke up crying in the middle of the night, and she said she was scared and wanted to go home. Mrs. Peters testified she would not allow Minor #2 to go home "due to the fact that I know her father really well, and he bragged a lot that he slept with a gun. And he said that if anybody ever knocked on the door in the middle of the night, he would not even look, he would shoot. I'm not sending a child into that situation." R. 114, l. 11 - 116, l. 2.

Mrs. Peters said she and the appellant both told her: "Baby, you're going to be all right. Go back to sleep." Mrs. Peters told the minor: "You go back to sleep and tomorrow we can get up, use the pool, just like a normal day. [She] spent the night, woke up the next day, had cereal, put on a bathing suit and we all went swimming." R. 116, ll. 9-15. The following occurred on direct examination of Mrs. Peters by the solicitor:

Ms. Barwick: Okay. Shifting gears a little bit. [Minor #1] had never made any accusation like this to you before?

Mrs. Peters: Never.

Ms. Barwick: And [Minor #2] never made an accusation before this either, did she?

Mrs. Peters: Those kids always wanted to be at my house, all the time.

Ms. Barwick: They enjoyed all of their time there, right?

Mrs. Peters: All the time. And they always - - after these allegations were said, they wanted to come back, so . . .

Ms. Barwick: You don't remember saying that [Minor #1] had actually told you that the Defendant touched her vagina?

Mrs. Peters: Never.

Ms. Barwick: Okay. She never told you that?

Mrs. Peters: Never.

Ms. Barwick: You don't remember telling Michelle Gerald from DSS that she told you that?

Mrs. Peters: On my kids' life, she never told me that, because I would have went crazy.

Ms. Barwick: Okay. So I want to be clear. You never told Michelle Gerald that [Minor #1] told you that your husband touched her on her vagina?

Mrs. Peters: No. She told me he stood in the doorway.

R. 117, l. 20 – 118, l. 17.

Mrs. Peters acknowledged appellant was drunk on the night of these allegations, and that appellant never said he did anything wrong to either of the girls. Appellant later testified that he drank beer every day and while it had an effect on him he still had his wits about him. R. 126, l. 4 – 127, l. 19.

Fifteen-year-old Minor #1 testified that Gabby Peters was her best friend. Minor #1 said she usually spent the night "every time I went over there." R. 2, l. 6 – 3, l. 24. Minor #1 said she went to Florida with appellant's family for Thanksgiving and she went to Carowinds with them. She liked to swim at their house because they had a pool and she said appellant's wife picked her up from school in April of 2009. Gabby lived with appellant, Jackie Peters, and their younger daughter MacKenzie. R. 3, l. 21 – 4, l. 25.

Minor #1 said after they got back from Carowinds in April, 2009, "I spent the night both nights." Her claim was "when we came back that night we got ready for bed and that's when I woke up and he was touching me." R. 5, ll. 1-6.

Minor #1 said earlier in the day "Mark was kind of drunk. He was being real loud and he was wrestling with Gabby and he was - - tried to with me, but he was kind of tickling me and stuff, but I didn't let him because I didn't feel very comfortable." Minor #1 said she went to bed in Gabby's room and she claimed when she woke up "Mark was touching me" as Gabby was "laying in her bed." R. 4, l. 10 - 8, l. 21.

She alleged appellant touched her "on my private area and on my stomach . . . he ran his fingers through my hair and then he just got up and shut the door and walked out . . . I was really scared and I didn't know what to do so I sat there and prayed. And then he came back and that's when he was naked . . . he just stood at the doorway." Minor #1 testified she just turned over and watched the television, and "he asked me what I was watching. And I said, Lockwood Eric. And he was like, laying in the bed with Derek? And I just didn't say anything. And then he said that I could come downstairs with him and I didn't answer him." "Looking back on it, I know that, it's like, perverted." R. 10, l. 14 - 12, l. 4.

Minor #1 testified appellant was kneeling by her when she alleged he touched her, but she said appellant did not attempt to put his hands under her clothing or move her. R. 30, l. 3 - 31, l. 21.

Minor #1 said when she heard the basement door shut where appellant slept she went to Mrs. Peters room. She said she shook Mrs. Peters to wake her up, and she claimed she told appellant's wife: "[M]ark came in there touching me. And then she said that he came in there with her, too." R. 13, l. 4 - 14, l. 8.

Minor #1 maintained that Mrs. Peters went in the basement to talk with appellant and she returned and said she was sorry it happened. Minor #1 testified that appellant then came upstairs in his shorts. She said appellant argued with Jacqueline Peters, and he went to use the restroom in the bedroom. She testified: "Jackie got up and slammed the door. And she said, there you go using the bathroom in front of her. And he opened the door back up and used the restroom. And then he came back out and then he told me that he was sorry if he thought anything - - if I thought anything had happened. And he come over there and picked MacKenzie [his younger daughter] up and went downstairs." R. 15, l. 20 - 18, l. 5.

Minor #1 testified she tried to go back to sleep that night. She told Mrs. Peters she did not want to go home because she was scared. Minor #1 said Mrs. Peters took her to school the next day. She did not tell anyone at school what had happened because "me and Gabby had the same friends and I just didn't want to bring it up. I'd just rather tell one of my parents than to tell people at school." R. 18, l. 19 - 19, l. 21.

Minor #1 talked to her mother after school on the phone as she did every day when she got home. She told her mother what had occurred. She said her mother "called my Dad and told him that he needed to come home and told him a little bit about what happened. And then he said to call the police. So we did." The police arrived and Minor #1 said she gave them a statement. R. 19, l. 4 - 21, l. 19.

On cross-examination Minor #1 said appellant was drunk that night, and she had seen him drunk many times before. However, she admitted she went over to his house frequently. R. 22, l. 8 - 23, l. 19. Minor #1 admitted that she went with her mother to see a physician at Easley Pediatrics after the alleged incident, and the purpose of this visit was to

help allow her to stay home and be homeschooled from that point forward. R. 27, l. 17 – 28, l. 19.

Ruth Jones was Minor #1's step-mother. She remembered when Minor #1 called her after she got home from school as she did everyday. Jones said she could tell something was wrong with Minor #1 because "her voice sounded a little crackly and I could tell she was upset about something." Mrs. Jones said she asked Minor #1 if she got into a fight with Gabby or if Mrs. Peters did something to hurt her feelings. She said when she asked if it was Mark she began to cry and she said she told Minor #1 she would be home immediately. R. 38, l. 7 – 42, l. 16. Once home, Mrs. Jones recalled that Minor #1 made her allegation about sexual abuse in Gabby's bedroom, and she called the police. R. 42, l. 11 – 44, l. 4.

Minor #2 was a friend of MacKenzie Peters, appellant's younger daughter. Minor #2 lived next door to appellant and his daughters. R. 48, l. 9 – 49, l. 25.

Minor #2 was eleven-years-old at the time of trial. She testified in December of 2008 she stayed overnight at appellant's house with MacKenzie in the basement. R. 49, l. 3 – 51, l. 13. Minor #2 testified that appellant, his wife, his other daughter Gabby, and Minor #2's sister, Kaitlyn, all slept at appellant's house that night. R. 52, ll. 4-16.

Minor #2's claim was that she woke up in the middle of the night and appellant was touching her "in my private and like on my chest." Minor #2 maintained appellant touched her over and under her clothing. R. 53, ll. 11-22. She also said appellant ran his hands through her hair, and she estimated the touching happened for probably "like a half hour or so." Minor #2 stated that she pretended to be asleep the entire time. R. 54, l. 19 – 55, l. 24.

She said after appellant left she ran upstairs to Gabby's room, and woke her sister. Minor #2 testified that she was crying at the time, and her sister "asked Mark and Jackie if

we could go home.” Minor #2 said she was told they could not go home because it was too dark, and because her parents were probably asleep. R. 56, l. 10 – 58, l. 19.

On cross-examination Minor #2 denied she told appellant’s wife she had a bad dream. She did not tell anyone at school or her mother and father about the alleged incident. She admitted she did not tell anyone “about this until your dad came and asked you.” However, she denied she had already heard news reports about Minor #1 allegedly being molested. R. 59, l. 6 – 60, l. 25.

Minor #2 did not remember when this incident occurred although the solicitor alleged it happened in November or December of 2008. She did not remember whether appellant had been drinking that day, and she admitted she did not remember if she told the police appellant was allegedly breathing hard or rubbing his hands through her hair. R. 63, l. 10 – 65, l. 16.

Shane Gunter was Minor #2’s mother. She testified appellant was her next door neighbor and she remembered when he was arrested for the sexual assault of Minor #1. “I looked it up on-line and printed the article out and then read it to each of our four oldest daughters.” R. 75, l. 19 – 76, l. 20.

She said all of her daughters did not react to the news story, but Minor #2, “she kind of teared up, seemed like she was withholding something,” and she said Minor #2 started crying “when I read it to her.” R. 78, ll. 7-22. She asked Minor #2 “if something like that had been done to her there,” and she then called the Pickens County Police Department. R. 78, l. 19 – 79, l. 2.

The "expert" testimony

On the second day of trial, the state called Shauna Galloway-Williams as a witness.¹ Williams was the executive director of the Julie Valentine Center, which was formally the Greenville Rape Crisis and Child Abuse Center. Williams said she conducted forensic interviews and did "clinical work" there. R. 136, ll. 3-24.

Williams testified that a forensic interview was not done in this case. She had never met with either of the alleged victims. R. 137, ll. 1-13.

Williams had a Bachelor's degree in psychology, and a Master's degree in counseling. She said her training focused on forensic interviews with "ties to sexual and child abuse." She would admit on cross-examination that she attended a seminar in 2008 put on by the national college of District Attorneys. The seminar was "Child Abuse Summit, Working Together to Improve Child Abuse Prosecutions." R. 137, l. 11 – 138, l. 9; R. 156, l. 21 – 157, l. 8.

Williams said she had testified in criminal court eleven times and family court thirty times. The solicitor asked the judge to qualify Williams as an expert "in the field of counseling children who are victims of sexual abuse and their family members." R. 138, ll. 16-22.

The judge asked Defense Counsel Quinn if he had any *voir dire* or objection. Defense Counsel Quinn testified he objected to her qualifications, and he wanted to *voir dire* the witness. Counsel then asked Williams if she had ever been qualified in a case where she did not meet with the children or parties. Williams responded: "At least one other time in General Sessions." R. 138, l. 20 – 139, l. 10. Defense counsel then stated his objections:

¹ For ease of reference, Shauna Galloway-Williams is referred to as Williams.

I do not believe she's qualified to testify in this case, because she's not able to assist this jury with any question before them, as she has not met any of the people involved in the case. And as I believe the standard for a juror - - I'm sorry, for an expert, they may testify to scientific, technical or other specialized knowledge that will assist the trier of fact to understand the evidence or determine the fact at issue. She is not aware of any of the evidence in the case or any of the facts in issue.

R. 139, ll. 14-23.

The solicitor said Williams could assist the jury in understanding why children delay in disclosing or make partial or accidental disclosures. R. 140, ll. 1-7. The judge then ruled that, based upon her education and experience, she was qualified as a witness and that the subject matter was beyond the ordinary knowledge of a juror and he believed her testimony would be reliable. R. 140, ll. 8-21.

Williams then testified in the presence of the jury that the vast majority of children do not disclose sexual abuse after it happens. "The statistics say about **eighty percent** of children don't tell right after something has happened . . . but the main reason . . . **is fear.**" R. 141, l. 7 - 142, l. 25. (emphasis added). The following occurred on direct examination of Williams:

Ms. Barwick: In your experience, is it common or uncommon for children to be sexually abused by somebody they know and trust?

Williams: Yeah. It's very common, more likely than not, about **eighty percent** of the time, children are being abused by someone they know, they love and they trust.

R. 149, ll. 18-23. (emphasis added).

Williams was asked whether children fear "things like people at school finding out?" She answered that "children fear that other people are going to find out what happened."

Williams testified that accidental disclosure means that children give out pieces of what occurred, and "we don't expect that when they finally do tell, that we're going to get all the details on all the specifics right away." R. 143, l. 22 – 146, l. 10.

Williams said when the perpetrator was part of the child's life went "back to the relationship dynamics." R. 148, ll. 10-13. She said her organization recommended that there be no contact between the child and the person they accused of abuse. R. 148, l. 24 – 149, l. 17.

Williams also opined that children were not "sophisticated liars." She added that some children are "groomed" for sexual abuse and that grooming can start by touching, tickling children, "and getting close to the private area . . . as sort of testing the waters to see how close they can get to that . . . how that child's going to respond. R. 151, l. 19 – 153, l. 12. Williams said her figures that eighty percent of children do not initially disclose abuse that occurred were "**substantiated cases of abuse.**" R. 154, l. 7 – 155, l. 9. (emphasis added)

Appellant took the stand in his own defense. He denied improperly touching either alleged victim. Appellant testified that Minor #1 enjoyed spending time at his house, with his children, than she did being at her own home. He stated Minor #1 had told them "she did not have a good home life" and that she would rather be over at his house cooking out and playing in the pool. R. 168, ll. 2-19.

Appellant recalled the Gunter family later moved in next door to him. MacKenzie, his younger daughter, and Minor #2 played together almost daily. R. 169, ll. 1-24. Appellant said the alleged incident with Minor #2 occurred when his wife told him that

Minor #2 had a bad dream, and that she was scared. Appellant said he was not accused at the time of doing anything to Minor #2. R. 169, l. 22 – 170, l. 23.

On cross-examination appellant said he treated the neighbor children the same way he treated his own daughters. R. 175, l. 23 – 176, l. 23. Appellant said he did not remember his wife slapping him after Minor #1 made her allegation, but he did recall telling his wife that he did absolutely nothing to Minor #1. R. 178, l. 21 – 180, l. 15. Appellant admitted he argued with his wife over the allegation that he had gone upstairs without his clothes on. R. 181, ll. 2-14.

Appellant told the solicitor his wife would not lie for him, and that he had not done anything improper in his treatment of either child. R. 184, l. 10 – 189, l. 1.

Discussion

As seen, Williams had not met or interviewed any of the parties involved in this case, including the two alleged victims. She testified that eighty percent of victims of sexual abuse delay disclosure of that abuse. She also testified that eighty percent of children are sexually abused by someone they know. This was “substantiated.”

Defense counsel correctly objected that Williams should not be qualified as an expert. In addition, her testimony did not qualify as “expert” scientific, technical or other specialized knowledge testimony that would aid the jury under our rules of evidence. Williams had not even met the alleged victims or parties in this case. Defense counsel was correct in this objection to her qualifications, and the subject matter of her testimony.

Once clothed with the aura of an expert, Williams testified that eighty percent of victims of child sexual abuse delay disclosure, and that eighty percent of victims are abused by someone they know. She further testified that children are “groomed” for sexual abuse by

the perpetrator. This begins with touching or tickling and advances from there. There was, of course, testimony in this case that appellant wrestled with the children, and played with them and tickled them in the swimming pool. The solicitor also asked if it was unusual for minors not to want people at school to know.

Williams also testified about "accidental disclosure," and she told the jury that her statistics had been "substantiated." Although Williams did not define substantiated, it seemingly includes alleged perpetrators convicted on pseudo-science testimony.

Our Supreme Court has stressed the judge's "gatekeeper" function regarding the qualification and admission of expert testimony. In State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009), the Supreme Court held that, pursuant to Rule 702, SCRE, the reliability of non-scientific expert testimony is also part of the gatekeeping function of the trial court and reliability should be determined prior to its admission into evidence.

The trial judge also has the responsibility to determine whether the "expert" testimony is reliable. Here, the judge incorrectly ruled the testimony was reliable.

In State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012), the Court determined that the judge erred by leaving the reliability determination for the jury. Here there was simply no evidentiary predicate to support the judge's determination that Williams' expert testimony was reliable.

In this case the testimony Williams gave would have to be admissible in every child sexual abuse allegation trial if the judge was correct in admitting it since she did not meet the alleged victims. In Mitchell v. Commonwealth, 777 S.W2d 930 (Ky. 1989) the Supreme Court of Kentucky addressed the introduction of evidence regarding "child sexual abuse accommodations syndrome." This syndrome involved delay of disclosure in abuse, secrecy,

helplessness, entrapment and accommodation, and retraction. The alleged victim in Mitchell told Richard Welch, who held a Masters degree in clinical social work, that she did not report the sexual abuse immediately because she was afraid.

The Kentucky Supreme Court held that the state had failed to prove that the "so called Sexual Abuse Accommodation Syndrome" had attained a scientific acceptance. Mitchell v. Commonwealth, 777 S.W.2d at 932. The Court noted there was no testimony that sexual abuse by persons other than the accused could have produced the same symptoms in the victims.

The Court also noted there was no testimony that all children who are sexually abused exhibited these symptoms, nor was there testimony that children who have not been sexually abused do not exhibit similar elements of the syndrome. The Court found reversible error because: (1) there was no medical testimony that the syndrome is a generally accepted medical concept and, (2) the testimony had no substantial relevance to the issue of the defendant's guilt or innocence. Mitchell v. Commonwealth, 777 S.W.2d at 933.

Again, here, Williams testified that eighty percent of abused children do not report sexual abuse "right away." Williams also told the jury that eighty percent of sexually abused children are abused by someone they know. The supposed relevance of this must be that the alleged victims in this case did not report the alleged abuse right away, and they knew appellant. Apparently, therefore, there was an eighty percent chance based on these two significant factors that they were actually sexually abused, and appellant was the someone that they knew. This, of course, reveals the fallacy and the danger in the admission

of this non-scientific pseudo junk science that our Supreme Court, and this Court, repeatedly have warned against in child sexual abuse cases.

In State v. Kromah, 401 S.C. 340, 737 S.E.2d 490, 499 (2013), the Supreme Court held the trial court erred in allowing a forensic interviewer to make a finding of compelling abuse. The Supreme Court pointedly again told the bench and bar that this testimony is not admissible.

In this case, there was no objection made to Smith's qualification as an expert, but we have previously observed that such qualification may be unnecessary. See, e.g., Douglas, 380 S.C. at 504, 671 S.E.2d at 609 (concluding it was unnecessary for the forensic interviewer to be qualified as an expert because no specialized knowledge was required there; the interviewer testified only as to her personal observations and experiences, and her interview with the victim; the Court found no error, however, noting the interviewer gave no opinion concerning the victim's veracity). In considering the ongoing issues developing from their use at trial, we state today that we can envision no circumstance where their qualification as an expert at trial would be appropriate. Forensic interviewers might be useful as a tool to aid law enforcement officers in their initial investigative process, but this does not make their work appropriate for use in the courtroom. The rules of evidence do not allow witnesses to vouch for or offer opinions on the credibility of others, and the work of a forensic interviewer, by its very nature, seeks to ascertain whether abuse occurred at all, i.e., whether the victim is telling the truth, and to identify the source of the abuse. Part of the RATAC method, which is not without its critics, involves evaluating whether the victim understands the importance of telling the truth and whether the victim has told the truth, as well as the forensic interviewer's judgment in determining what actually transpired. For example, an interviewer's statement that there is a "compelling finding" of physical abuse relies not just on objective evidence such as the presence of injuries, but on the statements of the victim and the interviewer's subjective belief as to the victim's believability. However, an interviewer's expectations or bias, the suggestiveness of the interviewer's questions, and the interviewer's examination of possible alternative explanations for any concerns, are all

factors that can influence the interviewer's conclusions in this regard. Such subjects, while undoubtedly important in the investigative process, **are not appropriate in a court of law when they run afoul of evidentiary rules and a defendant's constitutional rights.**

Williams had never met either of the alleged victims in this case, nor had she met any of the parties involved. Yet she gave statistical testimony that if approved by this Court would be admissible in each and every child sexual abuse case. This is but the latest in run around the logic and reasoning in State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012); and State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011).

In State v. Gaona, 293 Kan. 930, 270 P.3d 1165 (2012) the Kansas Supreme Court, unlike our Supreme Court, did not look with disfavor on a witness being qualified as an expert on forensic interviewing techniques. However, the Kansas Supreme Court said the witness was not qualified to testify as an expert on common characteristics of sexually abused children. That is **precisely** what happened in this case with the testimony Williams was allowed to impart.

Williams should not have been qualified as an expert. See State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006). Her testimony should not have been admitted because it was not scientific or technical testimony that would aid the jury. She had never even met the alleged victims.

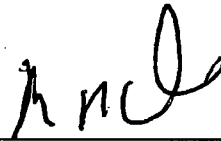
The evidence of guilt in this case was far from overwhelming. Appellant was a salesman who apparently kept a steady job. His wife disputed the assertions of the state when she was called as a witness by the state. Appellant testified categorically he did not touch the minors in an improper manner. The improper qualification of Williams as an

expert, and her inadmissible “expert” testimony was highly prejudicial. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed and his case remanded to the Pickens County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

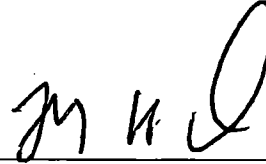
ATTORNEY FOR APPELLANT

This 22nd day of October, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

October 22nd, 2013

A handwritten signature in black ink, appearing to read 'M H D', is written over a horizontal line.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

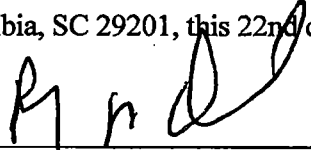
MARK PETERS,

APPELLANT

Appellate Case No. 2012-205886

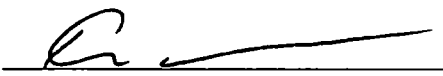
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of October, 2013.


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of October, 2013.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: August 21, 2023



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October 22, 2013

Mark R. Farthing, Esquire
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Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Mark Peters

Dear Mark:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/kam

Enclosure

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 25 2014

Appeal from Pickens County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2012-205886

S.C. Supreme Court

THE STATE,

Respondent,

vs

MARK STANLEY PETERS,

Appellant.

FINAL BRIEF OF RESPONDENT

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Attorney General

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed no error in qualifying a witness as an expert and permitting her to testify in regard to the common behavioral characteristics exhibited by juvenile victims of sexual abuse because the witness was qualified to testify on that subject based on her education, knowledge, training, and experience and because her testimony was beyond the common knowledge of the typical juror, could have assisted the jury in understanding the evidence presented during trial, and met a threshold level of reliability. Furthermore, to the extent that Appellant is challenging the reliability of the expert's testimony, that argument was not properly preserved for appellate review because it was never raised to the trial judge.

STATEMENT OF THE CASE

In May of 2009, Appellant Mark Stanley Peters was arrested following investigations into allegations that Appellant sexually assaulted a thirteen-year-old girl and an eight-year-old girl during separate incidents. In May of 2010, the Pickens County grand jury indicted Appellant for two counts of committing or attempting to commit a lewd act upon a minor child. On December 13, 2011, a jury trial was commenced in the Pickens County court of general sessions with the Honorable G. Edward Welmaker, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of 155 months for each of the convictions. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

Beginning on Friday, April 24, 2009, Victim 1, a thirteen-year-old girl, spent the weekend with her best friend, Gabby P. ("Gabby"), and Gabby's family. (R. pp. 3-5; p. 39). On Monday, April 27, 2009, Gabby's mother, Jacqueline Peters ("Jacqueline"), dropped Victim 1 and Gabby off at school in the morning. (R. p. 19). At the end of the school day, Victim 1 returned to her home and called her stepmother, Ruth Jones. (R. pp. 19-20; p. 40). During the phone call, Jones became concerned that Victim 1 was upset about something and began to question her to find out if anything had occurred. (R. pp. 19-20; p. 41). Jones asked Victim 1 if something happened with Gabby or Jacqueline, and Victim 1 indicated that nothing had occurred. (R. p. 41). Jones then asked Victim 1 if something happened with Gabby's father, Appellant Mark Stanley Peters, and Victim 1 began crying without verbally responding to the question.¹ (R. pp. 41-42).

Concerned, Jones quickly went home and was greeted at the door by Victim 1.² (R. p. 20; pp. 42-43). Victim 1 hugged her, began to cry, and disclosed that she was sexually abused by Appellant after she went to sleep at his home that weekend. (R. p. 43). In response, Jones quickly reported the incident to law enforcement, and Deputy Eddie Burgess of the Pickens County Sheriff's Office responded to Victim 1's home and took a statement from her about the incident. (R. p. 20; pp. 43-44; pp. 84-85; pp. 98-99). Thereafter, Detective Rita Burgess of the Pickens County Sheriff's Office began an

¹ Appellant was fifty-three years old at the time. (R. p. 105).

² Around that time, Jones began to continuously receive phone calls from Jacqueline and Gabby, and they left messages requesting that Victim 1 call them back. (R. p. 45).

investigation into Victim 1's allegations, and the investigation culminated with Appellant's arrest on May 8, 2009.³ (R. pp. 83-87).

Following Appellant's arrest, Shane Gunter, Appellant's next-door neighbor, saw on a news program that Appellant had been arrested for the sexual assault. (R. p. 49; p. 76). He then located a news article on Appellant's arrest and read it to each of his daughters individually to make sure nothing similar had happened to them. (R. pp. 76-78). Three of his daughters did not react to the article, but his eight-year-old daughter, Victim 2, began to cry and seemed to be withholding something. (R. p. 50; p. 78). Gunter then asked Victim 2 if something like what was described in the article had happened to her when she visited Appellant's home, and Victim 2 confirmed that it had. (R. pp. 78-79). In response, Gunter contacted the Pickens County Sheriff's Office, and Detective Burgess came and spoke with Victim 2. (R. p. 79; pp. 88-89). During Detective Burgess' conversation with Victim 2, Victim 2 disclosed that she had been sexually abused by Appellant in his basement in November or December of 2008. (R. pp. 51-55; pp. 89-90). Based on Victim 2's disclosure, Appellant was again arrested. (R. pp. 90-91).

Subsequently, Appellant was indicted for two counts of committing or attempting to commit a lewd act upon a minor child, and he proceeded to trial. (R. pp. 239-242). During trial, Appellant's victims testified about the incidents involving Appellant with Victim 1 testifying first. (R. pp. 4-18; pp. 51-58). During her testimony, Victim 1 stated she spent the weekend with Appellant's family and returned to Appellant's home after church on a Sunday night in April of 2009. (R. pp. 4-5). When she arrived back at Appellant's home, Victim 1 testified Appellant, who was intoxicated, wrestled with

³ Detective Burgess was not related to Deputy Burgess. (R. p. 91).

Gabby, tried to wrestle with her, and tickled her. (R. p. 5). Subsequently, Victim 1 indicated she went to sleep in Gabby's bedroom on a pallet on the floor. (R. p. 5; p. 7). After midnight, Victim 1 testified she woke up and discovered Appellant kneeling beside her and touching her vagina and stomach on the outside of her clothing. (R. pp. 8-10; p. 21; p. 31). When she woke up, Victim 1 indicated Appellant asked her if she wanted him to leave or to come back, and she told him to leave her alone. (R. p. 10). Victim 1 stated Appellant then ran his fingers through her hair and temporarily left the bedroom before returning several minutes later. (R. pp. 10-11). When he returned, Victim 1 testified he stood naked in the doorway to the bedroom and made an inappropriate remark. (R. p. 11). Victim 1 stated Appellant then asked her if she wanted to go downstairs with him, but she did not respond. (R. p. 11). Thereafter, Victim 1 indicated Appellant left the bedroom and went back downstairs, and she quickly went to Jacqueline's bedroom and told her what Appellant had done. (R. pp. 12-14). After she disclosed the abuse, Victim 1 testified Jacqueline responded that Appellant had done it to her as well, told her to get into her bed with another of Appellant's daughters, MacKenzie P. ("MacKenzie"), and went downstairs. (R. pp. 14-15). Shortly thereafter, Victim 1 stated Jacqueline returned to the bedroom and said she was sorry it happened. (R. p. 15). After that, Victim 1 indicated Appellant came into the bedroom, argued with Jacqueline, offered to take her home, and used the bathroom in the bedroom with the door open. (R. pp. 15-17). Victim 1 testified Appellant then told her that he was sorry if she thought anything happened before picking up MacKenzie and going back downstairs. (R. pp. 16-17). Subsequently, Victim 1 indicated she tried to sleep through the rest of the night, went home after school on the following day, revealed the sexual abuse to her mother, and spoke with a law enforcement officer about the incident. (R. pp. 18-20). Thereafter, on cross-examination,

defense counsel questioned Victim 1 about her failure to call out to Jacqueline when Appellant was sexually assaulting her, her failure to ask Jacqueline to take her home on the night of the incident, her failure to immediately call her parents from Appellant's home, her failure to reveal the abuse to anyone at her school before going home, and her failure to try to move away from Appellant during the incident. (R. pp. 24-27; pp. 32-33).

Subsequently, Victim 2 testified about another incident involving Appellant. (R. pp. 51-58). Regarding the incident, Victim 2 indicated she was sleeping on an air mattress in Appellant's basement with MacKenzie in November or December of 2008 when she woke up and found Appellant kneeling beside her. (R. pp. 51-53; p. 55). As he knelt beside her, Victim 2 testified Appellant touched her chest and vagina underneath and over her clothing, kissed her chest, and attempted to kiss her vagina. (R. pp. 53-55). Victim 2 indicated she pretended to be asleep until Appellant eventually stopped, Appellant ran his hand through her hair, and then Appellant left the room. (R. pp. 54-56). After Appellant left, Victim 2 testified she ran upstairs to her sister, who was sleeping in Gabby's bedroom. (R. p. 56). Victim 2 indicated she did not reveal the abuse to her sister but was crying and scared and wanted to go home. (R. pp. 57-58). After she went into Gabby's room, Victim 2 stated Appellant and Jacqueline came into the room and her sister asked them if they could go home. (R. p. 58). However, Victim 2 indicated Appellant and Jacqueline refused, telling them it was too dark and their parents were probably asleep.⁴ (R. p. 58). Subsequently, Victim 2 testified she revealed the abuse when her father asked her about it. (R. p. 59). Thereafter, on cross-examination, defense

⁴ Victim 2's sister also testified during trial and confirmed that her sister came into Gabby's bedroom crying hysterically around 1:00 a.m. on the night of the incident and said she wanted to go home. (R. pp. 68-69; p. 74). Victim 2's sister stated she then repeatedly asked Appellant and Jacqueline to let them go home but her requests were refused. (R. p. 69).

counsel questioned Victim 2 about her failure to reveal the abuse to her parents or anyone else shortly after it happened, her failure to call her parents from Appellant's home, and her failure to wake up MacKenzie during the incident.⁵ (R. p. 59; p. 63; p. 65).

Following the victims' testimony, the State offered the testimony of Shauna Galloway-Williams, the executive director of a child abuse and sexual assault recovery center, in regard to common behavioral characteristics exhibited by sexually-abused minors. (R. p. 136). At the outset of her testimony, Galloway-Williams indicated she was a licensed professional counselor, did clinical work and conducted forensic interviews at the center, was trained in working with families and children where there were allegations of abuse and neglect, had a bachelor's degree in psychology and a master's degree in counseling, and had received over one-hundred hours of forensic interviewing training. (R. pp. 137-138). She further indicated she previously testified in court as an expert in counseling juvenile victims of sexual abuse over forty times. (R. p. 138). However, she noted she did not meet with or conduct forensic interviews of either of Appellant's victims. (R. p. 137).

Thereafter, the State moved for Galloway-Williams to be qualified as an expert in the field of counseling juvenile victims of sexual abuse, and defense counsel objected, arguing:

I do not believe she's qualified to testify in this case, because she's not able to assist this jury with any question before them, as she has not met any of the people involved in the case. And as I believe the standard for a juror – I'm sorry, for an expert, they may testify as to scientific, technical or other specialized knowledge that will assist the trier of fact to understand the evidence or determine the fact at issue. She is not aware of any of the evidence in the case or any of the facts in issue.

⁵ Similar to his cross-examination of Victim 2, defense counsel questioned Victim 2's sister about her failure to simply leave Appellant's home, her failure to use the phone in Appellant's house to call her parents, and her failure to go home and get help for Victim 2. (R. pp. 71-73).

(R. pp. 138-139). In response, the solicitor asserted that the witness could assist the jury by helping them understand why juveniles delay disclosure, partially disclose, and accidentally disclose in sexual abuse cases. (R. p. 140). The trial judge then qualified Galloway-Williams as an expert, ruling:

I find that the witness is qualified as an expert and has the requisite knowledge and skill that qualifies an expert in child counseling, based upon her education and experience. I further find that the subject matter in this particular case would be beyond the ordinary knowledge of a juror requiring expert explanation of some of the factors that will certainly come into play in this particular case. I believe the testimony being offered would be reliable based upon the expertise of the witness.

(R. p. 140).

Once she was qualified as an expert, Galloway-Williams instructed the jury on the manner in which sexual abuse was typically disclosed by juvenile victims. (R. pp. 141-153). Specifically, she explained that approximately eighty percent of sexually-abused juveniles in substantiated cases of abuse did not immediately disclose the abuse for a variety of reasons, including due to fear, guilt, responsibility, and shame.⁶ (R. pp. 141-144; pp. 154-155). She further indicated that accidental and partial disclosures were common and that juvenile victims were generally more confident in making detailed disclosures when they had time and space separating them from their abuser. (R. pp. 145-148). Additionally, Galloway-Williams explained the concept of grooming, noting that abusers frequently used things like giving gifts, giving special attention, and tickling to develop trust with a child and to get the child comfortable with physical contact. (R. pp. 151-152). Finally, she explained that the timing of a child's disclosure did not alone establish if the child was telling the truth. (R. p. 155).

⁶ Galloway-Williams explained during trial that her statistics were derived from a study where all of the juveniles involved in the study were substantiated victims of sexual abuse. (R. pp. 154-155).

Subsequently, the State rested its case, and Appellant elected to testify in his own defense. (R. p. 157; p. 159). During his testimony, Appellant acknowledged that Victim 1 and Victim 2 frequently slept over at his home but denied sexually assaulting either of the girls. (R. pp. 160-161; p. 167; pp. 169-170; p. 173). Regarding the incident with Victim 1, Appellant stated Victim 1 spent time with the family on a weekend in April of 2009 and behaved normally. (R. pp. 161-163). On Sunday, Appellant stated he drank beer throughout the day, the girls went to church with neighbors, the girls returned home and went to bed, he said goodnight to them, and then he went downstairs. (R. pp. 164-165). At some point after he went downstairs, Appellant stated his wife came down to talk to him, but Appellant denied either speaking with anyone else until the next morning, seeing Victim 1 or his daughters again after they went to bed, approaching or touching Victim 1, or entering his daughter's bedroom unclothed. (R. pp. 165-167). Regarding the incident with Victim 2, Appellant indicated Victim 2 was sleeping over one night when he heard sounds coming from upstairs. (R. pp. 170-171). In response, Appellant testified he went upstairs to see what was happening and was informed by his wife that Victim 2 had experienced a bad dream. (R. p. 171). Appellant indicated his wife then *handled the situation, and he denied performing any inappropriate act on Victim 2 at any time.* (R. p. 171; p. 173). He further noted that Victim 2 did not make any allegations against him until he was arrested for the incident involving Victim 1. (R. pp. 171-172).

Thereafter, on cross-examination, Appellant admitted wrestling with the victims, claiming he treated them the same way he treated his own daughters. (R. p. 175). He further admitted he went upstairs after his wife came down and spoke to him following the incident with Victim 1. (R. p. 180). After speaking with his wife, Appellant stated he went upstairs, argued with his wife in her bedroom, and used the bathroom with the door

open. (R. pp. 181-182). In contradiction to his earlier testimony, Appellant also indicated he spoke with Victim 1 and asked her if she wanted to go home.⁷ (R. p. 183). However, Appellant denied apologizing to Victim 1 at that time.⁸ (R. p. 184).

Following Appellant's testimony, the defense rested its case. (R. p. 189). Thereafter, defense counsel and the solicitor presented their closing arguments to the jury. (R. pp. 191-225). During defense counsel's closing argument, defense counsel attacked the credibility of the victims by pointing out that Victim 1 did not disclose the sexual abuse when she had an opportunity to do so at school and that Victim 2 did not immediately disclose the abuse, did not tell her sister or parents about the abuse sooner, did not go home immediately after the abuse occurred, and did not provide a fully-detailed statement when she initially disclosed the abuse. (R. p. 192; p. 199; pp. 201-202; p. 204). Subsequently, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 237). Following the verdict, the trial judge sentenced Appellant to an aggregate term of imprisonment of 155 months. (R. p. 238).

⁷ Notably, Appellant also contradicted his earlier testimony regarding his drinking habits. (R. p. 165). Specifically, on direct examination, Appellant claimed he did not "drink alcohol at all" before admitting he drank beer "on a regular basis" on the weekends. (R. p. 165). Thereafter, on cross-examination, Appellant admitted he was a regular drinker and had a few beers every day. (R. p. 177).

⁸ Earlier during trial, Jacqueline testified that both she and Appellant apologized to Victim 1 after she reported the incident with Appellant. (R. pp. 118-119).

ARGUMENT

The trial judge committed no error in qualifying a witness as an expert and permitting her to testify in regard to the common behavioral characteristics exhibited by juvenile victims of sexual abuse because the witness was qualified to testify on that subject based on her education, knowledge, training, and experience and because her testimony was beyond the common knowledge of the typical juror, could have assisted the jury in understanding the evidence presented during trial, and met a threshold level of reliability. Furthermore, to the extent that Appellant is challenging the reliability of the expert's testimony, that argument was not properly preserved for appellate review because it was never raised to the trial judge.

Appellant contends the trial judge erred in qualifying Galloway-Williams as an expert and permitting her to testify in regard to the common behavioral characteristics exhibited by juvenile victims of sexual abuse. In support of that contention, Appellant maintains that Galloway-Williams should not have been qualified as an expert because she did not personally meet with or interview the victims or other parties involved with Appellant's case. Appellant further maintains that the subject matter of Galloway-Williams' expert testimony was not reliable. To the extent that Appellant is challenging Galloway-Williams' personal qualifications to testify as an expert, Galloway-Williams was properly qualified as an expert based on her education, knowledge, training, and experience regardless of whether she met with or interviewed the victims or other parties involved in Appellant's case because an expert is not required to be familiar with the specific facts of a case in order to testify as an expert. To the extent that Appellant is challenging the reliability of the expert testimony, that argument was not properly preserved for appellate review because it was never raised to the trial judge. As a result, it should not and cannot be considered for the first time on appeal. However, regardless of any issue preservation concerns, Galloway-Williams' testimony regarding the common behavioral characteristics exhibited by juvenile victims of sexual abuse was sufficiently reliable to warrant its admission, and such testimony has been recognized as highly

relevant, proper, and admissible in South Carolina and the majority of other jurisdictions in the United States. For those reasons, the trial judge did not abuse his discretion in qualifying Galloway-Williams as an expert and in admitting her testimony. Appellant's convictions should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court." (emphasis added)); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."); see also State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). Likewise, the decision as to whether to admit or exclude expert testimony rests within the trial judge's sound discretion and will not be reversed on appeal absent a prejudicial abuse of that discretion. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006); see State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009) ("A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion."). "An abuse of discretion occurs when the

conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ANALYSIS

“Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge.” Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). “Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions.” Id. at 445-446, 699 S.E.2d at 175. “The qualification of a witness as an expert falls largely within the discretion of the trial judge.” State v. Myer, 301 S.C. 251, 255, 391 S.E.2d 551, 554 (1990).

Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. Before admitting expert testimony, the trial judge must find: (1) the expert's testimony will assist the trier of fact; (2) the expert has the required knowledge, skill, experience, training, or education; and (3) the testimony is reliable. State v. Martin, 391 S.C. 508, 514, 706 S.E.2d 40, 42 (Ct. App. 2011); see also State v. Jones, 343 S.C. 562, 572, 541 S.E.2d 813, 819 (2001) (“Scientific evidence is admissible under Rule 702, SCRE, if the trial judge determines: (1) the evidence will assist the trier of fact; (2) the

expert witness is qualified; (3) the underlying science is reliable, applying the factors found in State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect.”).

A witness can properly be qualified as an expert where “the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury’s good judgment and common knowledge.” State v. Henry, 329 S.C. 266, 273, 495 S.E.2d 463, 467 (Ct. App. 1998). An expert’s testimony is admissible where “it is relevant and based on some factual predicate in the record.” State v. Irick, 344 S.C. 460, 465, 545 S.E.2d 282, 285 (2001). In determining whether a witness’ knowledge, skill, training, or experience qualifies the witness as an expert, no mandatory set of qualifications is required. Henry, 329 S.C. at 274, 495 S.E.2d at 467. Instead, an expert can become sufficiently skilled or knowledgeable to be able to provide an opinion helpful to the trier of fact in a multitude of ways. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 556, 658 S.E.2d 80, 86 (2008). “[D]ifferences in the amounts and quality of the expert’s education or experience go to the weight to be accorded the expert’s testimony and not to its admissibility.” Henry, 329 S.C. at 274, 495 S.E.2d at 467.

In addition to ensuring the expert is qualified, the trial judge must also ensure the testimony “meets a threshold level of reliability, regardless of whether it is scientific or nonscientific.” State v. Tapp, 387 S.C. 159, 165, 691 S.E.2d 165, 168 (Ct. App. 2010). In cases involving scientific expert testimony, the trial court should consider the following factors: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality

control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Council, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999). However, in cases involving nonscientific expert testimony, the factors applied in an analysis of scientific evidence cannot readily be applied. See White, 382 S.C. at 274, 676 S.E.2d at 688 (“The foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the Council factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony.”). Accordingly, no formulaic approach can or must be applied to determine reliability in cases involving nonscientific expert testimony. Id.

In the case sub judice, the trial judge properly qualified Galloway-Williams as an expert based upon her education, knowledge, training, and experience in regard to the common behavioral characteristics exhibited by juvenile victims of sexual abuse. Based on her education, knowledge, training, and experience, Galloway-Williams was properly permitted to testify about those common behavioral characteristics because testimony on that subject was beyond the common knowledge of the typical juror and was critical for the jurors to be able to evaluate and understand the behavior exhibited by the victims prior to their disclosures of the sexual abuse.

Critically, in cases such as Appellant’s case where there are allegations of juvenile sexual abuse, “[e]xpert testimony concerning child abuse typically comes from two sources: medical evidence provided by physicians and **behavioral science evidence** provided by psychiatrists, psychologists, and social workers.” State v. Morgan, 326 S.C. 503, 508, 485 S.E.2d 112, 115 (Ct. App. 1997) (emphasis added), overruled on other grounds by State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009). Significantly, in South Carolina, our appellate courts have consistently recognized that “[e]xpert testimony

concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible.” State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999).

“Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault.” Id. at 475, 523 S.E.2d at 794; see State v. White, 361 S.C. 407, 415, 605 S.E.2d 540, 544 (2004) (“The purpose of rape trauma evidence is to prove the elements of criminal sexual conduct since such evidence may make it more or less probable the offense occurred.”). Rape trauma or behavioral characteristic evidence is often crucial in child sexual abuse cases because “[t]he inexperience and impressionability of children often render them unable to effectively articulate the events giving rise to criminal sexual behavior.” White, 361 S.C. at 414-415, 605 S.E.2d at 544. Furthermore, rape trauma and behavioral characteristic evidence is also particularly important to explain the often unusual behavior exhibited by victims of sexual abuse that might be beyond the knowledge of the average juror. See Weaverling, 337 S.C. at 475, 523 S.E.2d at 794 (“It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the sexually abused child’s often strange demeanor.”); see also People v. Carroll, 95 N.Y.2d 375, 387, 740 N.E.2d 1084, ___ (N.Y. 2000) (“We have long held that expert testimony regarding rape trauma syndrome, abused child syndrome or similar conditions may be admitted to explain behavior of a victim that might appear unusual or that jurors may not be expected to understand[.]”); see, e.g., United States v. Lukashov, 694 F.3d 1107, 1117 (9th Cir. 2012) (“[The expert witness’] testimony was helpful to the jury because some jurors would not have a general understanding of an eight-year-old’s sexual knowledge and vocabulary and the level of sensory detail to look for in a child’s allegations of sexual

abuse.”); People v. Baenziger, 97 P.3d 271, 275 (Colo. Ct. App. 2004) (“Because the ‘lay notion of what behavior logically follows the experience of being raped may not be consistent with the actual behavior or which social scientists have observed from studying rape victims,’ expert testimony explaining these reactions is helpful to the jury in determining whether this delay should support the conclusion that the sexual assault did not occur.’ ” (citations omitted)). Accordingly, “both expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect.” State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993).

In Appellant’s case, Galloway-Williams had specialized knowledge regarding the common behavioral characteristics exhibited by juvenile victims of sexual abuse based on her education, knowledge, training, and experience. Specifically, Galloway-Williams had an educational background in psychology and counseling, had over one-hundred hours of training in forensic interviewing, was a licensed professional counselor, and was the executive director of a center directly involved with the counseling of juvenile victims of sexual abuse. In her roles as a counselor and the executive director of the center, Galloway-Williams personally performed clinical work, conducted forensic interviews, reviewed studies related to the behavior exhibited by juvenile sexual abuse victims, and testified as an expert in counseling juvenile victims of sexual abuse over forty times. As a result, Galloway-Williams possessed specialized knowledge in an area of expertise beyond the common knowledge of the average juror. See id. at 505-506, 435 S.E.2d at 861 (“[The witness] testified she had a master’s degree in social work and specialized in child and adolescent services. She attended training seminars regarding sexual abuse survivors and worked on more than one hundred cases involving sexually

abused children. We find no abuse of discretion in her qualification as an expert [in the field of sexual abuse].”). Furthermore, Galloway-Williams’ specialized knowledge was in an area that was critical for the jury to be able to properly evaluate and understand the evidence and testimony related to the victims’ behavior following the sexual abuse. See State v. Rogers, 293 S.C. 505, 506, 362 S.E.2d 7, 8 (1987) (“Evidence of behavioral traits of a sexual abuse child victim may be offered to explain inconsistencies in the behavior of the alleged victim.”), overruled on other grounds by State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). Finally, Galloway-Williams’ testimony on the subject of the common behavioral characteristics of juvenile victims of sexual abuse was sufficiently reliable to warrant its admission as it was based on her own personal experiences as a counselor in cases involving juvenile victims of sexual abuse and on studies conducted on substantiated cases of sexual abuse involving juvenile victims. See State v. J.Q., 130 N.J. 554, 573, 617 A.2d 1196, 1206 (N.J. 1993) (“There does not appear to be a dispute about acceptance within the scientific community of the clinical theory that CSAAS identifies or describes behavioral traits commonly found in child-abuse victims.”); see also John E. B. Meyers, Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion, 14 U.C. Davis J. Juv. L. & Pol’y 1, 45-46 (2010) (“Psychological research demonstrates that delayed reporting is common among sexually abused children. Frequently when children finally disclose, they give slightly different versions of the abuse to different interviewers. Finally, although there is debate about how many sexually abused children recant, it is undisputed that some children recant and some recant their recantation. Thus, from a psychological point of view, expert testimony about delay, inconsistency, and recantation is not controversial. From the legal perspective, such testimony is not worrisome.” (footnotes omitted)). Accordingly, for

those reasons, the trial judge did not abuse his broad discretion in qualifying Galloway-Williams as an expert and permitting her to testify during trial on the common behavioral characteristics exhibited by juvenile victims of sexual abuse.

In challenging the trial judge's decision to qualify Galloway-Williams as an expert and admit her testimony, Appellant contended during trial and contends on appeal that Galloway-Williams was not qualified to testify as an expert because she did not personally meet with the victims and, thus, her testimony allegedly could not have assisted the jury. However, contrary to that contention, there is no requirement whatsoever that an expert actually interview a victim or know the specific facts of a case before the expert can offer expert testimony during trial. See Weaverling, 337 S.C. at 475, 523 S.E.2d at 787 ("There is no requirement the sexual assault victim be personally interviewed or examined by the expert before the expert can give behavioral evidence testimony. The fact that the expert does not personally interview the victim bears on the weight of the behavioral evidence not on its admissibility."); see also State v. Roenfeldt, 241 Neb. 30, 39, 486 N.W.2d 197, 204 (Neb. 1992) ("The reasoning for a rule allowing an expert to testify about sexual abuse in generalities, **without being familiar with the alleged victim**, is that '[f]ew jurors have sufficient familiarity with child sexual abuse to understand the dynamics of a sexually abusive relationship,' and 'the behavior exhibited by sexually abused children is often contrary to what most adults would expect.' " (emphasis added, brackets in original, and citation omitted)); State v. Kaufman, 187 Ohio App. 3d 50, 85, 931 N.E.2d 143, 170 (Ohio Ct. App. 2010) (holding an expert witness was properly permitted to testify on general background information regarding delayed disclosure by juvenile victims of sexual abuse even though the expert did not know any of the specific facts related to Kaufman's victims). Instead, experts are permitted to

acquire their expertise in a broad variety of ways and can testify in regard to that expertise so long as the testimony would help the jury in understanding the evidence or in determining a fact in issue. See Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact **to understand the evidence** or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." (emphasis added)); see also Fields, 376 S.C. at 556, 658 S.E.2d at 86 ("[T]here are a variety of ways in which a person can become so skilled or knowledgeable in a field that their opinion in a scientific, technical, or specialized area can assist the trier of fact in determining a fact or in understanding the evidence."). Galloway-Williams' expert testimony was extremely important because it could have helped the jury understand the evidence related to the victims' behavior and disclosures of the abuse, which could potentially have been misunderstood without the benefit of that testimony. Cf. State v. Carpenter, 147 N.C. App. 386, 393, 556 S.E.2d 316, 321 (N.C. Ct. App. 2001) (holding that expert testimony indicating that delayed and incomplete disclosures are not unusual in cases of child abuse was "clearly instructive and helpful to the jury in understanding the evidence" because the nature of the juvenile sexual abuse places lay jurors at a disadvantage). Accordingly, the trial judge did not err in qualifying Galloway-Williams as an expert and permitting her to testify even though she had not met with the victims and was not familiar with the specific facts of their disclosures.

Additionally, for the first time on appeal, Appellant also contends that the trial judge should not have admitted the expert testimony because the subject matter of Galloway-Williams' testimony allegedly was not based on scientific, technical, or specialized knowledge and was not sufficiently reliable. However, Appellant did not

raise such a contention to the trial judge. Instead, during trial, Appellant simply contended that Galloway-Williams was not personally qualified to testify as an expert because she had not met with any of the people involved in the case and was not aware of any evidence or facts in the case.⁹ Significantly, because Appellant did not challenge the subject matter or reliability of Galloway-Williams' testimony during trial, Appellant is precluded from doing so for the first time on appeal. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (holding that a party cannot argue one ground in support of a motion during trial and then another ground in support of the motion on appeal); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."). As a result, Appellant's appellate argument in regard to the subject matter and reliability of the expert testimony was not preserved for appellate review and should not be addressed on appeal. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970) ("It is well settled that an issue which has not been presented to or passed upon by the trial judge will not be considered on appeal."); see also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000) ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." (emphasis added)); cf. Adams, 354 S.C. at 380, 580

⁹ Specifically, defense counsel argued: "I do not believe she's qualified to testify in this case, because she's not able to assist this jury with any question before them, as she has not met any of the people involved in the case. And as I believe the standard for a juror - I'm sorry, for an expert, they may testify as to scientific, technical or other specialized knowledge that will assist the trier of fact to understand the evidence or determine the fact at issue. She is not aware of any of the evidence in the case or any of the facts in issue." (R. pp. 138-139).

S.E.2d at 795 (declining to address one of the grounds raised on appeal in support of Adams' mistrial motion when that ground was never presented to the trial judge).

However, even assuming Appellant's appellate challenge to the subject matter or reliability of the expert testimony was somehow preserved for appellate review, the trial judge still committed no error in admitting the expert testimony. Critically, behavioral science evidence, including behavioral science evidence in regard to the common behavioral characteristics exhibited by juvenile victims of sexual abuse, has historically been recognized as admissible by the majority of courts in the United States. See People v. Spicola, 16 N.Y.3d 441, 465, 947 N.E.2d 620, ___ (N.Y. 2011) (recognizing that the majority of states allow the introduction of expert testimony to explain delayed disclosure and other behavioral characteristics exhibited by juvenile victims of sexual abuse); see also Baenziger, 97 P.3d at 275 ("It has been repeatedly held that rape trauma syndrome evidence is reasonably reliable."); State v. Crespo, 114 Conn. App. 346, 373, 969 A.2d 231, 248 (Conn. App. Ct. 2009) ("Such expert testimony, related to the issue of delayed reporting of sexual abuse, falls within the type of social framework testimony that has been deemed relevant in assessing a victim's conduct in cases of sexual abuse."); Harris v. State, 283 Ga. App. 374, 381, 641 S.E.2d 619, 625 (Ga. Ct. App. 2007) (recognizing that experts are properly permitted to testify in regard to the typical patterns of behavior exhibited by rape victims); Sanderson v. Commonwealth, 291 S.W.3d 610, 619 (Ky. 2009) (Scott, J., concurring in part and dissenting in part) ("[M]ost states allow [child sexual abuse accommodation syndrome] 'rehabilitative' testimony offered to explain the puzzling conduct of the victim in order to meet the defense's attack on the victim's credibility."); see, e.g., Elizabeth Trainor, Admissibility of Expert Testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS) in Criminal Case, 85 A.L.R. 5th 595

(listing cases in which courts have found testimony on the common behavioral characteristics of victims of sexual abuse to be reliable and unreliable). Moreover, such evidence has also historically and specifically been recognized as proper and admissible by South Carolina courts. See Schumpert, 312 S.C. at 505-506, 435 S.E.2d at 861-862 (holding an expert in the field of sexual abuse was properly qualified to testify in regard to the victim's behavioral characteristics and the fact that those characteristics were typical for victims of sexual abuse); Weaverling, 337 S.C. at 474-475, 523 S.E.2d at 794 (instructing that expert testimony concerning the common behavioral characteristics exhibited by juvenile victims of sexual abuse was relevant, helpful, and admissible); see also White, 361 S.C. at 415, 605 S.E.2d at 544 (recognizing that rape trauma evidence is admissible in sexual assault cases involving either adult or juvenile victims); State v. Whaley, 305 S.C. 138, 142, 406 S.E.2d 369, 371-372 (1991) (holding that expert testimony in regard to factors that could affect eyewitness identifications was admissible); State v. Hill, 287 S.C. 398, 400, 339 S.E.2d 121, 122 (1986) (holding that expert testimony on battered woman's syndrome, which involves testimony on the common characteristics that are exhibited by women abused over an extended period of time, is admissible if the expert is qualified on the subject). Thus, as opposed to testifying in regard to "non-scientific pseudo junk science," the expert in Galloway-Williams' case testified on subject matter that has been recognized as highly relevant, proper, and admissible in the majority of jurisdictions in the country, including in South Carolina.¹⁰ (App. Br. p. 19).

¹⁰ In his appellate brief, Appellant correctly identified Kentucky as one of the states in the minority that do not permit testimony in regard to the common behavioral characteristics exhibited by sexual abuse victims, citing to the Kentucky Supreme Court's opinion in Mitchell v. Commonwealth, 777 S.W.2d 930, 933 (Ky. 1989), where that court determined that the trial judge erroneously admitted testimony on child sexual abuse accommodation syndrome. (App. Br. pp. 17-18). However, Appellant incorrectly appears to suggest

In Appellant's case, Galloway-Williams' testimony regarding the common behavioral characteristics exhibited by juvenile victims of sexual abuse was based on her own experiences counseling minor victims of abuse, her clinical work and work as a licensed professional counselor, her education and training, and her review of statistics derived from studies involving substantiated cases of abuse. See J.Q., 130 N.J. at 573, 617 A.2d at 1206 ("There does not appear to be a dispute about acceptance within the scientific community of the clinical theory that CSAAS identifies or describes behavioral traits commonly found in child-abuse victims."); see also Schumpert, 312 S.C. at 505-506, 435 S.E.2d at 861 ("[The witness] testified she had a master's degree in social work and specialized in child and adolescent services. She attended training seminars regarding sexual abuse survivors and worked on more than one hundred cases involving sexually abused children. We find no abuse of discretion in her qualification as an expert [in the field of sexual abuse]."); see, e.g., Whaley, 305 S.C. at 142, n. 2, 406 S.E.2d at 372 (rejecting the suggestion that expert testimony on factors that might affect eyewitness identifications was not sufficiently reliable to warrant its admission during trial due to the

in his appellate brief that Kansas is one of the few states that does not permit the introduction of testimony in regard to the common behavioral characteristics exhibited by juvenile victims of sexual abuse. (App. Br. p. 20). Contrary to what Appellant appears to suggest, expert testimony on the common behavioral characteristics exhibited by juvenile victims of sexual abuse has consistently been found to be reliable and admissible in Kansas. See State v. Reyna, 290 Kan. 666, 685, 234 P.3d 761, 775 (Kan. 2010) ("Case law supports the conclusion that the testimony of general behavioral traits of sexual abuse victims is helpful to the jury and, therefore, admissible."); State v. McIntosh, 274 Kan. 939, 960, 58 P.3d 716, 730 (Kan. 2002) ("The Court of Appeals did not err in finding that the trial court did not abuse its discretion in qualifying Theis as an expert for the purpose of testifying as to common behaviors among sexually abused children and allowing Theis to testify that A.D. exhibited behavior consistent with a sexually abused child."); State v. Reser, 244 Kan. 306, 313, 767 P.2d 1277, 1282 (Kan. 1989) ("There are numerous cases from other jurisdictions where expert testimony regarding characteristics of sexually abused children has been held properly admitted as providing helpful background information to the jury."). In the case cited to by Appellant, the Kansas Supreme Court simply found that the particular witness who testified as an expert on that subject was not personally qualified to testify without indicating that testimony on the common behavioral characteristics exhibited by juvenile victims of sexual abuse was itself inadmissible. See State v. Gaona, 293 Kan. 930, 948-949, 270 P.3d 1165, 1177-1178 (Kan. 2012) (finding a witness who was not a psychologist, psychiatrist, social worker, or therapist did not possess the required qualification to testify about the common behavioral characteristics exhibited by juvenile victims of sexual abuse).

fact that the subject was a legitimate area of psychological study and had generated a large body of work). Under those circumstances, Galloway-Williams' testimony met the threshold level of reliability necessary to warrant its admission during trial, and it was ultimately up to the jury to determine the weight to assign to her expert testimony. See White, 382 S.C. at 274, 676 S.E.2d at 689 (instructing that the trial judge must determine whether an expert is qualified and the subject of the expert's testimony meets a **threshold** level of reliability before permitting the expert to testify); see also Perry v. New Hampshire, ___ U.S. ___, 132 S. Ct. 716, 728 (2012) ("[T]he jury, not the judge, traditionally determines the reliability of evidence."); Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 596 (1983) ("Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence."); see, e.g., State v. Jones, 273 S.C. 723, 732, 259 S.E.2d 120, 125 (1979) (finding the trial judge properly exercised his discretion in admitting expert testimony on "bite-mark" evidence where "[t]here was no showing that the techniques and theories employed were other than accepted by the photographic and dental communities").

Significantly, the expert who testified in Appellant's case did **not** testify that she believed the victims, that the victims had been sexually abused, that the victims were telling the truth, that the victims' behavior suggested they were telling the truth, that the victims' disclosures were compelling, or that she had even met with or interviewed the victims. Cf. State v. Kromah, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013) (instructing that forensic interviewers should not testify about a child's veracity or tendency to tell the truth, vouch for a child's believability, state that they made a compelling finding of abuse, assert that they believed the child, or indicate that the child's behavior suggests the

child was telling the truth); State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) (finding a forensic interviewer's testimony constituted improper vouching where the interviewer testified the victims provided compelling disclosures of abuse by Jennings and provided details consistent with the background information provided by the victims' mother, the police report, and other children); State v. McKerley, 397 S.C. 461, 465-466, 725 S.E.2d 139, 142 (Ct. App. 2012) (finding a forensic interviewer's testimony to be improper where the interviewer testified about giving an opinion as to whether something happened and about consistent information and compelling findings). Instead, the expert simply explained common behavioral characteristics exhibited by juvenile victims of sexual abuse while cautioning the jury that aspects of those behavioral characteristics such as delayed disclosure did not establish that a child was or was not telling the truth. See Weaverling, 337 S.C. at 475, 523 S.E.2d at 794 ("It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the sexually abused child's often strange demeanor."); see also State v. Gonzalez, 150 N.H. 74, 78, 834 A.2d 354, 358 (N.H. 2003) ("We have recognized that a layperson is not capable of making such observations because 'a child's delayed disclosure of abuse, and recantation of statements about abuse, may be puzzling or appear counterintuitive to lay observers when they consider the suffering endured by a child who is continually being abused.' Because of its counterintuitive nature, expert testimony may be permitted to educate the jury about apparent inconsistent behavior by a victim following an assault ant to 'provid[e] useful information that is beyond the common experience of an average juror.' " (brackets in original and citations omitted)). As a result, the expert did not improperly bolster or vouch for the credibility or believability of the victims, and the trial judge committed no error in admitting the expert's testimony. See State v. Douglas, 367

S.C. 498, 521, 626 S.E.2d 59, 71 (Ct. App. 2006) ("Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror."), rev'd in part on other grounds, 380 S.C. 499, 671 S.E.2d 606 (2009).

In conclusion, the trial judge properly qualified Galloway-Williams as an expert based on her education, knowledge, training, and experience and work as a licensed professional counselor even though she had not personally met with the victims. See Weaverling, 337 S.C. at 475, 523 S.E.2d at 787 ("There is no requirement the sexual assault victim be personally interviewed or examined by the expert before the expert can give behavioral evidence testimony."). Furthermore, the trial judge properly permitted Galloway-Williams to testify on an area of specialized knowledge that could have been helpful to the jury in understanding the evidence presented during trial, and the subject matter of Galloway-Williams' testimony met a threshold level of reliability. See Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."). Under those circumstances, the trial judge did not abuse his discretion in admitting Galloway-Williams' expert testimony on the common behavioral characteristics exhibited by juvenile victims of sexual abuse. See Henry, 329 S.C. at 273, 495 S.E.2d at 466 ("There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a

factual issue which is beyond the scope of the jury's good judgment and common knowledge."). Appellant's convictions should be affirmed.

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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October 4, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2012-205886

THE STATE,

Respondent,

vs.

MARK STANLEY PETERS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
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