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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH ANTHONY DRACHSLIN, SR.,

APPELLANT

APPELLATE CASE NO. 2014-000945

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,	)	
	)	2013-GS-39-1018, 1019, 1020
PLAINTIFF,	)	
	)	
-VS-	)	
	)	APRIL 23 AND 24, 2014
JOSEPH ANTHONY DRACHSLIN, SR.,	)	
	)	
DEFENDANT.	)	TRANSCRIPT OF RECORD
	)	

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

A P P E A R A N C E S:

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ATTORNEY FOR THE STATE

JOHN DEJONG, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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JURY VOIR DIRE

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Def.	
126	Shelby, Janna B	W	F				x
121	Ross, Jason E	W	M		x		
137	Stoddard, Cynthia J	W	F			x	
132	Sowell, Marshall E	W	M				x
26	Covington, Everett J Jr	W	M				x
63	Hernandez, Tori L	W	F				x
70	Jaynes, Sara M	W	F			x	
100	Norris, Marshall J	W	M			x	
30	Dobbins, Kenneth D	W	M			x	
37	Fowler, Kelli M	W	F			x	
9	Beckenhauer, Thomas R	W	M				x
103	Osteen, Linda F	W	F			x	
28	Crowe, Carl G	W	M		x		
104	Pace, Nathan S	W	M				x
80	Massengale, Bobby L	W	M				x
133	Sowell, Melvin E Jr	W	M			x	
159	Youngblood, Cheryl A	W	F				x
62	Hendrix, Mau N	A	F				x
102	Olcott, Timothy D	W	M				x
33	Ferber, Charles R	W	M		x		
148	Vanderventer, David R	W	M			x	
73	Lavery, Charles N	W	M		x		
157	Young, Melody L	W	F				x
49	Grant, Jean L	W	F			x	
39	Galloway, Ashley D	W	F			x	
10	Blair, Michael C	W	M				x

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32	Fabian, Mary A	W	F			x	
22	Clardy, Lisa M	W	F			x	
110	Pfeiffer, Konrad A	W	M		x		
112	Porter, Judith M	W	F				x

1 **APRIL 23, 2014**

2 (WHEREUPON, Court convened with all parties present
3 and the following proceedings were had.)

4 (WHEREUPON, State Exhibit Numbers 1 through 6 were
5 marked for identification.)

6 THE COURT: All right. Gentlemen, you ready to
7 proceed?

8 MR. TOOKER: Yes, sir.

9 MR. DEJONG: Ready for the defendant, Your
10 Honor.

11 THE COURT: All right. Let's make sure we
12 understand what we're doing today.

13 MR. DEJONG: Your Honor, I apologize. I've got
14 this fan roaring behind me and I cannot hear you. I mean
15 no disrespect, but I cannot hear you.

16 THE COURT: All right. I'll do better. I'm
17 mumbling now. I'm talking to myself now, Mr. DeJong;
18 okay?

19 MR. DEJONG: Okay. I find that when I do that
20 I'm my own best company, Your Honor. But be that as it
21 may.

22 THE COURT: What I want to do first of all is
23 set forth what issues the state has and what issues the
24 defense has so that we can sort of know where we're
25 going. What issues would there be needed by the state

1 for action prior to the jury coming in, Mr. Tooker?

2 MR. TOOKER: Yes, sir, Your Honor. The first
3 thing the state wants to bring before the court is a
4 motion to consolidate our indictments. Before you are
5 three indictments, 2013-GS-39-1018, 1019 and 1020, and
6 they allege a course of conduct by the defendant against
7 two minor children.

8 Now, two of the indictments, one is for criminal
9 sexual conduct in the third degree with a minor, criminal
10 sexual conduct in the first degree with a minor are for
11 the defendant's older female grandchild, Older Sister
12 [REDACTED]. And then the other indictment, criminal
13 sexual conduct with a minor in the third degree is for
14 his other granddaughter, Younger Sister [REDACTED]

15 So what the state would like to do is have those
16 indictments consolidated for the purposes of this trial
17 so that we can try all three indictments together and
18 elicit testimony from both victims as to what the
19 defendant allegedly did to them and introduce forensic
20 interviews through forensic interviewer Christine
21 Carlberg with the Julie Valentine Center from interviews
22 with both alleged victims.

23 THE COURT: What's the second matter that the
24 state would have?

25 MR. TOOKER: The second matter, just a little

1 bit of housekeeping, we intend to offer a couple of
2 statements the defendant made in our case in chief, and
3 we would just like to proffer the testimony of Detective
4 Rita Burgess and Brian Bolding to establish the
5 circumstances surrounding those statements in a *Jackson*
6 *v. Denno* hearing.

7 THE COURT: Are those written statements or
8 oral statements?

9 MR. TOOKER: Two oral statements and a written
10 statement. The first oral statement was made to Brian
11 Bolding. He arrived on scene pre-Miranda. The second
12 oral statement was made to Brian Bolding post-Miranda.
13 The third statement was a written statement provided to
14 Detective Burgess and Brian Bolding, and that was also
15 post-Miranda.

16 THE COURT: All right. What other matters
17 would the state have?

18 MR. TOOKER: Those are the state's only
19 preliminary matters.

20 THE COURT: Anything from the defense, Mr.
21 DeJong?

22 MR. DEJONG: Thank you, Your Honor. May it
23 please the court. Mr. Tooker's first item was a bit
24 novel to me. It looked to me like they were already
25 consolidated on the trial docket. But without arguing

1 that necessarily, there would be an argument to sever the
2 two alleged victims in the motion to sever the two
3 alleged victims' cases in this trial. And I don't think
4 Your Honor is ready to hear argument. You just want to
5 know what the issues are right now.

6 THE COURT: Does that differ from his first --
7 he's moving to consolidate and you're moving to sever?

8 MR. DEJONG: Yes, sir.

9 THE COURT: Is that the same issue?

10 MR. DEJONG: It's basically the same thing.
11 He's saying tomato and I'm saying tomato, Your Honor.

12 THE COURT: Okay. Any other ---

13 MR. DEJONG: Yes, Your Honor. There will be a
14 motion to suppress the forensic interview with regard to
15 the forensic interview of the alleged victim Older Sister
16 Certainly depending on how the court rules on that, there
17 would be an additional motion to suppress certain
18 portions of the forensic interview. And of course, there
19 will be an argument to at least suppress part, if not
20 all, of my client's statements, Your Honor, but I don't
21 think that's right until we get to the *Jackson v. Denno*,
22 Your Honor. That's all I can think of.

23 THE COURT: All right. Any issues with the
24 statement given by Younger Sister

25 MR. DEJONG: As far as the forensic interview

1 goes?

2 THE COURT: Right.

3 MR. DEJONG: Yes, Your Honor, there will be.

4 Not as to ---

5 THE COURT: On both of those?

6 MR. DEJONG: Yes, sir. On **Younger Sister** not as to the
7 entire forensic interview, I don't think. Very candidly,
8 I have a great deal to argue on that one. On **Older Sister** I
9 argue to the entirety of the forensic interview. But if
10 Your Honor rules that it comes in, then there would be a
11 portion of that interview that I would argue should be
12 suppressed, Your Honor. There are two portions actually
13 on **Younger Sister**

14 THE COURT: You also told me you want to
15 suppress the statements of your client?

16 MR. DEJONG: Well, the pre-Miranda, but that's
17 something we'll have to discuss factually, Your Honor.

18 THE COURT: Okay. All right. Let the record
19 reflect that the attorneys -- I did meet with them
20 briefly yesterday and by consent they provided me with
21 copies of the forensic interviews of both of the victims
22 in this case. I have reviewed both of those so that when
23 we do have our argument on suppression, I will have some
24 familiarity with it. I've seen them both in their
25 entirety, so we'll be able to cover that.

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Brian Bolding -In-Camera - Direct Examination by Mr. Tooker

11

1 I think it might -- let's go to the *Jackson Denno*
2 first and get that one. The other two somewhat mesh, I
3 guess, more so than that one being in the middle. So
4 let's address the *Jackson Denno* matters first.

5 You've got your witnesses here, I guess.

6 MR. TOOKER: Yes, sir. May it please the
7 court?

8 THE COURT: Yes, sir.

9 MR. TOOKER: State calls Brian Bolding to the
10 stand.

11 THE COURT: Come around and be sworn.

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

14 Do you solemnly swear or affirm the testimony you're
15 about to give in this case to be the truth, the whole
16 truth and nothing but the truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Thank you, sir. State your name
19 for the record, please.

20 THE WITNESS: Brian Bolding.

21 **BRIAN BOLDING,**

22 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

23 **IN-CAMERA**

24 **DIRECT EXAMINATION**

25 **BY MR. TOOKER:**

1 Q. Lieutenant Bolding, where do you work, sir?

2 A. At the Pickens County Sheriff's Office.

3 Q. Okay. And you're familiar with why you were called
4 to testify today?

5 A. Yes, I am.

6 Q. You encountered the defendant, Mr. Drachslin, on
7 the date of this alleged incident; is that correct?

8 A. That's correct.

9 Q. When you initially encountered him, where was he?

10 A. He was initially sitting on the front steps of the
11 home.

12 Q. And did he make any statements to you initially
13 when you responded before he had been Mirandized?

14 A. Yes, he did.

15 Q. Okay. And what did he say?

16 A. I asked him if he was okay at first because he had
17 his head down between his hands. And he said no. and I
18 asked him why? He said because he had been caught with
19 his hand down Older Sister pants.

20 Q. Okay. And who is Older Sister

21 A. His granddaughter.

22 Q. All right. Did you know why you had responded to
23 the scene or what you were called out for?

24 A. I was dispatched in reference to a possible alleged
25 sexual assault that had just occurred.

1 Q. Okay. And when you got on the scene, where
2 specifically was the defendant?

3 A. He was sitting on the front steps of the home
4 outside in the front yard, basically, on the front steps
5 of the house.

6 Q. Was he under arrest when you asked him if he was
7 okay?

8 A. Absolutely not.

9 Q. Was he cuffed?

10 A. Oh, absolutely not.

11 Q. Had any interviews been conducted with the children
12 yet?

13 A. No.

14 Q. Okay. Had he been restrained in anyway?

15 A. No, sir.

16 Q. After he said that, then what did you do?

17 A. Basically I contacted Detective Burgess for
18 assistance in interviewing the females.

19 Q. Okay. And did she come out?

20 A. She did.

21 Q. Okay. Did y'all have occasion again to talk to the
22 defendant?

23 A. Yes, we did.

24 Q. Okay. And before you talked to him did you
25 Mirandize him?

1 A. Yes. He was given his Miranda advisements.

2 Q. Okay. And Lieutenant, I want to show you what's
3 been marked for identification purposes as State's 5 and
4 State's 6. What is State's 5?

5 A. State's 5 is the written waiver of rights of your
6 Miranda rights.

7 Q. Okay. And who signed that form?

8 A. It was initialed and signed by Joseph Drachslin,
9 Sr.

10 Q. Okay. And if you would, would you please read the
11 rights off that form?

12 A. It says, Your Rights, the Sheriff's Office in
13 Pickens County, South Carolina, date 3/12/2013. The time
14 is five ten p.m. The first line says, before you are
15 asked any questions you must understand your rights. And
16 it's checked and it's initialed by the defendant. The
17 second line says, you have the right to remain silent.
18 It's checked and initialed by the defendant. The next
19 line says, anything you say can be used against you in
20 court, and it's checked and initialed by the defendant.
21 You have the right to talk to a lawyer for advice before
22 we ask you any questions and to have him or her with you
23 during questioning, and it's checked and initialed by the
24 defendant. If you have no money to pay a lawyer's fee,
25 the court will appoint one to represent you without cost

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1 if you wish. It's checked and initialed by the
2 defendant. If you decide to answer questions without a
3 lawyer present you will still have the right to stop
4 answering at any time. You also have the right to stop
5 answering at any time until you talk to a lawyer. It's
6 checked and initialed by the defendant. And the next
7 line is a waiver of rights. I have read this statement
8 of my rights and I understand what my rights are. I am
9 willing to make a statement and answer questions. I do
10 not want a lawyer at this time. I understand and know
11 what I am doing. No promises or threats have been made
12 to me and no pressure or coercion of any kind has been
13 used against me. And it's checked and initialed by the
14 defendant. And it's signed by the defendant at the
15 bottom and it's witnessed by Detective Sergeant Burgess
16 and myself.

17 Q. Okay. And after you went over that information
18 with the defendant, did he appear to understand what you
19 were talking about?

20 A. Yes, he did.

21 Q. Okay. Did he look intoxicated or somehow confused?

22 A. No. He didn't look any of that.

23 Q. Okay. And after he signed that form and initialed
24 by each of those lines, did you interview him?

25 A. Detective Burgess interviewed him.

- 1 Q. Okay. And did he make any statements?
- 2 A. Yes. He, again, admitted that he had been caught.
- 3 Q. Okay. And these were oral statements initially?
- 4 A. We actually obtained a written statement from him.
- 5 Q. Okay. Before you got the written statement from
- 6 him, did he not admit things orally to you?
- 7 A. Yes. He admitted some of the questions. I don't
- 8 remember the specific questions, but yes, he did make
- 9 oral admissions, as well.
- 10 Q. Okay. And then after he made those oral
- 11 admissions, y'all got a written statement?
- 12 A. Yes.
- 13 Q. All right. Is that what's been premarked for
- 14 identification purposes as State's 6?
- 15 A. Yes. It's been marked State's 6.
- 16 Q. Okay. And that document right there, did the
- 17 defendant fill it out?
- 18 A. I filled out the top portion with his information.
- 19 And then I believe he hand wrote it and then he signed
- 20 it.
- 21 Q. Okay. And would you read that statement on the
- 22 record, please.
- 23 A. The date is May 12th -- correction, I'm sorry --
- 24 March 12th, 2013. The place was 114 Mountain Forest
- 25 Circle in Easley. Time started was at five forty-two

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17

1 p.m. I, the undersigned, Joseph Anthony Drachslin, Sr.,
2 am seventy-six years of age. My date and place of birth
3 being the 13th day of December, 1936 in Pennsylvania. I
4 now live at 114 Mountain Forest Circle in Easley, South
5 Carolina, which is within Pickens County's limits.
6 Before answering any questions or making any statements,
7 Brian R. Bolding and Rita Burgess, persons who identified
8 themselves as deputies with PCSO -- that's Pickens County
9 Sheriff's Office -- duly warned and advised me and know
10 -- and I know and understand that I have the following
11 rights: That I have the right to remain silent and I do
12 not have to answer any questions or make any statements
13 at all. That any statement I make can and will be used
14 against me in court or courts of law for the offense or
15 offenses concerning which the following statement is
16 hereafter made. That I have the right to counsel or
17 lawyer of my own choice before or at any time during any
18 questioning or statements I make. That if I cannot
19 afford to hire a lawyer, I may request and have a lawyer
20 appointed for me by the proper authority before or at any
21 time during -- I apologize. This is small writing here.
22 You'll have to bear with me on this one. I choose and
23 call for the -- I'm sorry. Let me back up here.
24 Q. Does it reiterate those same rights?
25 A. It does basically, yes.

1 Q. Okay. And then he filled that document out with
2 his own hand?

3 A. Yes, he did.

4 Q. And did you witness him doing this?

5 A. I did.

6 Q. Okay. And did he sign that document with his own
7 hand?

8 A. He did.

9 Q. Did you and Detective Burgess witness him doing
10 this?

11 A. We did.

12 Q. Is there anything else with regards to the
13 statements that he made that you feel the court needs to
14 know?

15 A. Would you like for me to read his statement?

16 Q. Sure. Please.

17 A. I was caught -- and bear with me, this is in his
18 handwriting. I was caught with my hand in Older Sister pants
19 today. I did this several months ago. I am truly sorry
20 for this and am ready to get help in anyway. I know that
21 my -- I apologize. I'm having trouble with his
22 handwriting. I think it says I have put my finger in her
23 ---

24 MR. DEJONG: Your Honor, I realize we're in a
25 *Jackson v. Denno*. What he thinks it says is not

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Brian Bolding -In-Camera - Cross Examination by Mr. DeJong

19

1 relevant. The document ---

2 THE COURT: I'll look at the document.

3 MR. DEJONG: Yes, Your Honor.

4 THE COURT: I'll let him continue.

5 Q. ... in her vagina before. Is that possibly ---

6 A. I believe that's what that says. It says I have
7 put my finger, and then there's a word I can't quite
8 discern here, and it says before and it says Older Sister
9 period. And then I wrote end.

10 Q. Okay. Anything else?

11 A. At the bottom of it, it says, I received a copy of
12 this statement. And it was initialed by Mr. Drachslin.
13 And it has the time it was complete and the date and it
14 was witnessed by myself and Detective Burgess and it was
15 signed by Mr. Drachslin.

16 MR. TOOKER: Permission to approach, Your
17 Honor.

18 THE COURT: You may.

19 MR. TOOKER: No further questions of this
20 witness at this time.

21 THE COURT: You may cross examine the witness,
22 Mr. DeJong.

23 MR. DEJONG: Thank you, Your Honor. May it
24 please the court.

25 **CROSS EXAMINATION**

1 **BY MR. DEJONG:**

2 Q. Lieutenant Bolding, when were you dispatched up to
3 -- well, where were you dispatched to, I guess is the
4 first question?

5 A. I believe it was 114 Mountain Forest Circle in
6 Easley.

7 Q. Do you remember what time you were dispatched?

8 A. Without looking at the incident report, I'd say
9 approximately three thirty in the afternoon.

10 Q. Okay. You want to look at your incident report?

11 A. If I could, it would help.

12 Q. I'm not going to hand you all of it. I'm going to
13 hand you what I believe is through -- I don't know if you
14 did more than one supplemental, but through your first
15 supplemental.

16 A. Thank you. Yes, I was dispatched at three thirty
17 in the afternoon.

18 Q. All right, sir. Now, if I understood you
19 correctly, you said when you arrived at -- now you've got
20 my copy. I can't remember the address -- 114 whatever
21 that address was ---

22 A. That's correct.

23 Q. --- you saw an older gentleman sitting on the front
24 steps and you spoke to him; is that correct? Is that
25 what you shared with Mr. Tooker?

1 A. Yes.

2 Q. Now, you filed a supplemental report in this case;
3 did you not?

4 A. I did.

5 Q. And in your report that is not quite what is in
6 your report; is it?

7 A. In my report, I was dispatched to this location. I
8 was approached by his son, Mr. Drachslin, Jr., and spoke
9 with him briefly before speaking to the defendant.

10 Q. Yes, sir. And that's my whole point. I think your
11 report says you saw an older white gentleman sitting on
12 the front steps. You did not speak to him at that point
13 in time?

14 A. No. He didn't speak to me and say what he said
15 until after I spoke with his son.

16 Q. Right. You spoke to young Mr. Drachslin?

17 A. That's correct.

18 Q. And certainly had allegations at that point in time
19 before you ever spoke to Mr. Drachslin, Sr.?

20 A. Exactly.

21 Q. All right. And before you went to speak to Mr.
22 Drachslin, Sr., you knew the allegations were of a sexual
23 offense nature; correct?

24 A. I knew that from the communications I received from
25 dispatch prior to getting to the house.

1 Q. All right. So now you have it from two directions.

2 You got it from communication from dispatch and you got
3 it from Mr. Drachslin, Jr.; right?

4 A. Exactly.

5 Q. Well, let me jump forward. When did you finally
6 place him under arrest?

7 A. He wasn't placed under arrest, I don't believe,
8 until after we obtained the written statements.

9 Q. All right. But what you're sharing with us, you
10 had the allegation -- well, let me ask you this. Did
11 dispatch identify a possible suspect?

12 A. I don't believe they did.

13 Q. When you talked to Mr. Drachslin, Jr., did he
14 identify a possible suspect?

15 A. Yes, he did.

16 Q. Wasn't even a possible in his mind; it was he done
17 it?

18 A. Yeah. He saw his father.

19 Q. All right. And now you have that information and
20 you go talk to Mr. Drachslin?

21 A. Yes.

22 Q. And in talking with Mr. Drachslin, you asked Mr.
23 Drachslin questions?

24 A. Yes.

25 Q. And at that point in time, were you in uniform?

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Brian Bolding -In-Camera - Cross Examination by Mr. DeJong

23

- 1 A. I was in uniform.
- 2 Q. Full brigade?
- 3 A. Yes, sir. Duty belt, gun, badge, the whole works.
- 4 Q. All right, sir. And certainly at that point in
- 5 time that you talked to Mr. Drachslin, pre-Miranda, ---
- 6 A. Uh-huh (affirmative).
- 7 Q. --- you knew what the allegations were?
- 8 A. Yes, sir.
- 9 Q. You knew he was a suspect?
- 10 A. Yes, sir.
- 11 Q. And you asked him about the allegations?
- 12 A. I asked him if he was okay.
- 13 Q. Right. Didn't you follow up with another question
- 14 on that?
- 15 A. He volunteered that he had been caught.
- 16 Q. But nonetheless, you didn't Mirandize him?
- 17 A. Not at that point, no.
- 18 Q. All right. Knowing those allegations, both from
- 19 dispatch and from Mr. Drachslin, Jr., before you spoke to
- 20 my client, Mr. Drachslin, Sr., -- I lost my whole train
- 21 of thought there. Knowing those allegations -- and
- 22 knowing that Mr. Drachslin, Jr. had identified my client
- 23 as the alleged suspect in this case, was he free to
- 24 leave?
- 25 A. Sure.

1 Q. Mr. Drachslin, Sr. was free to leave?

2 A. Yes.

3 Q. All right. Even though you had these allegations
4 and you had him as a suspect?

5 A. Yes. We wanted to do an investigation.

6 Q. I'm not saying that he was under arrest. You're
7 saying he was free to leave?

8 A. Absolutely.

9 Q. Now, let's move forward to the giving him of his
10 rights. What was Mr. Drachslin's demeanor when you spoke
11 to him pre-Miranda?

12 A. He was, I would say humbled. He seemed kind of
13 depressed. That why I asked him if he was okay.

14 Q. Upset?

15 A. A little bit.

16 Q. All right. Now, you asked him those questions pre-
17 Miranda. Now, do you wait to Mirandize him until Officer
18 Burgess gets there?

19 A. Yes.

20 Q. Okay. How long was that?

21 A. I would have to look at a radio log to see how long
22 it took for her to respond. It wasn't very long.

23 Q. Do you need more of this report?

24 A. I believe if we had a CAD sheet maybe from
25 communications that might show it. I'm not sure we have

1 that.

2 Q. Okay. I'll give you her supplementals here to see
3 if that'll help you.

4 A. I'm not sure it'll say what time she responded on
5 her supplementals. It's not going to specify her
6 response time.

7 Q. All right, sir. There was some lapse of time,
8 though?

9 A. Yes.

10 Q. After that first initial contact with Mr.
11 Drachslin, did you have any more contact with him until
12 Ms. Burgess got there?

13 A. I waited until she got there.

14 Q. All right. Where was Mr. Drachslin in the
15 meantime?

16 A. He was still sitting on the front steps of the
17 home.

18 Q. Were you watching him?

19 A. I would occasionally peek at him, yes.

20 Q. Pardon me?

21 A. I would occasionally take a peek at him, yes.

22 Q. More than a peek probably; right? You were
23 watching to see if he was going to leave or not; weren't
24 you?

25 A. I wouldn't say that.

- 1 Q. All right. Did you determine Mr. Drachslin's
2 educational level prior to Mirandizing him?
- 3 A. I'm not sure. I don't remember that.
- 4 Q. To determine whether he could read or write?
- 5 A. I don't remember that.
- 6 Q. Did you determine his age?
- 7 A. Yeah, we determined his age.
- 8 Q. How old was he?
- 9 A. At the time of the statement, I believe he was
10 seventy-six.
- 11 Q. What time of the -- well, you were dispatched about
12 thirteen ---
- 13 A. Three thirty. I was dispatched at three thirty,
14 yes, sir.
- 15 Q. Yeah. And you got there at what time?
- 16 A. I arrived on scene at three fifty-two.
- 17 Q. And left at what time?
- 18 A. I left the scene at six ten p.m.
- 19 Q. Where between in that time frame was the second
20 time you talked to Mr. Drachslin?
- 21 A. It would have been right around the time this
22 statement was obtained by myself and Detective Burgess.
- 23 Q. Which was what time?
- 24 A. Without looking at the statement, I think it was
25 around -- I'd have to look at the statement to refresh my

1 memory on that.

2 Q. Well, let me ask you this. Before you -- was there
3 any questioning or any discussion between either you or
4 Ms. Burgess, either one of you, with Mr. Drachslin before
5 he was Mirandized the second time -- or the first time, I
6 guess? The second time you talked to him?

7 A. I don't believe so.

8 Q. All right. And who Mirandized him; you or Ms.
9 Burgess?

10 A. I'm not sure. We both signed the form.

11 Q. All right.

12 A. I believe Detective Burgess would have. Those look
13 like her checkmarks.

14 Q. Realizing you're not a doctor, did you notice any
15 dementia about Mr. Drachslin?

16 A. No. I just noticed he was very sad.

17 Q. All right. You could not say what was creating his
18 sadness?

19 A. No, not at all.

20 Q. All right. After he was Mirandized and you gave
21 him the statement, did you just give him -- you or Ms.
22 Burgess just give him the blank form to fill out?

23 A. No. I believe we would have read it to him and
24 then had him initial it.

25 Q. Well, okay. So you read him the form and then that

1 written part was blank?

2 A. Are you -- you mean the statement form?

3 Q. Yes?

4 A. Oh, I would have filled out the top part and then
5 we would have given him the form and then he would have
6 written it himself.

7 Q. During the course of his writing that statement,
8 were any questions posed to Mr. Drachslin by either you
9 or Ms. Burgess?

10 A. No.

11 Q. Did he at any time ever pause in the writing of
12 that statement?

13 A. I don't remember it. No.

14 Q. Thank you, sir. No further questions.

15 THE COURT: Any redirect?

16 MR. TOOKER: No, sir.

17 THE COURT: Thank you. You may step down.

18 MR. TOOKER: The state next calls Rita Burgess.

19 THE CLERK: Do you solemnly swear or affirm the
20 testimony you're about to give in this case to be the
21 truth, the whole truth and nothing but the truth, so help
22 you God?

23 THE WITNESS: I do.

24 THE CLERK: If you would, have a seat and state
25 your name for the record, please.

1 THE WITNESS: Rita Burgess.

2 RITA BURGESS,

3 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

4 IN-CAMERA

5 DIRECT EXAMINATION

6 BY MR. TOOKER:

7 Q. Detective Burgess, where do you work, ma'am?

8 A. Pickens County Sheriff's Office.

9 Q. And what do you do?

10 A. I'm a sergeant in the detective division assigned
11 to the juvenile unit.

12 Q. And do you know why you've been called to testify
13 today?

14 A. Yes, sir.

15 Q. Okay. Did you have some involvement in this case?

16 A. Yes, sir, I did.

17 Q. Did you have occasion to talk to the defendant in
18 this case, Mr. Joseph Drachslin, Sr.?

19 A. Yes, sir, I did.

20 Q. Okay. When did you talk to him?

21 A. On March 12th, 2013.

22 Q. And where was this?

23 A. This was at his residence on 114 Mount Forest
24 Circle in Easley.

25 Q. Okay. And when you talked to him had you already

1 talked to other persons?

2 A. Yes, sir.

3 Q. Who had you talked to?

4 A. At that point I had spoken with Joseph Drachslin,
5 Jr., both of his children, **Older Sister** and **Younger Sister** and also his
6 wife; I believe her name is Teresa.

7 Q. Okay. And after you talked to them, did you have
8 some idea what the allegations were in this case?

9 A. And I had also spoken with Lieutenant Bolding. But
10 yes, sir, I did.

11 Q. With some idea of the allegations in this case, did
12 you decide it would be a good idea to talk with the
13 defendant?

14 A. Yes, sir.

15 Q. Okay. And before you talked to him did you
16 Mirandize him?

17 A. Yes, sir, I did.

18 Q. Okay. And is that a form that you and Mr. Bolding
19 witnessed together?

20 A. Yes, sir.

21 Q. Okay. And after Mirandizing him, did you interview
22 him?

23 A. Yes, sir, I did.

24 Q. Okay. How did that interview go?

25 A. It went fairly well. Mr. Drachslin was somewhat

1 upset about the allegations and what had transpired

2 earlier that day, but he did answer my questions.

3 Q. Okay. And initially what was his response to the
4 allegations?

5 A. When I initially met with him after I Mirandized
6 him, I asked him if he was willing to talk to me about
7 the events that had taken place, and he told me that he
8 was. I asked him if he could tell me what had happened
9 between he and **Older Sister** earlier in the day? And he said, we
10 were playing around and I guess -- and it went too far, I
11 guess. I asked him why he thought it went too far, and
12 he replied, I put my hand in her pants and squeezed her
13 butt. He said, we were playing doctor pretending she got
14 shot. I was the doctor. I don't know, I was just
15 stupid. He said, we don't play like that often. He then
16 denied that it had ever happened before today. And
17 stated that -- I asked him if he had ever touched **Younger Sister**
18 in this manner and he stated no. Then he became agitated
19 at the questions that I was asking him and stated,
20 playing doctor is all it was. She was shot in the leg
21 and had a bomb in her knee. I asked him if her injuries
22 were confined to her leg and knee then why did he need --
23 why he needed to put his hand in her pants? And he
24 replied, this is ridiculous. She's got an imagination
25 like you wouldn't believe.

- 1 Q. Okay. Did his story ever change?
- 2 A. He later admitted that he had -- he did have half
- 3 his hand in [Older Sister] pants and that his son did see him do
- 4 that.
- 5 Q. Did he admit to any other acts, previous acts?
- 6 A. He did admit that he had touched [Younger Sister] in the past
- 7 also.
- 8 Q. Okay. And did he admit to penetration of [Older Sister]
- 9 A. He did.
- 10 Q. And did he give a written statement?
- 11 A. Yes, sir, he did.
- 12 Q. Okay. And in that written statement -- did you
- 13 witness it?
- 14 A. Yes, sir.
- 15 Q. Okay. And did you watch him fill it out?
- 16 A. Yes, sir.
- 17 Q. And that was after his rights had been read?
- 18 A. Yes, sir.
- 19 Q. Did you -- and you're not a medical doctor, but did
- 20 you perceive anything to be wrong with him intellectually
- 21 when you were talking to him?
- 22 A. No, sir.
- 23 Q. Did he appear to be intoxicated?
- 24 A. No, sir.
- 25 Q. Okay. Did you have any questions with regards to

1 his ability to understand the information you were giving
2 him?

3 A. No, sir, I did not.

4 Q. No further questions.

5 THE COURT: You may cross examine, Mr. DeJong.

6 MR. DEJONG: Thank you, Your Honor. May it
7 please the court.

8 **CROSS EXAMINATION**

9 **BY MR. DEJONG:**

10 Q. So all of this took place at the 114 whatever the
11 street name or road is; correct?

12 A. Yes, sir, 114 Mount Forest Circle.

13 Q. Did you ever talk to Mr. Drachslin, Jr.?

14 A. Yes, sir.

15 Q. And when and where did you talk to him?

16 A. I spoke with him at the back of the residence when
17 I first arrived.

18 Q. All right. And what was his demeanor?

19 A. He was upset.

20 Q. Now, when you were questioning my client, Mr.

21 Drachslin, Sr., was Mr. Drachslin, Jr. in the area?

22 A. He was behind the house.

23 Q. How far would that have been?

24 A. Well, he was on the backside of the house and Mr.

25 Drachslin, Sr. was sitting on the front door steps, so it

1 was on the opposite side of the home.

2 Q. You say that Mr. Drachslin was responding to your
3 questions. We won't rehash all of that. But then he
4 became agitated; correct?

5 A. Yes, sir.

6 Q. Did you pursue questioning him at that point in
7 time when he became agitated?

8 A. I believe I asked him a couple more questions, yes,
9 sir.

10 Q. And it was after that agitation that you would say
11 that he admitted to penetration; is that correct?

12 A. He actually put that in his written statement, yes,
13 sir.

14 Q. Yes, ma'am. But that wasn't my question. My
15 question was, after he became agitated, that's when you
16 say he made that admission; correct?

17 A. Yes, sir. That's correct.

18 Q. All right. And he was very agitated?

19 A. He was agitated that I was asking him questions.

20 Q. So you're a psychiatrist and knew why he was
21 agitated?

22 A. He told me that my questions were ridiculous.

23 Q. That's true. But that was not necessarily the
24 cause of his agitated; was it?

25 A. It could have been something else.

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35

- 1 Q. How long did this last?
- 2 A. My speaking with him?
- 3 Q. Yes, ma'am?
- 4 A. Maybe ten or fifteen minutes.
- 5 Q. All outside?
- 6 A. Yes, sir.
- 7 Q. What was the weather like?
- 8 A. It was sunny.
- 9 Q. Pardon?
- 10 A. It was sunny that day.
- 11 Q. What was the temperature?
- 12 A. I could not advise you. It was comfortable
- 13 outside. We were all outside.
- 14 Q. It was in March; correct?
- 15 A. Yes, sir.
- 16 Q. Raining?
- 17 A. No, sir. The sun was shining.
- 18 Q. Where were **Younger Sister** and **Older Sister** when you were
- 19 questioning Mr. Drachslin, Sr.?
- 20 A. In the backyard with their parents.
- 21 Q. Was the mother Teresa Drachslin present when you
- 22 questioning him?
- 23 A. When I question?
- 24 Q. Mr. Drachslin?
- 25 A. She was in the backyard with her husband and her

1 children.

2 MR. DEJONG: Nothing further, Your Honor.

3 THE COURT: Any redirect?

4 MR. TOOKER: No, sir. May she step down?

5 THE COURT: Yes, you may step down.

6 Let me ask this question. Did he verbalize the
7 written statement that he gave as he was writing it out?

8 THE WITNESS: As he was writing it?

9 THE COURT: Right.

10 THE WITNESS: No, sir.

11 THE COURT: Okay. Thank you.

12 Any other witnesses?

13 MR. TOOKER: No, sir.

14 THE COURT: Any witnesses from the defense?

15 MR. DEJONG: None on behalf of the defense,

16 Your Honor.

17 THE COURT: All right. Let me verify the
18 statements in controversy. The pre-Miranda statement is
19 -- the question is, how are you? And then he states, I
20 got caught with my hand in her pants. The post-Miranda
21 statements, oral and verbal, pretty much are the same?
22 Is there any significance in the oral post-Miranda and
23 the written statement?

24 MR. TOOKER: No, sir, just that he reiterates.

25 So he makes an oral admission and then after making the

1 oral admission, then puts that same information on paper.

2 THE COURT: Okay. All right. Mr. DeJong, be
3 glad to hear from you as to why you believe they're not
4 admissible.

5 MR. DEJONG: Your Honor, not a great deal of
6 argument on the post-Miranda. On the pre-Miranda, I
7 certainly understand what Lieutenant Bolding and -- well,
8 I don't even think Detective Burgess got into whether or
9 not he was free to leave. But obviously when Lieutenant
10 Bolding arrived at this address, he knew the nature of
11 the allegation. I think he initially testified when Mr.
12 Tooker was examining him that he first spoke to Mr.
13 Drachslin, Sr. I think that would have been a different
14 scenario, but based on cross examination, Your Honor,
15 that is not what happened. What happened was he saw Mr.
16 Drachslin, Sr. He did not speak to Mr. Drachslin, Sr.
17 He went and spoke to Mr. Drachslin, Jr., who is the
18 father of the alleged victims in this case.

19 Now, once he talks to Mr. Drachslin, Jr., who
20 identifies Mr. Drachslin, Sr. as the alleged suspect in
21 this case, the information he had from dispatch,
22 certainly Lieutenant Bolding knew he was a suspect.

23 Your Honor certainly can determine the credibility
24 and all that. But I find it very difficult to believe
25 that Mr. Drachslin, at that point in time, had the right

1 to leave, regardless of what Lieutenant Bolding may say.

2 And indeed, Lieutenant Bolding kept an eye on him until

3 Detective Burgess arrived. Now, I don't know what would

4 have happened if Mr. Drachslin walked off. That would be

5 purely speculative.

6 But I simply submit, Your Honor, that he was not

7 under arrest. I understand that. But I would certainly

8 say he was in investigative custody at that point in

9 time. Should have been Mirandized. He was not

10 Mirandized. And therefore, that statement should not

11 come in.

12 THE COURT: Mr. Tooker.

13 MR. TOOKER: Thank you, Your Honor. May it

14 please the court.

15 So a two-prong test; right, custody and

16 interrogation. It's the state's position that he was not

17 in custody per Lieutenant Bolding's testimony. He was on

18 the front stoop. He was not enclosed. He was not

19 restrained. He was not handcuffed. He had not been told

20 you cannot leave. He had not been instructed to remain

21 on the stoop. But he sat there out of his own volition

22 and he remained until Detective Burgess and Lieutenant

23 Bolding then did Mirandize him and interrogate him. I

24 also believe the question, are you all right? And the

25 response is a non-sequitur; right. So is that

1 interrogation; are you okay? I don't think it is. I
2 think are you okay is determining the well-being of the
3 person, you know, initially when they respond.

4 Now, granted, Lieutenant Bolding does know the
5 allegations, certainly, and that's going to flavor the
6 way he deals with him, I'm sure, and why he called
7 Detective Burgess, the detective who specializes in
8 juvenile investigations. But the question, are you okay,
9 I don't think rises to the level of an interrogation.
10 But that, and not withstanding, I don't believe the
11 defendant was in custody for the purposes of *Jackson v.*
12 *Denno*, and I think the statement should be admitted as
13 proffered.

14 THE COURT: Well, obviously, the issue is
15 custodial interrogation, was it custody, was it
16 interrogation? I find that, by the totality of the
17 circumstances here, the officer arrives on the scene.
18 Most times they're wanting to make sure the scene is
19 secure, first of all; that there's no danger to anyone,
20 particularly the officer. And most times, by the time
21 they arrived, and particularly if they see a person with
22 his head down, I think it's a reasonable question to ask,
23 are you okay? Do we need to call medical attention for
24 you? Do we need to get you something to drink? Is there
25 anything we can do for you? I don't consider that as an

1 interrogation of a suspect.

2 Certainly the location, I think, leads to the
3 voluntariness of it, as well. He's at his -- I don't
4 know whether this was where he lived or not, but I gather
5 it was where he lived or at least was frequently there.
6 Dispatch had been called some twenty minutes earlier and
7 he hadn't chosen to walk down the road or get in his car
8 and drive off. No one was keeping him there then. I
9 think he did not feel -- well, I don't know what he felt,
10 but the circumstances certainly show that he didn't feel
11 for those twenty minutes that he was there before the
12 officer arrived.

13 I believe it's admissible under the totality of the
14 circumstances, considering all the factors surrounding
15 this, the nature of the question and the nature of the
16 answer and the location, timing. I'll admit that. Of
17 course, the jury will make a decision as to all the
18 statements as to whether it was proper. I find by the
19 standard that I have at this stage that it is a voluntary
20 statement.

21 All right. How about, since we're on statements,
22 let's go next to the forensic interviews. Why don't we
23 take the one you feel like the entire interview is
24 tainted. Mr. DeJong, was that on the older child, Older Sister

25 MR. DEJONG: That would be correct, Your Honor.

1 THE COURT: All right. Let me hear from you on
2 that. Again, if we need -- do we have a machine to play
3 that if I need to ---

4 MR. TOOKER: Yes, sir, the TV has been set up
5 and it will play it.

6 THE COURT: All right. In case I need to see
7 it again. I tried to make notes at the time frames as I
8 went by, as well, but ...

9 All right. What matters do you believe should not
10 be -- or you say the entire interview is tainted because
11 of what, Mr. DeJong?

12 MR. DEJONG: Your Honor, actually the
13 interview, up until the break, somewhere -- I did not
14 write the time down -- it was probably in the twenty
15 minute area in terms of the duration of the tape.

16 Before I move forward on that, the alleged victim in
17 this case, and we're talking about Older Sister now, had been
18 repeatedly asked about touching, penetration. She
19 admitted the touching. She denied the penetration. And
20 the interview up till that point, although I think
21 numerous of those questions were leading, but up until
22 that point we did pretty good.

23 Now, once they took the break, this is no longer an
24 interview, Your Honor. I don't think under any stretch
25 of the imagination is it a forensic interview. It became

1 an interrogation of the child. Interrogation being the
2 forensic interviewer goes out, and I can only presume,
3 but presumptively talked to a law enforcement agent. Now
4 comes in and starts trying to impeach what the child has
5 already told her. Repeatedly. But there has been no
6 penetration. There has been touching, but no
7 penetration. Touching on the butt. No touching on the
8 peepee, as I recall, at that point in time. The forensic
9 interviewer comes in and says, well, do you remember
10 telling the police this? Now the child changes her
11 story.

12 Your Honor, I'm not a psychiatrist, but in terms of
13 that, children like to please. She's been asked the
14 question, asked the question, asked the question, asked
15 the question. Now, she's confronted by this interviewer
16 with something she purportedly told the police before and
17 so she's going to change her story. And she did, to some
18 degree. I just think that was totally improper under the
19 totality of the forensic interviewing statute. I think
20 it was dead wrong. And I think that part taints the
21 whole tape, taints the whole interview.

22 THE COURT: How?

23 MR. DEJONG: Well, because of this, is any of
24 it reliable?

25 THE COURT: Okay.

1 MR. DEJONG: And certainly -- let me back up
2 just a minute. When she started interrogating the child
3 as to what she had told law enforcement, I suggest those
4 were very leading questions, Your Honor, and not proper
5 at all on a forensic interview. And I would submit the
6 entire tape, even though when you get to that point
7 you're pretty good. But then when you start throwing
8 that in, I think it mucks the whole tape up, the whole
9 interview up. And I don't think any of it should come in
10 and I would ---

11 THE COURT: Would your argument be stronger if
12 that had happened first and then the rest of it? I'm
13 having a hard time figuring out what happened at the end
14 taints the first? Help me with that.

15 MR. DEJONG: I'm just saying because of that,
16 the -- I don't know how the jury is going to look at
17 that, obviously.

18 Now, I will be satisfied if you just cut the tape
19 right there. I'll let the rest of it in. I don't care.

20 THE COURT: Mr. Tooker, what do you think about
21 the interview?

22 MR. TOOKER: Yes, sir, Your Honor. And I'll go
23 ahead -- well, so I'm clear, my understanding, it's two
24 questions in particular that Mr. DeJong is objecting to,
25 from what he and I discussed earlier and from what I

1 understand, based on his motion.

2 Christine Carlberg, the forensic interviewer asks

3 Older Sister did you tell law enforcement blah, blah, blah.

4 And then I think at another point asks, did you say this?

5 Right? And so those questions, I think Mr. DeJong

6 objects to because they suggest an answer. Right?

7 Now, if you watch the forensic interviews in their

8 totality, what you see is she asks the question and then

9 the child responds and then the child then starts

10 elaborating. So there's the pointed question, well, what

11 about this? And then after the pointed question, then

12 the child takes that information and elaborates and

13 explains why it is and how it is and when it was and

14 those things. And those were not led.

15 Now, I have Ms. Carlberg here present in the

16 courtroom, and I told her to be prepared to testify in-

17 camera as to her practices, her procedures, and how she

18 conducted that interview and why it is she asked the

19 question in the way she did in this circumstance. If

20 Your Honor would like to hear that testimony I'll be glad

21 to proffer it. I don't think it's necessary personally,

22 but who am I?

23 Now, I've printed the code section as pertinent for

24 these forensic interviews, and that's 17-23-175. May I

25 approach?

1 THE COURT: I've got it.

2 MR. TOOKER: Okay. And what that code section
3 says is, you know, you've got a child less than eleven.
4 That's not disputed here. You've got allegations of some
5 sort of sexual act. And then what you've got to have is
6 any one of these suggested things or something else, that
7 indicates that the tape is reliable.

8 So ultimately the consideration is not, you know,
9 were some of the questions leading or, you know, how were
10 the questions asked. But that is something the court can
11 consider in determining whether or not, in the totality,
12 that the tape is reliable.

13 Now, I think when you watch the whole tape what you
14 see is a child who is initially reticent or hesitant to
15 explain what happened. And then, you know, after being
16 interviewed by Ms. Carlberg for some time, then does
17 start opening up and does start explaining what happened,
18 how it happened. And in the meantime, I think you can
19 see that reticence or that hesitance, that she doesn't
20 want to really come out and say everything. But I think
21 that the trustworthiness of the tape is there. The
22 trustworthiness in the interview is there, again, based
23 on the totality of the circumstances. And some of the
24 things that, you know, Your Honor, of course, can
25 consider is her training, her experience, you know, her

1 explanation, and that's why, you know, we have her here
2 in case Your Honor would like to hear that testimony.

3 But I think that looking at the tape in whole, it is
4 reliable and Your Honor can rely on that information in
5 admitting the tape.

6 THE COURT: The tape that I heard, and I don't
7 know if this is -- I guess you've got the equipment. You
8 know, I had all the volume as high as it could be, and I
9 was leaning against the speaker to try to hear. But
10 after the break and after the pointed questions, she
11 didn't ask, have you ever told any -- maybe she did
12 before -- have you ever told anyone else anything
13 different? But when she came back she didn't ask it that
14 way; she asked, didn't you tell law enforcement.

15 MR. TOOKER: Yes, sir.

16 THE COURT: She didn't phrase it, have you ever
17 told anyone else that he did this? That concerns me
18 some.

19 Did the child ever point-blank say, yes, he did
20 penetrate?

21 MR. TOOKER: In that tape I don't think she
22 admits the penetration. She ---

23 THE COURT: Even after the break? Did she ever
24 say he penetrated me?

25 MR. TOOKER: To my recollection, what she

1 complaints of what she -- you know, the allegations in
2 the tape are that, and this is pre-break, she says he
3 attempted. He kept trying, but there were things that
4 would stop him. Right? Younger Sister would come in and stop
5 him or I would push his hand away; I would stop him.
6 After the break, Christine asks him (verbatim), did you
7 tell the police yadayadayada. And at that point she
8 says, yes, I did. She says, was that true or was that a
9 lie? The child at that point says, that was true. She
10 goes, well, explain that. So then that dynamic, that
11 same conversation resumes with that same traditional
12 RATAC method. Now, ---

13 THE COURT: But did she ever -- when she said
14 explain that, did she explain, yes, he penetrated her?

15 MR. TOOKER: No. She explained that he touched
16 on her peepee and her butt on top of ---

17 THE COURT: As I remember hearing it, she never
18 herself said -- when she answered was that true? Yes, it
19 was true. Did that mean, yes, I did tell them that?
20 It's true that I told them that, but whether that was the
21 truth, I don't know which way that's interpreted. Was it
22 true what he did or was it true that I told them?

23 And y'all watched the tape, I'm sure, many more
24 times that I have, but I cannot remember her saying point
25 blank, yes, he did penetrate.

1 MR. TOOKER: I don't recall that either, Your
2 Honor, and I've looked for it. So I don't think on the
3 tape she says penetration. She complains of penetration
4 to law enforcement and to the medical professionals that
5 she, you know, encountered, but not to Ms. Carlberg.

6 THE COURT: Yes, sir.

7 MR. DEJONG: Going to where you were, I think
8 she was asked before the break, have you ever talked to
9 anybody else about this? The response was, yes, the
10 police. What did you tell the police? I told the police
11 the same thing I told you; speaking of the interviewer.
12 Then we go into the break and now it's something totally
13 different.

14 THE COURT: Okay. Let's talk about [Younger Sister] now.

15 MR. DEJONG: [Younger Sister] Your Honor, on that one, I
16 think actually the interviewer was a little more cautious
17 with [Younger Sister] than she was with [Older Sister] maybe because [Younger Sister]
18 was more talkative. I don't know. There are two things
19 in [Younger Sister] tape that concerns me.

20 Number one, initially when they start talking about
21 the allegations, as I heard [Younger Sister] statements to the
22 interviewer, she did not indicate, as I recall looking at
23 the tape, that she saw my client's hand down the pants of
24 [Older Sister] Daddy said. And I think on two different
25 occasions, she said, daddy said.

1 I don't think that's admissible. That's purely
2 hearsay. She can testify to what she saw, and I'm sure
3 she -- she said she saw some other things. But what
4 daddy said and what daddy saw, I think should be struck.

5 Another part of it, Your Honor, comes on the back
6 end of the tape -- of the interview. The back end being
7 -- and this is on both of the interviews, as I recall.
8 The interviewer says something along the lines, if anyone
9 ever does this to you again, and then goes on who she can
10 tell or whatever. Well, by the interviewer saying, if
11 anybody ever does this to you again, that's certainly the
12 interviewer saying -- it's almost the same as what the
13 Court of Appeals says, you can't bolster. You can't say
14 this is a compelling revelation of sexual abuse. By
15 saying that if anybody ever does to you again, that is
16 bolstering the child's testimony and saying, yes, this
17 happened, and if it ever happens again then you need to
18 go tell someone. So on Younger Sister particular interview,
19 those are the two things I would raise on that, Your
20 Honor.

21 THE COURT: Okay. Solicitor?

22 MR. TOOKER: With regards to if anybody does
23 anything like this to you again, I understand what Mr.
24 DeJong is saying. I'm not -- you know, we can shut the
25 tape off after the ---

1 THE COURT: We can mute that.

2 MR. TOOKER: Yeah. That's not something the
3 state is concerned with. So we can stop at that point.

4 The second thing and this is a little more novel to
5 me, so it's almost like hearsay with the hearsay
6 argument. Now the first level of hearsay, I guess, is
7 not hearsay pursuant to the statute. The statute says
8 it's not hearsay in these circumstances. Now, Mr. DeJong
9 is saying, but what **Younger Sister** said her father said in the
10 tape is hearsay. Now, I counter that with, you know,
11 this is a child doing the best she can to explain what
12 she knows about this incident to this person. And I
13 think what you see with **Younger Sister** particularly because she
14 is so young, is she's not, she's not all that adept at
15 explaining these concepts to an adult. So she an
16 articular as best she can what happened, and as a child
17 that age, I mean, you figure her world is her parents.
18 So what she's talking about is what she sees, what she
19 hears and what goes on in her household. I don't think
20 that the statements themselves are -- and Mr. DeJong,
21 what were they again?

22 MR. DEJONG: I think when the interviewer was
23 asking questions about my client having his hands down
24 **Older Sister** pants, she said, Daddy said. And there was some
25 of that I ---

1 THE COURT: It was early on and it was a couple
2 of times she brought her daddy in, which I presume only
3 happened that afternoon, what daddy said. I don't think
4 the evidence would show daddy knew it earlier.

5 MR. TOOKER: Yes, sir.

6 THE COURT: Okay.

7 MR. TOOKER: So in response to that, if Your
8 Honor is inclined to keep it out, you know, Mr. DeJong is
9 free -- I mean, we can mute it at that point. But
10 ultimately I don't think that ---

11 THE COURT: Anything else on the interviews?

12 MR. DEJONG: Nothing else on the interviews,
13 Your Honor, I don't believe.

14 THE COURT: All right. Let me hear from you on
15 the severance, Mr. DeJong.

16 MR. DEJONG: On the severance, Your Honor, that
17 almost -- I would never say our Appellate Courts have
18 shifted the burden of proof as far as reasonable doubt
19 goes, but boy, procedurally, they have definitely shifted
20 the burden of proof.

21 I start out, Your Honor, I think maybe my way of a
22 little background with *State versus Beekman*, that is B,
23 as in boy, E-E-K-M-A-N. That's a 2013 case of 405 S.C.
24 225. In that case, Your Honor, the defendant was alleged
25 to, I believe, have molested two children or

1 stepchildren. And in that case, the alleged facts are
2 not in one sense that particularly important to my
3 argument. But what is important to my argument, when we
4 start talking about a severance, when we look at *Beekman*,
5 not only do we have to talk about the severance, but we
6 have to come back and talk about 404(b)(2), which is
7 something the appellate court said I didn't do in
8 *Beekman*. But nonetheless, that's where the analysis
9 comes, because in *Beekman*, they said, well, -- I don't
10 necessarily think they said it should have been severed,
11 but they said, even if it had; under 404(b), it could
12 have come in under prior bad acts. So I think we have to
13 look at both of those.

14 Apparently, Mr. Tooker handed me a memorandum
15 shortly before Your Honor took the bench today, which I
16 have looked at very briefly. On the severance, Your
17 Honor, and I think what Mr. Tooker, the case he is
18 arguing is *State versus McGaha*, M-C-G-A-H-A, which is 404
19 S.C. 289. In that one they said our Supreme Court has
20 held a trial court may try separate charges together when
21 they arise out of a single chain of circumstances or
22 prove by the same evidence and are the same general
23 nature and those sub -- I can't say the word today --
24 basically substantial right of the defendant has been
25 prejudiced.

1 Well, I'm always fascinated, especially in CSC cases
2 where we talk about a substantial right of the defendant
3 being prejudiced, the mere charges in themselves are
4 highly prejudicial. But I think the constitution of the
5 United States says a defendant is entitled to a trial by
6 a jury of his peers and that jury should be a fair and
7 impartial jury. I think when we start bringing charges
8 together, Your Honor, and in this case jumping to 404(b)
9 for just a minute, the state wants to talk about
10 similarities as they do in their memo on the
11 consolidation. If perhaps we were simply talking about a
12 lewd act on [Younger Sister] and a lewd act on [Older Sister] I don't think
13 I would -- my argument would have the strength that I
14 think it does now, because now we're talking about a
15 criminal sexual conduct in the first degree with [Older Sister]
16 and then two alleged criminal sexual conduct third
17 degrees, which I still have a hard time. I want to call
18 them a lewd act, but that's under the old statute. So in
19 this one when you jump forward to the 404(b) and looking
20 at 404(b), in this case I would suggest to the court that
21 the only reason the state would be attempting under
22 404(b), if that's where it would be headed, would be
23 under common scheme or plan.

24 Now, go back to the severance for just one moment,
25 under *State versus Harris*, that's a 2002 case, and the

1 court there was talking about severance. Again, they say
2 it is in the sound discretion of the trial judge and
3 should be granted only when there's a serious risk that a
4 joint trial would compromise a specific trial right of
5 the co-defendant -- and of course, that was a co-
6 defendant case -- or prevent the jury from making a
7 reliable judgment about -- again, they say co-defendant
8 -- but I would say in this case it would be the defendant
9 in general, based on the different nature of the charges
10 between the two alleged victims.

11 Now, even beyond that, if the charges are similar, I
12 have a case here, which is *State versus Kirton*, K-I-R-T-
13 O-N, which is a 2008 case which I believe is still good
14 law. It's 381 S.C. 87. In that case the court goes
15 through basically a history of 404(b) with regard to the
16 common scheme or plan part of 404(b). In there, and of
17 course they even go back to *Lyle* in there. I'm not sure
18 of the pagination in the case itself. They go in there,
19 they go back and talk about a case *State versus Tuton*, T-
20 U-T-O-N, 354 -- I don't have the original cite. They're
21 citing from 328. They talk about balancing the
22 similarities of cases concerning the admission, common
23 scheme or plan. In that case they found they were not
24 sufficient to support the similarity.

25 Quite candidly, if you go through that *Kirton* case

1 and try to reconcile the history of 404(b) common scheme
2 or plan, I candidly would have had to ask for a
3 continuance to do that because it would take days, if not
4 weeks, to try to reconcile all of those. However, going
5 on with *State versus Kirton* where they are quoting from
6 *Tuton*, T-U-T-O-N, they say, if the court does not clearly
7 perceive the connection between the extraneous criminal
8 transaction and the crime charged, that is its logical
9 relevance, the accused should be given the benefit of the
10 doubt and the evidence should be rejected. Now, that's
11 on the common scheme or plan.

12 Now, I come back to *Harris* where the court is
13 talking about severance. Number one, I don't think in
14 this case, even if the court severed, and depending on
15 which case it decided -- the state decided to proceed on,
16 the similarities in the case and large part because, they
17 are alleging penetration on the one alleged victim and
18 not on the other, Your Honor, I don't think there are
19 such similarities in the case that rise to the level of
20 similarities as noted by our Court of Appeals and by our
21 Supreme Court.

22 Now, when you get to that point, if we talk about
23 similarities and then you go back to the severance, and
24 again I'm citing or quoting from *Harris*, and the
25 particular part is, a reliable judgment about -- again,

1 that case says co-defendant, but in this case I would say
2 the defendant's guilt, is because I think in this case
3 where you have an allegation of CSC first, along with two
4 separate allegations of CSC third, I think that can
5 become very confusing to the jury. We have argued the
6 tape situation. But as a hypothetical, and certainly I
7 don't know what the jury would do, but my client is
8 charged with CSC first on Older Sister I would suggest to the
9 court, if they find there was no penetration as to Older Sister
10 but penetration as to Younger Sister then I think that could be
11 very confusing to them and they could roll over and say,
12 well, no, not Older Sister but Younger Sister and still convict him of
13 criminal sexual conduct in the first degree, even though
14 he's not charged with that offense as far as Younger Sister

15 So I think in this case, if you look at both McGaha,
16 and taking that in light of the Beekman case where you
17 have to do an analysis of both, the motion to sever and
18 the 404(b), I think under both of those analyses, Your
19 Honor, these cases should be severed, because my opinion
20 is the similarities are not in this case to the point
21 that one or the other could come in as prior bad acts.

22 Thank you, Your Honor.

23 THE COURT: All right. Mr. Tooker.

24 MR. TOOKER: Okay. I want to make sure that I
25 address Mr. DeJong's arguments in turn. My understanding

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1 is predominantly what Mr. DeJong is focusing on is the
2 404(b) analysis under *State v. McGaha* to show that the
3 defendant's substantive rights are not particularly
4 prejudiced; i.e., even if the indictments were tried
5 separately would prior bad act evidence, would 404(b)
6 evidence, be admissible in each distinct trial. If that
7 is the case then substantive rights aren't being impinged
8 and they would be able to be tried together, you know,
9 assuming the other elements of *McGaha* are shown.

10 Now, if Mr. DeJong is acknowledging that the other
11 elements are present, then I'll just focus my argument on
12 the 404(b). If not, I'd like to go just point by point
13 with the *State v. McGaha* material.

14 THE COURT: Do you have anything different from
15 what you have in your brief?

16 MR. TOOKER: No, sir. I was just going to put
17 on the record what I wrote down in my brief, sir.

18 THE COURT: Single chain of circumstance, same
19 evidence, same general nature?

20 MR. TOOKER: Yes, sir.

21 THE COURT: No prejudice? I guess that's
22 arguable?

23 MR. TOOKER: Yes, sir.

24 THE COURT: All right. I'll -- let me look
25 over these cases, particularly Mr. DeJong has cited,

1 Harris and others. Let's take a break. I guess our jury
2 is ready to come in. I've ruled on the Jackson versus
3 Denno.

4 On the tapes, on Older Sister tape, we're going to cut it
5 at the end of the break. Just don't play the rest of it.

6 MR. TOOKER: Your Honor, with regards to
7 Older Sister tape then, it's my reading of the statute that
8 the determination has got to be that the tape itself is
9 reliable. If the determination is not the tape -- or
10 that the tape is not reliable, then I don't think it's
11 admissible at all. So I think that -- and I don't want
12 to certainly ---

13 THE COURT: Even though there was a break?

14 MR. TOOKER: Yes, sir. I think that the
15 determination has to be reliability of the interview. So
16 if Your Honor determines that the interview itself is
17 reliable ---

18 THE COURT: Well, then, nothing can be muted or
19 redacted then under that ---

20 MR. TOOKER: Well, I think you can determine
21 that an interview is reliable, but that something in the
22 interview would be inadmissible pursuant to another rule
23 of evidence. But I think what Your Honor is ruling is
24 that after the break it becomes unreliable. And I think
25 that makes -- that taints the entirety of the interview

1 and makes the interview unreliable.

2 And that being the case, I wouldn't seek to admit it
3 without the entirety of that tape.

4 THE COURT: Well, if you don't seek to -- you
5 can admit the evidence you want to admit.

6 MR. TOOKER: Yes, sir. But what I'm -- I guess
7 what I'm saying is I don't think it's admissible evidence
8 without a ruling that it is reliable.

9 THE COURT: Well, it is reliable to the break.

10 MR. TOOKER: To the break. And after the break
11 it becomes unreliable ---

12 THE COURT: Right.

13 MR. TOOKER: --- is what Your Honor is ruling.
14 And so ---

15 THE COURT: It is a reliable tape -- well, I
16 guess it's reliable when Older Sister asks the questions about
17 your husband and your children and all that afterwards, a
18 lot of it is reliable. But if you want to go -- what I'm
19 ruling is it cannot be played -- or the leading questions
20 about didn't you tell the sheriff this and didn't you
21 tell the investigator this, and I don't know how many of
22 those questions were there, around a minute and twenty-
23 three, somewhere around in there.

24 MR. TOOKER: Yes, sir, I think so. And this is
25 more now from a trial strategy standpoint. But what I'm

1 trying to get from Your Honor is a determination as to
2 whether or not the tape itself is admissible, because I
3 don't know that I want to admit it, but I don't want to
4 not admit it and then have Mr. DeJong admit it and make
5 it look like I'm hiding something from the jury.

6 THE COURT: Well, the tape is admissible up to
7 the break. Those questions that clearly are leading
8 about didn't you do this, those are not admissible.
9 After those, the rest of the tape I find is reliable, if
10 you want to go to the trouble of redacting that portion
11 or muting that portion and then picking it back up,
12 that's -- I'll allow that. I don't remember how much
13 significant information came about then other than the
14 dialogue back and forth between them.

15 Maybe I said that for your convenience and you
16 didn't want that for your convenience to break it at the
17 break. But the questions relating to didn't you tell the
18 sheriff this, didn't you tell the deputies this, that has
19 to be muted or redacted.

20 MR. TOOKER: Okay. And if Your Honor will
21 indulge just so I'm clear. I know I'm belaboring the
22 point. But at the break Christine comes back in and she
23 asks, you know, I heard that you told the police,
24 yadayadayada. She responds, yes, I did. Was that true?
25 Yes, it was. That part I can pull and then when she

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1 starts asking open-ended questions again, we can keep
2 that part, even though it's after the break.

3 THE COURT: How quick is this testimony? Is
4 this going to be the testimony before lunch or after
5 lunch?

6 MR. TOOKER: I can call her after lunch and I
7 can create or redact a copy.

8 THE COURT: Then you and Mr. DeJong can go over
9 that during the lunch break and decide.

10 MR. TOOKER: Yes, sir.

11 THE COURT: But I find the tape is reliable.
12 Just those questions are not.

13 MR. TOOKER: Okay. Thank you, sir.

14 THE COURT: As far as the -- on Younger Sister tape
15 about the -- at the end, if this happens to you again,
16 that will be muted. As far as the mention of daddy said,
17 I'll allow that. That certainly goes toward credibility
18 and you can certainly argue that to the jury. But I'll
19 allow that in. I don't think that taints the tape, in
20 spite of the hearsay there. That stays in. The question
21 about -- or the statement, if this happens to you again,
22 will be out. The other leading questions in Older Sister tape
23 will be out.

24 The *Jackson Denno*, we've -- other than the
25 severance, is there anything else that we haven't

1 resolved?

2 MR. TOOKER: Nothing from the state, sir.

3 THE COURT: I'll look at these cases. Your
4 voir dire, I'll cover most of those things; the witness
5 list, I've got those from you. We'll take about a ten
6 minute break. I'll get out and then the jury can come in
7 and get them -- have they been scanned? They haven't
8 been; have they?

9 THE CLERK: No, sir.

10 THE COURT: So it'll take a while for their
11 badges to be scanned; fifteen minutes or so. And then
12 over lunch y'all can look at the tape if you need to.

13 MR. TOOKER: Your Honor, for scheduling
14 purposes, is it your intent that we're going to pick the
15 jury and then come back after lunch for openings or ---

16 THE COURT: Let's see how long it takes to pick
17 the jury.

18 MR. TOOKER: Yes, sir.

19 THE COURT: Do you have a short witness to
20 begin with; or not?

21 MR. TOOKER: My first witness, I believe, will
22 be a long witness.

23 THE COURT: Okay. So we'll probably take a --
24 we'll see how we are. If it's toward twelve we'll take
25 an early lunch and that way y'all can get ...

1 Okay. I think I've set forth the matters I need to
2 under the statute as far as the admission of the tape. I
3 find that there are particularized guarantees of
4 trustworthiness that does have internal coherence, gives
5 a detailed account. I haven't heard yet from the
6 training of the interviewer. I don't know if that's a
7 contest or not. I'm assuming ---

8 MR. DEJONG: Probably. Although I don't know
9 where the state's going with it, Your Honor, but it could
10 well be.

11 THE COURT: That she is not a qualified
12 interviewer?

13 MR. DEJONG: No. I'm not going to contest
14 whether or not she's a qualified interviewer. But if she
15 wants to get into all this RATAG/RATAP (verbatim),
16 whatever that stuff is, then I'm going to object to that.
17 Her educational background, I don't care about. All this
18 interviewing training and all that, yes, I object to
19 that.

20 MR. TOOKER: We're not seeking to qualify her
21 as an expert, sir.

22 THE COURT: Well, I'm assuming -- again, I'll
23 have to hear the testimony, but I'm basing this ruling on
24 admitting that, as I must, at an in-camera hearing; that
25 the interviewer has been properly trained in conducting

1 these interviews with children. I find that the
2 statements, subject to the redactions that I've
3 mentioned, to be admissible if she is a qualified
4 interviewer.

5 All right. Let's take about a fifteen minute break
6 so our jury can get scanned in and I'll look over these
7 cases.

8 (WHEREUPON, the court stood at recess for a short
9 break.)

10 THE COURT: Ladies and gentlemen, we're now
11 ready to select a jury for the trial of the next case we
12 have for this week. This is a case brought by the State
13 of South Carolina against Mr. Joseph Anthony Drachslin,
14 Sr. Mr. Drachslin has been charged and an indictment has
15 been issued alleging that he did, here in Pickens County,
16 between November the 1st, 2011 and March the 12th, 2013,
17 commit an act of criminal sexual conduct with a minor in
18 the first degree; that being that he committed a sexual
19 battery on individual initialed [REDACTED] who was less than
20 eleven years of age at the time.

21 Mr. Drachslin is also charged, between those same
22 dates, with committing criminal sexual conduct with a
23 minor in the third degree upon the individual initialed
24 [REDACTED], that being a child under sixteen years of age with
25 the intent to arouse or appeal to, gratify the lusts,

1 passions or sexual desires of himself or the child; that
2 being criminal sexual conduct with a minor in the third
3 degree.

4 There is also a charge between the same dates here
5 in Pickens County alleging that Mr. Drachslin performed a
6 criminal sexual conduct act of a third degree upon the
7 body parts of [REDACTED] Younger Sister. Those initials, again, being a child
8 under the age of sixteen, with the intent to arouse,
9 appeal to or gratify the passions or sexual desires of
10 himself or the child.

11 The three charges involving two individuals.

12 Mr. Drachslin, he's entered a plea of not guilty to
13 these charges. That places the burden on the state to
14 prove his guilt beyond any reasonable doubt. He's
15 presumed innocent and comes into this courtroom as an
16 innocent man until the state meets that high burden of
17 proof of beyond a reasonable doubt. I'm going to be
18 judging the law in this case, deciding what law is
19 applicable. We need to find twelve fair and impartial
20 jurors to determine what the facts are in the case and
21 make that determination.

22 First of all, ladies and gentlemen, is there any
23 member of the jury panel who has any prior knowledge from
24 whatever source about the alleged incidents that happened
25 between November of 2011 and March of 2013? If you have

1 any knowledge about this from any source, would you
2 please stand?

3 (No response.)

4 THE COURT: Thank you. There is no response.

5 Is there any member of the jury panel related by blood or
6 marriage to Mr. Joseph Anthony Drachslin, Sr.? If so,
7 would you please stand?

8 (No response.)

9 THE COURT: Is there a member of the jury panel
10 who has a close business or a social, a personal
11 relationship with Mr. Drachslin? If so would you please
12 stand?

13 (No response.)

14 THE COURT: Thank you. There is no response.

15 Among the potential witnesses who may be called upon
16 to testify in this case, ladies and gentlemen, are Brother

17 [REDACTED], Teresa Drachslin, Older Sister

18 Drachslin, Younger Sister [REDACTED] Rita Burgess with the
19 Pickens County Sheriff's Office, Brian Bolding with the
20 same agency, Dr. Greg Mazak of Trinity Bible Church, Dr.
21 Mary Fran Crosswell of Greenville Memorial Hospital,
22 Christine Carlberg of the Julie Valentine Center, and
23 David Graham. Is there any member of the jury panel
24 related by blood or marriage to any of these potential
25 witnesses? If so would you please stand?

1 (No response.)

2 THE COURT: Is there a member of the jury panel
3 who has a close business or a social, a personal
4 relationship with any of these potential witnesses? If
5 so would you please stand?

6 Yes, sir, your name, please?

7 THE JUROR: It's Joshua Alexander.

8 THE COURT: And which of the witnesses do you
9 know?

10 THE JUROR: Mr. Bolding.

11 THE COURT: And how do you know him?

12 THE JUROR: Just a friend of the family.

13 THE COURT: Okay. Do you see him on a periodic
14 basis?

15 THE JUROR: No, sir.

16 THE COURT: You just know him?

17 THE JUROR: Yes, sir. We used to go to church
18 together a long time ago.

19 THE COURT: You still do? Do you see him ---

20 THE JUROR: No, sir.

21 THE COURT: If you would remaining standing
22 just a moment.

23 Yes, ma'am, your name, please?

24 THE JUROR: Jennifer Galloway.

25 THE COURT: And which witness do you know?

1 THE JUROR: Mr. Bolding.

2 THE COURT: And do you see him on a regular
3 basis?

4 THE JUROR: No.

5 THE COURT: Do you know him from ---

6 THE JUROR: High school.

7 THE COURT: High school. Okay. If you'd
8 remain standing.

9 Your name, please, ma'am?

10 THE JUROR: Sarah Jaynes.

11 THE COURT: And which witness do you know?

12 THE JUROR: Mr. Bolding.

13 THE COURT: And do you see him on a regular
14 basis?

15 THE JUROR: No, not on a regular basis.

16 THE COURT: Okay. All right. Those of you who
17 are standing ...

18 Yes, ma'am, your name, please?

19 THE JUROR: I know Ms. Burgess on a
20 professional -- I'm a school counselor and we've worked
21 on some of the same cases together.

22 THE COURT: All right. If you would be seated
23 just for a moment. I'll get to that in just a moment.

24 Those of you who are standing that know this
25 particular officer who may be called upon to testify in

1 this case, the fact that you know him and have known him
2 in church years past, in school years past or see him
3 periodically, would the fact that you know him interfere
4 with your ability to be a fair juror? If he testifies
5 could you weigh his testimony as all other testimony and
6 give it the weight that you think it deserves, just like
7 any other testimony, and make a decision if you're
8 selected, on all the evidence that you hear and the law
9 that I give you? If you feel any hesitancy at all that
10 because of knowing this particular witness in the past
11 that that would interfere with your ability, then we have
12 other jurors we can select. Those of you who are
13 standing, if you believe you could be a fair juror, I'm
14 going to ask you to be seated. If you have any hesitancy
15 at all, please remain standing.

16 Thank you. Let the record reflect that the jurors
17 have been seated.

18 Now, is there any member of the jury panel or a
19 member of your immediate family now or in the past have
20 worked for any organization or agency or business that
21 investigates or counsels victims of alleged sexual
22 assault or sexual molestation? If you've worked or have
23 employees in the Department of Social Services, if you've
24 volunteered as a guardian ad litem, you or a family
25 member, or a school counselor, if you would stand if

1 you've had any dealings in the past with organizations
2 that investigate this.

3 THE JUROR: What if you're the mother of a
4 victim?

5 THE COURT: Excuse me.

6 THE JUROR: A mother of a victim.

7 THE COURT: Well, I'll get to that in a minute,
8 if you'll just respond to the questions I have. I'll
9 have other questions to ask; okay? So those of you who
10 are standing have either worked for or been involved with
11 agencies that investigate alleged sexual assault or
12 sexual molestation. Let me get your names, please.
13 Again, Ms. Galloway.

14 THE JUROR: Yes. I'm Mary Ann Fabian.

15 THE COURT: Fabian? I'm sorry.

16 THE JUROR: Yes. And I'm the guidance
17 counselor at Liberty Elementary School.

18 THE COURT: All right. Your name, please, sir?

19 THE JUROR: Marshall Norris. My wife is a
20 guidance counselor at Easley High School.

21 THE COURT: All right. Yes, sir, in the back.

22 THE JUROR: Nick Lavery, Your Honor. I've had
23 the occasion to be involved in cases such as this in the
24 past.

25 THE COURT: All right. And your name, please,

1 ma' am?

2 THE JUROR: Dana West. I was a volunteer for
3 CASA for four years.

4 THE COURT: Volunteer for?

5 THE JUROR: CASA.

6 THE COURT: CASA. Okay. How long ago was
7 that?

8 THE JUROR: Five years ago.

9 THE COURT: All right. Those of you who are
10 standing that have involvement in this from different
11 aspects and allegations of child abuse, would that
12 interfere with your ability to be a fair and impartial
13 juror? If you've had that experience and that experience
14 could be helpful in helping to resolve a case, then you
15 would be qualified to be a juror. But if that experience
16 in anyway would taint your impartiality or interfere with
17 your ability to be fair and impartial, then we have other
18 jurors we can select. Those of you standing who have
19 either yourselves or a relative involved in these
20 agencies or organizations believe that you can be a fair
21 juror, I'm going to ask you to be seated. If you have
22 any hesitancy at all, please remain standing.

23 (No response.)

24 THE COURT: Thank you. Let the record reflect
25 that the jurors have all been seated.

1 Is there any member of the jury panel a contributing
2 member of any organization whose primary concern is that
3 of promotion of law enforcement or victims' rights, such
4 as the Sheriff's Association, the Trooper's Association,
5 MADD or SADD, PAAR, CAVE? If you're a contributing
6 member of any of those organizations, would you please
7 stand?

8 (No response.)

9 THE COURT: Thank you. There's no response.

10 Is there any member of the jury panel or a member of
11 your immediate family involved in law enforcement in
12 anyway? If so would you please stand. If you or a
13 member of your immediate family are in law enforcement.

14 All right. Let me start over here. Your name,
15 please, ma'am.

16 THE JUROR: Lisa Clardy.

17 THE COURT: Ms. Clardy, what relative do you
18 have in law enforcement?

19 THE JUROR: My brother was a sheriff's deputy.
20 Now he's a DNR officer.

21 THE COURT: Okay. He's still -- in Pickens
22 County here or ---

23 THE JUROR: Spartanburg.

24 THE COURT: Spartanburg. If you would remain
25 standing a moment.

1 Yes, ma'am, your name?

2 THE JUROR: Jean Grant. My nephew is a state
3 highway patrolman.

4 THE COURT: Okay. In South Carolina?

5 THE JUROR: Uh-huh (affirmative).

6 THE COURT: If you would remain standing,
7 please, ma'am.

8 Yes, sir, your name, please.

9 THE JUROR: Zachary Scott.

10 THE COURT: And what relative do you have?

11 THE JUROR: My brother and my uncle work for
12 Anderson County.

13 THE COURT: Your uncle and your brother are
14 employed in Anderson County in law enforcement?

15 THE JUROR: Yes, sir.

16 THE COURT: All right. If you would remain
17 standing, please.

18 Yes, sir, your name again, please.

19 THE JUROR: Marshall Norris. My brother is a
20 police officer in Indiana.

21 THE COURT: In Indiana. If you would remain
22 standing. Yes, ma'am.

23 THE JUROR: Sarah Jaynes. And my brother is a
24 sheriff's deputy here in Pickens County.

25 THE COURT: In Pickens County.

1 THE JUROR: Uh-huh (affirmative).

2 THE COURT: All right. Those of you who are
3 standing, law enforcement presumably are going to be
4 testifying. The fact that you have a relative in law
5 enforcement, would that interfere in anyway with your
6 ability to be a fair juror? If you feel that it would,
7 we'll select other jurors. You may remain standing if
8 you feel it would affect you. If not, then please be
9 seated, if you feel you could be fair to both.

10 Let the record reflect that all the jurors have been
11 seated.

12 Now, is there any member of the jury panel or a
13 member of your immediate family who has ever been charged
14 with or accused of or arrested for any sexual assault or
15 a sexual molestation? Or is there any member of the jury
16 panel or a member of your immediate family who has ever
17 been the victim of a sexual abuse or a crime of sex in
18 anyway? If so would you please stand. If a family
19 member or you yourself have ever been charged with or
20 have a family member who or yourself have been a victim
21 of sexual assault or abuse.

22 All right. The four of you standing, what I'd like
23 to do is just talk with you with the record here with the
24 court reporter. So if you could come up one at a time,
25 I'll get that information from you.

1 Yes, sir, if you'd come forward, please. Your name
2 and number, please, sir.

3 THE JUROR: I'm number 20, Mike Childs. My
4 daughter was kidnaped, ten, fifteen years ago and held
5 for probably a week before we could find her, and raped.

6 THE COURT: Do you think that would ---

7 THE JUROR: It could very easily, yeah.

8 THE COURT: I'm going to excuse you from the
9 trial.

10 THE JUROR: I appreciate it.

11 THE COURT: What I'm going to ask you to do is
12 just have a seat. You don't need to respond to any other
13 questions I ask. Okay, sir?

14 THE JUROR: Thank you.

15 THE COURT: Thank you very much for sharing
16 that.

17 Yes, sir, your name and ---

18 THE JUROR: Billy Bolding, number 12.

19 THE COURT: All right, sir.

20 THE JUROR: When I was about eleven years old,
21 I was abused one time. I mean, it wasn't nothing major.
22 It didn't go to court or nothing.

23 THE COURT: Would that affect your ability to
24 be a fair juror?

25 THE JUROR: It probably would. I'm probably

1 prejudiced.

2 THE COURT: What I want you to do, please, I'm
3 going to excuse you. But if you'll just have your seat
4 back. And you don't need to respond to any other
5 questions I ask. Thank you, Mr. Bolding.

6 Yes, ma'am, your name and number.

7 THE JUROR: Lakesha Garrett, number 43.

8 THE COURT: Something happened to you or a
9 relative?

10 THE JUROR: No. My sister.

11 THE COURT: Was she abused?

12 THE JUROR: Well, when she was about three or
13 four, we had a family friend that tried to get her to
14 perform an act on him. And then I have an uncle that has
15 been in trouble that is a registered sex offender.

16 THE COURT: Would those things affect your
17 ability to be a fair juror?

18 THE JUROR: No, sir.

19 THE COURT: You've got an uncle that's a
20 registered sex offender and you've got a sister ---

21 THE JUROR: Sister.

22 THE COURT: --- that was as a child.

23 THE JUROR: Yes, sir.

24 THE COURT: You could be a fair to both side
25 and ---

1 THE JUROR: Yes, sir.

2 THE COURT: --- just listen to the evidence and
3 the law?

4 THE JUROR: Yes, sir.

5 THE COURT: Thank you for sharing that, Ms.
6 Garrett. You may return to your seat.

7 Yes, ma'am, your name and number, please.

8 THE JUROR: Melissa Evett, 31.

9 THE COURT: 31. Yes, ma'am.

10 THE JUROR: I've been through a case like this
11 with my daughter. Rita Burgess was the detective on the
12 case.

13 THE COURT: Do you think that might interfere
14 with your ability ---

15 THE JUROR: I know how hard it is to bring the
16 charges against someone.

17 THE COURT: I'm going to excuse you in this
18 case.

19 THE JUROR: I think I may be prejudiced. I'm
20 sorry.

21 THE COURT: If you would just return to your
22 seat. You don't need to respond to any other questions.
23 Just have a seat; okay? Thank you very much.

24 THE COURT: Okay. Two more. Yes, ma'am, your
25 name and number, please. Number 79.

1 THE JUROR: Jeanette Marette, number 79.

2 THE COURT: Yes, ma'am, Ms. Marette.

3 THE JUROR: I was the victim of an attempted
4 rape.

5 THE COURT: Recently or ---

6 THE JUROR: No. In the seventies.

7 THE COURT: Do you think that would interfere
8 with your ability to be a fair juror in this case?

9 THE JUROR: I don't think so, but I ---

10 THE COURT: Do you have any hesitancy at all?

11 THE JUROR: I think I'll be okay.

12 THE COURT: You think you would? You're not
13 sure, though?

14 THE JUROR: I never know.

15 THE COURT: I'm going to excuse you. If you
16 would return to your seat. You don't need to respond to
17 other questions I ask. If you'd just have a seat, ma'am.
18 Thank you very much.

19 Yes, ma'am. Let me get your name and number.

20 Number 14. Yes, ma'am.

21 THE JUROR: Vickie Bowers.

22 THE COURT: Did you have an event happen in
23 your life?

24 THE JUROR: When I was five.

25 THE COURT: Would that affect your ability to

1 be a fair juror?

2 THE JUROR: Yes, it would.

3 THE COURT: I'm going to ask you to return to
4 your seat. You don't need to respond to any other
5 questions. You'll be excused from this trial. Thank you
6 very much.

7 THE JUROR: Okay. Thank you.

8 THE COURT: Has any member of the jury panel
9 expressed or formed an opinion in anyway about the facts
10 in this case? If so would you please stand.

11 (No response.)

12 THE COURT: Is there any member of the jury
13 panel aware of any bias or prejudice that would interfere
14 with your ability to be a fair juror in this case? If so
15 would you please stand?

16 Yes, sir, your name, please, sir.

17 THE JUROR: Bill Albertson.

18 THE COURT: All right. Mr. Albertson, you
19 don't believe you could be a fair juror in this case?

20 THE JUROR: No, sir, I don't.

21 THE COURT: All right. And you, sir, don't
22 believe you could be a fair juror? Your name, please,
23 sir?

24 THE JUROR: Christopher Napoli.

25 THE COURT: All right. If I could talk to each

1 of you up here, please, just for a moment.

2 All right. Mr. Albertson. I understand from the
3 clerk that you have protection for tomorrow.

4 THE JUROR: I'm sorry. I have a hearing
5 problem.

6 THE COURT: You've got a medical condition that
7 you need to take care of tomorrow; is that right?

8 THE JUROR: Yes, sir.

9 THE COURT: This case is going to go into
10 tomorrow, so you don't need to -- you won't be selected.
11 If you'll just have a seat. You don't need to respond to
12 any other questions I have; okay?

13 Yes, sir, your name and number.

14 THE JUROR: Christopher Napoli, number 97.

15 THE COURT: Yes, sir.

16 THE JUROR: This case is sensitive to me. I've
17 got a little girl.

18 THE COURT: You have a little girl.

19 THE JUROR: And personally ---

20 THE COURT: You don't think you could handle
21 that?

22 THE JUROR: When you first said it, I just
23 didn't have a good feeling about it.

24 THE COURT: Thank you for sharing that. I'm
25 going to excuse you.

1 THE JUROR: I'm under oath. I have to be
2 honest with you.

3 THE COURT: You don't need to respond to any
4 other questions I have. Okay? If you'll just have a
5 seat now. Thank you.

6 Yes, sir, your name and number, please.

7 THE JUROR: 142, Edward Terrell.

8 THE COURT: Number 142.

9 THE JUROR: When you said he had three charges
10 against him, I know in my mind he's guilty. I have two
11 teenager daughters.

12 THE COURT: You wouldn't be willing to listen
13 to the evidence.

14 THE JUROR: With three charges against him, I
15 just soon take him out back.

16 THE COURT: I'm going to excuse you from the
17 trial of this case if you'd return to your seat. You
18 don't need to respond to other questions I ask. Okay?

19 THE JUROR: Thank you.

20 THE COURT: Ladies and gentlemen, at this time
21 I'm going to have the attorneys to stand and introduce
22 themselves to the jury. Solicitor, if you would.

23 MR. TOOKER: Thank you, Your Honor, may it
24 please the court. My name is Sam Tooker and I'm the
25 assistant solicitor here in Pickens County and seated

1 beside me is Ms. Rita Burgess and Lieutenant Brian
2 Bolding.

3 THE COURT: Thank you. Mr. DeJong.

4 MR. DEJONG: Thank you, Your Honor, may it
5 please the court. I'm John DeJong. I practice law here
6 in Pickens County. Today I have the pleasure of
7 representing Mr. Joseph Drachslin. And also seated at
8 counsel table with me, who will probably be in and out
9 during this trial, but that is Ms. Anita McCoy, and she
10 is my investigator.

11 THE COURT: Thank you, gentlemen. Is there any
12 member of the jury panel related by blood or marriage to
13 either of these attorneys or members of their staff? If
14 so would you please stand.

15 (No response.)

16 THE COURT: Is there a member of the jury panel
17 who has a close business or a social, a personal
18 relationship, with either of the attorneys or members of
19 their staff?

20 Yes, sir, state your name, please.

21 THE JUROR: Thank you, Your Honor. Nick
22 Lavery.

23 THE COURT: All right, sir.

24 THE JUROR: I know Mr. Tooker and Mr. DeJong
25 very well, both professionally and personally.

1 THE COURT: Okay. Would that affect your
2 ability to be a fair juror, Mr. Lavery?

3 THE JUROR: No, Your Honor.

4 THE COURT: All right. Thank you, sir, you may
5 be seated.

6 Is there any member of the jury panel ever been
7 involved in any litigation in which you were a party at
8 which either of these attorneys represented you or
9 represented the opposing side? If you've ever been
10 involved in litigation as a party where either the
11 attorneys represented you or represented the opposing
12 side, would you please stand.

13 (No response.)

14 THE COURT: Thank you. There is no response.

15 Ladies and gentlemen, the state of South Carolina is
16 in this courtroom today. Mr. Drachslin is in this
17 courtroom today and each desire to have fair and
18 impartial jurors to listen to the evidence, decide what
19 the facts are and in light of the law that I give, decide
20 what the truth is in this matter and render a verdict.
21 That's not only their desire, but under our constitution,
22 they deserve to have fair and impartial jurors to hear
23 this case. Is there any member of the jury panel aware
24 of any reason whatsoever that in this particular case you
25 could not be fair to both the state, to the defendant,

1 and render a verdict solely on the law and the evidence
2 and that alone? If for any reason you believe you could
3 not be a fair juror, would you please stand.

4 (No response.)

5 THE COURT: Thank you. There's no response.

6 Any other questions from the state?

7 MR. TOOKER: Nothing from the state, sir.

8 THE COURT: Any other questions from ---

9 MR. DEJONG: Nothing on behalf of Mr.
10 Drachslin, Your Honor.

11 THE COURT: Okay. Thank you very much, ladies
12 and gentlemen. What we're going to be doing now, as I
13 told some of you earlier, we have a computer that's going
14 to randomly get your names in a pot. Some of you may
15 have served years ago where they had a canister and they
16 would pull out a name and call it out. We now have a
17 computer to do that. Mr. Welborn has been working on
18 that and we have a random line-up of your names. In a
19 few moments he'll call those names in the order that the
20 computer generated those and he'll give you further
21 instructions then as far as the impanelment of the jury.

22 You ready for them now? Okay. Let's empanel a
23 jury.

24 THE CLERK: If you would, please stand as I
25 call your names.

1 Juror number 126, Janna B. Shelby. What says the
2 state?

3 MR. TOOKER: Please present Ms. Shelby.

4 THE CLERK: And the defense?

5 MR. DEJONG: Please swear the juror.

6 THE CLERK: If you would come forward, please,
7 ma'am, and have a seat in the jury box.

8 Juror number 121, Jason E. Ross. What says the
9 state?

10 MR. TOOKER: Please excuse Mr. Ross from the
11 trial of this case.

12 THE CLERK: Return to your seat, please, sir.

13 Juror number 137, Cynthia J. Stoddard. What says
14 the state?

15 MR. TOOKER: Please present Ms. Stoddard.

16 THE CLERK: And the defense?

17 MR. DEJONG: Please excuse this juror from the
18 trial of this case.

19 THE CLERK: If you would return to your seat,
20 please, ma'am.

21 Juror number 132, Marshall E. Sowell. What says the
22 state?

23 MR. TOOKER: Please present Mr. Sowell.

24 THE CLERK: And the defense?

25 MR. DEJONG: Please swear the juror.

1 THE CLERK: If you would come forward, please,
2 sir, and have a seat in the jury box.

3 Juror number 26, Everett J. Covington, Jr. What
4 says the state?

5 MR. TOOKER: Please present Mr. Covington.

6 THE CLERK: And the defense?

7 MR. DEJONG: Please swear the juror.

8 THE CLERK: If you would come forward, please,
9 sir, and have a seat in the jury box.

10 Juror number 63, Tori L. Hernandez. What says the
11 state?

12 MR. TOOKER: Please present Ms. Hernandez.

13 THE CLERK: And the defense?

14 MR. DEJONG: Please swear the juror.

15 THE CLERK: If you would come forward, please,
16 ma'am, and have a seat in the jury box.

17 Juror number 70, Sarah M. Jaynes. What says the
18 state?

19 MR. TOOKER: Please present Ms. Jaynes.

20 THE CLERK: And the defense?

21 MR. DEJONG: Please excuse this juror from the
22 trial of this case.

23 THE CLERK: If you would return to your seat,
24 please.

25 Juror number 100, Marshall J. Norris. What says the

1 state?

2 MR. TOOKER: Please present Mr. Norris.

3 THE CLERK: And the defense?

4 MR. DEJONG: Please excuse this juror from the
5 trial of this case.

6 THE CLERK: If you would return to your seat,
7 please, sir.

8 Juror number 30, Kenneth D. Dobbins. What says the
9 state?

10 MR. TOOKER: Please present Mr. Dobbins.

11 THE CLERK: And the defense?

12 MR. DEJONG: Please excuse this juror from the
13 trial of this case.

14 THE CLERK: You can return to your seat.

15 Juror number 37, Kelli M. Fowler. What says the
16 state?

17 MR. TOOKER: Please present Ms. Fowler.

18 THE CLERK: And the defense?

19 MR. DEJONG: Please excuse this juror from the
20 trial of this case.

21 THE CLERK: If you would return to your seat,
22 please.

23 Juror number 9, Thomas R. Beckenhauer. What says
24 the state?

25 MR. TOOKER: Please present Mr. Beckenhauer.

1 THE CLERK: And the defense?

2 MR. DEJONG: Please swear the juror.

3 THE CLERK: If you would come forward, please,
4 sir, and have a seat in the jury box.

5 Juror number 103, Linda F. Osteen. What says the
6 state?

7 MR. TOOKER: Please present Ms. Osteen.

8 THE CLERK: And the defense?

9 MR. DEJONG: Please excuse this juror from the
10 trial of this case.

11 THE CLERK: You can return to your seat,
12 please.

13 Juror number 28, Carl G. Crowe. What says the
14 state?

15 MR. TOOKER: Please excuse Mr. Crowe from the
16 trial of this case.

17 THE CLERK: If you would return to your seat,
18 please.

19 Juror number 104, Nathan S. Pace. What says the
20 state?

21 MR. TOOKER: Please present Mr. Pace.

22 MR. DEJONG: I'm sorry, Your Honor, may I step
23 around the corner here?

24 THE COURT: Yes, sir.

25 MR. DEJONG: I can't see this gentleman. Oh,

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1 there he is. What number, Mr. Clerk?

2 THE CLERK: 104.

3 MR. DEJONG: Thank you, sir. Please swear the
4 juror.

5 THE CLERK: If you would come forward, please,
6 sir, and have a sets in the jury box.

7 Juror number 80, Bobby L. Massengale. What says the
8 state?

9 MR. TOOKER: Please present Mr. Massengale.

10 THE CLERK: And the defense?

11 MR. DEJONG: Please swear the juror.

12 THE CLERK: If you would come forward, please,
13 sir, and have a seat in the jury box.

14 Juror number 133, Melvin E. Sowell, Jr. What says
15 the state?

16 MR. TOOKER: Please present Mr. Sowell.

17 THE CLERK: And the defense?

18 MR. DEJONG: Please excuse this juror from the
19 trial of this case.

20 THE CLERK: If you would return to your seat,
21 please, sir.

22 Juror number 159, Cheryl A. Youngblood. What says
23 the state?

24 MR. TOOKER: Please present Ms. Youngblood.

25 THE CLERK: And the defense?

1 MR. DEJONG: Please swear the juror.

2 THE CLERK: If you would come forward, please,
3 ma'am, and have a seat in the jury box.

4 Juror number 62, Mau N. Hendrix. What says the
5 state?

6 MR. TOOKER: Please present Ms. Hendrix.

7 THE CLERK: And the defense?

8 MR. DEJONG: Please swear the juror.

9 THE CLERK: If you would come forward, please,
10 ma'am, and have a seat in the jury box.

11 Juror number 102, Timothy D. Olcott. What says the
12 state?

13 MR. TOOKER: Please present Mr. Olcott.

14 THE CLERK: And the defense?

15 MR. DEJONG: Please swear the juror.

16 THE CLERK: If you would come forward, please,
17 sir, and have a seat in the jury box.

18 Juror number 33, Charles R. Ferber. What says the
19 state?

20 MR. TOOKER: Please excuse Mr. Ferber from the
21 trial of this case.

22 THE CLERK: If you would return to your seat,
23 please, sir.

24 Juror number 148, David R. Vandeventer. What says
25 the state?

1 MR. TOOKER: Please present Mr. Vandeventer.

2 THE CLERK: And the defense?

3 MR. DEJONG: Please excuse this juror from the
4 trial of this case.

5 THE CLERK: If you would return to your seat,
6 please, sir.

7 Juror number 73, Charles N. Lavery. What says the
8 state?

9 MR. TOOKER: Please excuse Mr. Lavery from the
10 trial of this case.

11 THE CLERK: If you would return to your seat.

12 Juror number 157, Melody L. Young. What says the
13 state?

14 MR. TOOKER: Please present Ms. Young.

15 THE CLERK: And the defense?

16 MR. DEJONG: Please swear the juror.

17 THE CLERK: If you would come forward, please,
18 ma'am, and have a seat in the jury box.

19 Juror number 49, Jean L. Grant. What says the
20 state?

21 MR. TOOKER: Please present Ms. Grant.

22 THE CLERK: And the defense?

23 MR. DEJONG: Please excuse this juror from the
24 trial of this case.

25 THE CLERK: If you would return to your seat,

1 please, ma'am.

2 Juror number 39, Ashley D. Galloway. What says the
3 state?

4 MR. TOOKER: Please present Ms. Galloway.

5 THE CLERK: And the defense?

6 MR. DEJONG: Please excuse this juror from the
7 trial of this case.

8 THE CLERK: If you would return to your seat,
9 please, ma'am.

10 Juror number 10, Michael C. Blair. What says the
11 state?

12 MR. TOOKER: Please present Mr. Blair.

13 THE CLERK: And the defense?

14 MR. DEJONG: Please swear the juror.

15 THE CLERK: If you would come forward, please,
16 sir, and have a seat in the jury box.

17 This will be for the alternate. Juror number 32,
18 Mary A. Fabian. What says the state?

19 MR. TOOKER: Please present Ms. Fabian.

20 THE CLERK: And the defense?

21 MR. DEJONG: Please excuse this juror from the
22 trial of this case.

23 THE CLERK: If you would return to your seat,
24 please, ma'am.

25 Juror number 22, Lisa M. Clardy. What says the

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1 state?

2 MR. TOOKER: Please present Ms. Clardy.

3 THE CLERK: And the defense?

4 MR. DEJONG: Please excuse this juror from the
5 trial of this case.

6 THE CLERK: You may return to your seat,
7 please, ma'am.

8 Juror number 110, Konrad A. Pfeiffer. What says the
9 state?

10 MR. TOOKER: Please excuse Mr. Pfeiffer from
11 the trial of this case.

12 THE CLERK: If you would return to your seat,
13 please, sir.

14 Juror number 112, Judith M. Porter. What says the
15 state?

16 MR. TOOKER: Please present Ms. Porter.

17 THE CLERK: And the defense?

18 MR. DEJONG: Please swear the juror.

19 THE CLERK: If you would come forward, please,
20 ma'am, and have a seat in the jury box.

21 THE COURT: Any legal matters we need to take
22 care of as far as the selection of the jury in this case,
23 from the state?

24 MR. TOOKER: Nothing from the state, sir.

25 THE COURT: From the defense?

1 MR. DEJONG: Not on behalf of Mr. Drachslin,
2 Your Honor.

3 THE COURT: Ladies and gentlemen who were not
4 selection, I thank you for your patience with us today.
5 I can excuse you at this time. Please call back tonight
6 after six o'clock. There will be a message on the
7 answering machine for you as to when you need to report
8 back tomorrow or when you need to call back. Thank you
9 very much.

10 Everyone else, please remain seated while the jury
11 departs.

12 (WHEREUPON, the jury panel exited the open court at
13 approximately 11:58 a.m.)

14 THE COURT: Ladies and gentlemen, you've seen
15 the process by which you were selected to serve as a
16 juror in this case. These parties believe you're the
17 best twelve people to decide what the facts are, to
18 listen to this case.

19 You may notice we have thirteen. The last juror
20 selected is the alternate. Her seat will change. As the
21 trial starts, she'll go exactly the opposite on the back.
22 That'll be her designated seat. We don't need to change
23 now. But the alternate is every bit a part of the jury
24 as anyone else. We select an alternate because often --
25 well, not often -- but sometimes it may occur during the

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1 course of a trial that one of you may have an emergency
2 or one of you falls ill. I certainly hope none of that
3 happens. But if it were to happen, rather than having to
4 start the process over all over, we can just have the
5 alternate stand in the shoes of whatever juror has that
6 emergency need and we can continue with the trial without
7 beginning anew.

8 I'm honored to be working with you in this case, to
9 have this opportunity. I wear the black robe. I'm
10 referred to as the judge, and I am the judge of the law.
11 But you are every bit as much judges as I am, because
12 you're going to be judging the facts. That may give you
13 some trepidation to have a title of judge, thinking to
14 yourself, well, I've never served as a juror before.
15 I've never taken any law courses. Never even been in a
16 courtroom. Never talked to a lawyer in my life. Some of
17 those things may be applicable to you, but I assure you,
18 ladies and gentlemen, you bring every skill to this
19 courtroom that you're going to need to be the judges of
20 the facts, because what you bring into this courtroom are
21 the everyday experiences you enjoy in the home and the
22 workforce and social activities. You're bringing into
23 this courtroom the good common sense with which you've
24 been blessed. That's what you're going to need to
25 utilize in determining just what the facts are based upon

1 the evidence that is presented. You're committing to
2 these individuals, to these parties, to be fair and
3 impartial to both sides.

4 Now, as the law giver, I'm going to give you the law
5 at the end of the case, whatever law may be applicable as
6 I determine that to be. Your requirement will be to
7 accept that law and apply that law to the facts that
8 you've heard and the evidence that you've heard.

9 Part of my job also is to determine when we take
10 breaks. Normally we'll take a morning break and an
11 afternoon break; usually an hour, an hour and a half at
12 the time. If any time you need a break and I haven't
13 called for a break, please get my attention, get the
14 attention of one of these bailiffs. You've had
15 interaction with them during the week. Mr. Schumacher
16 over to your left and in the back, Mr. Grant. Mr. Carr,
17 who is also over behind me. I think any of these
18 bailiffs will certainly help you in anyway. Mr. Welborn,
19 you've already had a chance to meet this week and he'll
20 be here in the courtroom or either one of his deputy
21 clerks from his office. The young lady seated directly
22 in front of you with her back to you is Danette Hanks.
23 She's the court reporter. She's taking down everything
24 that's said during the course of the trial. She'll be
25 marking any exhibits that may be introduced and keeping

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1 up with those. Hudson Smith is the young man seated
2 beside me, a recent law school graduate admitted to the
3 bar from South Carolina. You may see him coming and
4 going as the case unfolds, and taking care of things back
5 at the office. Any of these folks will certainly assist
6 you in anyway that they can.

7 If we haven't taken a break and you need a break,
8 that means you're not going to be as comfortable as you
9 need and you need to be comfortable in order to listen to
10 the evidence. That's your job here, is to listen
11 carefully and observe what's going on so that you can
12 determine just what the facts are.

13 Cases normally take place in stages. The attorneys
14 make an opening statement to you. They give you an
15 overview of what you may expect to hear or principals
16 that they feel might be important as the case develops.
17 After that the state will call witnesses. There may be
18 some documentary evidence. After all the evidence has
19 been presented, witnesses have been examined and cross
20 examined, then the attorneys again will have an
21 opportunity to address you in a closing statement and
22 then I'll instruct you on the law.

23 Until I've instructed you on the law, you shouldn't
24 be discussing the case one with another or with anyone
25 else. It's very important that the process that we're in

1 now maintains its purity. These parties have picked you
2 to be the impartial ones to be the fact-finders in this
3 case. That means that they want to avoid any appearance
4 of any impropriety. So as you come and go from lunch and
5 otherwise, you may see the lawyers in the hallway or get
6 on the elevator with them. They may seem very unfriendly
7 and not very talkative. You shouldn't hold that against
8 their clients. That's their training. They want to make
9 sure that any observation by others that they're talking
10 to a juror won't be misinterpreted. They may have an
11 innocent conversation about the weather or sports or some
12 other event, but it may be perceived otherwise. So if
13 they seem to high-hat you in anyway and walk another way
14 or not as friendly as they normally are, please don't
15 hold that against them or their clients. That's their
16 training. That's the way they're taught to do, to avoid
17 any appearance of any impropriety whatsoever.

18 By the same token, as you're out and about for lunch
19 and during the evening, you're obviously going to have
20 curious family members; did you get picked and what's the
21 case about? Then they'll want to give you some input;
22 let me tell you what I've heard about something like
23 that. That would be improper, ladies and gentlemen.
24 Certainly you can tell your family and loved ones,
25 friends, that you're serving on a jury and it involves

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1 sexual abuse. But short of that, you shouldn't be
2 talking about the case at all while it's in progress.
3 You shouldn't let other people try to talk to you about
4 the case. You're performing a high calling today to be
5 the fact-finders and you're going to have an opportunity
6 when the case is concluded to share your experience with
7 your family, your friends and your loved one, your
8 business associates. But while it's in progress is not
9 the time to be doing that. Even when you're out for
10 lunch you may -- someone may want to approach you and ask
11 you something about the case or share some information
12 with you, but that would be improper as well. You just
13 tell that person that you're a juror and you can't be
14 discussing it with anyone. If anyone were to persist in
15 doing that, please excuse yourself as soon as you can and
16 if possible get the name of that individual and report
17 that back to me. I assure you, I'll take care of that.
18 I don't expect anything like that to happen. But I want
19 you to be on guard now for the possibility of any undue
20 influence coming upon you. If you're in a restaurant and
21 you overhear someone innocently talking about this case,
22 some of the court personnel or otherwise, you take the
23 initiative and just move to another booth or you maintain
24 the impartiality that you have now throughout this trial.
25 That's what's paramount, that you do that.

1 It's only when I give you the instructions at the
2 end of the trial that you're to talk about it, even with
3 each other. You don't analyze the case as it's unfolding
4 and take a break and talk about what you've heard so far.
5 That would be improper as well. When all the evidence is
6 in and I've instructed you on the law, that's when you'll
7 have a chance to start your discussion and deliberation
8 in the case, and at no time before that.

9 Part of my job also is to rule upon objections that
10 are made. Sometimes in a trial objections are made.
11 Sometimes there's not any made. But if there are, my job
12 is to rule upon those. Sometimes it's a question. It
13 may be a document. Frequently I can say sustained or
14 overruled and we move on to the next question.
15 Sometimes, as you've already seen in this case starting,
16 I may huddle up with the attorneys and we can resolve an
17 issue or do some scheduling about a witness that needs to
18 come at a certain time.

19 Sometimes there may be a legal matter that one of
20 the lawyers raises. In the course of a trial there are
21 stages in which legal matters come up. And when those
22 legal matters come up and I need more time on, you may be
23 back in your jury room while I hear some testimony that
24 normally wouldn't even be presented to a jury. I may
25 have to hear argument of legal counsel. Research some

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1 law myself and study some law books.

2 As the judge of the law, I want to make the very
3 best decision I possibly can. Sometimes I need to hear
4 those things or decide those things and research those
5 matters that would have no concern of you. It's not that
6 we're hiding things from you. It's just that I need to
7 focus on those legal matters. It's very similar, as I've
8 explained to you briefly, when the case is concluded and
9 you're back in your jury room deciding what the facts
10 are, I'm a judge just like you are and I'm not going to
11 be back there with you deciding what the facts are.
12 That's not my prerogative. That's yours and yours alone,
13 just as mine is the law and mine alone to decide that.

14 The Chief Justice of the South Carolina Supreme
15 Court has issued an order that's directed to people such
16 as you that have been empaneled for a jury. And that
17 order is to be related by trial judges such as I to that
18 jury. As you know, ladies and gentlemen, we're in a
19 highly technical age and information age and there's all
20 kind of information out there on the internet, libraries
21 for those who still frequent libraries, other means of
22 archiving newspapers or news reports. The Chief Justice
23 has indicated that while you're involved in a trial and
24 been selected such as you are now, you're not to have any
25 kind of independent research. You're not to do any kind

1 of investigation as to words that you may hear as the
2 case develops. You're not to do any kind of social media
3 while you're -- many of you may have some so-called
4 friends out there in cyberspace that you want to share
5 everything with, but that's going to have to be shared
6 after this trial is over and not while it's in progress.
7 You can, again, share your experiences at that time, but
8 while the case is in progress, you should not be doing
9 any kind of social media about your experiences here or
10 what you've heard. You shouldn't be doing any kind of
11 independent research. That would be improper. I'm
12 confident these fine attorneys are going to present
13 everything to you in this courtroom that you're going to
14 need to make a good sound decision about the facts in the
15 case.

16 Normally, ladies and gentlemen, we take a lunch
17 break around one o'clock and have an afternoon break and
18 try to stop about five, five thirty in the afternoon.
19 Again, depending on how a witness -- we try to conclude
20 the witness testimony if at all possible. We'll be ready
21 to start at nine in the morning. We'll take a morning
22 break and lunch time around one o'clock. Rather than
23 having these attorneys now make an opening statement to
24 you and calling a witness and then having to break, we're
25 going to take our lunch a little earlier today. We have

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1 a few legal matters we need to take care of. I need to
2 see if there's any exhibits that could be premarked and
3 things of that nature that we need to take care of
4 initially.

5 If you'll be back in your jury room at one thirty, I
6 believe we'll be ready to begin then. That gives you a
7 little more than an hour. That's gives us time to get
8 things taken care of here. Mr. Schumacher will show you
9 where to report back where you'll be operating from in
10 your jury room.

11 Have a good lunch, ladies and gentlemen. We'll see
12 you back at one thirty today.

13 (WHEREUPON, the jury exited the open court at
14 approximately 12:14 p.m.)

15 THE COURT: All right. For the record, I've
16 read the -- I think most all the cases that you cited.
17 Particularly I focused on the ones that the defense had
18 brought up about the *McGaha* case and the *Beekman* case. I
19 believe that here the analyzing -- I guess the difficulty
20 a trial judge has is he's got to make a decision about
21 the factors in these cases without hearing any testimony.
22 But I have had the benefit of hearing the forensic
23 interviews, the witness list and a little bit of a recap
24 of what the state intends to show by way of its
25 witnesses. And I believe from that dialogue that I had

1 that most of the circumstances that developed in this
2 case would show, particularly from the information I have
3 from the *Jackson versus Denno* hearing and the --
4 listening to the forensic interviews in the pretrial that
5 I did in my office, there is a series of connected
6 transactions involved in this case that's the same
7 relationship to the defendant. While there may be a list
8 of the witnesses the state intends to call, one or two
9 witnesses that may only address one of the alleged
10 victims, I believe, by and large, from what I've heard
11 that most of the witnesses will relate to the same
12 evidence as to both of the victims. Certainly a
13 substantial portion would relate to both victims.

14 The *McGaha* case certainly sets forth that the other
15 factor of the same general nature point blank says that a
16 lewd act is the charge here on a couple of the cases.
17 Recodified, that criminal sexual conduct with a minor in
18 the first degree are cases that arise of the same general
19 nature and the prejudice, I believe it would be minimal
20 in light of the fact that the case law, I think, is
21 pretty clear under 404(b) that more than likely this
22 would be admissible for the common scheme and plan of
23 allowing it in.

24 So I fail to see any substantial prejudice to the
25 defendant. So that's why, as I mentioned to both

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1 attorneys prior to the selection of the attorneys, that I
2 had ruled on the joint motions both made and allow the
3 consolidation of the charges.

4 Anything else we need to take care of now before we
5 take a lunch break, gentlemen?

6 MR. TOOKER: Nothing from the state, sir.

7 MR. DEJONG: Nothing that I can think of right
8 now, Your Honor.

9 THE COURT: All right. If you need something
10 let us know before we get our jury back. We'll have them
11 sworn when they come back at one thirty. And if there
12 are any exhibits that can be marked, that would be
13 helpful to the court reporter. We'll be ready to have
14 our opening statements at one thirty.

15 (WHEREUPON, the court stood at recess for a lunch
16 break.)

17 THE COURT: Ladies and gentlemen, we're now
18 ready to proceed with the opening statements of the
19 attorneys. I told you earlier, that will kick the trial
20 off. What the lawyers have to say to you in their
21 opening statement is not evidence. The evidence will
22 come from the witness stand and any other exhibits that
23 may be made a part of the record. While this is not
24 evidence, I urge you to listen carefully as each of the
25 attorneys address you. I'm confident they can give you

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1 valuable insights to help you as the case develops and as
2 you listen carefully to the testimony.

3 Before we have the attorneys address you in their
4 opening statements, Mr. Welborn is going to administer an
5 oath to you. I hope you'll listen carefully as this oath
6 is given. It tells you everything you need to know to be
7 a juror. It's a time-honored oath. It's been in
8 existence since well before the foundation of our
9 country. It's an oath taken by a citizen such as you
10 throughout our land. And I'm confident that you'll
11 fulfill the obligations that you're making under the
12 oath.

13 Mr. Clerk, you may swear the jury.

14 THE CLERK: If you would please stand. Again,
15 after the oath is administered, answer by saying I will.

16 Raise your right hand. You shall well and truly try
17 the issue joined in this case of the State versus Joseph
18 Anthony Drachslin, Sr., and a true verdict render
19 according to the law and evidence, so help you God?

20 (WHEREUPON, all jurors answered I will and were duly
21 sworn.)

22 THE CLERK: Thank you. You may be seated.

23 THE COURT: Solicitor, you may make your
24 opening to the jury.

25 MR. TOOKER: Thank you, Your Honor, may it

1 please the court. Mr. DeJong.

2 **OPENING STATEMENT**

3 **BY MR. TOOKER:**

4 Ladies and gentlemen of the jury, I introduced
5 myself briefly when you were selected this morning.
6 Again, my name is Sam Tooker. I'm an assistant solicitor
7 here in Pickens County. I know that when you guys got
8 selected, and you looked at all the other people who were
9 in this room that got to go home, probably a part of you
10 said, man, I wish I got to go home. This isn't going to
11 be fun. You know, I've got to sit on this jury. I heard
12 those indictments. That sounds like some pretty serious
13 stuff. And certainly on behalf of the state, and I'd
14 like to think on behalf of the defendant and the court,
15 I'd like to thank you for your service. People don't
16 thank you a lot when you're here, and I think sometimes
17 it almost seems a little rote, but we mean it. There's
18 nothing that we do here that we can do without you. You
19 can have all the solicitors and defense attorneys and
20 court reporters and judges and clerks in the world, but
21 without twelve jurors, we can't accomplish anything.
22 Because we don't have the fact-finder. We don't have
23 somebody that can sit down and figure out what the truth
24 is in a case. And for that, we thank you a great deal.
25 Now, like I said, you heard the indictments as they

1 were read to you by the judge. And these are very
2 serious charges. And they are serious to the state.
3 They're serious to the victims. They're serious to the
4 defense and the defendant. And so, please treat them
5 seriously.

6 Now, what is alleged, in particular, in these three
7 indictments, is one course of conduct. What is alleged
8 is that the defendant inappropriately touched his
9 granddaughters. In the indictments you heard **Older Sister** and **Younger Sister**.
10 And that's what we do to give them some degree of
11 anonymity in the court records that make their way to the
12 clerk's office. But these are human beings. These are
13 people. It's **Older Sister** and **Younger Sister**. Two
14 little kids. And they're going to testify in this trial.
15 And you're going to hear them say what this man did to
16 them. But what's alleged, in particular, and what I want
17 to emphasize initially, is that each charge has
18 individual elements that we've got to meet. The burden
19 is on the state. It's our burden to prove this case to
20 you beyond a reasonable doubt. It's a burden we accept.

21 But two of the charges are criminal sexual conduct
22 with a minor in the second degree. Now what that means
23 is somebody older than fourteen touched somebody ---

24 MR. DEJONG: I object, Your Honor. That's a
25 misstatement.

1 THE COURT: A misstatement of what the charge
2 is. You said second degree.

3 MR. TOOKER: Oh, I apologize, Your Honor.

4 THE COURT: All right.

5 **OPENING STATEMENT CONTINUED**

6 **BY MR. TOOKER:**

7 Criminal sexual conduct with a minor in the third
8 degree. That's my bad. If somebody over the age of
9 fourteen touches somebody under the age of sixteen and
10 they do so with a lewd or lascivious intent, an intent to
11 gratify their own sexual interests or to gratify the
12 sexual desires of that minor child. And there are two
13 counts of that. One count with Older Sister and one count with
14 Younger Sister

15 Now, in addition to those two charges, there is a
16 charge of criminal sexual conduct with a minor in the
17 first degree. And that means that the defendant touched
18 the victim, Older Sister who was less than eleven years of age
19 at the time, and committed what we call a sexual battery.
20 A sexual battery is penetration, however slight, but some
21 form of penetration. And what's alleged in this case is
22 that he inserted his finger into her vagina. Those are
23 the facts as we're going to present them to you.

24 Now, they got here in an interesting way. What
25 happened in this case is the girls' father, Mr. Brother

1 Brother [REDACTED], walked into a room in his home where his
2 father was living under his roof, and saw the defendant,
3 his father, inappropriately touching his daughter [REDACTED] Older Sister
4 Called 911. Police got involved. The girls talked to
5 the police. And the defendant talked to the police. And
6 those are the facts as we're going to present them to you
7 over the course of this trial.

8 But ultimately what you're here to do is justice.
9 And when I say justice, I don't mean you've got to find
10 this particular result, you're got to make this
11 particular conclusion. We'll talk about conclusions in
12 final argument. But when I say you've got to do justice,
13 what you have to do is you have to keep an open mind.
14 You have to listen to this testimony and listen to every
15 single witness that takes the stand and keep an open mind
16 and assess their credibility, assess their believability.
17 Look at these people. Figure out why is it they would
18 say what they're saying. Determine if what they're
19 saying is something that makes sense to you.

20 And when you do that, do that with an open mind and
21 don't make conclusions. Don't make any conclusions until
22 after this case is over and you go back into that jury
23 room and with all the facts and all the evidence and
24 everything that's been presented in this case, then come
25 together as a group and talk about what you saw and what

1 you heard and what you have. And at that point, do
2 justice. Come to a verdict. And render a verdict that
3 speaks the truth.

4 Thank you.

5 THE COURT: Mr. DeJong, you may address the
6 jury in your opening.

7 MR. DEJONG: Thank you, Your Honor, may it
8 please the court. Mr. Tooker.

9 **OPENING STATEMENT**

10 **BY MR. DEJONG:**

11 Ladies and gentlemen, you just took an oath which
12 his honor shared with you has been around for a long,
13 long time. I believe he shared with you, even before
14 this country was founded. So that's been a long time.

15 Now, that oath has been there. Where it came from,
16 I don't know. What I do know is that there are things
17 important -- not to say your oath is not important -- but
18 there are things tremendously, in my opinion, more
19 important than that in this trial. And those things we
20 often refer to as rights. We use the word rights, and I
21 think we sometimes forget that when we talk about rights
22 it is not just rights that we're talking about, it is the
23 law. It is the law that was established by the framers
24 of the Constitution of the United States of America.

25 One of those rights is what we call the presumption

1 of innocence. It's the law; the law of this country.
2 Some hour or two ago, His Honor asked us to introduce
3 ourselves to you, which we did. And I shared with you at
4 that point in time that today I had the pleasure of
5 representing Mr. Joseph Anthony Drachslin, Sr. And I do.
6 But now, ladies and gentlemen, I would like to
7 reintroduce him to you, and I would like you to take a
8 look at him as he sits at counsel table there. And I ask
9 you to take a look at him because what I now introduce to
10 you is the innocent Joseph Anthony Drachslin, Sr. And it
11 could well come across your mind, how in the world is
12 that? Well, I'll share with you how in the world is
13 that.

14 You could very easily say, well, was he not arrested
15 for these offenses? And yes, indeed, he was. However,
16 ladies and gentlemen, we could take the arrest warrants,
17 tear them up and throw them in the garbage can under the
18 solicitor's table. Because the fact that arrest warrants
19 were issues, the fact that Mr. Drachslin was arrested, at
20 this point in this case is totally and absolutely
21 meaningless. Those, if you want to call them fact, are
22 not facts where we stand today. Those are merely
23 charging documents. And the fact that he was arrested
24 and arrest warrants were issues, has nothing to do, and
25 that goes with the presumption of innocence, which I will

1 get to momentarily.

2 The next question you may well ask is, well, His
3 Honor read us indictments. And indeed he did. Well, he
4 was indicted by the Pickens County Grand Jury. And
5 indeed he was. However, the same thing with those
6 indictments, ladies and gentlemen, we could do with them
7 what I suggested we could do with the arrest warrants, is
8 merely tear them up into shreds, throw them into the
9 garbage can under the solicitor's table because that is
10 not proof in this case.

11 This trial actually, in one sense, hasn't even
12 really started yet. It will really start when I hush up
13 here in a few minutes and go sit down and witnesses start
14 getting on the witness stand. This substantial right
15 that every citizen has under the law is called the
16 presumption of innocence. And sometimes, ladies and
17 gentlemen, we liken that -- the presumption of innocence
18 to what is called a robe of righteousness. And that's
19 why I asked you to look at Mr. Drachslin, because at this
20 moment in time, from the very top of his head to the very
21 soles of his feet, wrapped around him three hundred and
22 sixty degrees is this presumption of innocence. A right,
23 a law. He is presumed to be innocent. Mr. Drachslin has
24 nothing to come before you thirteen people now to prove
25 today. Because he is presumed to be innocent. And that

1 presumption of innocence, ladies and gentlemen, does not
2 leave after the first witness testifies, after however
3 many witnesses testifies. It does not leave. Indeed,
4 that presumption of innocence, that legal right, that
5 law, follows Mr. Drachslin back into the jury room when
6 y'all go back there to deliberate.

7 And it is only until and unless that you are
8 convinced based upon the state's evidence, beyond a
9 reasonable doubt that he is guilty, does he lose that
10 presumption of innocence. As I said, Mr. Drachslin has
11 nothing to come to prove to you today. Whether he
12 testifies or don't testify, I don't know at this point in
13 time, but I can share with you that if he doesn't testify
14 he has nothing to prove to you. Again, why? Because of
15 the presumption of innocence.

16 Now, the burden of proof in this case, and I'm not
17 really going to dwell on the burden of proof, but the
18 burden of proof in this case rests solely on the state.
19 This is a case of the State of South Carolina, with all
20 their resources, versus Joseph Anthony Drachslin, Sr.
21 And they have the burden of proof. They must prove their
22 case beyond a reasonable doubt. We'll talk a little bit
23 more about beyond a reasonable doubt when we have an
24 opportunity -- we being Mr. Tooker and myself -- in our
25 closing statements we will have a little more opportunity

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1 to talk to you about reasonable doubt, what is reasonable
2 doubt. And certainly His Honor is going to charge you on
3 what reasonable doubt is when this case is almost over.
4 His charge will be the last thing you hear before you go
5 out to deliberate.

6 So ladies and gentlemen, you are the fact-finders in
7 this case; the sole fact-finders in this case.

8 Now, His Honor has read those indictments to you.
9 And those indictments that he read to you, they are not
10 pretty. It would be very easy, ladies and gentlemen, to
11 allow your mind to slam shut when you heard those
12 allegations and those indictments. But I ask you, I beg
13 of you, I plead of you, if you had a thought of your mind
14 slamming shut, number one, don't let it slam shut.
15 Number two, if it has, reopen it. Because under this
16 oath that you took is however many hundreds of years old,
17 you swore that you would well and truly try this case
18 under the facts and the evidence of this case. You are
19 the fact-finders. Today you are perfect. Until the
20 conclusion of this case, you are perfect. Whatever your
21 ultimate decision is, which I would submit to you would
22 be not guilty, it's your decision. Nobody can talk to
23 you about it; nothing. It is your decision.

24 I am not going to stand here, ladies and gentlemen,
25 this afternoon at this point in this case and talk to you

1 about what evidence you might see or might hear, because
2 I don't know. We are going to find that out together as
3 this case proceeds. I don't know what it is, so I cannot
4 stand here and tell you what evidence you are going to
5 see or hear. We will talk about that again at the end of
6 the case.

7 On behalf of Mr. Drachslin and even the state of
8 South Carolina, I want to thank you for being here. It's
9 a beautiful day outside. There's probably a hundred, if
10 not a thousand, places you would rather be this
11 afternoon. And Mr. Tooker, I think, touched about it,
12 that you are so very, very important to our judicial
13 system in any jury setting, but especially in a setting
14 where someone is charged with a crime. You are the
15 cornerstone of the whole system.

16 I often share with juries that the great, late
17 Winston Churchill made a statement about jury service. I
18 have some people that take issue with me whether it was
19 the great, late Winston Churchill or not, but I still say
20 it was. And he said, or someone said, jury service is
21 the greatest service you can render for your country in
22 peacetime. Now, we are not in peacetime. We know that.
23 So maybe to paraphrase Mr. Churchill slightly, jury
24 service is the greatest service you can render to your
25 community as a non-combatant. It is that important. I

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1 put you right under -- our whole system puts you right
2 under there, because that is the importance.

3 This case rests in your hands. From this moment
4 forward it is in your hands.

5 You have been more than graciously attentive, and I
6 appreciate it so very, very much. I would ask that you
7 continue to remain attentive. Listen, as I know you
8 will. Keep your minds open. And when you've heard
9 everything and it's all over and you go back there to
10 deliberate, you bring back a verdict of not guilty on all
11 charges.

12 Thank you so much for your patience.

13 THE COURT: Solicitor, you may call your first
14 witness.

15 MR. TOOKER: Thank you, Your Honor, may it
16 please the court. The state would like to call Mr.
17 Joseph Drachslin, Jr.

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

20 Do you solemnly swear or affirm the testimony you're
21 about to give in this case to be the truth, the whole
22 truth and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you, sir. If you would have
25 a seat and state your name for the record, please. You

1 have to speak right into the microphone.

2 THE WITNESS: I'm Joseph Anthony Drachslin, Jr.

3 JOSEPH ANTHONY DRACHSLIN, JR.,

4 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. TOOKER:

7 Q. Mr. Drachslin, who is that man in the white shirt
8 seated at the defense table?

9 A. He's my father.

10 Q. Okay. And what is his name?

11 A. Joseph Anthony Drachslin, Sr.

12 Q. And do you know why you've been called to testify
13 here today?

14 A. Yes.

15 Q. What is it that you observed him doing?

16 A. I saw him putting his hands down my daughter's
17 pants and underwear.

18 Q. Where was this happening?

19 A. At our house. It was in the room that he was
20 staying in, and my son sleeps in that room, also. And it
21 was on the bed that he sleeps in.

22 Q. When had your father come to live with you?

23 A. In November of 2012.

24 Q. Why did he come to live with you?

25 A. He came down to live with us because he really

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1 couldn't take care of himself too well. He couldn't pay
2 his bills. And he had his electric turned off and his
3 heat was turned off. And he didn't have -- his truck had
4 broke down.

5 Q. So your family took him in?

6 A. Yes.

7 Q. Where did he live with you initially?

8 A. When he first came down, the only place we had open
9 was we had a bed in my daughter's room. It was an extra
10 bed. And we had to move some stuff around in my son's
11 room to move the bed into there so that he could sleep in
12 there with my son.

13 Q. How many children do you have?

14 A. I have three.

15 Q. What are their names?

16 A. [REDACTED], [REDACTED] and [REDACTED]

17 [REDACTED].

18 Q. How old is [REDACTED]?

19 A. [REDACTED] is ten.

20 Q. What about [REDACTED]?

21 A. [REDACTED] just turned seven.

22 Q. And what about [REDACTED]?

23 A. He just turned three.

24 Q. And do they still live with you?

25 A. Yes, they do.

1 Q. About when was it, do you recall, you saw your
2 father touching [REDACTED]?

3 A. You mean what time?

4 Q. No. About how long ago?

5 A. It was a year ago in -- March the 12th.

6 Q. Okay. And where were you shortly before you saw
7 this?

8 A. I was sleeping in the bed. I work nights driving a
9 semi truck. And I was expecting a package to come and I
10 happened to wake up earlier than I normally do. And I
11 was to get up to check the -- check on the internet when
12 the package was supposed to come in because I had gotten
13 a text that it was supposed to be coming in.

14 Q. Where was your wife at this time?

15 A. My wife was at work.

16 Q. Okay. So she works what hours?

17 A. She works from like eight thirty or nine in the
18 morning till five thirty, six o'clock at night.

19 Q. Okay. And what was your schedule at that time?

20 A. I worked nights. I would go in -- at that time I
21 was going in like six thirty, seven o'clock, and I'd come
22 home about anywhere from three to five or six in the
23 morning, depending on if they had my load ready when I
24 got to my -- got to the terminal. I drove between
25 terminals.

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1 Q. Okay. When you walked in and saw your father with
2 his hand down your daughter's pants, what did you do?

3 A. I hollered at him. I said, what in the world are
4 you doing? Why?

5 Q. Did your father explain himself?

6 A. He tried to say he was playing doctor. I said, you
7 don't play doctor with a little kid with your hand down
8 their pants.

9 Q. What did you do?

10 A. I hollered at him. And he came out of the room and
11 went into the den. And I went into the den and I was
12 hollering at him. I said, how could you do that? That's
13 my daughter. I said, that's your granddaughter. And
14 then I went back into my bedroom and grabbed my phone.
15 And I called my wife and told her what had happened. And
16 then I called 911.

17 Q. Okay. How soon after you saw what you saw did you
18 call 911?

19 A. It was not even five minutes.

20 Q. Were you upset?

21 A. Yes. Very. My own father was hurting my daughter.
22 Of course, I was.

23 Q. And after you talked to dispatch or 911, did you
24 talk to anybody else on the phone?

25 A. My pastor called me because my wife had called our

1 pastor. And our pastor called. And I told him what
2 happened. And he said he was going to come over.

3 MR. DEJONG: Objection to what he said, Your
4 Honor.

5 THE COURT: Sustained.

6 Q. I'm going to show you what's been marked as State's
7 Exhibit Number 1. Do you recognize this disc?

8 A. Yeah.

9 Q. What is on this disc?

10 A. It's the 911 call I made.

11 Q. Have you listened to it?

12 A. Yeah.

13 Q. And would you say that it's a fair and accurate
14 copy of the conversation you had with the dispatcher ---

15 A. Yes, it is.

16 Q. --- when you called 911?

17 MR. TOOKER: At this point, Your Honor, the
18 state would like to move State's 1 into evidence and
19 publish it to the jury.

20 THE COURT: Any objection?

21 MR. DEJONG: No objection, Your Honor.

22 THE COURT: Without objection, Exhibit 1 is
23 admitted into evidence and may be published to the jury.

24 (WHEREUPON, State Exhibit Number 1 was admitted into
25 evidence.)

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1 (WHEREUPON, State Exhibit Number 1 was played in
2 open court.)

3 Q. Did the police come to your residence?

4 A. Yes, they did.

5 Q. And when they arrived did you tell them what you
6 saw?

7 A. Yes, I did.

8 Q. Were you honest with them?

9 A. Yes, I was.

10 Q. Did you ever have any further communication with
11 your father?

12 A. He had sent us a letter from the detention center,
13 and I visited him once.

14 Q. Let me show you what's been marked as State's
15 Exhibit Number 2. Is this the letter that he sent you?

16 A. Yes, it is.

17 Q. And how do you know it to be from him?

18 A. It's in his handwriting.

19 Q. Did he sign it at the bottom?

20 A. Yeah, signed it dad.

21 Q. Who did he write it to?

22 A. To me.

23 Q. How did he address it?

24 A. Dear son.

25 Q. And without reading the whole thing, what was he

1 saying in that letter?

2 A. It says: I know you did what you had to do. I
3 don't have any bad feelings towards you. This has been
4 an eye-opener for me. I pray you can forgive me, as I
5 have taken all the truth of everything -- of ever doing
6 anything like that ever again. I love your children too
7 much for that. I will have a hearing on the 16th of May
8 and I'm hoping that I can be free, if you can find it in
9 your heart to come and pick me up. I love you very, very
10 much, and the children, too. Your loving father, Dad.
11 P.S., Please write back if you will.

12 MR. TOOKER: At this point, Your Honor, the
13 state wants to move State's 2 into evidence.

14 THE COURT: Any objection?

15 MR. DEJONG: No objection, Your Honor.

16 THE COURT: Without objection, Exhibit 2 may be
17 admitted into evidence and published to the jury.

18 (WHEREUPON, State Exhibit Number 2 was admitted into
19 evidence.)

20 Q. So you said you also visited him at the law
21 enforcement center?

22 A. Yes.

23 Q. And did y'all talk?

24 A. Yes.

25 Q. Did y'all talk about this?

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1 A. Not really.

2 Q. Has this been difficult on you?

3 A. Very. I've felt like my heart's been ripped out.
4 I've loved my father my whole life. I looked up to him.
5 He was -- he really was my hero growing up. He was a
6 good father growing up to me. And it -- I can't
7 understand why he would do that to my child, his own
8 grandchild.

9 Q. How have the girls been since he's been taken out
10 of that situation?

11 A. **Older Sister** has been -- she really doesn't want to have
12 anything to do with him. I mean, we've -- you know, we
13 cleaned the house and found some of his clothes. And her
14 first reaction, just throw them out. She doesn't want to
15 have nothing to do with him. And **Younger Sister**, she's too young
16 to understand, but it has affected her. It's affected
17 **Older Sister**. I mean her grades have went down during this
18 time. But since he's been gone her grades have come back
19 up, which is good. **Younger Sister**, she -- **Younger Sister**, she was
20 pulling her hair out and stuff. She would twist her hair
21 and while this was going on, she was twisting her hair so
22 bad that she was pulling hair out of her head. And she
23 has since stopped doing that. She still twists her hair.
24 That's just one of her little quirk things. But her hair
25 has grown back and she's doing better.

1 MR. TOOKER: Once moment, Your Honor. No
2 further questions at this time.

3 THE COURT: Any cross examination?

4 MR. DEJONG: Your Honor, may it please the
5 court.

6 **CROSS EXAMINATION**

7 **BY MR. DEJONG:**

8 Q. So on March the 12th of 2013, you were living at
9 the 114 -- ah, shoot, I thought I wrote it down.

10 A. Mount Forest Circle.

11 Q. Thank you, sir. That's where you were living at
12 that point in time. When your father came to live with
13 you, is that where you were living at that point in time?

14 A. Yes. We've lived there since 2001.

15 Q. All right. So when he came down, where did he come
16 from?

17 A. Pennsylvania.

18 Q. Is that where y'all were from originally, as well?

19 A. Yes.

20 Q. Did you all live up -- did you live close to him
21 when you were in Pennsylvania?

22 A. Yeah. After my wife and I were first married, we
23 lived in an apartment in Saegertown, in the town of
24 Saegertown, about a mile, mile and a half from my
25 parents' house. And then we had moved down to Cochranton

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1 with my wife's parents before we moved down here.

2 Q. [Redacted] and [Redacted], had they been born while you were
3 still in Pennsylvania?

4 A. No. They've both been born here.

5 Q. They were both born here?

6 A. Yeah, Greenville Memorial.

7 Q. Now, you said, if I understood you correctly, the
8 reason in part that your father came down here was that,
9 if I heard you right, you told Mr. Tooker he couldn't
10 control himself?

11 A. No, it wasn't that he couldn't, he just -- he had
12 never been real good with money and stuff. When my mom
13 was alive she took care of all that. He just blows it on
14 stuff. And then it just -- I think it just slipped his
15 mind sometimes that he -- he just don't think about not
16 paying what he needs to get paid, basically.

17 Q. He just doesn't think about things sometimes;
18 right?

19 A. Well, it's not that he doesn't think about it. I
20 think he just makes a poor choice of what to use his
21 money for.

22 Q. All right. So when he came down to live with you,
23 your wife and then the two children, let me ask you this,
24 Mr. Drachslin, how old were the children when he moved
25 down?

1 A. [REDACTED] would have been -- she's ten now, going to be
2 turning eleven, so she would have been eight, nine.

3 Q. And if I understand, he came down in November of
4 2012; ---

5 A. Right..

6 Q. --- isn't that correct? All right. And then lived
7 with you continuously up until sometime around March the
8 12th of 2013?

9 A. That's correct.

10 Q. Now, when -- on March the 12th of 2013 when you say
11 you saw this, this was in the bedroom that you had set up
12 for Mr. Drachslin, Sr. and your son; is that correct?

13 A. Correct.

14 Q. Was there a television in that room?

15 A. No.

16 Q. In your father's room there was not a television?

17 A. No.

18 Q. Okay. It's a three bedroom house. How many baths?

19 A. One and a half.

20 Q. So the half, I gather just so I'm sure -- I'm sure
21 the jury knows -- but so I'm sure, the half was basically
22 a commode and a sink?

23 A. Correct.

24 Q. And then you had the full bath with either a
25 shower, bathtub or both; correct?

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1 A. Yes.

2 Q. And where was that full bath located in relation to
3 Mr. Drachslin, Sr.'s room?

4 A. It's in between -- it goes -- you come out of our
5 dining room into the hallway and right across from the
6 dining room door would have been his room. And you come
7 out of there, turn left, and there's a door to the
8 basement and then the bathroom door on the right. And
9 then at the end of the hall is my daughter's room and my
10 and my wife's room on the other side.

11 Q. How far would you say yours and your wife's room
12 was from Mr. Drachslin, Sr.'s room?

13 A. It's, I don't know, ten feet, fifteen. Because the
14 whole hallway is only like seventeen feet long, so ten or
15 twelve ---

16 Q. So certainly it ---

17 A. Yes.

18 Q. I'm sorry, sir. I didn't mean to cut you off. A
19 very short distance?

20 A. Yes.

21 Q. All right. Now, when you woke up -- well, what
22 time of the day was it now when you allege this happened?

23 A. It was in the middle of the afternoon. I think it
24 was maybe three, three thirty, somewhere around there.

25 Q. Was it still daylight outside; do you recall?

- 1 A. Oh, yes.
- 2 Q. House well lit and you could certainly see what was
3 going on?
- 4 A. Yeah, I mean, he had the light on in the room.
- 5 Q. All right. So daylight outside and there was a
6 light on in the room; correct?
- 7 A. Yes.
- 8 Q. Now, at this particular time, where was your son?
- 9 A. Brother was -- I believe he was at daycare.
- 10 Q. All right. How about Younger Sister?
- 11 A. Younger Sister was home.
- 12 Q. Do you know where she was?
- 13 A. I think she was in the living room maybe watching
14 kids' shows.
- 15 Q. Okay. So if I recall correctly what you said, the
16 living room was basically directly across from Mr.
17 Drachslin, Sr.'s room; is that correct?
- 18 A. No. It's not directly across. If you're coming
19 out of the dining room, his room was directly across from
20 the dining room. The living room, you turn left and go
21 in through the door there, and that's the living room.
- 22 Q. Well, is the living room on the opposite side of
23 the hall or the same side of the hall as Mr. Drachslin,
24 Sr.'s room?
- 25 A. It's at the end -- the hallway goes from the door

1 in the living room to the -- down to the end of the hall
2 where our rooms split off.

3 Q. When you awakened on December the 12th -- not
4 December -- March the 12th of 2013, did you awaken on
5 your own or were you startled awake? Or how did it come
6 about that you awakened?

7 A. I had gotten a text message on my phone saying that
8 I was supposed to be getting a package delivered.

9 Q. You weren't awakened by either of the children that
10 were home by crying out?

11 A. No.

12 Q. You heard nothing from either one of those, I
13 gather; right?

14 A. No. Nothing.

15 Q. All right. And for no further than that was, if
16 they had cried out, you would have been able to hear
17 them; wouldn't you?

18 A. Most definitely.

19 Q. All right, sir. You have a three bedroom, one and
20 a half bath house, and I'm certainly not trying to be
21 offensive, but a fairly small house you would say;
22 correct? In terms of square feet?

23 A. I think it's about seventeen hundred square feet.

24 Q. Okay. And in the course of your father living
25 there, certainly the children would go into his room; is

1 that correct?

2 A. Yeah. It was also their brother's room, so, yeah.

3 Q. Right. So the point of that being, there was
4 nothing unusual about **Older Sister** being in that room?

5 A. For the most part, I mean, she goes in and gets,
6 you know, clothes for **Brother** or diapers or, you know.

7 Q. All right, sir.

8 A. She wasn't banned from the room.

9 Q. When you came from your bedroom, then I guess you
10 came up the hallway. And I wasn't sure. Were you
11 getting on the computer to check on this package or were
12 you checking the door to see if it had been delivered?

13 A. I was going out to the computer in the living room.

14 Q. In the living room. So to go to the -- get to the
15 computer in the living room, you would have gone by Mr.
16 Drachslin, Sr.'s door?

17 A. Correct.

18 Q. Was that door open?

19 A. Yes, it was.

20 Q. Wide open?

21 A. Yeah.

22 Q. Now, you had just awakened; right?

23 A. Yeah, just a few minutes before then.

24 Q. Right. Now, do you recall how **Older Sister** was dressed
25 that day?

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1 A. She had on her -- I think it was blue jeans or one
2 of her blue jean shirts and her -- I think it was one of
3 her -- it was basically her uniform from school.

4 Q. All right. Do you remember what day of the week
5 this was?

6 A. I believe it was a Tuesday.

7 Q. Tuesday?

8 A. Yes.

9 Q. That would have been a school day?

10 A. Yes. It would have been a school day.

11 Q. All right. The uniform -- well, the uniform, was
12 that a uniform that you and your wife devised or was that
13 required by the school?

14 A. Required by the school.

15 Q. Okay. And was it a blue jean shirt or a pair of
16 blue jeans, or do you recall?

17 A. I think it was blue jeans, possibly. I don't -- I
18 remember it was like a blue jean material.

19 Q. Okay.

20 A. Because she has a skirt that's like that also.

21 Q. Basically denim is what you remember; ---

22 A. Yes, denim.

23 Q. --- correct? Now, do you recall when you went by
24 that bedroom door, was Older Sister laying or sitting or how was
25 she?

1 A. She was laying on the bed.

2 Q. Back, stomach, side?

3 A. She was laying on her stomach.

4 Q. All right. And then you say that you believe you
5 saw your father down her -- hand down her pants?

6 A. Yes, I did.

7 Q. All right. And how long -- did you see what you
8 say you saw and then immediately say, what are you doing?

9 A. Yeah. As soon as he put his down hand down her
10 pants, of course.

11 Q. Okay. That's fine. So at that point in time, you
12 couldn't really tell how far his hand was down her pants?

13 A. Oh, he stuck his whole hand down her pants because
14 he had to pick her up pants and panties up and stick his
15 hand down.

16 Q. To your knowledge did she have underwear on?

17 A. Yes, she did.

18 Q. Could you tell whether his hand was on top of the
19 underwear or under the underwear?

20 A. It looked like it was under the underwear.

21 Q. And you could see that?

22 A. Yes, because she was laying -- the bed, when you
23 look in the doorway this way, the bed is laying along the
24 wall here, and she was laying like this with her head
25 towards -- away from me, and he was standing on the side

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1 of the bed, and he was -- had his hands all over her like
2 he was checking her out and then he picks his hand -- her
3 pants and underwear up and sticks his hand down there and
4 that's when I hollered at him.

5 Q. Now, what you just described now, Mr. Drachslin, I
6 didn't time it, but that took a good bit of time. That
7 was more than just what you testified a moment ago that
8 you saw it and yelled at him; right?

9 A. Yes. As soon as he stuck his hands down her pants,
10 I mean, ...

11 Q. Well, when you were coming from your bedroom going
12 to the living room, I believe, or the den, whichever it
13 was to get to the computer, you were walking; right?

14 A. Yeah.

15 Q. All right. And you were more or less walking by
16 that door; right?

17 A. Yeah.

18 Q. So now what you're describing for us, there was
19 nothing going on when you walked by that door other than
20 Older Sister was laying on the bed?

21 A. No. When I walked past the door, I just happened
22 to look in there, because the light was on, and he was in
23 there and he had his hands on her. And he went down her
24 like this and then he picked up her thing and stuck her
25 (verbatim) hand in there. That's when I hollered at him.

1 Q. Then he told you he was playing doctor?

2 A. After that, yeah.

3 Q. When you yelled at him and asked him what he was
4 doing; right?

5 A. Yes, I did.

6 Q. And then he said he was playing; right?

7 A. That's what his -- that's what he said.

8 Q. That's what he told you?

9 A. That's what he told me.

10 Q. All right. Now, he lived in the house twenty-four
11 hours a day, seven days a week?

12 A. Yeah.

13 Q. And how would you describe, prior to March the 12th
14 of 2013, Mr. Drachslin, Sr.'s relationship with your
15 children?

16 A. About the same as any other grandfather.

17 Q. Well, did he spend time with them?

18 A. Of course, he did.

19 Q. Did he play with them?

20 A. Oh, yeah.

21 Q. Wrestle with them from time to time?

22 A. Yeah.

23 Q. All right. So the fact that there were -- he said
24 they were playing, whether you accepted that or not, the
25 fact that they were playing would not have been unusual;

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1 would it?

2 A. No. About a week or so before [REDACTED] said that he

3 -- they were ---

4 Q. I didn't ask you what [REDACTED] said, Mr. Drachslin.

5 I'm sorry.

6 A. Okay.

7 Q. Now, when you saw what you believed you saw, you

8 became angry; didn't you?

9 A. Of course.

10 Q. And pretty much what your feelings were at that

11 point in time is pretty much what you told the

12 dispatcher; correct, I want to shoot the son of a bitch?

13 A. Any God-fearing father would.

14 Q. Well, that's what you said?

15 A. Yeah.

16 Q. And you were angry?

17 A. Of course.

18 Q. Right. And you conveyed that anger to Mr.

19 Drachslin, Sr.; didn't you?

20 A. Of course.

21 Q. And March the 12th of 2013, if I've got the date

22 right, and I think I do, how old was your father?

23 A. Seventy-six, I think.

24 Q. How old were you?

25 A. Forty-three.

- 1 Q. Did you share with Mr. Drachslin, Sr. you wanted to
2 do him bodily harm; that you were that angry?
3 A. I didn't tell him that.
4 Q. Okay. You certainly were yelling at him?
5 A. Yes, I was.
6 Q. Probably we could even say you were screaming at
7 him; right?
8 A. Most ---
9 Q. Pardon?
10 A. Most definitely.
11 Q. And were you about the same size then as you are
12 now?
13 A. Yeah.
14 Q. Maybe not as tall, but you're certainly larger and
15 younger than your father; aren't you? Correct?
16 A. We're about the same size.
17 Q. All right. So the first thing you do when you say
18 you saw this -- well, let me back up here a little bit.
19 When you say you saw this, **Older Sister** was laying on the bed.
20 Was she talking?
21 A. No.
22 Q. Was she laughing?
23 A. No.
24 Q. Was she crying?
25 A. No.

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1 Q. Nothing?

2 A. She just had this blank stare.

3 Q. But you couldn't see her face; could you?

4 A. Well, as soon as I hollered she looked around.

5 Q. And where was your father when the police came?

6 A. He was out on the front steps.

7 Q. Okay. And where were you?

8 A. I was in the house.

9 Q. Okay. And how far would you have been from the
10 front steps?

11 A. I was back in the bedroom. And then -- because I
12 got the girls and told them to go into my bedroom and
13 stay there. And when the police showed up, I was out in
14 the den.

15 Q. You were where?

16 A. Out in the den.

17 Q. Out in the den?

18 A. Yeah.

19 Q. All right. Did you ever go outside to where the
20 front steps were?

21 A. No, I did not.

22 Q. After the police got there, where did you go, if
23 anywhere?

24 A. I walked outside to see the police officer.

25 Q. Okay. Well, was that where the police officer was

1 coming towards your father, where you were sitting? Or
2 he was sitting, rather?

3 A. No. I come out of the den, which is on the back
4 side of the house.

5 Q. Okay.

6 A. And around to the end of the house. And that's
7 where I met the police officer.

8 Q. So before you called the police, you spoke to your
9 wife via telephone; correct?

10 A. Yeah.

11 Q. Okay. Now, you say after this -- I couldn't really
12 hear what you said, we have this fan running back here --
13 **Older Sister** after these allegations, came forward -- if I
14 understood you correctly, **Older Sister** really didn't change too
15 much; correct?

16 A. Oh, yes, she did. I mean, she didn't want to have
17 -- talk anything about him.

18 Q. She didn't want to talk about him; right?

19 A. No.

20 Q. She didn't want anything to do with him; did she?

21 A. Well, you know, ---

22 Q. Didn't want to talk about the incident or didn't
23 want to talk about Mr. Drachslin, Sr. She didn't want to
24 talk about any of it; did she?

25 A. She did not have nothing to do with him.

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1 Q. Yes, sir. Now, you shared with Mr. Tooker that

2 **Younger Sister** pulled her hair; correct?

3 A. Well, she likes to twist her hair usually when she
4 gets tired or bored or something, she'll just kind of sit
5 there and twist it. But at the time she was twisting it
6 so bad, she was pulling clumps of hair out.

7 Q. But twisting her hair had happened -- her doing
8 that had happened long before these allegations came
9 about; didn't it?

10 A. Oh, she's always kind of twisted her hair, but she
11 had never pulled out clumps of hair.

12 Q. Right. Do you recall having told Mr. Drachslin,
13 Sr., get out of my house or I'll shoot you?

14 A. I don't recall saying that I would shoot him. I
15 believe -- I think I might did holler at him to get out
16 of my house. Yes.

17 Q. How long did you keep **Older Sister** and **Younger Sister** back in your
18 bedroom?

19 A. They stayed there until, I believe, it was either
20 my wife or the police showed up.

21 Q. All right. Did either one or both of the children
22 either speak to one of the police officers?

23 A. Yeah. They spoke to the police officer.

24 Q. Where was that done?

25 A. I believe it was in our den maybe.

1 Q. Okay.

2 A. And they also might have had them -- I forget which
3 one they might have talked to in the den or maybe in the
4 police car. I'm not sure.

5 Q. Okay. And certainly there were discussions between
6 you and your wife about these allegations; wasn't there?

7 A. Yeah. I told her what happened.

8 Q. All right. And with the children?

9 A. No. The children weren't around when I spoke to
10 them about that.

11 Q. You're sharing with this jury you never spoke to
12 the children about these allegations?

13 A. Oh, I tried to get them to -- you know, asked them
14 what happened and, you know, how long this has happened?
15 And you know, them kind of things. I tried to get them
16 to talk. They haven't really talked a whole lot about
17 it.

18 Q. And over what period of time did you do that, Mr.
19 Drachslin?

20 A. We've been trying to get them to talk so that they
21 can get through this. We've been trying to talk to them
22 and stuff and get them to talk for -- since this
23 happened.

24 Q. So it would be safe to say that you have talked to
25 them about these allegations repeatedly since March the

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1 12th of 2013?

2 A. We've talked to them a few times, but they just
3 don't want to talk.

4 Q. When the police came -- did two police come at the
5 same time? One? How many came at first?

6 A. The lieutenant showed up first and then the
7 detective showed up afterwards.

8 Q. To your knowledge did the lieutenant have any
9 contact with your father before he spoke to you?

10 A. No. Because I seen him pull up and I come out of
11 the house and he come over and asked me what was going
12 on.

13 Q. All right. After he spoke to you, do you know
14 whether or not the lieutenant had any contact with your
15 father?

16 A. I believe he went over and talked to him, yes.

17 Q. Thank you, Mr. Drachslin.

18 THE COURT: Any redirect?

19 MR. TOOKER: Just briefly.

20 **REDIRECT EXAMINATION**

21 **BY MR. TOOKER:**

22 Q. You've talked to your children?

23 A. Of course.

24 Q. Did you tell them to tell the truth or to tell
25 lies?

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1 A. Tell the truth, of course.

2 Q. No further questions.

3 THE COURT: Thank you, sir. You may step down.

4 Ladies and gentlemen, this might be a good time to

5 take a short break before the next witness is called.

6 Let me remind you again, as I will repeatedly, don't

7 discuss the case while you're back. We'll take a short

8 break to let you stretch your legs. We'll call you back

9 in just a few moments. If you'll retire to your jury

10 room.

11 (WHEREUPON, the jury exited the open court at

12 approximately 2:39 p.m.)

13 THE COURT: Okay. Let's take about a ten

14 minute break.

15 (WHEREUPON, the court stood at recess for a short

16 break.)

17 THE COURT: All right. Let's have the jury

18 come in if they're ready, First Sarge?

19 (WHEREUPON, the jury entered the open court at

20 approximately 2:56 p.m.)

21 THE COURT: Solicitor, you may call your next

22 witness.

23 MR. TOOKER: Thank you, Your Honor, may it

24 please the court. The state calls Dr. Greg Mazak to the

25 stand.

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1 THE CLERK: Place your left hand on the bible
2 and raise your right.

3 Do you solemnly swear or affirm the testimony you're
4 about to give in this case to be the truth, the whole
5 truth and nothing but the truth, so help you God?

6 THE WITNESS: Yes, sir.

7 THE CLERK: Thank you, sir. If you would have
8 a seat and state your name for the record, please.

9 THE WITNESS: My name is Greg Mazak.

10 GREG MAZAK,

11 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. TOOKER:

14 Q. Dr. Mazak, where do you work, sir?

15 A. I'm a pastor at Trinity Bible Church in Greer,
16 Suber Road, South Carolina.

17 Q. Do you teach, as well?

18 A. Yes, sir. I'm also a professor at Bob Jones
19 University in Greenville, South Carolina.

20 Q. Okay. And how is it that you know the Drachslins?

21 A. They've been members of our church for quite a long
22 time. And we know them as church members and then Teresa
23 has been enrolled in our graduate counseling program.
24 And so through those two venues, I know them.

25 Q. Okay. And are you familiar with why you've been

1 called to testify in this case?

2 A. Yes, sir.

3 Q. Okay. What do you remember about the circumstances
4 surrounding the events in this case?

5 A. On the afternoon of the day that we're talking
6 about, Teresa called me and she called me to let me know
7 that things were not well ---

8 MR. DEJONG: Your Honor, I'm going to object to
9 that. It's another way of him saying what she said.
10 It's hearsay.

11 MR. TOOKER: Well, but that's not being offered
12 for the truth of the matter, Your Honor.

13 THE COURT: Based on what he just said, I'll
14 overrule your objection there. Of course, he knows not
15 to get into what other people say.

16 Q. You got a call from Teresa?

17 A. Teresa called me. Yes, sir.

18 Q. Okay. And what did you do as a result of that
19 call?

20 A. After that I called Joe.

21 Q. You called Joe?

22 A. Yes, sir.

23 Q. You talked to him on the phone?

24 A. Yes, sir.

25 Q. What would you say his emotional state was when you

1 talked to him?

2 A. It was not good. He was very upset.

3 Q. Very upset. In that emotional state what did he
4 tell you?

5 A. What did Joe tell me?

6 Q. Yes, sir.

7 A. He told me that he saw his dad with his hand in ---

8 MR. DEJONG: Your Honor, can I have
9 clarification as to which Joe we're talking about?

10 MR. TOOKER: We're talking about Joe, Jr., his
11 parishioner.

12 THE WITNESS: Yes, sir.

13 MR. DEJONG: Then I'm going to object to what
14 he said, Your Honor. That's why I asked for the
15 clarification.

16 MR. TOOKER: It's an excited utterance, Your
17 Honor. As was testified to on Mr. Drachslin's direct, he
18 called or talked to this man five minutes after he saw
19 the defendant touching his daughter. He said he was in
20 an emotional state. I think he's still under the
21 influence of that excited event when he has this
22 conversation.

23 MR. DEJONG: Your Honor, I'd take issue with
24 that. I'd like to be heard outside the presence of the
25 jury.

1 THE COURT: All right. Ladies and gentlemen,
2 we have a legal matter we need to take care of. If
3 you'll go back to your jury room. Don't discuss the
4 case. We'll call you back as soon as we can.

5 (WHEREUPON, the jury exited the open court at
6 approximately 2:58 p.m.)

7 THE COURT: All right. Mr. DeJong.

8 MR. DEJONG: Please the court, Your Honor, I'm
9 not clear at all. Number one, I knew that Dr. Mazak was
10 going to be a witness, obviously from the witness list.
11 Exactly what he was going to testify to, I don't know.
12 For want of a better term, the foundation that the state
13 has laid at this point in time for what they claim to be
14 an excited utterance, I would suggest is sketchy at best.
15 I can't -- Dr. Mazak may have said, and I just couldn't
16 hear what he said, how soon all this transpired after he
17 got this -- well, when he got this phone call, when it
18 fell within the whole scenario of what was going on out
19 there or whatever.

20 Even at that, Your Honor, excited utterance, I can't
21 put my eye on the rule at this point in time. Certainly
22 at that point in time, I believe he's already talked to
23 his wife. I don't know if he's called law enforcement at
24 that point in time or not. Certainly the excited
25 utterance rule, as I understand it, says that there's not

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1 sufficient time to reflect on what happened.

2 Well, again, I don't know the time element here. So
3 I can't really argue whether there was or there wasn't,
4 because I don't know at this point in time. So out of an
5 abundance of caution, I've got to object. There wasn't
6 -- it doesn't fall within the excited utterance rule.

7 THE COURT: All right. Mr. Tooker.

8 MR. TOOKER: Yes, sir. And the foundation was
9 laid with the testimony of Mr. Drachslin, not with Pastor
10 Mazak. Now, Pastor Mazak satisfies one element in as
11 much as he describes Mr. Drachslin as having said the
12 words in, you know, I guess in a manner that shows he's
13 still under the influence of the excited event. But the
14 excited event and the time line were established by Mr.
15 Drachslin's testimony. And Mr. Drachslin testified that
16 he saw these things, told his father to leave ---

17 THE COURT: Did you ask this witness what day
18 it was that they talked or what time it was or any of
19 those -- they may have had more than one conversation.

20 MR. TOOKER: Okay. And maybe I need to specify
21 on the record that it is the day that ---

22 MR. DEJONG: I would like to hear that from the
23 witness, not from Mr. Tooker, Your Honor.

24 THE COURT: Well, why don't you make a proffer
25 now, Mr. Tooker.

1 MR. TOOKER: Yes, sir.

2 PROFFERED TESTIMONY OF GREG MAZAK

3 DIRECT EXAMINATION.

4 BY MR. TOOKER:

5 Q. All right. Dr. Mazak, do you recall the day

6 particularly when you had the conversation with Joe?

7 A. Yes, sir. Is it okay if I look at a calendar just

8 to ---

9 THE COURT: Yes, sir.

10 A. Because I don't want to misspeak. Thank you. It

11 was approximately a year ago. The date was in 2013; it

12 was March the 12th, on a Tuesday.

13 Q. Okay.

14 A. Yes, sir.

15 Q. And on that date you had a conversation with him on

16 the telephone?

17 A. Yes, sir.

18 Q. Okay. And again, describe his emotional state

19 during the course of that conversation?

20 A. He was very upset.

21 Q. And in that upset state, what did he tell you?

22 A. He told me that he walked into a room and saw his

23 dad with his hand in Older Sister pants.

24 Q. Okay. Is that something that you understood to

25 have just occurred?

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1 A. Yes, sir.

2 Q. Okay.

3 MR. TOOKER: Your Honor, and that would be the
4 testimony regarding this statement that we would seek to
5 elicit from Dr. Mazak.

6 THE COURT: And the call was made in response
7 to the wife's call to the witness; is that right?

8 MR. TOOKER: So what Mr. Drachslin, Jr.
9 testified to on the stand is ---

10 THE COURT: Well, I think this witness
11 testified that he got a call ---

12 MR. TOOKER: From the wife. And so he called
13 Mr. Drachslin, Jr. And they had a conversation ---

14 THE COURT: Did you ask the witness how long
15 after he got the wife's call did he call the ---

16 MR. TOOKER: No, sir, I didn't. I can. Again,
17 I think the foundation was laid when Mr. Drachslin, Jr.,
18 when he testifies as to how long after everything
19 happened that he talked to his pastor, on his direct.

20 THE COURT: All right.

21 Q. Doctor, how long after you got the call from Teresa
22 Drachslin before you called Joseph Drachslin, Jr.?

23 A. It was a very short period of time. It was, you
24 know, within a minute, I would assume.

25 Q. Okay.

1 A. Yeah.

2 Q. Thank you, sir.

3 THE COURT: Do you have any questions on the
4 proffer on cross examination, Mr. DeJong?

5 MR. DEJONG: Just a couple, Your Honor.

6 **CROSS EXAMINATION**

7 **BY MR. DEJONG:**

8 Q. Dr. Mazak, what time did the call from Teresa
9 Drachslin come to you?

10 A. I don't know specifically, sir. It was in the
11 afternoon.

12 Q. Late afternoon?

13 A. I can give an estimate. An estimate would be
14 approximately three o'clock in the afternoon. Maybe
15 three to four p.m. Somewhere in there.

16 Q. It's our testimony, after you got that call, you
17 initiated a call to Mr. Drachslin, Jr.; correct?

18 A. Yes, sir, that's correct.

19 Q. All right. He didn't call you?

20 A. That is correct. Teresa called me. I called Joe,
21 Jr. Yes, sir.

22 Q. Did you have any indication when you made that call
23 that the police were already there?

24 A. You know, I'm not -- I can tell you what I -- could
25 you ask me that again, please, because I want to answer

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1 the question well.

2 Q. Either when you called and talked to Teresa

3 Drachslin ---

4 A. Yes, sir.

5 Q. --- or Joe Drachslin, Jr., was there any indication
6 that the police were already there or had been there?

7 A. The best I recall, I knew they were not there yet.

8 MR. DEJONG: That's all I have.

9 THE COURT: I believe this clearly falls within
10 the exception of hearsay under Rule 803. So I will allow
11 the testimony.

12 MR. TOOKER: Thank you, sir.

13 MR. DEJONG: I'm not arguing, Judge. I just
14 want to be sure on the record, Your Honor, I presume
15 that's what he's going to testify to next, so I don't
16 have to make another objection when the jury comes in.

17 THE COURT: Is there going to be any different
18 testimony than what we've just hear?

19 MR. TOOKER: There's going to be the excited
20 utterance and then him just describing the emotional
21 states of the persons that he countered on scene.
22 Because he did drive out to the residence.

23 THE COURT: All right. Let's have our jury
24 come back if they're ready.

25 Your objection is noted, Mr. DeJong.

1 MR. DEJONG: Thank you, Your Honor.

2 (WHEREUPON, the jury entered the open court at
3 approximately 3:06 p.m.)

4 THE COURT: All right. Solicitor, you may
5 proceed.

6 MR. TOOKER: Thank you, Your Honor.

7 **DIRECT EXAMINATION**

8 **CONTINUED**

9 **BY MR. TOOKER:**

10 Q. Dr. Mazak, before we were interrupted, we were
11 talking about a conversation that you had with Joseph
12 Drachslin, Jr.

13 A. Yes, sir.

14 Q. How was it that it came about to have that
15 conversation? Why did you talk to him on the phone?

16 A. I called him in response to his wife Teresa calling
17 me.

18 Q. Okay. How soon after Teresa called you did you
19 call him?

20 A. It would have been right after within a minute,
21 give -- a very short period of time.

22 Q. Okay. And do you recall the date that this was to
23 have occurred?

24 A. Yes. It was Tuesday, March the 12th, I believe, of
25 2013. I'm sorry. I'm nervous. I apologize for that.

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1 But I wrote -- I have my notes here and it was March the
2 12th, Tuesday, of 2013.

3 Q. Okay. And based on your best recollection do you
4 remember what time of day it was?

5 A. Yes, sir, it was -- I don't know exactly. It was
6 in the middle of the afternoon, maybe three o'clock,
7 maybe getting closer to four o'clock, so somewhere in
8 that middle period of the day.

9 Q. Okay. And then you called Mr. Drachslin, Jr.?

10 A. Yes, sir.

11 Q. Did you call him via his cellular telephone or his
12 house phone?

13 A. I called from my cell phone. I called him -- the
14 best I recall, I called his cell phone.

15 Q. And when you talked to him, again, what would you
16 say his emotional state was when you had that
17 conversation?

18 A. He was very upset.

19 Q. And in that emotional state, what did he describe
20 to you having happen?

21 A. He told me that he walked into the room and saw his
22 dad with his hand in Older Sister pants.

23 Q. Okay. And after he told you that, what did you
24 decide to do?

25 A. The first thing I said was, please call 911, please

1 call the police immediately. And the best I recall he
2 told me he had already done that.

3 Q. Okay. And then what did you do? What steps did
4 you take?

5 A. I then told him that I would come out right away.
6 And I asked him, please, don't do anything that he would
7 regret.

8 Q. And did you come to the residence?

9 A. Yes, sir, I drove out to the house. I was at my
10 home and I drove to their home. Yes, sir.

11 Q. About how long a drive is that?

12 A. It's approximately forty-five minutes.

13 Q. And when you got there who was at the residence?

14 A. I pulled into the driveway and the best I recall
15 there was a marked patrol car in front of the driveway in
16 the driveway, so I pulled next to it. And Joe's dad, Mr.
17 Drachslin, Sr., was on the front porch. So I walked
18 towards Mr. Drachslin, whom I know, and because I wanted
19 to speak with him to try to maybe encourage him or
20 something, and the police officer asked me not to go
21 towards him. He was polite, but said, please don't speak
22 with him at all. So then the police officer directed me
23 up the driveway to the back of the house and that's where
24 Joe and Teresa were.

25 Q. Okay. And would you describe how they seemed, what

1 their emotional state was when you encountered them at
2 their house?

3 A. Joe was very upset. He was very disturbed. He was
4 very angry. He was pacing. He was upset. He was
5 crying.

6 Q. What about Teresa; how did she seem?

7 A. Teresa was doing better. She was concerned. The
8 best I recall, she wasn't weeping. Again, Joe was
9 weeping. I hugged him. I prayed with him. I talked
10 with him. He was very, very upset.

11 Q. Do you recall where the girls were when you got
12 there?

13 A. At that time I remember talking to Joe and Teresa
14 and just Joe being upset. As I recall there was another
15 officer there. I believe there was a female officer
16 there. I'm not -- I believe the female officer was
17 talking to the children. But not where I was. Not where
18 -- Joe and Teresa and I were at the back door standing
19 there.

20 Q. Okay.

21 A. And I'm not real clear on ...

22 Q. Okay. And how long did you end up spending at
23 their residence on that evening?

24 A. I would say I was there somewhere between an hour
25 and two hours. Approximately an hour to two hours. Yes,

1 sir.

2 Q. Okay. And as a result of all this, have you had
3 any, I guess, continued professional dealings with the
4 Drachslins to help them through this?

5 A. Yeah, I've met with Joe a couple of times because
6 of challenges that he's had, nightmares, trouble
7 sleeping, and just very, very troubled. And I've met
8 with him as a family with my wife present at least two
9 times at the church office to pray with them, to talk
10 with them and to try to help the children. Just to
11 encourage the children to know that they didn't do
12 anything wrong.

13 Q. Yes, sir. No further questions.

14 THE COURT: You may cross examine the witness.

15 MR. DEJONG: Thank you, Your Honor. May it
16 please the court.

17 CROSS EXAMINATION

18 BY MR. DEJONG:

19 Q. So Dr. Mazak, you referred to your calendar to get
20 the date that this phone call came in?

21 A. Yes, sir.

22 Q. Phone call from Teresa?

23 A. Yes, sir.

24 Q. You didn't make a notation on your calendar as to
25 the time; did you?

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1 A. I did not note the time. No, sir.

2 Q. Okay. And you indicated mid-afternoon, I believe

3 -- I don't want to put words in your mouth -- but your

4 best guess, best recollection, I think one of those you

5 said, mid-afternoon, three, possibly closer to four?

6 A. Yes, sir, somewhere in that time span.

7 Q. All right.

8 A. I'm not real clear, but ...

9 Q. All right. Then you talked with Joe, Joe, Jr., now
10 so we're clear; right?

11 A. Yes, sir.

12 Q. How long did that conversation last?

13 A. Just approximately -- it's hard -- I'm going to say
14 approximately ten minutes, fifteen minutes, perhaps.

15 Q. Now, you indicate that he was upset. Upset
16 conjures up many different mental images. Upset, mad
17 upset?

18 A. Yes, sir.

19 Q. Upset to the point of threatening physical harm to
20 Mr. Drachslin, Sr.?

21 MR. TOOKER: Objection, Judge. That's
22 speculation.

23 MR. DEJONG: Not if he heard it.

24 THE COURT: Overruled. If he can answer it.

25 MR. DEJONG: Thank you.

- 1 THE COURT: I'll allow him to answer it.
- 2 A. He was very upset. He was very angry.
- 3 Q. Well, I asked that because you said at some point
4 in time, please don't do anything you would regret in the
5 future, or words to that effect?
- 6 A. Yes, sir. I did. Yes, sir. Yeah.
- 7 Q. And that's not -- those words aren't intended for
8 somebody that's sorrowing, that's intended for somebody
9 that's angry; right?
- 10 A. That's correct, sir. He was angry.
- 11 Q. Right. Now, when you got there, what time
12 approximately did you get there, to the house I'm
13 speaking of?
- 14 A. Approximately forty-five minutes after the phone
15 call with Joe.
- 16 Q. Okay. So now we're talking anywhere probably
17 between -- well, somewhere between three forty-five and
18 four forty-five in the afternoon; correct?
- 19 A. Could have been, yes, sir. Yeah.
- 20 Q. All right. And when you got there, there was one
21 police car in the driveway?
- 22 A. I remember specifically one. I don't know that it
23 was only one. But I remember specifically one, yes, sir.
- 24 Q. Okay.
- 25 A. Because I had to pull next to it.

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1 Q. Okay. When you got there you indicated that you
2 were walking towards Mr. Drachslin, Sr.; correct?

3 A. Yes, sir.

4 Q. Which police officer asked you not to do that?

5 A. He was in uniform and he was Pickens County.

6 Q. Well, how many uniform officers did you see out
7 there that day?

8 A. When you said which -- I'm sorry.

9 Q. Well, how many uniformed officers? We'll narrow it
10 down that way; okay?

11 A. I believe -- I know there was at least one in
12 uniform. Yes, sir.

13 Q. Okay. And how long they had been there, you don't
14 know?

15 A. No, sir.

16 Q. Okay. But nonetheless, that uniformed officer
17 asked you not to go speak to Mr. Drachslin, Sr.; correct?

18 A. That is correct. I remember that, sir.

19 Q. You indicated you spent, I believe, an hour and a
20 half to two hours there?

21 A. I believe I said, I'm not sure, an hour to two
22 hours. Yes, sir, somewhere in that area.

23 Q. Were you there when the police left?

24 A. The best I recall when I left there was still
25 police there. I believe there was still one there.

1 Q. And you -- well, let me ask you this. During the
2 course of the time that you were there, did you speak to
3 the children?

4 A. I'm not clear on that.

5 Q. Pardon me?

6 A. I'm not clear on that.

7 Q. Okay. Well, to the best of your recollection, were
8 the children present when there were any discussions
9 about what allegedly happened that afternoon?

10 A. I have a memory of Brother kicking a ball around out
11 off to the side. I have a vague memory of Brother being
12 there. I don't -- I'm not clear on the girls being
13 there.

14 Q. At any time or ...

15 A. I don't, I don't have a clear memory of that; no,
16 sir.

17 Q. Did you ever go inside the house?

18 A. Do you mean that day, sir?

19 Q. Yes, sir?

20 A. The best I recall I did not.

21 Q. Mr. Tooker asked you if you had had any, I believe
22 his words were, professional dealings with Joe Drachslin,
23 Jr., Ms. Drachslin, since these allegations arose. You
24 indicated you had; is that correct?

25 A. Yes, sir.

1 Q. And were any of these meetings family meetings?

2 A. Two -- we had two meetings, yes, sir, with their
3 family.

4 Q. And when we say their family; with the children?

5 A. Yes, sir.

6 Q. All right. And during those two -- well, let me
7 ask you this. How long after March the 12th of 2013 did
8 you have these meetings?

9 A. I would say -- this is a very rough estimate. But
10 the first one I would say perhaps two weeks later,
11 perhaps.

12 Q. So two weeks later would have been towards the end
13 of March; is that correct?

14 A. If it was two weeks, yes, sir.

15 Q. Okay. And how about the second one. Do you have
16 any recollection of that?

17 A. Again, a rough estimate would be approximately
18 maybe three weeks after that perhaps.

19 Q. Okay. So now we're basically mid to late April;
20 correct?

21 A. That would be possible. Yes, sir.

22 Q. Now, those two were with Joe, Jr., Ms. Drachslin
23 and the two or three children; right?

24 A. As I recall, all three, I believe, would have been
25 there. Yes, sir.

1 Q. And at those meetings were these allegations
2 discussed?

3 A. No, sir.

4 Q. Not at all?

5 A. No, sir.

6 Q. So what then was the purpose of the meetings?

7 A. I talked -- as a pastor, I explained to the
8 children that no matter what happens in life, God loves
9 them very much. And no matter what takes place in life,
10 even if we don't understand it, that the Lord always
11 cares for us. And I remember at one meeting, at least,
12 going through Old Testament passages to encourage them.
13 Yeah.

14 Q. But you would have to agree, in those meetings,
15 even if the allegations didn't occur, there was some
16 reinforcement with these children of what the allegations
17 were?

18 A. I would say that there was definitely the idea that
19 something bad had taken place. Yes, sir.

20 Q. And that was directly or indirectly conveyed to
21 these children?

22 A. Yes, sir.

23 Q. Thank you, Dr. Mazak.

24 THE COURT: Any redirect?

25 MR. TOOKER: No, sir, Your Honor. And may this

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1 witness be excused?

2 MR. DEJONG: No objection.

3 THE COURT: Without objection. Thank you very
4 much. You may be excused, sir.

5 MR. TOOKER: The state next calls Mary Fran
6 Crosswell to the stand.

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

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

12 THE WITNESS: I do.

13 THE CLERK: If you would have a seat and state
14 your name for the record, please.

15 THE WITNESS: Mary Fran Ratchford Crosswell.

16 **MARY FRAN RATCHFORD CROSSWELL,**

17 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

18 **DIRECT EXAMINATION**

19 **BY MR. TOOKER:**

20 Q. All right. Dr. Crosswell, -- well, that's
21 presupposing facts not in evidence. What's your
22 profession?

23 A. I'm a child abuse pediatrician.

24 Q. Okay. So you're a medical doctor?

25 A. Yes.

1 Q. What's your academic background?

2 A. I received my undergraduate degree from Wake Forest
3 University. I received my medical degree from the
4 University of Louisville. And I completed a three-year
5 pediatric residency at the Greenville Hospital System.

6 Q. Okay. And where do you currently work?

7 A. Currently I work for Greenville Health System in
8 the division of forensic pediatrics child abuse and
9 neglect.

10 Q. What does that mean exactly?

11 A. I am a pediatrician that is board certified in both
12 general pediatrics and child abuse pediatrics. And so
13 when there's a concern of a child having undergone some
14 form of maltreatment, they're referred to me for
15 evaluation.

16 Q. Okay. How many children would you say you've
17 treated in your career?

18 A. I'd say approximately two hundred children a year.

19 Q. And do you have to do continuing education stuff to
20 keep your licensure to date?

21 A. Yes, I do.

22 Q. What kind of stuff do you have to do?

23 A. I have to do -- you know, annually I'm attending
24 continuing medical education courses to keep my training
25 current and up-to-date.

1 Q. Okay. And you said that you are board certified?

2 A. Yes.

3 Q. What does that mean exactly? What does board
4 certification mean?

5 A. When -- once a physician completes all of the
6 education requirements, they're eligible to sit for a
7 certification boards to practice medicine in that field.
8 And so I was able to sit and pass the boards for general
9 pediatrics. Child abuse pediatrics is a subspecialty of
10 the field of pediatrics. And so I was eligible based on
11 my experience to sit for those boards, as well.

12 Q. Okay. And did you have any involvement in this
13 case?

14 A. Yes, I did.

15 Q. Okay. Who did you treat, if anyone?

16 A. I was asked to evaluate Older Sister and Dorothy
17 Drachslin.

18 Q. Okay. And let's take those in turn. Older Sister
19 Drachslin -- well, where did you respond to?

20 A. So these sisters were referred to the Julie
21 Valentine Center, which is an umbrella agency that also
22 houses the child advocacy center that sees children from
23 both Pickens and Greenville Counties.

24 Q. And Julie Valentine Center, is that what used to be
25 called -- well, what was their old name; do you remember?

1 A. It's amazing how quickly we forget. I really don't
2 remember.

3 Q. Rape crisis?

4 A. Well, the rape crisis is a partner agency that's
5 housed in the umbrella agency of the Julie Valentine
6 Center.

7 Q. Okay.

8 A. So it's one of several agencies in the ...

9 Q. Okay. Do you often respond to the Julie Valentine
10 Center as opposed to a hospital?

11 A. I respond to both the hospital for inpatient
12 evaluations and then any outpatient referrals are seen at
13 the Julie Valentine Center.

14 Q. Okay. And you said you encountered both Older Sister
15 Younger Sister in this case?

16 A. Yes, I did.

17 Q. Okay. With regards to Older Sister -- well,
18 first, when you respond and you're going to examine a
19 child in a circumstance like this, what kind of
20 information do you need to know?

21 A. It is a detailed medical evaluation. So I gather a
22 detailed medical history from the care giver who brings
23 them to the appointment. And then I gather a history
24 from the patient, him or herself. And then do a thorough
25 medical exam. Based on the information that I received

1 from both the history and the examination will determine
2 any laboratory testing or further studied that I need to
3 do to guide my diagnosis.

4 Q. The information, I guess that you're provided both
5 by the parent or guardian and then by the child him or
6 herself, does that information influence in anyway the
7 kind of treatment you provide the child?

8 A. Certainly. Yes.

9 Q. And specifically I mean, do you need to know what
10 kind of assault, you know, is alleged to have transpired?
11 Is that important?

12 A. Yes, it is. It's important for me to know the
13 details about what happened and what types of contact
14 have occurred so that I can do an appropriate assessment
15 and then order appropriate laboratory studies to go along
16 with that.

17 Q. Okay. So just by way of example, is it important
18 to know if the allegations are that a person assaulted
19 the child as opposed to the child being in some sort of
20 car accident? I mean, would that make a difference in
21 terms of treatment just as a medical practitioner, not
22 as, you know, pediatric care giver?

23 A. Yes. It's important to know a history or what has
24 happened so that I can understand any findings or absence
25 of findings on my physical exam, as well as, again, the

1 laboratory studies that go along with, you know, making
2 that diagnosis.

3 Q. Okay: For the purposes of medical diagnosis, what
4 information did you elicit from Older Sister

5 A. Specifically what she ---

6 Q. Specifically what she was complaining of?

7 A. She was referred for -- due to allegations she had
8 made of sexual abuse.

9 Q. And specifically what kind of sexual abuse was
10 complained about?

11 A. The reason for referral initially was from
12 fondling. And then she was able to give further
13 information regarding ---

14 MR. DEJONG: Your Honor, I'm going to object to
15 that unless that information came from her. Because that
16 is not clear in this report.

17 THE COURT: Are you talking about the history
18 now?

19 MR. TOOKER: Yes, sir.

20 THE COURT: Well, let the witness state the
21 source of the history so that I'll be able to rule
22 accordingly on the objection.

23 MR. TOOKER: Yes, sir.

24 Q. So what did Older Sister say specifically about what
25 happened to her for purposes of your medical procedure?

1 A. Okay. So as I said, after getting a history from
2 the care giver, I talk to my patients alone. And so I
3 spoke to Older Sister in the exam room with a child life
4 specialist present with me. And she told me she was
5 there because her grandfather had touched her. Do you
6 want me to go on with the further details?

7 Q. Please do. What did she complain of?

8 A. She said she had no idea how many times it had
9 happened. That it happened at least a few times.
10 Sometimes her sister would be there when it happened, but
11 not always. He touched her with his hand and denied that
12 he touched her with any other part of his body. She
13 denied that he asked her to touch him anywhere. Denied
14 ever seeing anything that made her think she might be
15 hurt. Denied that anyone else has ever touched her in a
16 way she didn't like. And denied that anyone else has
17 ever hurt her before.

18 Q. Okay. And so after you got that information, you
19 also got the patient's history, what kind of examination
20 did you perform?

21 A. So we do a head-to-toe physical exam. So like a
22 normal pediatric exam looking at the eyes, the ears, the
23 mouth, neck, heart, lungs and stomach. When we get to
24 the genital portion of the exam, we use a piece of
25 medical equipment called a culpascope. And a culpascope

1 is a -- it is a large piece of medical equipment that
2 provides a magnification system. It provides a light
3 source. And it provides the ability to photo document
4 any findings on the exam. So performed that exam on

5 Older Sister

6 Q. Okay. And did you find her to have any injuries in
7 anyway?

8 A. No, she did not have any injuries.

9 Q. Okay. And specifically by injuries I mean, was her
10 genital area damaged in anyway?

11 A. No, it was not.

12 Q. Okay. Now, in your experience in all the cases
13 you've seen, does this necessarily mean that sexual abuse
14 did not occur?

15 A. No, it does not.

16 Q. Why is that?

17 A. Based on the -- it can be for several different
18 reasons. First, the nature of the abuse and what types
19 of touch occurred. Secondly, if there was an injury, it
20 could have healed rapidly without leaving any signs or
21 scarring visible to the eye.

22 Q. Okay. You said the nature of the touching. Would
23 fondling leave injuries of any kind?

24 A. I would not expect fondling to leave any injuries.

25 Q. Okay. What about a slight digital penetration?

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1 Would you expect that to leave an injury of any kind?

2 A. Not a slight digital penetration, no.

3 Q. All right. If there were a more egregious digital
4 penetration, would that necessarily mean that you would
5 see an injury when you examine the child?

6 A. No. I did not examine her until May 2nd, 2013. So
7 even if there had been an injury at the time of the
8 incident, it could have easily healed without leaving any
9 physical signs.

10 Q. Okay. And did you also talk to little Younger Sister
11 Drachslin, as well?

12 A. Yes, I did.

13 Q. And do you recall if she actually complained to you
14 of anything or would she say anything at all?

15 A. She, as herself, did not provide a complaint to me.

16 Q. Okay. So she didn't say anything that happened and
17 you were just going on the history you had been provided?

18 A. Correct.

19 Q. Okay. And what kind of examination did you perform
20 on Younger Sister

21 A. I performed the same examination on Younger Sister as I had
22 previously described that I did on Older Sister

23 Q. Okay. And did you observe any injuries on Younger Sister
24 person?

25 A. No, I did not.

1 Q. And again, would that necessarily mean that nothing
2 happened?

3 A. No, it would not. Medical studies have shown that
4 up to eighty-five percent of cases of sexual abuse do not
5 have any specific findings on physical exam.

6 Q. Okay. Is there anything else you did or any other
7 analysis you performed in this case that you think the
8 jury needs to know about?

9 A. I would just make one more comment about Younger Sister
10 exam.

11 Q. Please.

12 A. That she did have a condition called
13 trichotillomania, which is an area of hair loss, hair
14 breakage, that's the result of a compulsive urge of
15 someone to pull their own hair. And that can often be
16 induced by stress, which was temporally associated with
17 this incident.

18 Q. Okay. And that is something that you noticed
19 yourself?

20 A. Yes.

21 Q. Okay. With regards to Older Sister did you notice
22 anything in terms of thumb sucking? Was any of that
23 noted in your report?

24 A. Only in history provided by the care givers that
25 she had always sucked her thumb, but it had increased in

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1 frequency in the last few months.

2 Q. So opposed to trichotillomania -- did I say that
3 right?

4 A. Yes.

5 Q. As opposed to trichotillomania, was there something
6 observable -- thumb sucking that's not necessarily
7 something that is observable unless they do it in front
8 of you?

9 A. Correct.

10 Q. Anything else you can think of, ma'am?

11 A. No.

12 Q. No further questions at this time.

13 THE COURT: You may cross examine the witness.

14 MR. DEJONG: Thank you, Your Honor. May it
15 please the court.

16 **CROSS EXAMINATION**

17 **BY MR. DEJONG:**

18 Q. Doctor, you did your exam May the when?

19 A. May the 2nd, 2013.

20 Q. To your knowledge was that the first medical exam
21 that occurred after these allegations arose?

22 A. To my knowledge that is the first exam.

23 Q. To your knowledge the children were never taken to
24 the emergency room immediately or anything like that?

25 A. I was not made aware of that.

- 1 Q. Now, you say that -- well, let's talk about Older Sister
2 first. She says this happened and then she says she
3 doesn't know how many times, but at least a few times.
4 But then you come down in your report, and I'm looking at
5 the child's statement; right?
- 6 A. Correct.
- 7 Q. Denied that anyone else has ever touched her in
8 anyway she didn't like. Now, if I understood you
9 correctly, the next thing you said in there was denied
10 that anyone else has hurt her. That's not what you
11 reported; was it? You reported, denied that anyone has
12 hurt her before?
- 13 A. Correct.
- 14 Q. Right. So anyone means everybody; right?
- 15 A. Correct.
- 16 Q. So that would mean nobody has ever hurt her; right?
- 17 A. Correct.
- 18 Q. Right. Now, then going to Younger Sister denies
19 that anyone has ever touched her in a way she didn't
20 like?
- 21 A. Correct.
- 22 Q. Denies that anyone has touched her, quote, peepee
23 or pooper, end quote?
- 24 A. Correct.
- 25 Q. Denies that anything at her house scares her?

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1 A. Correct.

2 Q. And those answers were, I gather, elicited from

3 **Younger Sister** and **Older Sister** from questions that you asked them?

4 A. That's correct.

5 Q. And even on you asking those questions, those

6 denials were there?

7 A. Correct.

8 Q. Did you ask them more than once?

9 A. No. {

10 Q. Okay. Now, obviously you examined them -- examined

11 both of the -- I gather these were done at the same time;

12 right?

13 A. Correct.

14 Q. Okay. And that would have been some eight weeks

15 after the allegations arose?

16 A. I'd have to look at a calendar, but I'd say that's

17 ---

18 Q. Allegations arose on March the 12th of 2013 and

19 then it was May before you did your exam; correct?

20 A. That's correct.

21 Q. Now, when you did your exam, that was what you

22 gathered from **Younger Sister** and **Older Sister** Now, on your physical

23 findings you found absolutely nothing?

24 A. Correct.

25 Q. Other than two healthy young ladies?

- 1 A. And the trichotillomania.
- 2 Q. Yes, ma'am. I can't pronounce that word, so I'm
3 going to call it hair pulling; okay? You don't know when
4 the hair pulling started; do you?
- 5 A. No, I don't.
- 6 Q. Could have been long before March the 12th?
- 7 A. Could have been.
- 8 Q. Is that basically -- is that kind of like a nervous
9 condition of some sort or another?
- 10 A. Induced by stress in many cases.
- 11 Q. Okay. And you can't say what kind of stress would
12 cause it?
- 13 A. That's correct.
- 14 Q. Okay. So you found nothing physically -- the hymen
15 on both of these children were intact?
- 16 A. Correct. Wait a minute. I don't use that
17 terminology. But there were no findings on the hymen.
- 18 Q. No notchings, no tearings, no nothing?
- 19 A. That's correct.
- 20 Q. All right. And in penetration, there would
21 normally be some notching or tearing?
- 22 A. That's not correct.
- 23 Q. Explain it to me.
- 24 A. Well, the -- I mean, penetration just means past
25 the entrance of the vagina. If you have slight

1 penetration, you can do that without damaging the hymenal
2 tissue.

3 Q. Okay. Now, you found no redness in the vaginal
4 area?

5 A. That's correct.

6 Q. Of either?

7 A. That's correct.

8 Q. No rashes?

9 A. No.

10 Q. No indications of anything; right?

11 A. That's correct.

12 Q. Now, are you on contract with the Julie Valentine
13 Center or do you do this independently from the Julie
14 Valentine Center?

15 A. I am an employee of the Greenville Health System,
16 and the Greenville Health System pays for our space at
17 the Julie Valentine Center in order to perform our exams.

18 Q. Okay. So it's kind of you do or kind of you don't
19 work for the Julie ---

20 A. I do not work for the Julie Valentine Center. My
21 exam room is housed in their facility, but I am in no way
22 employed by them.

23 Q. Now, you say that based on, I gather, the length of
24 time that elapsed between the alleged allegations and
25 your exam that certainly they could have healed if there

1 had been an injury; right?

2 A. That is correct.

3 Q. A lot of things could have; right? I mean, they
4 could have healed? Could have never happened; right?

5 A. Not based on my medical evaluation where I got a
6 detailed history that it did happen.

7 Q. That's exactly what I'm saying. You know, you say
8 it could have healed, but it could have never happened,
9 there could have never been any penetration based on your
10 exam?

11 A. But the physical exam is also very consistent with
12 the history provided to me by my patient.

13 Q. All right. But one is just as probable as the
14 other if we're going to talk probabilities; aren't they?

15 A. I would disagree with that statement.

16 Q. So -- thank you, Doctor.

17 THE COURT: Any redirect?

18 MR. TOOKER: Briefly.

19 **REDIRECT EXAMINATION**

20 **BY MR. TOOKER:**

21 Q. Mr. DeJong mentions Older Sister saying that she denied
22 anyone else had hurt her?

23 A. Correct.

24 Q. Did she specifically name someone?

25 A. No. The reason -- when I ask that -- I ask every

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1 child I see if anyone has ever hurt them, because
2 oftentimes a child that's experienced one form of
3 maltreatment may have experienced another form of
4 maltreatment. And my job is just to assess general
5 overall safety. So I'm just screening, in general, to
6 make sure that she is in a safe environment, even after
7 this has occurred.

8 Q. But what I'm getting at, in your child statement
9 portion here, don't you write: Stated her grandfather
10 touched her?

11 A. Yes.

12 Q. Okay. And that was what she was complaining of to
13 you?

14 A. Yes.

15 Q. In that interview room?

16 A. Yes.

17 Q. Away from her parents?

18 A. Correct.

19 Q. Away from anybody else except for that child life
20 specialist?

21 A. Correct.

22 Q. No further questions.

23 THE COURT: All right. Thank you. You may
24 step down, Doctor.

25 MR. TOOKER: May she be excused, Your Honor?

1 MR. DEJONG: No objection.

2 THE COURT: Without objection you may be
3 excused. Thank you very much.

4 You may call your next witness.

5 MR. TOOKER: Thank you, Your Honor. State next
6 calls Ms. Christine Carlberg.

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

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

12 THE WITNESS: Yes, sir.

13 THE CLERK: If you would have a seat and state
14 your name for the record, please.

15 THE WITNESS: Christine Carlberg.

16 **CHRISTINE CARLBERG,**

17 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

18 **DIRECT EXAMINATION**

19 **BY MR. TOOKER:**

20 Q. Ms. Carlberg, where do you work, ma'am?

21 A. I'm employed by Greenville Department of Mental
22 Health and I'm contracted to work at the Julie Valentine
23 Center.

24 Q. And what do you do there?

25 A. I'm a forensic interviewer.

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1 Q. What does that mean?

2 A. That means I conduct interviews with children who
3 have allegations of abuse in a court investigation.

4 Q. Okay. And did you interview anybody in this case?

5 A. I did.

6 Q. Who did you interview?

7 A. I interviewed Older Sister and Dorothy, who went by

8 Younger Sister

9 Q. Okay. And when you say interviewed, are you
10 trained to interview them in a particular way?

11 A. Yes, sir.

12 MR. DEJONG: Your Honor, I'm going to object to
13 this. I think this has been ruled on. I objected
14 getting into any of that as to this interviewing
15 technique or whatever. I think she can lay a foundation.
16 She has laid the foundation for what she does, where she
17 works and that she did an interview. The solicitor is
18 going to interview -- introduce the interview. That
19 foundation is laid. I think that's what she's limited
20 to, Your Honor.

21 THE COURT: How far do you wish to ask
22 questions of this witness, Solicitor?

23 MR. TOOKER: I just want to ask her what kind
24 of questions she asks kids.

25 THE COURT: You may proceed.

1 Q. Now, Ms. Carlberg, what kind of questions do you
2 ask kids?

3 A. Well, you want to ask children non-leading, non-
4 suggestive questions in order for them to tell what
5 happened to them.

6 Q. Okay. And in this case you said you interviewed
7 Younger Sister

8 A. And Older Sister

9 Q. And Older Sister And Younger Sister was the younger of the pair?

10 A. Yes, sir.

11 Q. How old was she when you interviewed them; do you
12 remember?

13 A. She was six years old.

14 Q. I'm going to show you what's been marked as State's
15 3. Do you recognize this item?

16 A. Yes, sir. It's a copy of the interview with
17 Younger Sister

18 Q. Okay. And how do you know that it's a copy of the
19 interview with Younger Sister

20 A. I made that copy and initialed it and dated it.

21 Q. Okay. And have you watched it?

22 A. I have.

23 Q. Would you say it's a fair and accurate copy of the
24 interview that you conducted with Younger Sister on the
25 date of the interview?

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1 A. Yes, sir.

2 MR. TOOKER: At this point, Your Honor, the
3 state wants to enter State's 3 into evidence and publish
4 it to the jury.

5 THE COURT: Any objection?

6 MR. DEJONG: Your Honor, may we approach?

7 THE COURT: Yes, sir.

8 (WHEREUPON, Messrs. Tooker and DeJong approached the
9 bar.)

10 THE COURT: All right. Subject to the prior
11 rulings, the exhibit will be admitted and may be
12 published to the jury.

13 MR. DEJONG: Your Honor, may I go stand in the
14 corner to watch this?

15 THE COURT: Yes, sir.

16 (WHEREUPON, State Exhibit Number 3 was admitted into
17 evidence.)

18 (WHEREUPON, State Exhibit Number 3 was published in
19 open court to the jury.)

20 Q. And so we're clear, when she said wallet, what did
21 she mean?

22 A. She said that was the same thing as his peepee,
23 which she had identified as the penis.

24 Q. Okay. And what word did she use to describe her
25 vagina?

1 A. Peepee.

2 Q. Okay. And what about her rear?

3 A. Her butt.

4 Q. Okay.

5 MR. TOOKER: No further questions at this time,

6 Your Honor.

7 THE COURT: You may cross examine the witness.

8 MR. DEJONG: Thank you, Your Honor. May it
9 please the court.

10 **CROSS EXAMINATION**

11 **BY MR. DEJONG:**

12 Q. So what was the date of this interview, Ms.
13 Carlberg?

14 A. The date of he interview was April the 12th, 2013.

15 Q. So right at a month after the allegations took
16 place?

17 A. Yes, sir.

18 Q. All right. Now, who brought her to the interview?

19 A. Her parents.

20 Q. Okay. Was law enforcement -- I'm not saying
21 present in the room, but was law enforcement present on
22 the day that you did this interview?

23 A. No, sir.

24 Q. Okay. Now, what time of the day did you do the
25 interview?

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1 A. I'm not sure. Usually I do my interviews in the
2 morning, but I'm not sure.

3 Q. Okay. So having been a month after the allegations
4 arose, you certainly couldn't say who this child has
5 talked to; could you?

6 A. I usually ask the parents who the child has talked
7 to when I gather background information from them.

8 Q. You have no personal knowledge of who talked to the
9 child?

10 A. No, sir.

11 Q. Or how many times?

12 A. No, sir.

13 Q. Or how many different people?

14 A. No, sir.

15 Q. Thank you, ma'am.

16 THE COURT: Any redirect?

17 MR. TOOKER: No redirect, Your Honor, but we'd
18 like to reserve the right to recall this witness if
19 necessary.

20 THE COURT: All right. You may step down.

21 MR. TOOKER: May it please the court.

22 THE COURT: You may call your next witness.

23 MR. TOOKER: State next calls Lieutenant Brian
24 Bolding to the stand.

25 THE CLERK: Do you solemnly swear or affirm the

1 testimony you're about to give in this case to be the
2 truth, the whole truth and nothing but the truth, so help
3 you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you, sir. If you would have
6 a seat and state your name for the record, please.

7 THE WITNESS: My name is Brian Bolding.

8 **BRIAN BOLDING,**

9 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

10 **DIRECT EXAMINATION**

11 **BY MR. TOOKER:**

12 Q. And Lieutenant Bolding, where do you work, sir?

13 A. At the Pickens County Sheriff's Office.

14 Q. And how long have you worked for the sheriff's
15 office?

16 A. Since 1993.

17 Q. In what capacity are you employed by the sheriff's
18 office?

19 A. I'm a lieutenant with the uniform patrol division.

20 Q. What does that mean exactly with regards to your
21 duties and what you do on a day to day basis?

22 A. I supervise a team of uniformed deputies and we all
23 respond to calls for service and patrol the county,
24 answer calls for service as needed.

25 Q. Okay. And do you know why you've been called to

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1 testify in this case?

2 A. Yes.

3 Q. Okay. Did you respond to an incident?

4 A. I did.

5 Q. Okay. What were you dispatched out to; do you
6 know? Let me step back. When you are dispatched, when
7 you're contacted, are you made aware of what kind of case
8 you're going out to?

9 A. Usually we're dispatched to a specific call for
10 service and they'll advise us, if they can, exactly what
11 the possible complaint is.

12 Q. Okay. Were you made aware of what the complaint
13 was in this case when you responded?

14 A. Yes, I was. It was an alleged -- possibly alleged
15 sexual assault that had just occurred.

16 Q. Okay. And where did you respond to, what address?

17 A. 114 Mountain Forest Circle in Easley, South
18 Carolina. It's within Pickens County off of, I think
19 it's off^l of Cedar Rock Road.

20 Q. Okay. And when you responded who did you find?

21 Who was there?

22 A. I observed the defendant on the front steps and
23 then his son, Mr. Drachslin, Jr. came outside and spoke
24 with me.

25 Q. Okay. So the first person you encountered was Mr.

1 Drachslin, Jr.?

2 A. I saw Mr. Drachslin, Sr. first, but I, in fact,
3 spoke to Mr. Drachslin, Jr. first. But the first person
4 I saw was Mr. Drachslin, Sr. sitting on the front steps
5 of the home.

6 Q. And of course, without going into what Mr.
7 Drachslin, Jr. said, what did you do after talking to
8 him?

9 A. After I calmed him down, I then went over and spoke
10 to Mr. Drachslin, Sr.

11 Q. Okay. And as you approached him, what would you
12 say the defendant's demeanor appeared to be?

13 A. He was very humble. He was sitting on the front
14 steps of the home outside and he had his head down. And
15 I was concerned for him.

16 Q. Okay. And what did you say to him, if anything?

17 A. I asked him if he was okay.

18 Q. What was his response to that?

19 A. He said no, because he had been caught with his
20 hand down his granddaughter's pants.

21 Q. Okay. At that point had he been Mirandized or
22 anything?

23 A. No, not at that point.

24 Q. Okay. What did you do as a result of him saying
25 that?

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1 A. As soon as he said that, I wanted to get some
2 backup out there due to the allegations. And I called
3 for Detective Sergeant Burgess to come out because she's
4 a female and specializes in possible female victims.

5 Q. Okay. They're juveniles, too; right?

6 A. Exactly.

7 Q. So while you're waiting for Detective Burgess to
8 get on the scene, what did you do?

9 A. I then went back around and I spoke to Mr.
10 Drachslin, Jr.

11 Q. Okay. And did you get the full rundown of
12 everything we've heard in court?

13 A. Pretty much.

14 Q. Did you talk to the kids at all or did you wait for
15 the detective ---

16 A. I wanted to wait on the detective to get there
17 because she was a female and it was female juveniles. I
18 felt more comfortable with that.

19 Q. Okay. How long would you say after you requested
20 backup from Detective Burgess before she arrived?

21 A. It -- probably whatever time it took her to drive
22 from the sheriff's office over to Easley. Maybe twenty
23 minutes tops, twenty-five.

24 Q. Okay. And once she got there, what was the next
25 thing that happened?

1. A. After that I believe she may have spoke to Mr.
2 Drachslin, Jr. And then after that we went and spoke to
3 Mr. Drachslin, Sr.

4 Q. Okay. Did she talk to the kids?

5 A. She did. I don't remember if she talked to them
6 first or if it was after. But she did talk to them.

7 Q. Did you talk to the kids?

8 A. I don't believe I did. I believe I was there when
9 she did.

10 Q. Okay. And y'all went and talked to the defendant
11 in this case?

12 A. We did.

13 Q. Where was he when you went and talked to him?

14 A. He was still sitting on the front steps of the
15 home.

16 Q. About how long after, you know, you responded, you
17 went up and you asked how he was doing, he said he wasn't
18 doing well, he got caught with his hand down his
19 granddaughter's pants; how long after that before you
20 talked to him again?

21 A. It was several minutes. I have no idea the exact
22 time. Maybe twenty minutes or so. Twenty-five, thirty,
23 I'm not sure.

24 Q. And as you and Detective Burgess approached the
25 defendant, did you Mirandize him?

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- 1 A. He was given his Miranda warnings at that time.
- 2 Q. I'm going to show you what's been marked as State's
- 3 5. Do you recognize this document?
- 4 A. I do.
- 5 Q. Okay. What is that document?
- 6 A. This is the Pickens County Sheriff's Office Waiver
- 7 of Rights form.
- 8 Q. And who signed that document?
- 9 A. It's signed by Joe Drachslin, Sr. and Detective
- 10 Burgess and myself.
- 11 Q. Why did you and Detective Burgess sign that
- 12 document?
- 13 A. As witness that he signed it.
- 14 Q. Okay. And are there any initials on that page, as
- 15 well?
- 16 A. There are.
- 17 Q. Where are the initials?
- 18 A. Beside each individual line in the paragraph.
- 19 Q. Now, if you would, explain how it is that you
- 20 administer the rights to somebody who's been accused of
- 21 something?
- 22 A. Well, we talk to them to make sure they understand
- 23 what's going on and make sure if they want to talk to us.
- 24 And if they do want to talk to us then we will basically
- 25 read each line and have them initial each line and we'll

1 put a checkmark by each line as we read it.

2 Q. And if you would, would you just go line by line
3 the rights that you advised the defendant of?

4 A. Well, it says: Before we ask you any questions,
5 you must understand your rights. And there's a
6 checkmark, and it was initialed by the defendant. The
7 next line says: You have the right to remain silent.
8 And it has a checkmark and it was initialed by the
9 defendant. The next line says: Anything you say can and
10 -- be used against you in court. And it has a checkmark
11 and the defendant initialed it. The next line say: You
12 have the right to talk to a lawyer for advice before we
13 ask you any questions and to have him or her with you
14 during questioning. It has a checkmark beside it and it
15 was initialed by the defendant. The next line says: If
16 you have no money to pay a lawyer's fee, the court will
17 appoint one to represent you without cost if you wish.
18 It has a checkmark beside it and it's initialed by the
19 defendant. The next line says: If you decide to answer
20 questions without a lawyer present, you still have the
21 right to stop answering questions at any time. You also
22 have the right to stop answering at any time until you
23 talk to a lawyer. And it has a checkmark beside it and
24 it's initialed by the defendant. And the Waiver of
25 Rights paragraph reads: I have read this statement of my

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1 rights and I understand what my rights are. I am willing
2 to make a statement and answer questions. I do not want
3 a lawyer at this time. I understand and know what I am
4 doing. No promises or threats have been made to me. And
5 no pressure or coercion of any kind has been used against
6 me. And it's checkmarked and it's initialed by the
7 defendant.

8 Q. Okay. And after you went over all that information
9 with him, did he agree to talk to you?

10 A. He did. And he signed the form.

11 Q. And he signed that form?

12 A. He did.

13 Q. And you signed that form, as well?

14 A. I did, as well as Detective Burgess.

15 MR. TOOKER: At this point, Your Honor, the
16 state would like to move State's 5 into evidence.

17 THE COURT: Any objection?

18 MR. DEJONG: No objection.

19 THE COURT: Without objection Exhibit 5 is
20 admitted and may be published to the jury.

21 (WHEREUPON, State Exhibit Number 5 was admitted into
22 evidence.)

23 Q. So you and Detective Burgess started interviewing
24 the defendant; is that correct?

25 A. That's correct.

1 Q. Where was this again? Did you move or did you stay
2 at the same location?

3 A. He was still sitting on the front steps of his
4 home.

5 Q. Okay. Would you say his emotional state had
6 changed at all?

7 A. He was pretty upset. He was obviously distraught
8 over the allegations.

9 Q. Okay. And if you can, do you recall what his date
10 of birth is?

11 A. I'm not sure. I think he said he was seventy-six
12 years old at the time, but I don't remember his date of
13 birth.

14 Q. Okay. You know, and despite that advanced age, did
15 you notice any, what appeared to you to be cognitive
16 impairment; did he seem to understand what you were
17 saying?

18 A. He understood what I was saying. He understood
19 what was going on.

20 Q. Okay. Did he give you an indicators that he was
21 confused or addled or anything like that?

22 A. Absolutely not.

23 Q. Okay. After y'all started interviewing him, did he
24 make any admissions about this case?

25 A. Yes. He admitted that he had been caught with his

1 hand down his granddaughter's pants. And he also
2 admitted to me that he had inserted his finger into her
3 vagina.

4 Q. Now, which granddaughter are we talking about?

5 A. I believe it was nine year old Older Sister at the time.

6 Q. All right. So he admitted to you that he put his
7 finger into her vagina?

8 A. That's correct.

9 Q. Now, are these things that he's saying orally?

10 A. He initially said it orally and then we asked him
11 if he wanted to give a written statement and he gave us a
12 written statement.

13 Q. Okay. Next I'm going to show you what's been
14 marked as State's 6. Do you recognize this item?

15 A. I do.

16 Q. Okay. And what is that item?

17 A. It's the Pickens County Sheriff's Office Voluntary
18 Statement form.

19 Q. What's contained on that form; what kind of
20 information?

21 A. It has the person that we're getting a statement
22 from, it has their pertinent information. It also has
23 basically the same advisement of rights; although in much
24 smaller writing. And then it has blank lines for the
25 person to actually fill out in their own words what they

1 want to write. And then it has the bottom part where
2 witnesses are noted and the time it was completed and so
3 forth.

4 Q. Did you write anything on that document?

5 A. I did. I filled out his information at the top of
6 the page. And then I signed it at the bottom as a
7 witness.

8 Q. Okay. Who actually wrote the statement in this
9 case?

10 A. The statement part was completed by the defendant,
11 Mr. Drachslin, Sr.

12 Q. So the defendant wrote that in his own hand?

13 A. He did.

14 Q. Okay. And he wrote that after signing that Waiver
15 of Rights form?

16 A. Exactly.

17 Q. And this is a copy or this is the actual document?

18 A. This is the actual document.

19 MR. TOOKER: At this point, Your Honor, the
20 state would like to move State's 6 into evidence and
21 publish it to the jury.

22 THE COURT: Any objection.

23 MR. DEJONG: Subject to my previous argument.

24 THE COURT: Subject to a prior hearing, it's
25 admitted and may be published to the jury.

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1 (WHEREUPON, State Exhibit Number 6 was admitted into
2 evidence.)

3 MR. TOOKER: I was caught with my hand in
4 Older Sister pants today. I did this several months ago. I
5 am truly sorry for this and am ready to get help in
6 anyway. I have put my finger in her vagina before,
7 Older Sister End.

8 Q. After he gave that statement, what did y'all do?

9 A. At that time?

10 Q. Yes, sir?

11 A. We basically concluded our interview with him. And
12 I believe Detective Burgess went and followed up with the
13 other folks.

14 Q. Okay. Was he placed in arrest shortly after?

15 A. Yes.

16 Q. And after being arrested did y'all get warrants
17 from a magistrate?

18 A. Yes, we did.

19 Q. Okay. Is there anything else you did in this
20 investigation that you feel like you didn't testify to
21 that you need to convey to the jury?

22 A. That's pretty much it.

23 Q. Okay.

24 MR. TOOKER: No further questions, Your Honor.

25 THE COURT: You may cross examine the witness,

1 Mr. DeJong.

2 MR. DEJONG: Thank you, Your Honor. May it
3 please the court.

4 **CROSS EXAMINATION**

5 **BY MR. DEJONG:**

6 Q. What time were you despatched, Lieutenant?

7 A. I believe it was three thirty p.m. in the afternoon
8 on March the 12th, 2013.

9 Q. Okay. What time did you leave?

10 A. I believe I left around six ten p.m.

11 Q. What time?

12 A. Six ten p.m.

13 Q. All right. And so you were there for what, roughly
14 three, three and a half hours?

15 A. Approximately.

16 Q. All right. Now, when you first got there, Mr.
17 Drachslin, Sr., did you know who he was when you pulled
18 up?

19 A. I had no idea who anybody was.

20 Q. Okay. Now, you say that when you pulled up who you
21 later identified as Mr. Drachslin, Sr. was sitting on the
22 front steps; correct?

23 A. That's correct.

24 Q. All right. And you didn't speak to him at that
25 point in time; right?

1 A. No, sir, not initially.

2 Q. All right. Then you say the first person you made
3 contact was with Mr. Drachslin, Jr.?

4 A. That's correct.

5 Q. And as I recall your testimony and when Mr. Tooker
6 was asking you questions, you say you calmed him down.
7 Well, let's -- before we jump to the next step, let's --
8 was he angry?

9 A. He was very upset. I wouldn't say calm him down as
10 much as I would say comfort the man.

11 Q. He was angry?

12 A. He was upset.

13 Q. Yes, sir. While you were present did he make any
14 threats towards Mr. Drachslin, Sr.?

15 A. No, he didn't.

16 Q. Okay. Well, when you got there you say you saw Mr.
17 Drachslin, Sr. and then Mr. Drachslin, Jr. met you. So
18 did Mr. Drachslin, Jr. come by where Mr. Drachslin, Sr.
19 was sitting?

20 A. No, he did not. Mr. Drachslin, Sr. was sitting on
21 the front steps of the home. And if I remember
22 correctly, Mr. Drachslin, Jr. came from around the rear
23 part of the home and met me kind of on the side of the
24 house.

25 Q. Okay. How far away was that from Mr. Drachslin,

1 Sr.?

2 A. Maybe sixty feet around the corner.

3 Q. How much?

4 A. Maybe sixty feet around the corner.

5 Q. Okay. Now, in addition to calming Mr. Drachslin,
6 Jr. down, you started an investigation at that point in
7 time; didn't you?

8 A. I did.

9 Q. And it was more than calming him down; you asked --
10 or Mr. Drachslin, Jr. provided you information about the
11 allegations; didn't he?

12 A. Yes. He made his report to me.

13 Q. And indeed, in providing you information, he also
14 provided you with information as to an alleged suspect;
15 did he not?

16 A. He did.

17 Q. Now, you had all of that information before you
18 talked to Mr. Drachslin, Sr.; correct?

19 A. That's correct.

20 Q. And actually you had some information, at least as
21 to what the allegations were, before you ever arrived at
22 this address; right?

23 A. I did, from my communications center.

24 Q. Right. And then you -- after you have that
25 information, you go talk to Mr. Drachslin, Jr. and then

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1 you go talk to Mr. Drachslin, Sr.; correct?

2 A. That's correct.

3 Q. With all that information and knowledge that you
4 already have; right?

5 A. Absolutely.

6 Q. Now, the Pickens County Waiver of Rights forms,
7 they're fairly common; aren't they?

8 A. Yes.

9 Q. Y'all carry them around in your cars?

10 A. We do.

11 Q. And so you certainly had one of these even before
12 Ms. Burgess came out there; didn't you?

13 A. It could have come from my car or her car. They're
14 commonly carried with all officers.

15 Q. The point of that is, you had one available to you;
16 didn't you?

17 A. I'm sure I did.

18 Q. All right. Now, at that point in time, with the
19 information you had, you didn't go Mirandize Mr.
20 Drachslin, Sr.; did you?

21 A. Absolutely not. Didn't have a need to at the time.

22 Q. I'm sorry?

23 A. I didn't have a need to at the time.

24 Q. Not even with what your investigation had revealed
25 at that point in time?

1 A. He was not in custody at the time.

2 Q. Well, let me ask you this. After you talked to Mr.
3 Drachslin, Sr. and while you were waiting for Ms. Burgess
4 to arrive, did you stay around the front of the house
5 where Mr. Drachslin, Sr. was?

6 A. I left the front of the house a few times to go
7 around to the side to speak to Mr. Drachslin, Jr.

8 Q. You certainly kept an eye on Mr. Drachslin, Sr.;
9 didn't you?

10 A. I'm sure I did.

11 Q. Yes, sir. And of course, he didn't attempt to
12 leave; did he?

13 A. No. I just wanted to make sure he was going to
14 stay being okay.

15 Q. Right. And then after he shares with you what you
16 allege that he shared with you, at some point in time
17 after that, you and Ms. Burgess decide to give him his
18 Miranda warnings; correct?

19 A. That's correct.

20 Q. Now, you say Mr. Drachslin was -- well, let me back
21 up a little bit. You got to this address about three
22 thirty in the afternoon?

23 A. I believe I was despatched at three thirty. I
24 believe I arrived at three fifty-two.

25 Q. By the way, do you ever remember seeing the

1 preacher out there?

2 A. I believe I did, yes.

3 Q. Was he involved in any of the discussions in this
4 case?

5 A. He testified earlier.

6 Q. I'm asking you, when you were there was he involved
7 in any of the discussions that was going on with law
8 enforcement?

9 A. No. I didn't discuss anything with him. I did ask
10 him to step away. He was coming up and wanted to speak
11 to Mr. Drachslin, Sr. I wasn't sure who he was at he
12 time. So for the safety of Mr. Drachslin, Sr., as well
13 as the integrity of any investigation we may be
14 conducting, I asked him to step to the side.

15 Q. Yes, sir. So you tell us today that Mr. Drachslin
16 -- Mr. Drachslin, Sr. was not in custody when you asked
17 him these questions; right?

18 A. He was not in custody.

19 Q. But you sure as blazes didn't want anybody else
20 talking to him; did you?

21 A. I didn't know who anybody was, and I'm not sure if
22 anyone would have meant anyone harm on the scene. And I
23 wasn't going to let anything happen to anybody.

24 Q. Now, you have been a police officer since 1993?

25 A. Police officer since '95. I started as a

1 dispatcher in '93.

2 Q. Okay. I'll spot you two years one way or the
3 other; Lieutenant?

4 A. Thank you, sir.

5 Q. Been to the academy?

6 A. I have.

7 Q. Part of a police officer's duty at an alleged crime
8 scene is to preserve evidence; is it not?

9 A. That's correct.

10 Q. Did you seek any kind of medical exam on these
11 alleged victims at that point in time?

12 A. I was going to defer to the parents for that.

13 Q. Pardon me?

14 A. I deferred to the parents for that.

15 Q. Okay. Well, it's not their job to preserve
16 evidence; is it?

17 A. Uh-uh (negative).

18 Q. That's your job; right?

19 A. Exactly.

20 Q. And you didn't?

21 A. I didn't -- I'm sorry, what?

22 Q. You made no attempt to see if there was any
23 evidence or attempt to preserve evidence?

24 MR. TOOKER: Judge, I'm going to object..

25 Lieutenant Bolding is not a medical professional.

1 THE COURT: I overrule your objection.

2 A. I did not call an ambulance at the time, no.

3 Q. Nor did you take them to the emergency room?

4 A. Not at that time.

5 Q. Is there not a protocol on this type of case of
6 preserving evidence?

7 A. Given the allegations, I'm not sure what physical
8 evidence would have been there at that time. So I just
9 called for Detective Burgess.

10 Q. I'm not asking you that. I'm asking you, is there
11 a protocol in these type cases?

12 A. Yes, generally someone is sent to the hospital
13 after the initial investigation.

14 Q. Whether you think there's any evidence or not is
15 not what counts; is there?

16 A. Uh-huh (affirmative).

17 Q. But in this case you did not do that?

18 A. Correct.

19 Q. You made no effort to preserve any evidence if
20 there was any or if there wasn't any? Correct?

21 A. I didn't call a medical professional in.

22 Q. Yes, sir. Now, you -- well, the twenty minutes
23 that you were there until Ms. Burgess arrived, what are
24 you doing?

25 A. I think I may have been getting a statement from

1 Mr. Drachslin, Jr., if I remember. It's been a while.

2 Q. So that took twenty minutes?

3 A. I'm not sure of the time it would have took, but

4 ---

5 Q. All right. So now Ms. Burgess gets there in about
6 twenty minutes, so now we're about, what, four twenty?

7 A. Probably.

8 Q. Okay. So when she gets there who does she talk to
9 first? Do y'all go talk to Mr. Drachslin, Sr. or do you
10 go talk -- does she go talk to the children?

11 A. I don't recall exactly who she would have talked to
12 first. She would have talked to me first, obviously. I
13 would have briefed her. And then she probably would have
14 went and talked to Mr. Drachslin, Jr.

15 Q. Pardon me?

16 A. She probably, after she spoke to me, would have
17 spoke to Mr. Drachslin, Jr.

18 Q. Junior?

19 A. Yes.

20 Q. Oh, okay. Well, my question is, at what point in
21 time did you talk to Mr. Drachslin, Sr.?

22 A. Whatever time that we would have advised him of his
23 rights.

24 Q. And how long -- well, let me back up. Prior to
25 Mirandizing him of what you have on this form, which is

1 State's Exhibit

2 MR. TOOKER: 5.

3 Q. Number 5 ---

4 MR. DEJONG: Thank you, Mr. Tooker.

5 Q. --- you've got five ten p.m. on that. Do you see
6 it?

7 A. It's there if you say.

8 Q. All right. Now, prior to Mirandizing him, how long
9 did you and/or Ms. Burgess talk to Mr. Drachslin, Sr.?

10 A. Maybe a minute.

11 Q. Pardon me?

12 A. Maybe a minute.

13 Q. All right. Now, once you Mirandized him, how long
14 did you talk to him?

15 A. I'm not sure how long the interview would have
16 taken. And then there would have been a time on the
17 written statement as to the time it was started.

18 Q. Well, I'll let you look at the written statement.
19 You tell me what time it was over?

20 A. The statement was started at five forty-two p.m.,
21 and the statement concluded at five forty-eight p.m., the
22 written portion.

23 Q. All right. So what happened between five twelve
24 p.m. and five forty-two p.m.?

25 A. We would have been standing there speaking with

1 him.

2 Q. Exactly. So it wasn't that you asked him a
3 question and he just contemporaneously answered that
4 question; was it?

5 A. Correct.

6 Q. There was a period of questioning Mr. Drachslin
7 that lasted at least some -- whatever the difference is
8 between five ten p.m. and five forty-eight p.m.?

9 A. Yes, that's ---

10 Q. Or five forty-two p.m. when he started his written
11 statement?

12 A. Correct.

13 Q. So it wasn't that he suddenly just volunteered all
14 this stuff to you?

15 A. Not after he initially volunteered it. No.

16 Q. It was based upon your interrogation of him to get
17 the information; right?

18 A. Yes.

19 Q. And at that point, and during that point, you
20 talked about various things; right?

21 A. Correct.

22 Q. And one was touching?

23 A. I'm sure it would have been.

24 Q. Well, you were there?

25 A. Yeah.

1 Q. Okay. And that's what he -- that's really what he
2 admitted to in this case; wasn't it, the touching?

3 A. He admitted to putting his finger in Older Sister
4 vagina.

5 Q. Right. After between five ten and five forty-two
6 interrogation; right?

7 A. That's correct.

8 Q. And when you got out there -- well, let's talk a
9 little bit -- the front of the house, would that be the
10 part that faced the driveway?

11 A. The -- it faces the roadway and the driveway comes
12 down basically kind of parallel off the corner of the
13 house.

14 Q. Okay. Well, the front steps where you say Mr.
15 Drachslin, Sr. was sitting, could you see the driveway or
16 -- let me rephrase that. I don't want you to have to
17 speculate. As you were going into the driveway, could
18 you see Mr. Drachslin?

19 A. Yes.

20 Q. And you were in a marked car?

21 A. I was, marked patrol car and full uniform.

22 Q. Full uniform, all the stuff strapped around your
23 waist and all that good stuff; ---

24 A. Correct.

25 Q. --- right?

1 A. Yes.

2 Q. All right. Thank you, Lieutenant.

3 THE COURT: Any redirect questions?

4 MR. TOOKER: Briefly.

5 **REDIRECT EXAMINATION**

6 **BY MR. TOOKER:**

7 Q. Five ten to five forty-two, how many minutes is
8 that?

9 A. Thirty-two minutes.

10 Q. Thirty-two minutes; okay. So you talked to the man
11 for thirty-two minutes and then he gave a confession?

12 A. That's correct.

13 Q. Okay. Is thirty-two minutes a long time to
14 interview a criminal suspect?

15 A. I've had way longer interviews.

16 Q. Okay. No further questions.

17 THE COURT: Thank you, sir. You may step down,
18 Lieutenant Bolding.

19 MR. TOOKER: Permission for this witness to be
20 excused.

21 MR. DEJONG: No objection, Your Honor.

22 THE COURT: Without objection the witness may
23 be excused.

24 Could I see the attorneys here just for a moment.

25 (WHEREUPON, Messrs. Tooker and DeJong approached the

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1 bar.)

2 THE COURT: Ladies and gentlemen, I believe
3 this might be a good time for us to break for the day
4 rather than -- we're all ready for a break. By the time
5 we got back and tried to start with getting another
6 witness in, it might be a little later on a Wednesday
7 night that we want to stay. So we're going to take a
8 break now for the evening. If you'll be back at nine
9 o'clock in the morning.

10 Let me remind you, again, ladies and gentlemen, what
11 I told you earlier today before lunch, not to be doing
12 any kind of communicating with anyone, not any social
13 media, no independent research. That would be improper.
14 It would be against your oath that you've taken. Against
15 the Chief Justice instructions to you. I want us to
16 maintain the purity of the process we're in, and that's
17 important for both the state and to the defendant in this
18 case.

19 Hope you have a good evening, ladies and gentlemen.
20 We'll see you back at nine o'clock, be ready to start.

21 Everyone else, please remain seated while the jury
22 departs.

23 (WHEREUPON, the jury exited the open court at
24 approximately 4:45 p.m.)

25 THE COURT: All right. We'll be ready to start.

1 back at nine o'clock in the morning.

2 MR. TOOKER: Yes, sir.

3 (WHEREUPON, the court stood at recess for the day.)

4 **APRIL 24, 2014**

5 (WHEREUPON, Court convened with all parties present
6 and the following proceedings were had.)

7 THE COURT: I understand we've got one juror
8 not quite here yet, so we'll wait to proceed.

9 Any matters we need to take care of? Are we ready
10 to proceed?

11 MR. TOOKER: Nothing from the state, sir.

12 THE COURT: Okay.

13 Everybody is here. Once they have time to settle
14 in, whenever they're ready, we're ready for them.

15 THE BAILIFF: Okay, sir.

16 (WHEREUPON, the jury entered the open court at
17 approximately 9:09 a.m.)

18 THE COURT: Good morning, ladies and gentlemen.
19 We're now ready to proceed with the trial of the case.

20 Solicitor, you may call your next witness.

21 MR. TOOKER: Thank you, Your Honor. May it
22 please the court. State calls Ms. Older Sister

23 THE CLERK: I need to get you to put your
24 animals down for just a minute; okay? Place your left
25 hand on the bible and raise your right hand.

Older Sister [REDACTED] - Direct Examination by Mr. Tooker

1 Do you solemnly swear or affirm the testimony you're
2 about to give in this case to be the truth, the whole
3 truth and nothing but the truth, so help you God?

4 THE WITNESS: I will.

5 THE CLERK: Please state your name.

6 THE WITNESS: It's Older Sister [REDACTED]

7 Older Sister [REDACTED]

8 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

9 **DIRECT EXAMINATION**

10 **BY MR. TOOKER:**

11 Q. Older Sister [REDACTED] how you doing today?

12 A. Good.

13 Q. What's your birth date?

14 A. [REDACTED].

15 Q. Of what year; do you know?

16 A. [REDACTED].

17 Q. And how old are you today?

18 A. Ten years old.

19 Q. So you've got a birthday coming up?

20 A. Yes.

21 Q. You excited?

22 A. Yes.

23 Q. Good. Do you have any brothers or sisters?

24 A. Yes.

25 Q. What are their names?

Older Sister [REDACTED] - Direct Examination by Mr. Tooker

- 1 A. Younger Sister and Brother [REDACTED].
- 2 Q. Who's the oldest of all three siblings?
- 3 A. Me.
- 4 Q. And who's the middle?
- 5 A. Younger Sister
- 6 Q. How old is Younger Sister
- 7 A. Seven.
- 8 Q. And what about Brother [REDACTED]; how old is he?
- 9 A. He's three years old.
- 10 Q. So he's the baby?
- 11 A. Yes.
- 12 Q. Do you like being a big sister?
- 13 A. Yes.
- 14 Q. Do you know the difference between the truth and a
- 15 lie?
- 16 A. Yes.
- 17 Q. What's the difference between the truth and a lie?
- 18 A. The truth is what is the right thing and a lie is
- 19 what is wrong.
- 20 Q. Okay. So if I pointed at the carpet and said the
- 21 carpet is red. Would that be a truth or a lie?
- 22 A. A lie.
- 23 Q. Okay. Is it good to tell the truth?
- 24 A. Yes.
- 25 Q. Is it good to tell a lie?

1 A. No.

2 Q. Okay. Do you know why we're having this trial?

3 A. Yes.

4 Q. Why are we having this trial?

5 A. Because what my papa did was wrong.

6 Q. Okay. And what did your papa do?

7 A. He touched my peepee and butt.

8 Q. Okay. And when did this start happening?

9 A. A while after he came down.

10 Q. After he came down from where?

11 A. From Pennsylvania.

12 Q. And you say he touched your peepee and butt. Was
13 that above the clothes, below the clothes or both?

14 A. Both.

15 Q. And did he do any other kind of touching that you
16 didn't like?

17 A. No.

18 Q. No? Okay. When you say he touched your peepee and
19 butt, was that on the outside of your body, on the inside
20 of your body or both?

21 A. Both.

22 Q. It was both? Okay. Do you remember when your dad
23 saw what your papa was doing?

24 A. Yes.

25 Q. What happened when your dad saw it?

1 A. He screamed at my papa and then my papa ran to the
2 front porch, outside.

3 Q. Okay. When your papa would do this stuff, would it
4 be in your house or at a different place?

5 A. At my house.

6 Q. Do you remember where in your house?

7 A. In the den and his room and my room.

8 Q. Okay.

9 MR. TOOKER: One second, Your Honor.

10 Q. Did your papa touch you with his hand or another
11 part of his body?

12 A. His hand.

13 Q. Did he ever touch you with any other part of his
14 body?

15 A. No.

16 Q. Okay.

17 MR. TOOKER: No further questions at this time,
18 Your Honor.

19 THE COURT: Cross examine, if you wish.

20 MR. DEJONG: Thank you, Your Honor. May we
21 approach?

22 (WHEREUPON, Messrs. Tooker and DeJong approached the
23 bar.)

24 **CROSS EXAMINATION**

25 **BY MR. DEJONG:**

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Older Sister - Cross Examination by Mr. DeJong

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- 1 Q. Good morning, Older Sister.
- 2 A. Good morning.
- 3 Q. It's not fair, I know your name, but you don't know
- 4 mine; do you? I'm John.
- 5 A. Hi John.
- 6 Q. Hi Older Sister Will you talk with me a few minutes
- 7 here?
- 8 A. Sure.
- 9 Q. All right. Thank you. Do you remember when your
- 10 papa came from Pennsylvania?
- 11 A. Yes.
- 12 Q. How long did he live with y'all?
- 13 A. I don't know.
- 14 Q. Don't know; okay. Well, did you and Younger Sister and --
- 15 what's your brother, Brother
- 16 A. Yes.
- 17 Q. Did y'all spend a lot of time with papa?
- 18 A. Yes.
- 19 Q. Did y'all play?
- 20 A. Yes.
- 21 Q. Play games?
- 22 A. Yes.
- 23 Q. He would tickle you?
- 24 A. Yes.
- 25 Q. Okay. And that was kind of what you did; right?

- 1 A. Yes.
- 2 Q. And he lived there all the time; right?
- 3 A. Yes.
- 4 Q. Okay. And your mama, she worked?
- 5 A. Yes.
- 6 Q. And your daddy, he worked?
- 7 A. Yes.
- 8 Q. All right. Now, when you say this was happening,
- 9 was your daddy at home or was he at work?
- 10 A. He was at home sleeping.
- 11 Q. Okay. Well, when you say this happened in the
- 12 bedroom and the den and your room, I believe; right?
- 13 A. Yes.
- 14 Q. Now, who all stayed in your room?
- 15 A. My papa for a few months and then me and Younger Sister [REDACTED]
- 16 Q. Okay. So when you say this -- your daddy was
- 17 asleep, where was Younger Sister [REDACTED]
- 18 A. She was -- we were in the living room watching TV.
- 19 Q. Now, do you remember when you went some place and
- 20 talked to a lady and they pointed out where there was a
- 21 camera and told you you were being videoed and all that
- 22 good stuff?
- 23 A. Yes.
- 24 Q. Did you remember -- do you remember telling her
- 25 papa never touched you on the peepee?

1 A. No.

2 Q. Okay. That no one ever touched you on the peepee;
3 do you remember that?

4 A. No.

5 Q. Okay. Do you remember telling her that he touched
6 you on the outside of your panties, but never touched
7 your skin?

8 A. Yes.

9 Q. Okay. So you told that lady that papa never
10 touched you on your skin; right?

11 A. Yes.

12 Q. And I believe you told that lady that papa never
13 put anything in you; didn't you?

14 A. Yes.

15 Q. Okay. And she asked you those questions several
16 times; didn't she?

17 A. Yes.

18 Q. Okay. And every time you told her -- she asked you
19 that, you told her papa never put anything in you; didn't
20 you?

21 A. Yes.

22 Q. And every time she asked you, you said papa never
23 got under your panties; it was always on top of your
24 panties; correct?

25 A. Yes.

1 Q. All right. Now, going back to, I guess, when all
2 of these things started with papa, that was the day you
3 say your daddy saw papa. Do you remember that day?

4 A. No.

5 Q. You don't remember that day?

6 A. No.

7 Q. Okay. Do you remember telling the lady you talked
8 to that you didn't know papa was doing anything to you at
9 that point in time?

10 A. No.

11 Q. Okay. When you talked to the police -- do you
12 remember talking to the police?

13 A. Yes.

14 Q. When you talked to the police was your daddy and
15 mommy there?

16 A. Yes.

17 Q. Okay. When you talked to this lady in the room
18 where the camera was, was your mommy and daddy there?

19 A. No.

20 Q. Okay. So when you talked to the lady in the room,
21 you talked to the lady in the room all by yourself;
22 correct?

23 A. Yes.

24 Q. How many times did you talk to the police, Older Sister [REDACTED]

25 A. Once, I think.

1 Q. Okay. How many times did you talk to the lady in
2 the room?

3 A. Once.

4 Q. Before you went and talked to the lady in the room
5 did you talk to anybody about what you were going to talk
6 about to the lady in the room?

7 A. No.

8 Q. Okay. Did you ever talk to your mommy and daddy
9 about this before you went to talk with the lady in the
10 room?

11 A. No.

12 Q. Did you ever talk to a preacher before you ever
13 went and talked to the lady in the room?

14 A. Yes.

15 Q. Excuse me just one second. My memory is not always
16 real good, so I have to make notes. When you talked to
17 the police, that was at your house; right?

18 A. Yes.

19 Q. Okay. And that was -- how long after that -- that
20 makes no sense at all, so let me start over; okay? You
21 say your daddy screamed at your papa; right?

22 A. Yes.

23 Q. Okay. How long after your daddy screamed at your
24 papa did you talk to the police?

25 A. Like a few minutes.

Older Sister [REDACTED] - Cross Examination by Mr. DeJong

1 Q. How long did your daddy scream at your papa?

2 A. Not very long.

3 Q. And your papa left the house?

4 A. Yes.

5 Q. When your daddy screamed at your papa did that

6 scare you?

7 A. No.

8 Q. It didn't bother you?

9 A. No.

10 Q. And you loved your papa; didn't you?

11 A. Yes.

12 Q. All right. And he played with you and did things

13 for you; right?

14 A. Yes.

15 Q. Okay.

16 MR. DEJONG: One moment, please, Your Honor.

17 Q. Did your papa ever hurt you in anyway?

18 A. No.

19 Q. Thank you, Older Sister [REDACTED]

20 THE COURT: Any redirect?

21 MR. TOOKER: Can we approach briefly, Your

22 Honor?

23 THE COURT: Yes, sir.

24 (WHEREUPON, Messrs. Tooker and DeJong approached the

25 bar.)

1 MR. DEJONG: I might need to be heard on this,
2 Your Honor.

3 THE COURT: Ladies and gentlemen, sometimes
4 legal matters come up, so we're going to take just a
5 brief break for you. I've got a job for you to do while
6 you're back in your jury room, however. I need for you
7 to select a foreperson. What the foreperson will do,
8 sometimes you may have already experienced when you're
9 back in your jury room you may have a need, a cup of
10 coffee or call and check on a sick child; whatever it may
11 be. We need a spokesman, if you will, to contact the
12 bailiffs to speak on behalf of whatever juror may have a
13 special need, just write out that need. What the
14 foreperson will ultimately do when all the evidence is in
15 and the case is yours to decide, then the foreperson will
16 be the one who will facilitate the discussion one with
17 another, make sure everyone has his or her input, and on
18 behalf of the jury write out a verdict.

19 So from among the first twelve of you, we need to
20 select a foreperson while you're back and we're taking
21 care of this matter of law, you can accomplish that task
22 for me. If you would, just write the name of the
23 foreperson back on a sheet of paper, give it to the
24 bailiff and when we come back, the bailiff will let you
25 know the designated seat for the foreperson.

1 If you will retire back to your jury room. Don't
2 discuss the case at this time.

3 (WHEREUPON, the jury exited the open court at
4 approximately 9:25 a.m.)

5 THE COURT: Older Sister [REDACTED] if you want to step down,
6 just have a seat down there for right now.

7 All right. Mr. DeJong, I believe you said you
8 wanted to be heard. At the bench conference, the
9 solicitor sought to ask the witness about prior
10 statements made to law enforcement under 408 -- or excuse
11 me, 801(d). You felt that that would not be proper under
12 the rule. Be glad to hear from you.

13 MR. DEJONG: Your Honor, I can only assume for
14 the moment, since the state did not go into any great
15 specificity, under 801(d)(1) ---

16 MR. TOOKER: (B).

17 MR. DEJONG: (B). Thank you, Mr. Tooker, you
18 clarified it for me. I think, Your Honor, in that (b) is
19 -- okay. We have to start out with it's not hearsay if
20 declarant testifies at trial or hearing and is subject to
21 cross examination concerning the statement.

22 Well, number one, I didn't cross examine her
23 concerning that police statement. I cross examined her
24 on, yes, on an impeachment basis, but not what she told
25 law enforcement; what she told the forensic interviewer.

1 So I certainly don't think I -- there was any attempt on
2 my part to cross examine her on the statement that now
3 the state wants to introduce as permissible hearsay.

4 MR. TOOKER: If I may on that point, Your
5 Honor.

6 THE COURT: All right.

7 MR. TOOKER: I think the first analysis is, is
8 it proper to allow the state to use a prior consistent
9 statement to rebut an implication of fabrication; right?
10 So Mr. DeJong's cross examination of the witness was,
11 didn't you tell this other person that these things
12 didn't happen; right? So, bam, implication that when she
13 testified today, fabrication; right? So then the state
14 wants to say then, this statement that you made to law
15 enforcement before you talked to the forensic
16 interviewer, that statement was consistent with what you
17 said today. So that prior consistent statement should be
18 offered via this witness to rebut the implication of
19 fabrication.

20 So when it says be subject to cross examination, is
21 cross examination about the statement after I asked her
22 about it. So I asked her, you know, did you talk to law
23 enforcement? Did you say yadayadayada? And then Mr.
24 DeJong then has the opportunity on recross to cross
25 examination her about that statement. That's my

1 understanding of the rule.

2 MR. DEJONG: That's my understandings of the
3 rule, Your Honor. My understanding ---

4 THE COURT: But either way, she's been subject
5 to cross examination; hasn't she, even if we take your
6 interpretation, she's there for you to cross examine her
7 about any statement? She is subject to being cross
8 examined. You may choose not to, but she is subject to
9 being cross examined.

10 MR. DEJONG: Well, I don't read the rule as
11 subject to cross -- well, it does say is subject to cross
12 examine. Certainly she was subject to cross examination.
13 There's no ---

14 THE COURT: You just chose not to examine her
15 on that statement?

16 MR. DEJONG: I did not examine her on the
17 statement that she gave law enforcement. I was tempted
18 to, but I stayed away from it on purpose.

19 THE COURT: Any other matters that need to be
20 heard ---

21 MR. DEJONG: Well, I think under (b), Your
22 Honor, it speaks of and I think it is -- it speaks of a
23 recent fabrication or improper influence. It didn't come
24 out on cross examination, but certainly there was no
25 implication by my cross examine that it was a recent

1 fabrication or undue influence. I don't know what the
2 recent refers to in the rule. Recent before coming into
3 court, or recent before the allegations of the
4 fabrication. My think is recent prior to coming into
5 court. There certainly was no cross examination on
6 anything recent before coming into court. Everything was
7 limited in the cross examination to the time frame
8 between the time the allegations arose and the time she
9 went to see the forensic interviewer. So she, I think --
10 well, I don't know -- no, she didn't testify on direct as
11 to what she told the police. I think she certainly could
12 have. I think Mr. Tooker could have gone into that on
13 direct examination.

14 THE COURT: What information do you wish to get
15 from the witness as to what she told the officers?

16 MR. TOOKER: In essence I would go into, you
17 know, did you talk to Rita Burgess in this case? And did
18 you talk to her on that day that your dad got mad at your
19 papa. And when you talked to her did you tell her about
20 what happened? Yeah, I did. Were you honest with her
21 then? Yeah. Were you honest with the court when you
22 testified today? I mean, in essence that would be it.

23 I'm not looking to go into specifics, but I mean,
24 it's the state's opinion that if I say, did you say
25 something to somebody else a year ago, I mean, that is

1 hearsay, even if it's that own witness's prior statement.
2 It's still hearsay because it's an out-of-court statement
3 being offered for the truth of the matter.

4 Now, the exception then is when they have implied
5 some sort of fabrication. And I think in this case the
6 fabrication, you can argue, he's implying that the
7 fabrication was today. Or the fabrication arose through
8 some sort of coaching after the incident and before the
9 forensic interview.

10 THE COURT: So you're not going to get into the
11 specifics of what the statement was. It's that you did
12 talk to the officer and that you told the truth?

13 MR. TOOKER: Yeah.

14 MR. DEJONG: Well, he doesn't want a public
15 statement. He can ask her if she talked to the police.
16 I don't care about that.

17 THE COURT: Okay.

18 MR. DEJONG: It's when we get into what she
19 said and the statement itself, yes, I care about that.

20 THE COURT: All right. Well, he's ---

21 MR. TOOKER: Well, and I don't think extrinsic
22 evidence would be admissible without some sort of -- if
23 she says, no, I didn't talk to police or no, I didn't
24 tell them that, then at that point extrinsic evidence
25 comes in.

1 THE COURT: All right. We'll allow you to do
2 that in your redirect.

3 MR. DEJONG: Your Honor, I'm not arguing. I'm
4 asking what you're going to allow him to do? I'm not
5 clear.

6 THE COURT: What he just stated, that did you
7 talk to the police on that day that it happened? Did you
8 tell them the truth?

9 Anything else, Mr. Tooker, that you want ---

10 MR. TOOKER: Well, did you talk to the police?
11 Did you tell them what you told us today? And was that
12 the truth, what you told them was it the truth? That's
13 about it.

14 THE COURT: All right. Let's have our jury
15 come back, if they're ready. Well, they might not,
16 they've got to ...

17 THE BAILIFF: Go ahead and bring them in, sir?

18 THE COURT: Bring them in if they're ready.

19 Wait just a minute.. Older Sister would you come back
20 around? I'm sorry. I forgot. I need to have you back
21 up here.

22 All right. Now we're ready.

23 (WHEREUPON, the jury entered the open court at
24 approximately 9:34 a.m.)

25 THE COURT: Thank you, Mr. Foreman, ladies and

1 gentlemen.

2 You may redirect the witness with your questions,

3 Mr. Tooker.

4 MR. TOOKER: Thank you, Your Honor. May it
5 please the court.

6 **REDIRECT EXAMINATION**

7 **BY MR. TOOKER:**

8 Q. All right. Older Sister do you remember talking to this
9 lady right here?

10 A. Yes.

11 Q. Okay. And did you talk to her in the police car?

12 A. Yes.

13 Q. Okay. And was that on the day that your daddy got
14 mad at your papa or on a different day?

15 A. It was on the same day.

16 Q. On the same day? And on that day did you tell this
17 lady what you told the jury?

18 A. Yes.

19 Q. Okay. And were you being honest with her?

20 A. Yes.

21 Q. And were you honest with these people when you told
22 them what happened?

23 A. Yes.

24 Q. Okay.

25 MR. TOOKER: No further questions, Your Honor.

Younger Sister [REDACTED] - Direct Examination by Mr. Tooker

1 THE COURT: All right. Thank you.

2 MR. DEJONG: I have one question, Your Honor.

3 THE COURT: One question.

4 **RECROSS EXAMINATION**

5 **BY MR. DEJONG:**

6 Q. What you told the lady in the room, was that the
7 truth?

8 A. Yes.

9 Q. Thank you, ma'am. No further questions.

10 THE COURT: All right. Thank you, Older Sister [REDACTED] You
11 may step down.

12 You may call your next witness, Solicitor.

13 MR. TOOKER: Thank you, Your Honor. State
14 calls Younger Sister [REDACTED]

15 THE CLERK: Can you put your left hand on the
16 bible and raise your right?

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

20 THE WITNESS: Yes.

21 THE CLERK: Thank you. Good girl.

22 Younger Sister [REDACTED]

23 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

24 **DIRECT EXAMINATION**

25 **BY MR. TOOKER:**

Younger Sister - Direct Examination by Mr. Tooker

- 1 Q. Younger Sister what's your full name?
- 2 A. Younger Sister
- 3 Q. Younger Sister Let me get you to talk right
- 4 into this microphone. All right. Now, I want you to say
- 5 your name again?
- 6 A. Younger Sister
- 7 Q. Good girl. How old are you?
- 8 A. Seven.
- 9 Q. Seven? When are you going to be eight?
- 10 A. April the 7th.
- 11 Q. Of next year?
- 12 A. (No verbal response.)
- 13 Q. Okay. What did you do for your birthday this year?
- 14 A. I don't know.
- 15 Q. You don't know? Okay. What grade are you in in
- 16 school?
- 17 A. First grade.
- 18 Q. First grade. Do you like first grade?
- 19 A. Yes.
- 20 Q. What's your favorite part about first grade?
- 21 A. Reading.
- 22 Q. Reading. Why do you like reading so much?
- 23 A. Because you can get smarter.
- 24 Q. You can get smarter. Good. What's your teacher's
- 25 name?

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Younger Sister - Direct Examination by Mr. Tooker

- 1 A. Ms. Tarr (phonics).
- 2 Q. Is she a good teacher?
- 3 A. Yes.
- 4 Q. Do you like her?
- 5 A. Uh-huh (affirmative).
- 6 Q. Do you live in South Carolina?
- 7 A. Yes.
- 8 Q. And do you like South Carolina?
- 9 A. Yes.
- 10 Q. Okay. Who do you live with in your house?
- 11 A. My mommy and daddy, my sister and brother.
- 12 Q. And what's your brother's name?
- 13 A. Brother
- 14 Q. Is he the oldest or the youngest?
- 15 A. He's the youngest.
- 16 Q. Okay. And what's your sister's name?
- 17 A. Older Sister
- 18 Q. And is she the oldest?
- 19 A. Yes.
- 20 Q. Are you the middle one?
- 21 A. Yes.
- 22 Q. Do you like being in the middle?
- 23 A. Yes.
- 24 Q. You do? Okay. Do you know what the difference is
- 25 between a truth and a lie?

Younger Sister [REDACTED] - Direct Examination by Mr. Tooker

- 1 A. Yes.
- 2 Q. Which one is good and which one is bad?
- 3 A. A truth is good and a lie is bad.
- 4 Q. If I said that the carpet in this room is red,
- 5 would that be a truth or a lie?
- 6 A. (No verbal response.)
- 7 Q. Why don't we look at the carpet to see. What color
- 8 is this carpet?
- 9 A. Green.
- 10 Q. Green. So if I said it's red, is that a truth or a
- 11 lie?
- 12 A. It's a lie.
- 13 Q. That's a lie; right, and that would be bad. So if
- 14 I said the carpet was green, is that the truth?
- 15 A. Yes.
- 16 Q. Is that good?
- 17 A. Yes.
- 18 Q. Okay. And do you know why we're having this trial?
- 19 A. Because Papa did something bad.
- 20 Q. And what did papa do bad?
- 21 A. He touched [REDACTED] Older Sister peepee and butt.
- 22 Q. Did you see him touch [REDACTED] Older Sister
- 23 A. Yes.
- 24 Q. Did he ever touch you?
- 25 A. Yes.

1 Q. Where did he touch you?

2 A. On my peepee and butt.

3 Q. And did that happen one time or more than one time?

4 A. More.

5 Q. More than one time?

6 A. (No verbal response.)

7 Q. Okay. Did you like it or not like it?

8 A. Not like it.

9 Q. Okay. And when he touched you was it on top of the
10 clothes or under the clothes or both?

11 A. I can't remember.

12 Q. Okay. And that's okay. When he touched you did he
13 use his hand or a different body part?

14 A. His hand.

15 Q. His hand? Okay. And do you remember the day that
16 your daddy got real mad at your papa?

17 A. Yes.

18 Q. And after that did you talk to everybody who asked
19 you questions?

20 A. Yes.

21 Q. And did you tell the truth to these people today?

22 A. Yes.

23 Q. Okay.

24 MR. TOOKER: No further questions.

25 THE COURT: Any questions, Mr. DeJong?

1 MR. DEJONG: Thank you, Your Honor. May I have
2 just one moment, please?

3 THE COURT: Yes, sir.

4 **CROSS EXAMINATION**

5 **BY MR. DEJONG:**

6 Q. Hey Younger Sister

7 A. Hey.

8 Q. How are you today?

9 A. Good.

10 Q. Good. It's not fair, I know your name. You don't
11 know my name, do you?

12 A. Uh-uh (negative).

13 Q. I'm John. So can we talk for just a minute or two
14 here?

15 A. Yes.

16 Q. All right. Your papa -- we can hardly see each
17 other; can we? Let me move that out of the way a little
18 bit. There we go. Did your papa live with y'all?

19 A. Yes.

20 Q. Okay. How long did he live with you? Do you know?

21 A. No.

22 Q. Okay. Long time?

23 A. Yes.

24 Q. And he lived in the house every day; right?

25 A. Yes.

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Younger Sister - Cross Examination by Mr. DeJong

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1 Q. And did your papa play with you?

2 A. Yes.

3 Q. And would he tickle you?

4 A. Yes.

5 Q. And sometime he would even poke you with a stick in
6 the shoulder; wouldn't he, when y'all were playing?

7 A. No.

8 Q. No? All right. Now, on the day your daddy
9 screamed at your papa, when your daddy screamed at your
10 papa, do you remember where you were?

11 A. No.

12 Q. Well, were you in the room with Older Sister

13 A. Yes.

14 Q. Who else was in the room?

15 A. Papa.

16 Q. Okay. Anyone else?

17 A. No.

18 Q. Were the lights on that day; do you remember?

19 A. No.

20 Q. Was the door open or closed to papa's bedroom?

21 A. Open.

22 Q. Okay. And was your daddy home?

23 A. Yes.

24 Q. Okay. Now, on the day your daddy yelled at your
25 papa, do you remember talking to this lady right here?

1 A. No.

2 Q. You don't remember talking to her? Do you remember
3 talking to a police person at all?

4 A. No.

5 Q. You don't remember that? Well, do you remember
6 telling anyone that day that no one had ever -- well, did
7 anybody ask you if anybody had touched your body that
8 day? Do you remember that?

9 A. No.

10 Q. Okay. Do you remember telling or at least shaking
11 your head, no, that no one had ever touched you in any of
12 those spots?

13 A. No.

14 Q. Okay. Just one last question, Younger Sister Did your
15 papa ever hurt you?

16 A. No.

17 Q. Thank you, ma'am.

18 THE COURT: Any redirect?

19 MR. TOOKER: No, sir. May she be excused?

20 MR. DEJONG: No objection, Your Honor.

21 THE COURT: Certainly. Thank you, Younger Sister You
22 can step down.

23 You may call your next witness.

24 MR. TOOKER: Thank you, Your Honor. State
25 calls Teresa Drachslin.

1 THE CLERK: Place your left hand on the bible
2 and raise your right.

3 Do you solemnly swear or affirm the testimony you're
4 about to give in this case to be the truth, the whole
5 truth and nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Thank you, ma'am. If you would
8 have a seat and state your name for the record, please.

9 THE WITNESS: My name is Teresa Drachslin.

10 **TERESA DRACHSLIN,**

11 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

12 **DIRECT EXAMINATION**

13 **BY MR. TOOKER:**

14 Q. Ms. Drachslin, are you the mother of **Younger Sister** and

15 **Older Sister** and **Brother**

16 A. Yes.

17 Q. Okay. And have you been sitting through this
18 trial?

19 A. Pardon me?

20 Q. Have you been sitting through this trial?

21 A. Yes.

22 Q. Okay. When did you find out about your father-in-
23 law touching your daughter?

24 A. When my husband called me the day that the police
25 came out. He called me at work.

- 1 Q. Okay. And where do you work?
- 2 A. Now it's called Concentrix. Then it was IBM. It's
- 3 in Greenville.
- 4 Q. And when you got that call, what did you do?
- 5 A. First I checked to make sure that Older Sister was okay.
- 6 Then I went and told my manager that I had to leave. I
- 7 packed up; I left work. I went -- I called Pastor Greg
- 8 and then I picked up Joseph from daycare and went home.
- 9 Q. Okay. When you got home who did you find at your
- 10 house?
- 11 A. I don't remember if there were one or two police
- 12 officers there. I think both were there. My husband, my
- 13 father-in-law. There was nobody else that I remember.
- 14 Pastor Greg showed up after I got there.
- 15 Q. Okay. And when you arrived, would you describe
- 16 your husband's emotional state?
- 17 A. It was a mixture of sad and upset.
- 18 Q. Okay. And would you describe how your kids were?
- 19 A. Joseph was fine. Younger Sister didn't really understand
- 20 what was going on. And when I first got there, Older Sister I
- 21 think, was in the car talking with the police.
- 22 Q. Okay. Was your husband in the car with her?
- 23 A. No. He was in the backyard.
- 24 Q. Okay. And did you sit in the car with her?
- 25 A. No.

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Teresa Drachslin - Direct Examination by Mr. Tooker

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1 Q. All right. So when [REDACTED] talked with the police,
2 it was just her and Detective Burgess?

3 A. Yes. In fact, when I got there, the police told me
4 to go straight to my husband; not to speak to my
5 children.

6 Q. And did you see where your father-in-law was?

7 A. He was on the front porch.

8 Q. Okay. Did you make contact with him in anyway?

9 A. No.

10 Q. Could you observe, when you saw him, what his
11 emotional state appeared to be?

12 A. He was sitting on the front porch with his head
13 down.

14 Q. Okay. And after your kids and your husband talked
15 with the police, what happened?

16 A. After they talked to the police, Detective Burgess
17 told us that the Valentine Center would call us.

18 MR. DEJONG: Objection.

19 THE COURT: Sustain the objection.

20 Q. Did you schedule anything?

21 A. They scheduled an appointment for the Valentine
22 Center to call us.

23 Q. Okay.

24 A. The Valentine Center was going to call us to make
25 the appointment.

1 Q. An appointment for the interview?

2 A. For the forensic interview, yes.

3 Q. Okay. And did you have any instructions as to, you
4 know, what to do with your kids before the interview?

5 MR. DEJONG: Your Honor, the very question
6 asked is hearsay.

7 MR. TOOKER: It's not being offered for the
8 truth of the matter, but to show the effect on ---

9 THE COURT: I'll allow the question.

10 A. They told us that we were not allowed to discuss
11 what had happened with the children before they went to
12 the Valentine Center.

13 Q. Okay. Did you discuss with the kids what had
14 happened before they went to the Julie Valentine Center?

15 A. No. And that was very hard not to talk to them.

16 Q. Okay. And after they went to the Julie Valentine
17 Center, was there a medical examination scheduled?

18 A. They scheduled a medical exam, yes.

19 Q. Okay. Did you take your children to that?

20 A. Yes.

21 Q. And what did you observe behaviorally after your
22 father-in-law moved to your residence in South Carolina?

23 A. Well, **Older Sister** started sucking her thumb more. **Younger Sister**
24 was twisting her hair and she was pulling out clumps of
25 hair. **Younger Sister** had a hard time in kindergarten. She

1 struggled with kindergarten.

2 Q. Did you know why this was the case?

3 A. No.

4 Q. Did **Older Sister** suck her thumb already?

5 A. Yes, she did.

6 Q. So what was unusual about her sucking her thumb?

7 A. She was sucking it more. We were trying to get her
8 to stop and she just kept sucking more and more.

9 Q. Okay. And did **Younger Sister** twirl her hair a little more?

10 A. When she would get nervous she would twirl her
11 hair.

12 Q. Did she usually pull it out or was that abnormal?

13 A. Normally she wouldn't pull it out. No.

14 Q. Okay. Did those behaviors persist after your
15 father-in-law left the home or did they end?

16 A. They did for a while.

17 Q. Okay. Did they stop?

18 A. They still suck their thumb and twirl their hair
19 but not nowhere near like they did. As you can see,

20 **Younger Sister** hair is looking good.

21 Q. Okay. So that behavior has decreased since he's
22 left?

23 A. Significantly, yes.

24 Q. Is there anything else that you saw or observed in
25 your kids that you feel like this jury needs to know

1 about?

2 A. Nothing that I can think of

3 MR. TOOKER: One moment, Your Honor. No

4 further questions.

5 THE COURT: You may cross examine the witness,

6 Mr. DeJong.

7 MR. DEJONG: Thank you, Your Honor. May it

8 please the court.

9 **CROSS EXAMINATION**

10 **BY MR. DEJONG:**

11 Q. So on March the 12th of 2013, what time did you

12 leave the home, Ms. Drachslin?

13 A. You mean to go to work?

14 Q. Yes, ma'am.

15 A. It was probably around seven thirty.

16 Q. Okay. And what time did you get home?

17 A. I would have gotten the call between three and four

18 sometime. And it's forty-five minutes to an hour.

19 Q. So basically you were out of the home all day long;

20 right?

21 A. Yes.

22 Q. And having any personal knowledge of what may or

23 may not have transpired in the home that day, you don't

24 know; do you?

25 A. No, I do not.

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Teresa Drachslin - Cross Examination by Mr. DeJong

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1 Q. Did Mr. Drachslin, Sr., did he -- from your
2 observation did he have a good relationship with your
3 children?

4 A. From what I remember, yes.

5 Q. Did he play with them?

6 A. Yes.

7 Q. Play with them almost in a childish manner?

8 A. I don't know if I would call it childish, but he
9 played with them like a grandfather would.

10 Q. Yes, ma'am. Wrestle with them?

11 A. Yes.

12 Q. Tickle them?

13 A. Yes.

14 Q. Poke at them from time to time?

15 A. Probably. I don't remember everything they did.

16 Q. Yes, ma'am. But just your observation, it was a
17 good relationship with your children; right?

18 A. From what I remember, yes.

19 Q. And did they ever express any -- express to you any
20 fear of him?

21 A. No fear, no.

22 Q. Okay. Thank you, Ms. Drachslin.

23 THE COURT: Any redirect?

24 MR. TOOKER: No, sir. May she be excused?

25 MR. DEJONG: No objection.

1 THE COURT: Without objection. Thank you,
2 ma'am, you may step down.

3 THE WITNESS: Thank you.

4 THE COURT: The state may call its next
5 witness.

6 MR. TOOKER: Thank you, Your Honor. The state
7 calls David Graham.

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

10 Do you solemnly swear or affirm the testimony you're
11 about to give in this case to be the truth, the whole
12 truth and nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Thank you, sir. If you would have
15 a seat and state your name for the record, please.

16 THE WITNESS: David Graham.

17 **DAVID GRAHAM,**

18 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

19 **DIRECT EXAMINATION**

20 **BY MR. TOOKER:**

21 Q. All right. Mr. Graham, did you ever have occasion
22 to encounter the defendant?

23 A. Yes. I was in a cell with him at the Pickens
24 County Detention Center.

25 Q. Okay. And what were you at the detention center

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1 for?

2 A. Breach of trust.

3 Q. Do you have any other criminal history?

4 A. No.

5 Q. You got like a shoplifting on your record, maybe?

6 Does that sound right?

7 A. Years ago.

8 Q. And receiving stolen goods; does that sound right?

9 A. Yeah.

10 Q. Okay. And then the one that you were in the LEC
11 for, breach of trust, did you plead guilty to that?

12 A. Yes, I did.

13 Q. Did you get a sentence?

14 A. Probation.

15 Q. While you were at the LEC did you have occasion to
16 discuss with the defendant his charges and what was going
17 on in your case and his case?

18 A. Yes.

19 Q. Okay. What did y'all talk about?

20 A. I was sent for a psychiatric evaluation as part of
21 my case. That's a long story. I know that doesn't
22 correlate well with breach of trust, but that's a much
23 longer story. But I was sent for a psychiatric
24 evaluation. And when I came back from it, I was in a
25 three-way conversation with him and another inmate about

1 what I had said to get sent for the evaluation, what I
2 had had to do to be evaluated. Was I going to use mental
3 illness as a defense, and what could the ---

4 MR. DEJONG: Your Honor, I'm going to object to
5 all this mental illness stuff. It's not been raised as a
6 defense in this case, and it is not relevant.

7 THE COURT: What's the relevance of this,
8 Solicitor?

9 MR. TOOKER: He's just going to talk about they
10 had conversations about, you know, what he was doing with
11 his case, how you get evaluated and then the defendant
12 made admissions to him.

13 THE COURT: Let me talk to the attorneys up
14 here just for a moment.

15 (WHEREUPON, Messrs. Tooker and DeJong approached the
16 bar.)

17 Q. Okay. Did you talk to the defendant about his
18 charges?

19 A. Yes, I did.

20 Q. Okay. And did he make any admissions to you about
21 what he had been charged with?

22 A. Well, that's what I was building to there. He was
23 looking at my case and trying to draw a correlation so
24 that he could possibly use mental illness as a defense.

25 MR. DEJONG: I object to that, Your Honor.

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1 THE COURT: I sustain your objection.

2 MR. DEJONG: That calls for speculation.

3 Q. Move past that stuff.

4 A. Okay.

5 Q. But about actually the charges against him, did he
6 make any admissions to you about ---

7 A. Yes.

8 Q. --- having touched anybody?

9 A. Yes. He said that he had done it and that -- I
10 mean, I don't know how else to phrase it. That it was a
11 mental illness and that he needed help for it.

12 Q. Okay. So he told you that he done it and he needed
13 help?

14 A. Yes.

15 Q. Okay. No further questions.

16 CROSS EXAMINATION

17 BY MR. DEJONG:

18 Q. So you were in jail with him?

19 A. Uh-huh (affirmative).

20 Q. You have a prior record for shoplifting?

21 A. Uh-huh (affirmative).

22 Q. Receiving stolen goods?

23 A. Uh-huh (affirmative). I was not convicted of the
24 shoplifting.

25 Q. And breach of trust?

1 A. Uh-huh (affirmative). I'm also a former police
2 officer.

3 Q. I'm sorry?

4 A. I said, I'm also a former police officer.

5 Q. All right. But you were also convicted of those
6 charges; aren't you?

7 A. Yes. Not the crime of the century.

8 Q. Now, you were in jail and you were talking to ---

9 MR. DEJONG: Bear with me one second, please,
10 Your Honor.

11 Q. So you were in jail with Mr. Drachslin; right?

12 A. Uh-huh (affirmative).

13 Q. And I think the solicitor asked you if he admitted
14 it. Part of that was, I believe what you shared with law
15 enforcement was that he admitted to touching but never
16 admitted to penetrating anybody; right?

17 A. Yeah, he did admit to copulation, but never
18 admitted to penetration.

19 Q. Right. So what you're saying today is that he
20 admitted to the touching but that he never penetrated
21 anybody; right? Correct?

22 A. That's -- the best of my knowledge that's what he
23 said.

24 Q. And your charges were disposed of in July of 2013;
25 correct?

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- 1 A. Uh-huh (affirmative). July 23rd.
- 2 Q. You talked to law enforcement about Ms. Drachslin
- 3 in March of 2013; right?
- 4 A. No.
- 5 Q. Pardon?
- 6 A. No.
- 7 Q. You did not?
- 8 A. I didn't talk to them until after I was out of jail
- 9 in August or September.
- 10 Q. Let me get my glasses. So you talked to law
- 11 enforcement, I gather, on the 19th of September of 2013;
- 12 correct?
- 13 A. That sounds about correct.
- 14 Q. Did you go to them?
- 15 A. Yes, I did.
- 16 Q. You volunteered all this information?
- 17 A. Uh-huh (affirmative).
- 18 Q. All right. Thank you, sir.
- 19 THE COURT: Any redirect?
- 20 MR. TOOKER: No, sir.
- 21 THE COURT: Thank you. You may step down.
- 22 MR. DEJONG: No objection to him being excused,
- 23 Your Honor.
- 24 MR. TOOKER: You may be excused.
- 25 THE COURT: Call your next witness.

1 MR. TOOKER: Your Honor, may we approach
2 briefly?

3 (WHEREUPON, Messrs. Tooker and DeJong approached the
4 bar.)

5 THE COURT: Let's take a short break, ladies
6 and gentlemen, before the next witness is called. Don't
7 discuss the case while you're in your jury room. We'll
8 call you back in just a few moments for the concluding
9 witness, I understand, from the state. You may retire to
10 your jury room.

11 Everyone else, please remain seated.

12 (WHEREUPON, the jury exited the open court at
13 approximately 10:00 a.m.)

14 THE COURT: All right. We'll take a short
15 break.

16 MR. TOOKER: Thank you, sir.

17 (WHEREUPON, the court stood at recess for a short
18 break.)

19 THE COURT: All right. Ready to proceed?

20 MR. TOOKER: Yes, sir.

21 THE COURT: Okay. Have our jury come in if
22 they're ready.

23 (WHEREUPON, the jury entered the open court at
24 approximately 10:15 a.m.)

25 THE COURT: All right. Solicitor, you may call

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1 your next witness.

2 MR. TOOKER: Thank you, Your Honor. State
3 calls Detective Rita Burgess.

4 THE CLERK: Do you solemnly swear or affirm the
5 testimony you're about to give in this case to be the
6 truth, the whole truth and nothing but the truth, so help
7 you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. If you would have a set
10 and state your name for the record, please.

11 THE WITNESS: Rita Burgess.

12 **RITA BURGESS,**

13 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

14 **DIRECT EXAMINATION**

15 **BY MR. TOOKER:**

16 Q. Do you want to turn the mike down a little bit.

17 All right. Detective Burgess, where do you work, ma'am?

18 A. Pickens County Sheriff's Office.

19 Q. You can turn it up a little bit now. And how long
20 have you worked there?

21 A. Twenty-three years.

22 Q. Okay. And what do you do at the sheriff's office?

23 A. I'm a sergeant in the detective division assigned
24 to the juvenile unit.

25 Q. Okay. And what's the juvenile unit? What do y'all

1 investigate?

2 A. We investigate anything related to a minor, which
3 is someone under the age of seventeen.

4 Q. Okay. Does that mean you've got to investigate a
5 lot of these sex-type cases?

6 A. Yes, sir.

7 Q. Did you investigate this case?

8 A. Yes, sir, I did.

9 Q. How was it that you came to be involved in this
10 case?

11 A. I was contacted by Lieutenant Bolding and he
12 requested that I respond to the residence.

13 Q. Okay. And you were contacted by Lieutenant Bolding
14 via dispatch or your cell phone? Or how did he get in
15 touch with you?

16 A. I believe he called my cell phone.

17 Q. And when you got out there, what did you find?

18 A. What did I find?

19 Q. When you arrived on the scene, where is everybody;
20 what does the situation look like?

21 A. Well, I first met with Lieutenant Bolding who gave
22 me just a brief -- some brief information on what he had
23 responded to and, you know, the information that he had
24 encountered while he was there. I saw Mr. Drachslin, Sr.
25 sitting on the front door steps of the home. And Mr.

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1 Drachslin, Jr. was behind the residence with his
2 children.

3 Q. Okay. And so, you know, in your line of work,
4 what's your, I guess, your standard operating procedure?
5 What do you do first thing when you respond to a
6 situation like this one?

7 A. Well, the first thing I do is gather information to
8 know what I'm responding to. So I spoke with Mr.
9 Drachslin, Jr. and got information from him as to why we
10 were at his residence and what he had -- what he knew
11 about the situation, so that I have an idea of what I
12 need to speak to the children about.

13 Q. Okay. And so then is your next step to talk to the
14 children?

15 A. Yes.

16 Q. Okay. So which child did you talk to first?

17 A. Older Sister

18 Q. Okay. And where did you talk to Older Sister

19 A. In my vehicle.

20 Q. Was there anybody else in the vehicle with you?

21 A. No, sir.

22 Q. Okay. Dad wasn't there, or mom?

23 A. No, sir.

24 Q. Okay. Why is it that you want to talk to the child
25 just with you and the child?

- 1 A. To prevent any outside influence.
- 2 Q. Okay. And when you had that conversation, without
- 3 saying what she said, did she disclose when and where
- 4 sexual abuse was to have occurred?
- 5 A. Yes, she did.
- 6 Q. Okay. When did she say it was to have occurred?
- 7 A. She actually stated it had been occurring since Mr.
- 8 Drachslin, Sr. had moved here and began living with them.
- 9 Q. Okay. Did she say where it occurred?
- 10 A. In her home, in several different rooms of her
- 11 home.
- 12 Q. Okay. And after you gathered that information, did
- 13 you talk to Younger Sister
- 14 A. Yes, I did.
- 15 Q. Okay. And was Younger Sister prepared to talk to you?
- 16 A. Not as much as Older Sister no.
- 17 Q. Okay. So what's -- if you've got a child that's
- 18 hesitant, what's your next step? What do you do to see
- 19 if you can't develop a child's information?
- 20 A. When we're dealing with young children of their
- 21 age, of course, we try to speak with them and get
- 22 information from them ourselves. But we also make
- 23 referrals to the Julie Valentine Center for a forensic
- 24 interview and medical exams.
- 25 Q. Okay. Did you do that in this case?

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Rita Burgess - Direct Examination by Mr. Tooker

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1 A. Yes, I did.

2 Q. Okay. And there was some testimony before about
3 the kids being examined by a medical provider?

4 A. Yes, sir.

5 Q. All right. So dealing exclusively with these
6 juvenile type cases, how do you, I guess, figure out how
7 and when a medical provider should look at these kids?

8 A. Well, what I do is basically refer all children, if
9 they are complaining of sexual abuse, I make a referral
10 to the Julie Valentine Center for their medical exam,
11 simply because Dr. Crosswell specializes in that field
12 with children.

13 Q. Okay. And you did that in this case?

14 A. Yes, I did.

15 Q. Okay. And you did that on the day in question?

16 A. I believe it was actually the next day when I sent
17 the report in, because it was late in the day by the time
18 we got our paperwork completed. It would have been the
19 next morning. It would have been after-hours for the
20 Julie Valentine Center.

21 Q. Okay. And so after you gathered information from
22 the kids and from Mr. Drachslin, Jr., what did you do
23 next?

24 A. I spoke with Mr. Drachslin, Sr.

25 Q. Okay. And I want to show you what's been entered

1 into evidence as State's 5 and State's 6. Do you
2 recognize these documents?

3 A. Yes, I do.

4 Q. Okay. What is State's 5?

5 A. It's a Miranda warning that we provide to
6 individuals when we speak with them.

7 Q. Okay. And that's got all the person's rights on
8 that piece of paper?

9 A. Yes, sir.

10 Q. Okay. Did you go over this information with the
11 defendant?

12 A. Yes, I did. I read it to him.

13 Q. How did you know that he understood what you were
14 saying to him?

15 A. I first asked him if he could read and write, and
16 then I went over this -- I went over this with him line
17 by line.

18 Q. Okay.

19 A. And as I went over it, I put a checkmark at the end
20 of each sentence that I read to him. Then I provided it
21 to him and asked him to read the form and to initial each
22 line if he understood.

23 Q. So you read it to him and then he read it himself?

24 A. Yes, sir. He did not read it out loud to me. I
25 provided it to him and asked him to read back over it.

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1 And if he understood, then he was to initial each line
2 and sign the bottom.

3 Q. And did he do that?

4 A. Yes, he did.

5 Q. Okay. Did you witness this document, as well?

6 A. Yes, sir, I did.

7 Q. Okay. And State's 6, what is State's 6?

8 A. It is a voluntary statement provided by Mr.
9 Drachslin, Sr.

10 Q. Okay. And how did you get this voluntary statement
11 from Mr. Drachslin, Sr.?

12 A. He provided it.

13 Q. I mean, did you force it out of him?

14 A. No, sir.

15 Q. Okay. Did you waterboard him?

16 A. No, sir.

17 Q. Did he appear, when you were talking to him, to
18 understand your questions?

19 A. Yes, sir.

20 Q. Okay. Did he appear confused or addled or under
21 the influence of any drugs or medication?

22 A. He did not appear to be, no.

23 Q. Okay. All right. So your interview technique,
24 what does that consist of when you're talking to somebody
25 in a case like this?

1 A. Once I provided him with his Miranda, I basically
2 just asked him if he would tell me what occurred earlier
3 in the day.

4 Q. Okay. And that interview went on for half an hour
5 or so?

6 A. Basically, yes. And that would have included --
7 well, actually I -- yes. I gave him his Miranda at five
8 ten. And that would have included me going over his
9 Miranda; the thirty minutes would have included that.

10 Q. Okay. Is that a long time or a short time to
11 interview a suspect in a case?

12 A. It's a very short time.

13 Q. Okay. And so you talked to him for half an hour
14 and after half an hour, what was his emotional state?

15 A. He was shaken about us being there. He was sitting
16 with his head dropped when I got there. He was sitting
17 on the doorsteps with his head dropped down.

18 Q. Did he make any admissions to you about what had
19 occurred?

20 A. He did.

21 Q. What did he admit to?

22 A. He admitted to touching both -- he admitted to
23 touching Older Sister and he also admitted to putting his finger
24 in her vagina.

25 Q. Okay. So he admitted to touching Older Sister and putting

1 his finger in Older Sister vagina?

2 A. Yes, he did.

3 Q. Okay. Is that something he said out loud?

4 A. He actually made that statement out loud to
5 Lieutenant Bolding and then he also put that in his
6 written statement.

7 Q. Okay. And that written statement, that's what's
8 been marked as State's 6?

9 A. Yes, sir.

10 Q. Okay. That statement, did you watch him fill that
11 out?

12 A. Yes, I did.

13 Q. Did he fill it out with his own hand?

14 A. Outside of the very top portion where we provide
15 their personal information, their address, their date of
16 birth and so forth, we fill that in. He provided the
17 actual details of what had occurred. And he signed the
18 bottom.

19 Q. Okay. If you would, please, would you read that
20 statement to the jury?

21 A. Do you wish for me to read only what he wrote?

22 Q. Only what he wrote, yes, ma'am?

23 A. Yes, sir. I was caught with my hand in Older Sister
24 pants today. I did this several months before. I am
25 truly sorry for this. And I am ready to get help in

1 anyway. I have put my finger in her vagina before.

2 Older Sister And then it's -- I believe Lieutenant Bolding
3 wrote end and drew the line across the form to prevent
4 anything else from being added. And then Mr. Drachslin
5 signed the bottom.

6 Q. Okay. After he admitted to doing that, what did
7 y'all do?

8 A. I placed him under arrest.

9 Q. Okay. And took him to the LEC?

10 A. Yes, sir.

11 Q. Did y'all seek warrants?

12 A. Yes, I did.

13 Q. Okay. What else did you do in this case?

14 A. I made the referral to the Julie Valentine Center.
15 And I also met with Mr. Graham when he contacted our
16 office.

17 Q. Okay. And that was the fellow who had been in jail
18 with the defendant?

19 A. Yes, sir.

20 Q. Okay. And you took all of his information?

21 A. Yes, I did.

22 Q. Anything else that you did that you feel like the
23 jury needs to know about?

24 A. Not that I can recall at this moment.

25 Q. Okay. Oh, briefly. The residence, just so we've

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1 covered all our bases. What county is it in?

2 A. It's in Pickens County.

3 Q. Okay. And **Older Sister** how old was she when you
4 responded to the scene?

5 A. She was nine years old.

6 Q. And **Younger Sister** how old was she?

7 A. I believe she was five years old.

8 Q. Okay. And the defendant, how old was he?

9 A. Seventy-six.

10 Q. Okay. No further questions.

11 THE COURT: You may cross examine the witness.

12 MR. DEJONG: Thank you, Your Honor. May it
13 please the court.

14 **CROSS EXAMINATION**

15 **BY MR. DEJONG:**

16 Q. So you have been a police officer how long?

17 A. Twenty-three years.

18 Q. I'm sorry?

19 A. Twenty-three years.

20 Q. Long time?

21 A. Yes, sir.

22 Q. And this type of case where there are allegations
23 made like this, is there a protocol in place for these
24 cases?

25 A. A protocol as far as ---

1 Q. How you handle them?

2 A. We handle them on a case-by-case basis. They're
3 all different.

4 Q. Well, let's back up. Certainly it's not your job
5 to get convictions; is it?

6 A. It's my job to build a case. Yes.

7 Q. Yes, ma'am. But it's not your job -- well, let's
8 go the other way. What is your job?

9 A. My job is to investigate the allegations and if
10 there's probable cause, then we seek arrest warrants.

11 Q. Yes, ma'am. Many times in these cases, the child
12 is taken to the emergency room; aren't they?

13 A. Occasionally, yes.

14 Q. And many times they talk to what is called a sexual
15 assault nurse examiner; don't they?

16 A. That's correct.

17 Q. At the time or as close to the time as the
18 allegations supposedly took place; right?

19 A. Occasionally, yes, sir.

20 Q. And that cannot only be a matter of preserving
21 evidence, that would be one reason; right?

22 A. Yes, sir.

23 Q. But it might also be a matter of evidence that may
24 exclude a suspect; right?

25 A. Yes, sir.

1 Q. So that could go either way?

2 A. Yes, sir.

3 Q. That was not done in this case?

4 A. They were not taken to the emergency room, but they
5 were referred to the Julie Valentine Center.

6 Q. Yes, ma'am. I understand that. So when did they
7 go to the Julie Valentine Center?

8 A. I believe their medical exam was not until May.

9 Q. Right. Actually I believe the interview was prior
10 to the medical exam; wasn't it?

11 A. Yes, sir, I believe you're right.

12 Q. And the medical exam was done approximately six
13 weeks after these allegations arose?

14 A. Yes, sir.

15 Q. Now, that certainly is not an effort to preserve
16 evidence; is it?

17 A. Well, we make the referral to the Julie Valentine
18 Center and they provide the appointment to the family.

19 Q. Yes, ma'am. Now, do you remember what time you got
20 there?

21 A. No, sir, I do not have that available. It would
22 have been probably between four and four thirty.

23 Q. As to any personal knowledge as to any interaction
24 between the parents and the children before you got
25 there, you would have no personal knowledge of that;

1 would you?

2 A. Outside of Mrs. Drachslin, no, sir.

3 Q. Now, let's talk a little bit about -- well, first,

4 you talked to Older Sister in your vehicle, then you talked to

5 Younger Sister in your vehicle; correct?

6 A. That's correct.

7 Q. All right. And when you queried Younger Sister about had

8 anybody touched her, she shook her head in the negative;

9 didn't she?..

10 A. That's correct.

11 Q. She shook her head no?

12 A. That's correct.

13 Q. All right. Now, when you start talking to Mr.

14 Drachslin, you certainly didn't tell him all of his

15 rights; did you? You gave him his Miranda warnings;

16 right?

17 A. Yes, sir. I read every word of this to him.

18 Q. I think Mr. Tooker asked if you gave him all of his

19 rights. You gave him all of his Miranda rights?

20 A. That's correct.

21 Q. Not all of his rights?

22 A. I gave him all of his Miranda rights.

23 Q. Yes, ma'am. All right. Which was done at

24 approximately -- I don't have the form. Do you have the

25 form?

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- 1 A. Yes, sir.
- 2 Q. About five twelve?
- 3 A. Five ten p.m.
- 4 Q. Five ten. And the statement was ended at five
- 5 forty something?
- 6 A. You stated when it ended?
- 7 Q. Yes, ma'am.
- 8 A. At five forty-eight p.m.
- 9 Q. And you're referring, I think, just for the record,
- 10 to that's State's Exhibit Number 6; is that correct?
- 11 A. Yes, sir.
- 12 Q. Okay. So there was -- well, what time did the
- 13 statement begin; again referring to State's Exhibit
- 14 Number 6?
- 15 A. He began writing the statement at five forty-two
- 16 p.m.
- 17 Q. Okay. So basically in giving him his rights, how
- 18 long would you say that took?
- 19 A. In reading him the form?
- 20 Q. Yes, ma'am. And him signing it?
- 21 A. With me reading it to him and providing it to him
- 22 to read himself and him to sign it, a couple of minutes.
- 23 Q. So now you say after he waived his rights, he
- 24 admitted these things too; right?
- 25 A. Yes, sir.

1 Q. But there were other statements he made, as well;
2 wasn't there?

3 A. Yes, sir.

4 Q. Those statements were, I didn't touch them;
5 correct?

6 A. He did make that statement.

7 Q. Said he had no reason to touch them; right?

8 A. He made that statement in addition to other
9 statements.

10 Q. Yes, ma'am. I understand that. But let's get the
11 whole statement in there; okay?

12 A. Okay.

13 MR. TOOKER: Actually, Judge, I'm going to
14 object at this point. This is ---

15 THE COURT: What's your objection?

16 MR. TOOKER: Hearsay. It's admissible when we
17 -- if we're going to go into legal stuff, may we
18 approach?

19 MR. DEJONG: Your Honor, it's no different than
20 if they want to try to introduce parts of a statement and
21 not the entire statement. I'm entitled to get out the
22 entire statement. And that's exactly what I'm -- may not
23 be written, but a statement is a statement is a
24 statement.

25 MR. TOOKER: Judge, I'm going to go ahead and

1 object to all this talk in front of the jury.

2 THE COURT: All right. I'll overrule your
3 objection, Mr. Tooker. I'll allow him to ask her about
4 the statement.

5 Q. He stated he had no reason to touch the children;
6 right?

7 A. He did make that statement, yes.

8 Q. Yes, ma'am. Said he never touched the children;
9 right?

10 A. Yes.

11 Q. And then he said it was only in fun; right?

12 A. Yes.

13 Q. All right. But none of that is in his written
14 statement; is it?

15 A. He did not put that in his written statement.

16 Q. No, ma'am. But it was his statement?

17 A. That was a verbal statement that he made, yes.

18 Q. After he was Mirandized?

19 A. Yes, sir.

20 Q. When you got there you spoke to Mr. Drachslin, Jr.;
21 correct?

22 A. Yes, sir.

23 Q. Would it be fair to say he was upset?

24 A. He was visibly shaken, yes.

25 Q. Fair to say he was angry?

1 A. I would say he had times when he was angry and
2 times when he was very upset and crying and sad.

3 Q. And the anger was directed towards Mr. Drachslin,
4 Sr.; correct?

5 A. Of course.

6 Q. Yes, ma'am. Now, while you were there you say when
7 you got there Mr. Drachslin, Sr. was sitting on the front
8 porch steps, I guess, or on the front porch; correct?

9 A. Yes, sir. There's three or four steps on the front
10 porch and he was sitting on those doorsteps.

11 Q. While you were there and what you observed, did Mr.
12 Drachslin, Sr. ever attempt to leave?

13 A. No, sir.

14 Q. Did he ever attempt to flee the scene?

15 A. No, sir.

16 Q. He stayed right there?

17 A. Yes, sir.

18 Q. And he talked with y'all?

19 A. Yes, sir.

20 Q. He talked with y'all for about thirty minutes about
21 these other things now we know that he said before he
22 gave the written statement?

23 A. Yes.

24 Q. Do you know, during the course of your
25 investigation, did Mr. Drachslin, Sr. have any other

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1 family in this area?

2 A. Not to my knowledge.

3 Q. Did he drive; do you know?

4 A. I do not know.

5 Q. Okay. Thank you, Ms. Burgess.

6 THE COURT: Any redirect?

7 MR. TOOKER: Yes, sir.

8 **REDIRECT EXAMINATION**

9 **BY MR. TOOKER:**

10 Q. So only in fun. The defendant said, well, it was
11 only in fun. You also said that this interview took
12 about half an hour; right?

13 A. That's correct.

14 Q. Would you describe interviewing as a process?

15 A. Sure.

16 Q. Okay. I mean, you have to ask questions that
17 elicit information?

18 A. That's correct.

19 Q. Okay. So after he said, well, it's only in fun,
20 how do we get from there to him admitting that he did
21 this thing?

22 A. Well, there were a series of questions that I asked
23 him.

24 Q. Okay.

25 A. And he stated that they were playing doctor.

- 1 Q. Okay. And after he says they were playing doctor,
2 what do you say?
- 3 A. I'm going to refer to my notes or my report.
- 4 Q. Yes, ma'am.
- 5 A. I asked him if he could tell me what happened
6 between him and **Older Sister** earlier today? And he said, we
7 were playing and I went too far, I guess. I asked him
8 why he thought he went too far? And he replied, I put my
9 hand in her pants and squeezed her butt. We were playing
10 doctor pretending she got shot. I was the doctor. I
11 don't know; I was just stupid. We don't play like that
12 often.
- 13 Q. Often?
- 14 A. That's correct.
- 15 Q. It's not, I've never done this before?
- 16 A. No.
- 17 Q. It's we don't play like that often?
- 18 A. Yes, sir.
- 19 Q. Okay. And still he's sort of hedgy; isn't he?
20 He'd not outright saying, I put my finger in her vagina
21 at that point?
- 22 A. No, sir.
- 23 Q. So how do we go from there to the admission?
- 24 A. Well, he made several statements that they were
25 playing doctor; it was all -- he said, it is -- we were

1 playing doctor is all it was. She was shot in the leg
2 and had a bomb in her knee. I asked him if her injuries
3 were confined to her leg and her knee, why he needed to
4 put his hand in her pants? And he then became upset with
5 me and told me that my questions were ridiculous.

6 Q. Correct. What did you say in response to that?

7 A. I actually replied to him that what was ridiculous
8 was his grandchildren who were five and nine years old
9 were able to talk to me, a complete stranger to them,
10 concerning what had happened to them earlier in the day,
11 but he, as a man, could not tell me what happened.

12 Q. What did he do?

13 A. He began to cry.

14 Q. He began to cry?

15 A. Yes.

16 Q. Okay. And is it in that state that he then started
17 to tell you what he really did?

18 A. At that point I walked away for a few minutes just
19 to -- about six to ten feet away from him. And he began
20 telling Lieutenant Bolding what had happened that day.

21 Q. Okay. So after you said, your kids are man enough
22 to say this, your grandchildren; you're not? At that
23 point he goes ahead and says what he did?

24 A. As I walked away for a few minutes, and he began
25 telling Lieutenant Bolding about the penetration and what

1 he had done.

2 Q. And after he told Lieutenant Bolding, he told you?

3 A. Yes. And also put it in his written statement.

4 Q. And he put it in his written statement?

5 A. Yes, sir.

6 Q. No further questions.

7 THE COURT: All right. Thank you. You may
8 step down.

9 You may call your next witness, Solicitor.

10 MR. TOOKER: At this point, Your Honor, the
11 state rest its case.

12 THE COURT: Mr. Foreman, ladies and gentlemen,
13 this is a good time for us to take a break to get some
14 legal matters taken care of. If you would go back to
15 your jury room. Don't discuss the case yet. We'll call
16 you back in just a few moments.

17 Everyone else, please remain seated while the jury
18 departs.

19 (WHEREUPON, the jury exited the open court at
20 approximately 10:38 a.m.)

21 THE COURT: All right. Are there any matters
22 we need to take care of before we settle the record and I
23 talk to your client about his right to testify, Mr.
24 DeJong?

25 MR. DEJONG: At this point, Your Honor, on

1 behalf of Mr. Joseph Anthony Drachslin, Sr., I would
2 respectfully move the court for a directed verdict.
3 First with regard to the criminal sexual conduct in the
4 first degree, realizing Your Honor has to take the case
5 at this point in time in the light most favorable to the
6 state. I think the standard is -- I always read the
7 standard that there must be substantial credible evidence
8 for which the case -- for the case to go to the jury.

9 In this case, Your Honor, I submit to the court that
10 there is no substantial credible evidence with regard to
11 a sexual battery; i.e. penetration. I think penetration
12 is the thrust of what the state is going on at this point
13 in time. But under sexual battery, under Code Section
14 16-3-651, subparagraph (h), I'm not going to read it; I
15 know the court is familiar with it. But I would submit
16 to the court that under that definition of sexual battery
17 there is no substantial credible evidence for which the
18 jury could find -- make a finding of guilty.

19 With regard to the two CSC cases, Your Honor, again
20 we get into the area of what I consider to be substantial
21 credible evidence. There is some -- there was testimony
22 that it did occur. There was testimony that it didn't
23 occur. And I know Your Honor is not, as such, here to
24 weigh the credibility of the witnesses, but I still think
25 it goes back to the substantial credible evidence for a

1 jury to make a finding of guilt in those cases.

2 I would also share with the court, Your Honor, that
3 a matter of proof that the state has in a CSC third case,
4 when we look at that statute, I believe that is Code
5 Section 16-3-655, subparagraph (c), which talks about
6 criminal sexual conduct with a minor in the third degree.
7 Obviously intent is a matter that the state must prove as
8 it is an element of the crime. And I would submit to the
9 court that there was no substantial credible evidence in
10 this case presented by the state as to any intent on the
11 part of Mr. Drachslin, Sr. in this case as to arouse,
12 appealing to or gratify the lusts, passions of either
13 himself or the children in this case. Therefore I would
14 respectfully move for a directed verdict on the CSC
15 thirds, as well, Your Honor.

16 THE COURT: All right. Mr. Tooker, be glad to
17 hear from the state.

18 MR. TOOKER: Thank you, Your Honor. I think,
19 taken in the light most favorable to the state, there is
20 substantial evidence, certainly, but enough evidence to
21 go to a jury about CSC first, the sexual battery. The
22 victim testified that he did, when I asked was it outside
23 or inside your body or both when he touched you, she said
24 both; talking about her peepee and her butt.

25 That being corroborated by his admissions, that he

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1 did insert his finger into her vagina, I think are enough
2 to go to the jury on CSC first, inasmuch as the child was
3 less than eleven, and that would constitute a sexual
4 battery under South Carolina law.

5 With regard to the CSC thirds, the defendant's son
6 walked in and saw him touching his daughter in a way that
7 gave him cause to call 911. The daughter then testified,
8 yes, he touched her that way. The other daughter
9 testified, yes, he touched her that way. The forensic
10 interview of Younger Sister shows that -- she talks about him
11 touching her in that way. And then in his admissions to
12 both the -- both law enforcement, to his son via his
13 letter, and to Mr. Graham at the LEC, indicate that he
14 was inappropriately touching these children. So I think
15 there is substantial credible evidence to go to the jury
16 on all three charges.

17 THE COURT: Well, as you stated, Mr. DeJong, I
18 must consider all the evidence at this stage in the light
19 most favorable to the non-moving party, and that would be
20 the state here. It's only if there's a total failure of
21 competent evidence that I'm required to direct a verdict
22 of acquittal.

23 I believe the evidence here certainly raises more
24 than a mere suspicion of the accused's guilt. I find
25 there is substantial circumstantial evidence and direct

1 evidence that would require a jury to decide factually
2 just what occurred on both of these charges as far as the
3 sexual battery and as far as the gratification. So I
4 respectfully deny your motions, sir.

5 Any other matters we need to take care of?

6 MR. DEJONG: I would offer my client -- I'm not
7 sure, Your Honor, at this point in time whether he is
8 going to testify or not. I would offer him for voir
9 dire.

10 THE COURT: Yes, sir, if you would come forward
11 with him up here.

12 Mr. Drachslin, if you would just stand there with
13 your attorney. If you would, please, raise your right
14 hand. Do you swear or affirm the testimony you're about
15 to give me will be the truth, the whole truth and nothing
16 but the truth, so help you God?

17 THE DEFENDANT: I do, sir.

18 THE COURT: Mr. Drachslin, I need to ask you
19 some questions. I'm confident that you've had a chance
20 to go over these things with your attorney. I need to be
21 able to decide in my own mind that you understand the
22 rights that you enjoy under our constitution. We've
23 reached the stage in the trial where you can present a
24 defense. You have a right to claim the protections given
25 you by the United States Constitution, the Fifth

1 Amendment, Article I of our state constitution. Each of
2 those basically say that no person in a criminal trial
3 can be compelled or required to be a witness against
4 himself. That means you can't be required to testify in
5 this case. You have a right to testify in your own
6 behalf. Nobody can make you testify. It's a personal
7 right that you enjoy. Nobody can waive that right but
8 you. If you decide to testify, you'll be subject to the
9 same rules that govern any other witness. You can be
10 examined and cross examined on any relevant matters in
11 the case.

12 In addition, if you have prior convictions of any
13 kind that involve dishonesty or false statements or any
14 crime that has been punishable by imprisonment for more
15 than one year, if I determine that the probative value of
16 admitting that evidence would outweigh any prejudicial
17 effect to you, then the solicitor would be allowed to
18 attack your credibility by introducing your prior
19 criminal record.

20 Now, the decision to testify on your part must be
21 voluntarily made by you, intelligently made by you, with
22 the knowledge of the protections that you enjoy under our
23 constitution. And also understanding the consequences if
24 you do choose to testify, the impeachment that the state
25 will be allowed.

1 You may choose not to testify. If you make that
2 decision, I'm going to instruct the jury that they cannot
3 give that fact any consideration whatsoever. There's to
4 be no prejudice to you because you chose to exercise your
5 rights not to testify. Whether to offer testimony or not
6 is totally up to you. You can talk with your attorney.
7 You can talk with others. But ultimately that's a
8 decision that you and you alone will have to make.

9 Mr. Drachslin, do you understand what I'm talking
10 about?

11 THE DEFENDANT: Absolutely, sir.

12 THE COURT: Do you have any questions of me?

13 THE DEFENDANT: I can't think of any, sir.

14 THE COURT: All right, sir. You've discussed
15 this with your attorney already?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I'm going to give you time now.
18 We'll take a short break so you can further talk with
19 him. You may return to your table, sir, with your
20 attorney.

21 Are there any prior offenses for which the state
22 would use to impeach the defendant if he chose to
23 testify?

24 MR. TOOKER: No, sir.

25 THE COURT: All right. Let's take a short

1 break and we'll be ready to proceed.

2 You can talk with your attorney again, Mr.

3 Drachslin.

4 If I could see the attorneys here just for a moment
5 before you -- let him go on back. All right. We'll be
6 at ease. We'll take about a ten minute break.

7 (WHEREUPON, Messrs. Tooker and DeJong approached the
8 bar.)

9 (WHEREUPON, the court stood at recess for a short
10 break.)

11 THE COURT: Everybody ready to proceed?

12 MR. TOOKER: Are we talking about with regards
13 to the defense resting?

14 THE COURT: Well, I'll certainly let you ---

15 MR. DEJONG: I was giving you first shot if you
16 were ready to proceed or not, Mr. Tooker.

17 MR. TOOKER: Well, when it's appropriate or
18 when Your Honor would like to hear, I'd like to talk
19 about some charges and just make sure that I'm on the
20 same page as Your Honor with regards to charges.

21 THE COURT: Okay. Mr. DeJong, is your client
22 going to testify?

23 MR. DEJONG: He is not, Your Honor, and the
24 defense would rest. Before the jury comes back, I would
25 just respectfully renew my motion for a directed verdict,

1 Your Honor.

2 THE COURT: All right. Again, I deny your
3 motion. You have rested. Your motion is timely.
4 However, for the benefit of the jury, when they come back
5 we'll let you rest on the record, again, for their
6 benefit.

7 MR. DEJONG: Yes, sir. I'll do that.

8 THE COURT: All right. What about charges, Mr.
9 Tooker?

10 MR. TOOKER: With regards to CSC first, I
11 wanted to inquire as to whether or not Your Honor's
12 charge, when it dealt with sexual battery, used the
13 statutory language penetration however slight?

14 THE COURT: It does.

15 MR. TOOKER: Okay. And then I wanted to
16 inquire as to Your Honor's definition of lewd act on your
17 CSC third charge.

18 THE COURT: Well, it'll be the statutory
19 language. It'll be the -- I'll charge them the defendant
20 is charged with CSC with a minor third degree. Must
21 prove the defendant was over fourteen. Lewdly and
22 wilfully committed or attempted a lewd and lascivious act
23 upon a child under the age of sixteen with the intent to
24 arouse, appeal to, gratify the lusts, passions or sexual
25 desires of the defendant or of the child.

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1 MR. TOOKER: Okay.

2 THE COURT: I'll explain what wilfully means,
3 what lewd means, what lascivious means.

4 MR. TOOKER: Okay. And Your Honor indicated
5 that he was going to give a charge as to the defendant's
6 statements or confession?

7 THE COURT: Right.

8 MR. TOOKER: And Your Honor had mentioned the
9 charge about inconsistent statements, and you indicated
10 that you were going to include that part after the
11 defendant's charge?

12 THE COURT: Right. I'll probably put both of
13 those in at the same time when we're talking about the
14 statements. The statement for the defendant, and I'll
15 explain to them it's their job to decide whether or not
16 the statement was a defective statement and I'll also
17 talk about inconsistent statements; how they can judge
18 those for credibility.

19 And both attorneys have reviewed the verdict form
20 and find it in order.

21 All right. Everybody ready to proceed?

22 MR. DEJONG: Ready for the defense, Your Honor.

23 MR. TOOKER: If I could just have a few more
24 moments just to kind of ---

25 THE COURT: Okay.

1 MR. TOOKER: --- organize my thoughts.

2 THE COURT: Let me know when you're ready, Mr.

3 Tooker.

4 MR. TOOKER: Thank you, sir.

5

6 (WHEREUPON, the court stood at recess for a short
7 break.)

8 MR. TOOKER: Your Honor, I have one more
9 question with regards to charges.

10 THE COURT: All right. What is that?

11 MR. TOOKER: Will you charge the jury that with
12 regards to the criminal sexual conduct cases, all that
13 needs -- that they can conclude the defendant is guilty
14 based on the credibility of the witnesses alone. And I
15 believe that's a specific CSC charge. And no need of
16 corroboration, I think is the ---

17 MR. DEJONG: I think the Court of Appeals or
18 somebody has said that's okay.

19 THE COURT: Right.

20 MR. DEJONG: I don't like it, but I would think
21 the judges now are ---

22 THE COURT: I normally don't, but I'll ...

23 MR. TOOKER: Your Honor, I'm prepared to
24 proceed.

25 THE COURT: If our jury is ready, you can have

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1 them come in.

2 (WHEREUPON, the jury entered the open court at
3 approximately 11:19 p.m.)

4 THE COURT: Thank you, Mr. Foreman, ladies and
5 gentlemen, we're now ready to proceed.

6 Mr.. DeJong, you may call your first witness.

7 MR. DEJONG: The defense rests, Your Honor.

8 THE COURT: All right, ladies and gentlemen,
9 you've heard all the testimony now in the case. We now
10 have an opportunity for the attorneys to address you in
11 their closing statements. If you'll remember what I told
12 you when we began the trial, the attorneys' statements to
13 you is not evidence. You've heard all the evidence in
14 the case. Still, I urge you to listen carefully as each
15 attorney addresses you. I'm confident they can each give
16 you some valuable insights to help you in your
17 deliberations. After each of the attorneys have had a
18 chance to address you, I'll instruct you on the law. The
19 case will then be yours to decide.

20 Solicitor, you may address the jury in your closing.

21 MR. TOOKER: Thank you, Your Honor. May it
22 please the court, Mr. DeJong, Mr. Foreman, ladies and
23 gentlemen of the jury.

24 **CLOSING ARGUMENT**

25 **BY MR. TOOKER:**

1 That was a disturbing case. These are not fun
2 cases. These are not cases that are easy to put out of
3 mind and think to yourself after the fact, well, okay, I
4 sat in on that, I saw that, I can move on with my life.
5 These are the kind of cases that stay with you, because
6 these kind of allegations are the kind of allegations
7 that everybody can think about and be reviled by.

8 And so I do again appreciate your service in
9 listening to this case. Because I know it's not a fun
10 thing to hear. That testimony is not fun to hear. And
11 these ideas are not idea that people like thinking about.

12 Now, like I said before, the defendant is charged
13 with three specific offenses. He's charged with criminal
14 sexual conduct in the first degree and then two counts of
15 criminal sexual conduct in the third degree.

16 Now, I tend to be a bit of a visual learner. So
17 what I've done is I've just broken down the elements a
18 little bit. And let me say, too, if anything I say is
19 different than what His Honor charges you when His Honor
20 charges you on the law, then you have to, by your oath,
21 do what His Honor says. His Honor is the expert on the
22 law. You know, I'm just an attorney here explaining my
23 case to you.

24 But my understanding of this statute is you can
25 really break CSC with a minor in the first degree down

1 into two elements. The first being a child less than
2 eleven years of age. And the second being a sexual
3 battery. So in this case the child, during the time
4 frame alleged, -- well, the child is still less than
5 eleven years of age. But during the time frame, **Older Sister**
6 was less than eleven years of age.

7 And what's alleged in a CSC first is that he
8 penetrated her digitally. That he put his finger into
9 her vagina. All right. So that, pursuant to our statute
10 in this state, constitutes a sexual battery.
11 Penetration, however slight, constitutes a sexual
12 battery.

13 The second set of charges are CSC thirds. And the
14 CSC third statute is a little more in-depth because it's
15 not so simply as, was there penetration or was there not
16 penetration? It includes forms of touching, non-
17 penetrative touching. Now, what there has to be are
18 children less than sixteen years of age. In this case,
19 of course, we have **Older Sister** less than eleven; nine years
20 old, eight years old at the time. And **Younger Sister** much
21 younger than that; five, six years old at the time. So
22 both under sixteen. And of course, the defendant well
23 over fourteen years of age.

24 A lewd act has to occur. A lewd act is a touching.
25 Some kind of touching of the person of another with a

1 lewd or lascivious intent. Now, that intent is the real
2 question here. The intent is the intent to gratify the
3 sexual passions of the self or the child; right?

4 Now, if you believe the state's case, then that
5 element is satisfied. And I'll talk to you in a little
6 bit about why I believe that we have met our burden in
7 this case. But suffice it to say, the elements are
8 satisfied if you find our evidence convincing.

9 Now, I'll talk to you about evidence and the burden.
10 Now, the burden is on us. The burden is on the state.
11 And the judge will explain that to you in his charge on
12 the law. And that burden is beyond a reasonable doubt.
13 And that's a high burden. That's the burden in criminal
14 cases. But I don't want you to think that it is
15 unsurmountable, that it is not meetable. Because in this
16 country, in this state, in this jurisdiction, any time
17 someone has ever been accused of something criminal and
18 they have been convicted, they have been found guilty
19 beyond a reasonable doubt. And that is not a new thing.
20 That's going back to the constitutional convention in
21 what I believe was 1789 when our forefathers figured this
22 stuff out. That's when the burden was set. And any time
23 someone's convicted; magistrate court, general sessions
24 court, federal court, the burden was beyond a reasonable
25 doubt and that burden was met.

1 Credibility is important in any case and it's
2 particularly important in cases like these. Because in
3 cases like these seldom do you have a smoking gun. Now,
4 this case is novel inasmuch as we actually have a witness
5 to the abuse. I'll tell you, that's not something you
6 see very often. You know, you seldom find out that
7 somebody witnessed a child being abused.

8 But what you also have in these CSC cases, these
9 touching cases, is you don't have physical evidence. You
10 don't have injury. Right? You don't have -- I'll give
11 you a good example. If you've got a female jogging
12 through a park and she's attacked by a male and sexually
13 assaulted, you can expect there to be a punch to the face
14 or injuries to the ribs, you know, DNA evidence left from
15 the seminal deposits that that man would make. And
16 that's what you look for in cases like this.

17 Now, why these cases are different and why these
18 cases are special, because what you have is a period of
19 conduct over time. And a period of conduct over time for
20 what's happening is somebody's touching. You know, maybe
21 they touched a little bit at first and then they started
22 touching more and it progresses and it progresses and it
23 progresses.

24 And I'll say in this case, I count the Drachslin
25 family fortunate. I count them fortunate because clearly

1 the girls were not prepared to come forward and say what
2 had happened. Were it not for circumstance and fate,
3 this man would not have seen what his father was doing to
4 his daughters and would not have been able to stop it.
5 Who knows what would have happened? Who knows how much
6 worse it could have gotten? So as horrible an event as
7 this has been on this family, I believe they're fortunate
8 in that respect.

9 Now, like I said, credibility is important. And the
10 judge will instruct you on credibility. And credibility
11 means believability. But ultimately what I think about
12 when I think about credibility is what reason does
13 somebody have to lie? Right? What do they get out of
14 lying? What's the benefit to them of telling something
15 that's not true or saying something they think that will
16 help them? Right? Where do they benefit? In this case
17 I cannot image a circumstance that gives any of these
18 people a reasonable to lie.

19 Now, let's first talk about the Drachslin family.
20 You heard testimony from Joe, Jr., from Teresa and from
21 the girls, **Older Sister** and **Younger Sister** right? What reason do they
22 have to lie? I think in cross examination much was made
23 of the fact that before Rita Burgess got there how long
24 were the girls left with their father. You know, what
25 could he have told them; right? What is the testimony,

1 really, that he's steaming, like any father. That he's
2 outside his residence at the rear. That the defendant is
3 at the front of the residence and the girls are inside.
4 Right? And ultimately, let's say he's with them the
5 entire time, what reason does he have to accuse his
6 father of this? Clearly he is torn up. Clearly he is
7 torn up over the fact that a man that he loves did
8 something to someone for whom he cares so much. So what
9 reason would he have to then say, yes, I saw this if it
10 didn't happen. Or for him to, heaven forbid, make the
11 girls say this stuff? I mean, that is so beyond what I
12 can comprehend when observing these people and when
13 seeing them testifying and when hearing what they've had
14 to say, that I don't understand that argument, I guess.

15 Because these people, their lives have been wrecked.
16 I mean, their family has been split up as a result of
17 this. A man that they cared about; they cared so much
18 that they took him in Pennsylvania. They took him into
19 their home where they could help him. Where they could
20 make sure that he was taken care of. And in those
21 circumstances, you know, in those circumstances of love
22 and trust, he abused that trust. He abused that love.
23 And he abused those girls.

24 Now, the girls. It's interesting with children when
25 you call children to testify, and I don't know if y'all

1 remember, but some of the questions I asked them are
2 questions that didn't have anything to do with this case;
3 right. You know, what's your favorite class in school?
4 What's your teacher's name? You know, these kind of
5 small questions to show that they're capable of
6 understanding what I'm saying and that they're capable of
7 answering truthfully. That they understand the
8 difference between truth and a lie. That they understand
9 what it means to tell the truth and what it means to tell
10 a lie. And that they know that the truth is important
11 and that lying is bad.

12 So we ask these questions to establish that
13 foundation. And then after asking those questions, what
14 did they say happened? Older Sister says, papa touched her on
15 her peepee and her butt. Where? Under the clothes and
16 on top of the clothes. Did this happen once or more than
17 once? This happened more than once. What did he touch
18 you with? His hand. Where did this happen? Different
19 rooms in my house.

20 What did Detective Burgess testify to? She
21 testified that when she talked to her in the car when
22 nobody else was around, what did she say? It started
23 after he moved down from Pennsylvania and it happened in
24 different rooms in my house. She doesn't say it happened
25 anywhere else. She doesn't say it happened at school or

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1 on the bus or anywhere but at her home with her papa.
2 She also testified when asked was it on top of the skin
3 or inside your body? What did she say? Both. She said
4 he touched her both places. He touched her on top and he
5 touched her inside. What does that mean? It means
6 penetration.

7 The Julie Valentine Center folks and what they came
8 here to testify to was in essence -- and that's part of a
9 presentation of a case, is we're trying to show you what
10 steps were taken over the course of an investigation.
11 And ultimately what they do doesn't have anything to do
12 with whether or not you believe what the girls had to
13 say. But what they come in to do is say, listen, this is
14 how these things work. This is what this procedure is.
15 And when we're referred a child this is what we do. We
16 talk to these people. When we're referred a child, this
17 is what we do.

18 And what did Dr. Crosswell say? Dr. Crosswell said
19 that Older Sister complained of touching; right? And Older Sister
20 complained of the defendant having touched her
21 inappropriately. Now, she said Younger Sister wouldn't say
22 anything. I think that's one of the consistencies in
23 this case, is Younger Sister wasn't initially ready to talk about
24 this stuff. Wasn't ready to talk about it with Detective
25 Burgess. Wasn't ready to talk about it with the health

1 care provider. But -- and this is why we called Ms.
2 Carlberg, the benefit of people like that, like Ms.
3 Carlberg and other folks, the Julie Valentine Center, is
4 they talk to kids. They're trained to talk to kids.
5 They have this experience and they can relate to these
6 kids. And y'all watched the video. But better than I
7 can. You know, better than Detective Burgess can.
8 Better than somebody who -- despite the fact that we're
9 in this field and we do this thing, we don't have the
10 same requisite skill set and ability to communicate with
11 these children. So she talked to this child, and she
12 talks to this child and the child opens up.
13 In that video, what does she talk about? She talks
14 about her papa touching her on multiple occasions; right?
15 She talks about her papa touching her on her skin. She
16 talks about her papa touching her on her peepee and her
17 butt; right? She talks about having seen her papa touch
18 Older Sister What is going on here; right? I mean, if you're
19 stepping back and you're looking at this situation, what
20 really is going on here? Older Sister the older daughter,
21 primary target; right? She's the one that he's focusing
22 his efforts on. She's the one that he's already elected
23 to penetrate digitally.
24 Now, Older Sister -- or Younger Sister what is she? She's
25 younger. She's developing; right? She's getting a

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1 little older, a little more relatable. And he starts
2 touching her, too. He starts touching her, too. And
3 what does he do? He touches [Older Sister] in [Younger Sister] presence.
4 And what does that say to [Younger Sister] right? Well, it's
5 okay. You know, he does it to my big sister, so that
6 must make it okay. Right? It's not a big deal. And you
7 know, it's bad, it's not supposed to happen, but he does
8 it to [Older Sister] And it's my papa and I love him. He
9 wouldn't hurt me. You know, he's my grandfather. Right?
10 He wouldn't do anything bad to me.

11 We also had a couple of independent witnesses
12 testify in this case. One was Dr. Greg Mazak. He was
13 the pastor at their church; right? And he testified that
14 he was called. When all this transpired he was called
15 and he came out to the residence to attend to his flock;
16 right? That's what preachers do. They talk to the folks
17 who they care for. And he goes up there and he talks to
18 these people. And what does he say? When he responds
19 these people are a wreck. They're emotionally extremely
20 vulnerable. What does he testify about the defendant?
21 The defendant is sitting there with his head hung on the
22 front porch; right? His head hung. What did Lieutenant
23 Bolding say? He looked humbled; right? He looked
24 humbled. His head hung on the front porch. Mr. Mazak
25 also said he received a phone call from Joe, Jr. That

1 phone calls, he said Joe was in an emotional state. He
2 was very upset. And in that upset and excited state,
3 what did he say? He said, I walked in and saw my father
4 doing this.

5 Now, if this whole thing is some scheme that has
6 been concocted, do you think he's going to be able to
7 fake the emotion? Right? He's going to be able to fake
8 the emotion that you heard in that 911 call? Is he going
9 to be able to fake the emotional that everybody testified
10 to; that he was upset, that he was back and forth between
11 anger and tears; right? What does a father who just saw
12 his own father molesting his daughter do? He gets mad
13 and he gets sad. I cannot think of two more primal
14 emotions that would embody what a father would feel like
15 when he saw something like that.

16 I'll be honest, I'm recently a father. I had my
17 first child about three weeks ago. And in my mind, I
18 find it almost inconceivable to think about my dad doing
19 something to my son. I just -- I cannot fathom it. And
20 when I do, I feel different emotions. I feel rage and I
21 also feel the utmost hurt. I mean, I cannot think of
22 something that would be more of a betrayal of trust and
23 of love than witnessing that kind of event.

24 You also heard from a fellow name David Graham;
25 right? The guy took the stand, said he was in jail with

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1 the defendant at the LEC. He said they were sharing a
2 cell together. They're sharing a cell and the defendant
3 admits to him that he touched his girls. Now, at this
4 point he's been around the system a little bit and he's
5 pulling back, he says, whoa, whoa, whoa. I didn't
6 penetrate. I just touched them. I just touched them.
7 That's all. I just touched them. I didn't penetrate
8 them. I just touched them; right? Initially we've got
9 admissions to law enforcement right out the gate, before
10 he knows what all this means. Before he knows where it's
11 going to take him, to this courtroom in front of you
12 people. He doesn't know all that. All he knows is his
13 son walks in and sees his hand down his daughter's pants;
14 he's been caught. He's been caught; he knows he's been
15 caught. Law enforcement talks to him and he admits that
16 he's been caught.

17 Now, law enforcement. We had two officers in this
18 case; Lieutenant Brian Bolding and Detective Rita
19 Burgess, who in aggregate have forty-five years or
20 something of law enforcement experience. And they
21 testified as to what he said; right? I mean that's what
22 you do in a case like this. You interview the defendant.
23 You try to ascertain whether or not this person did this
24 thing they're accused of doing. So they say, yeah, we
25 talked to him. And ultimately what does he say? He

1 says, I did it. He says, I did it and I am guilty;
2 right? He says, I am guilty of touching these girls
3 inappropriately.

4 Now, initially Lieutenant Bolding responds and
5 Lieutenant Bolding encounters the defendant on the front
6 stoops with his head hung and he says, are you okay? I
7 mean, he's not even interrogating him at this point;
8 right? He's checking on this person who he's been made
9 aware who has just been caught molesting his
10 granddaughter and says, are you okay. He sees this man
11 and this man says, no, no, I got caught with my hand down
12 Older Sister pants. Immediately. I got caught with my hand
13 down Older Sister pants.

14 So law enforcement says, okay, whoa, whoa, whoa, got
15 to step back. Brian Bolding says, I need to call
16 somebody who deals specifically in these cases. Who does
17 he call? Calls Detective Burgess; twenty-three years on
18 the force. She comes out and what does she do? She
19 talks to Joe, Jr. She talks to the girls. And then she
20 goes and confronts the defendant with the information
21 that she's ascertained from Joe, Jr. and from the girls.
22 Talks to them about -- talks to him about what he did.
23 Asks him why; what is going on here. And he's denying
24 now. He's like, oh, crap, no, it's not what it looks
25 like. It's not what it looks like. Now, we were playing

1 doctor; that's all. We were just playing doctor. And
2 then she was like, you cannot man up enough, you cannot
3 be enough of a man to admit what you did. You cannot say
4 that I did these things when these girls have gone out on
5 a limb and have said, you did these things to me. Have
6 been real grown-ups, have been real adults. And he
7 breaks down. He starts crying. He hangs his head. And
8 what does he say? I did it. He says I did it. He says,
9 I touched those girls inappropriately. He says, I put my
10 finger into Older Sister vagina. This is not some sort of
11 confusion; right? What does an innocent person say when
12 they've been accused of doing something like this; right?
13 Absolutely not. Absolutely not. There is no way in hell
14 I would ever do anything like that. That is wrong. That
15 is impossible. What does this man say? I did it. Oh,
16 no, wait, it was a mistake. Then he breaks down and
17 admits again he did it.

18 Now, say I attribute that to the fact that he is
19 these girls' grandfather. And I bet somewhere in there
20 he does love them. And he cares for them. And I think
21 when things like this happen, there are two parts of a
22 person. There is the good part, the part that cares, the
23 part that is a grandfather that wants to hug and tickle
24 and love these girls. And then there's the bad part.
25 There's the bad part that somehow motivates someone like

1 this to do this kind of thing to his own flesh and blood.
2 And that bad part was overwhelmed by the good part. The
3 good part said, you have to come forward. You have to
4 tell what you did. And he did. He did.
5 He writes that information down. He writes it down
6 after having signed a Waiver of Rights form where they
7 went over with him exactly what his rights were, exactly
8 what it is that he's allowed to do, what this country
9 does to protect people. He's made aware of all that
10 information. There's no question that he understands
11 what all this means. And then what does he do? He
12 writes out a statement. I was caught with my hand in
13 Older Sister pants today. I did this several months ago. I
14 am truly sorry for this and I'm ready to get help in
15 anyway. Why does he need help if it's an accident; if
16 it's been misconstrued; if they're only playing doctor,
17 why does he need help; right? One of the elements of CSC
18 third; right, is lewd and lascivious intent. You're
19 trying to arouse the sexual feelings of the child or of
20 yourself. And why would he need help unless he's doing
21 that. Somebody who's playing with a kid and, you know,
22 touches them by mistake doesn't say I need help. They
23 say, it's a mistake. He says, I need help. And who else
24 does he say he needs help to? He says he needs help to
25 David Graham in the jail. He says, I need help; that's

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1 what I need. I need to get better. I'm afflicted. I'm
2 sick. Right? It's not that I'm a criminal. It's not
3 that my criminal intent motivated me to do this heinous
4 thing to my granddaughters. It's no, no, I'm sick. You
5 know, feel sorry for me. I need help. That's what I
6 need. I need help. No. You get punished. You do
7 something bad and you get punished. And that's what this
8 is about. It's not about did he do it; did he not do it.
9 It's about him not wanting to be punished.

10 I have put my finger in her vagina before, Older Sister
11 Put my finger -- he wrote the words on a piece of paper.
12 He wrote them down. Innocent people don't write down on
13 pieces of paper that they've inserted their fingers into
14 their granddaughters' vaginas. That's not what an
15 innocent person does. That is what a guilty person with
16 a guilty conscience does. He made the statements to his
17 cell mate and he wrote a letter.

18 He wrote a letter to his son. Dear son, I know you
19 did what you had to do. I don't have any bad feelings
20 towards you. This has been an eyeopener for me. Why is
21 it an eyeopener? Oh, because I can't do that. It's not
22 good for me to molest my daughters. I pray for you to
23 forgive me. I pray for you to forgive me. He needs
24 forgiveness. He needs forgiveness because he is guilty.
25 I have taken all thoughts of every doing anything like

1 that ever again. Oh, I won't do it again, I promise.
2 Please forgive me; I won't do it again. I won't do it
3 again. I love your children too much for that. And
4 that's the thing, again, this juxtaposition. And I
5 believe him when he says I love your children, because he
6 does. He's their grandfather. But it's this
7 juxtaposition between the part that's good, the part that
8 loves them, and that evil part that motivates him to do
9 these things to these children. I'll be having a
10 hearing. I'm hoping I can be free. I hope you can find
11 it in your heart to come and pick me up. I love you
12 very, very, very much.

13 And that's one of the more interesting parts of
14 this. He says he apologizes. He says he loves your
15 children. He says that he needs help. He says all these
16 things. And then what does he say? He says, well, I
17 need your help. I need you to come help me in this
18 hearing. That's what I need. I want to be free. I want
19 to be free; right? So ultimately, even that part he
20 loves the kids, that's still overwhelmed by the part that
21 is more concerned with his own personal being, his own
22 freedom, than the state of his grandchildren, than what
23 he did to them. A truly sorry person says, I am so
24 sorry, I'm willing to face the consequences. Please
25 forgive me. I hope you can. No, but this man says, I'm

1 sorry, I need help, you help me. It's this, this self-
2 centered vision of his world. It all revolves around
3 him. It's got nothing to do with these poor girls.
4 These poor girls that he made testify, that he made come
5 in here, take the stand ---

6 MR. DEJONG: Your Honor, I'm going to object to
7 that.

8 THE COURT: Sustain the objection.

9 MR. DEJONG: I'd ask for a curative
10 instruction.

11 THE COURT: All right. Ladies and gentlemen,
12 the fact that -- the state has the burden of proof and
13 they have the burden of presenting evidence to show the
14 proof. The defendant does not have any obligation to
15 prove his innocence.

16 **CLOSING ARGUMENT CONTINUED**

17 **BY MR. TOOKER:**

18 So ultimately what did he do? He inserted his
19 finger into her vagina, Older Sister a child less than eleven.
20 That is criminal sexual conduct in the first degree with
21 a minor. He rubbed on Younger Sister He rubbed on Older Sister
22 Younger Sister saw him rub on Older Sister Her father saw him rub on
23 Older Sister He did these things and he did them with a lewd
24 intent. He did them and he needs help. And he needs
25 help because he's afflicted. Because that part in his

1 brain that's supposed to tell him not to do these things
2 didn't tell him not to and he's doing them. And that's
3 why you need to find him guilty. That's why when you go
4 into your jury room and you deliberate on these facts,
5 you think about what he said and you think about what
6 these witnesses said and come to the conclusion that he
7 is guilty on criminal sexual conduct in the first degree,
8 criminal sexual conduct in the third degree and criminal
9 sexual conduct in the third degree.

10 Thank you.

11 THE COURT: All right. Mr. DeJong, you may
12 address the jury in your closing.

13 MR. DEJONG: Thank you, Your Honor. May it
14 please the court. Mr. Tooker.

15 **CLOSING ARGUMENT**

16 **BY MR. DEJONG:**

17 Mr. Tooker and I do not agree on many, many things.
18 One thing we can agree on, these are very, very difficult
19 cases. Difficult from this side of the rail. Difficult
20 from your side of the rail. Difficult from your side of
21 the rail, I suggest, ladies and gentlemen, is that some
22 twenty-two, twenty-four hours ago I stood in front of you
23 and asked you to remember that law called the presumption
24 of innocence. Why I would suggest that makes it
25 difficult for you, because as I have gone through this

1 case, as you have, you're almost in an island by yourself
2 when we ask you to remember that presumption of
3 innocence. And we understand everyone has a job to do.
4 Law enforcement has a job for the community at large.
5 Ms. Burgess testified and when I asked her is it your job
6 to convict people? No, it's my job to build cases.

7 Well, I suggest to you, ladies and gentlemen, that's
8 about half right. Do they not and are they not charged
9 with protecting the innocent as much as making a case
10 against the guilty? Are they not charged with following
11 their very own protocols that are in place in cases like
12 this? They arrive -- they being Ms. Burgess and Mr.
13 Bolding arrive where they allege a crime has been freshly
14 committed. They wait six weeks to get any kind of
15 medical exam. Four weeks before an interview is ever
16 done. We can talk about the interview. They're here for
17 all of us. And they don't do what they're charged to do.

18 Indeed, Mr. Bolding said, yeah, I knew why I was
19 responding to this call. He did, I think, have to back
20 paddle a little bit. I think he said he talked -- maybe
21 he didn't; you take it the way you heard it. But at any
22 rate, he talked to Mr. Drachslin, Jr. before he talks to
23 Mr. Drachslin, Sr. Certainly at that point in time he
24 knew -- he being Mr. Bolding -- knew what he was dealing
25 with and had an alleged suspect identified. Rights. As

1 one great criminal defense lawyer one time said, our
2 rights, mine, all thirteen of yours and everybody else's,
3 is not safe unless we guarantee them to those who are
4 charged with the most heinous crimes. Rights. He knew
5 what he was looking at. Does he try to give and comply
6 with Mr. Drachslin, Sr.'s rights? No. He asked him
7 questions. He's a police officer. Twenty-three or
8 twenty-five years. He's no rookie. He knows what he's
9 doing. He has the Waiver of Rights forms with him. I
10 believe that's what he testified. Does he Mirandize?
11 Does he give Mr. Drachslin, Sr. his rights at that point
12 in time? No. He does not.

13 And then we come in here and ask you to follow the
14 law for presumption of innocence when, in a case like
15 this, nobody wants to follow that law. Everyone wants to
16 immediately expect and believe the worst. Mr. Drachslin,
17 Jr. says he saw his hand -- Mr. Drachslin, Sr.'s hand
18 down Older Sister pants. I'm not going to get into all the
19 intricacies of how she was lying and all that. I'm going
20 to let y'all go over that. But nonetheless, the
21 immediate reaction, and this is what fascinates me. Mr.
22 Tooker has talked to you about making these allegations
23 against his father and all that. Other than asking the
24 question, what are you doing and running Mr. Drachslin,
25 Sr. out of the house, the next thing he does -- pretty

1 much the next thing. According to him he calls, what,
2 calls 911, and what does he say? I want to shoot the son
3 of a bitch, without any further communication with Mr.
4 Drachslin, Sr.

5 It is so easy, ladies and gentlemen, and this is
6 what makes these cases difficult, perhaps it's human
7 nature that we want to expect and believe the worst. Mr.
8 Drachslin, Jr. did it. Law enforcement did it. The
9 doctor did it.

10 Now, the doctor comes in and says, well, I didn't do
11 this exam for six weeks. Well, I can't really fault the
12 doctor for that. We have to go back to law enforcement
13 for that. There's a hospital right down the road. But
14 no, they wait the six weeks. Well, no finding, nothing.
15 Does that bother them? No, it doesn't bother them, not
16 in the least. They can still come in and say, oh, not
17 finding anything, that's normal, when there are these
18 allegations of penetration.

19 Let's talk a little bit about that. In this case,
20 ladies and gentlemen, there are two alleged victims.
21 There are three charges. Let's talk about the alleged
22 victim **Older Sister** who the state has filed two charges against
23 my client, Mr. Drachslin, Sr. with regard to **Older Sister** What
24 are those two charges? One is criminal sexual conduct in
25 the first degree. The second one is criminal sexual

1 conduct in the -- excuse me -- in the third degree.

2 Now, if the state is so convinced there was
3 penetration, why then would they even bother bringing him
4 and charging him with criminal sexual conduct in the
5 third degree? They're not sure there was penetration?
6 They're asking you to find it. But are they not sure
7 because they bring those two charges on this one alleged
8 -- same time frames if you will recall -- or as I recall
9 His Honor reading the indictments. Are they not sure?
10 They want you to -- the state says, we're not sure, but
11 we want you to say that it was penetration.

12 Now, I submit to you, ladies and gentlemen, with
13 regard to the criminal sexual conduct in the first
14 degree, there was no penetration. When **Older Sister** testified,
15 she talked to law enforcement, I believe, on March the
16 12th of 2013 and some four weeks later, I believe she
17 talked to the forensic interviewer. And interestingly
18 enough, ladies and gentlemen, as I recall, the forensic
19 interviewer said, I interviewed both **Older Sister** and **Younger Sister** I
20 didn't see **Older Sister** forensic interview. I don't think I
21 fell asleep during this trial. You didn't see it. Why
22 didn't the state bring that up for you? That's an
23 unknown at this point in time, what she said. I think I
24 asked her -- I believe it was **Older Sister** -- on cross
25 examination, didn't you tell the lady in the room where

1 the camera was that papa had never touched you? And as I
2 recall her answer -- you take it -- we've all heard a lot
3 of things. You take it as you heard it from the witness
4 stand. But as I recall her statement was she told the
5 lady in the room papa had never touched her. Mr. Tooker
6 then, on redirect, tries to rehabilitate her with talking
7 about the truth. And she says she told the police, law
8 enforcement, one thing and told the lady in the room, the
9 forensic interviewer, something totally different. Not
10 totally different, the exact opposite. And I know she's
11 a child, but she said she knew the difference between the
12 truth and a lie. And tells you both are the truth. They
13 can't both be the truth. There's no way. Because they
14 were diametrically opposed.

15 Remember, ladies and gentlemen, the state has the
16 burden of proof. I don't know if any of y'all have ever
17 served on a jury before or not. There are different
18 types of proof when we start talking in terms of the law.
19 If you have ever served on, or maybe you never have
20 served on a civil jury, a lawsuit when we say civil; car
21 wrecks, that type thing, the burden of proof there is by
22 the preponderance of the evidence. Preponderance of the
23 evidence, if the scale tips ever so slightly, that's
24 preponderance of the evidence. There is another burden
25 of proof which we call clear and convincing. That's

1 slightly higher than preponderance of the evidence, but
2 not as great as what we talk about in this case.

3 In this case, ladies and gentlemen, it is beyond a
4 reasonable doubt. That is their burden. What is a
5 reasonable doubt, His Honor will share it with you. But
6 I think part -- and you take the law from His Honor the
7 way you hear it -- a reasonable doubt is such a doubt as
8 would cause a reasonable person to hesitate to act in
9 conducting their daily affairs. A young person that gets
10 up and says he did and he didn't and both are the truth.
11 Reasonable doubt? I submit it is.

12 You saw **Younger Sister** tape. I'm not going to rehash
13 that. You saw it; you heard it. But even in **Younger Sister**
14 interview, I will submit to you, there were a lot of
15 inconsistencies. Now, in **Younger Sister** tape, as I recall, and
16 again you take it the way you heard it, it was on top of
17 the clothes. I think **Older Sister** said it was not necessarily
18 on top of her clothes, but certainly on top of her
19 panties. Again, the question is, which time is
20 believable? Did he, did he not? And granted, in these
21 cases, usually no one is there to know. But you have to
22 look at the credibility of the witnesses. This is Mr.
23 Drachslin, Sr.'s only day in court. And you must
24 determine whether or not the state has met its burden of
25 proof.

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1 Mr. Tooker in his opening statement yesterday talks
2 about. -- talked about justice. And justice is a very
3 lofty ideal, and we would love it; and we all love it.
4 But your function today, ladies and gentlemen, is not to
5 find justice. You have no friends to reward, no enemies
6 to punish. What your job today is, is to determine
7 whether or not the state has met its burden of proof.

8 Now, all three of these charges, when you get back
9 there to deliberate, you must look at each charge and
10 make a decision on each charge independently, and come to
11 a decision on that.

12 Now, let's talk a little bit more about the criminal
13 sexual conduct in the third degree, and I'm going to sit
14 down here and hush in just a few moments. Touching. A
15 grandfather, and no doubt about it, he is a grandfather,
16 no doubt about these two girls the state brought before
17 you to testify are his granddaughters. A loving
18 relationship. A fun relationship. A playful
19 relationship. **Older Sister** did papa ever do -- did he ever
20 hurt you? No. **Younger Sister** did your papa ever hurt you or do
21 anything to hurt you? I forget the exact question. No.
22 It's like a said a moment ago, Your Honor, we -- ladies
23 and gentlemen, we ask you to remember the presumption of
24 innocence, but it seems like everybody wants to
25 immediately jump. They see something and suddenly they

1 want to make it what they want to believe it is; not what
2 it may be. They wrestle, they tickle, they play; like
3 any grandparent would do.

4 Now, ladies and gentlemen, if you do find that there
5 was a touching, which I submit there may have been some
6 touching, but whoa, don't lose me right there; okay?
7 Number one, based on the relationship, it was a loving,
8 playful relationship that my client, Mr. Drachslin, Sr.,
9 had with his granddaughters. But let's get back a little
10 to the elements, what we call the elements of an offense,
11 and that's what the state must prove.

12 On the criminal sexual conduct in the third degree,
13 not only must the state prove that there was a touching
14 and His Honor will give you the whole law. I'm not going
15 to stand here and do that. That touching must have been
16 done in a lascivious, and there are some other words in
17 there, manner. That's one. Two, the state must prove
18 that beyond a reasonable doubt. And the second part of
19 that is the state must prove beyond a reasonable doubt
20 that it was done with the intent to arouse the sexual
21 gratification, and listen to that charge carefully, I beg
22 of you, because there are some other words in there, to
23 arouse the sexual gratification of either the actor or
24 the person that is being acted upon. They must prove
25 that beyond a reasonable doubt. Must be more than a

1 touching.

2 Mr. Graham came and testified before you, a known
3 thief, a liar, and they bring him in here and want you to
4 say -- want you to believe what a fine upstanding citizen
5 he is because he's coming in here to tell you what he
6 heard, what Mr. Drachslin shared with him when he was his
7 cell mate. Always amazes me that these people spend time
8 in jail and suddenly they come up here to be a state's
9 witness and they leave their horns and tail and pitchfork
10 outside and wear a halo. Hogwash. But it's up to you to
11 decide the credibility of the witness. And even if you
12 accept that what he said was credible as to touching,
13 which I submit that it was not, certainly the state
14 cannot say that that was in anyway an admission by Mr.
15 Drachslin of any kind of penetration, because the witness
16 emphatically said, no, he never admitted to any
17 penetration.

18 And while we're talking about admissions, and I'm
19 sorry. I'm getting wound up here. I'm going to try to
20 unwind. When we're talking about admissions, think about
21 this day of March the 12th, 2013. You saw Mr. Drachslin,
22 Jr., pretty good size man, and I don't mean that
23 offensively; I'm just stating a fact. Don't remember his
24 age. But there sits Mr. Drachslin, Sr. who is seventy-
25 six years old. As I recall, his son has already said and

1 told Mr. Drachslin, Sr., at least I believe threatened
2 him with physical harm. Obviously, emotions were running
3 high out there. I can't believe, especially when the son
4 says, I want to shoot the son of a bitch, there's got to
5 be some fear and trepidation. And law enforcement in
6 this case, they did not come in front of you, ladies and
7 gentlemen, and be totally up front honestly. They didn't
8 want to share with you the fact that he said, I didn't do
9 it. We were playing. It may have gotten out of hand.
10 They don't want to share that with you. What they want
11 to share is, he wrote this four-line statement and said
12 he's guilty. They don't want to share with you that they
13 spent thirty minutes with him, and what happened in that
14 thirty minutes? Do we not live in a digital age, ladies
15 and gentlemen? We've got recorders on cell phones.
16 We've got hand recorders. We've got all sorts, shapes
17 and sizes of recordings. Did you hear any recording what
18 happened in that thirty minutes? I didn't. They want to
19 say, oh, nothing happened in that thirty minutes. That's
20 for you to decide.

21 Finally, it is obvious at this point in time that
22 Mr. Drachslin did not testify in this case. Obvious to
23 all of us. As I shared with you yesterday, ladies and
24 gentlemen, Mr. Drachslin has nothing to come before you
25 to prove today. Zero. Today, yesterday, in this trial,

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1 has nothing to prove to you. That is a law of this
2 country. It's the same law as the presumption of
3 innocence, the same law as the state has the burden of
4 proof beyond a reasonable doubt. And that law is, nobody
5 has to testify. Why? Because they don't have to. They
6 don't have to prove their innocence.

7 And it could be very well when you get back into the
8 jury room, and I think His Honor is going to charge you
9 on that, you could very easily have the thought, boy, if
10 I was charged with this, I'd testify. If you had that
11 thought, it would be a violation of that oath you took
12 yesterday, which said, you will well and truly try this
13 case on the facts, evidence, and I believe it says the
14 law. And the law says he doesn't testify. If you try to
15 discuss the fact that Mr. Drachslin did not testify in
16 that jury room -- if you want to discuss that in the jury
17 room, the fact he did not testify, that will be a
18 violation of your oath. And I don't believe any of you
19 would violate that oath.

20 Again, I thank you. As I shared with you, this is
21 Mr. Drachslin's only day in court. You are the twelve
22 people to decide the facts of this case. I submit to
23 you, ladies and gentlemen, with regard to the CSC case,
24 there was no sexual battery, no penetration; not guilty.
25 I submit to you on the two CSC third cases, criminal

1 sexual conduct cases, I'm sorry, third, if there was a
2 touching the state has failed to prove it was to arouse
3 the sexual gratification, whatever the rest of that law
4 states that His Honor is going to give you; not guilty on
5 both.

6 Thank you so very, very much for your time and your
7 attention.

8 **CHARGE**

9 **BY THE COURT:**

10 Mr. Foreman, ladies and gentlemen of the jury, it's
11 now my responsibility to instruct you on the law. Let me
12 remind you that these indictments that I read to you and
13 showed you charging the defendant with criminal sexual
14 conduct with a minor, three separate charges, one in the
15 first degree, two in the third degree. Let me remind
16 you that the fact that he's been arrested and charged,
17 indicted for these offenses, that's not evidence in the
18 case. It cannot be considered by you as evidence of any
19 guilt. It doesn't create any presumption of guilt, no
20 inference of guilt. The indictments are merely the
21 papers by which the case comes before this court for
22 disposition.

23 Now, in this case the defendant has been charged
24 with three separate indictments and those are separate
25 and distinct one from another. You'll be asked to write

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1 a separate verdict form on each of those. The defendant
2 can be convicted or acquitted on any or all of the
3 offenses charged.

4 Now, by entering a plea of not guilty to these
5 charges, that places the burden on the state to prove the
6 defendant is guilty. A person charged with committing a
7 criminal offense in South Carolina is never required to
8 prove himself innocent. That's an important rule of law,
9 that no matter how serious the charge may be, the
10 defendant will always be presumed to be innocent of that
11 crime for which the indictment was issued, unless guilt
12 has been proven by evidence satisfying you, the jury, of
13 his guilt beyond a reasonable doubt. This presumption of
14 innocence doesn't end when you begin your deliberations.
15 It accompanies the defendant throughout the trial until
16 you've reached a verdict of guilt based on evidence
17 satisfying you of that guilt beyond a reasonable doubt.
18 Presumption of innocence isn't a mere legal theory, a
19 phrase that's tossed about. It is a substantial right to
20 which every defendant is entitled, unless you, the jury,
21 are satisfied from the evidence of the defendant's guilt
22 beyond a reasonable doubt.

23 The beyond a reasonable doubt phrase has been used.
24 You may ask yourself, what is a reasonable doubt in the
25 law? A reasonable doubt is the kind of doubt that would

1 cause a reasonable person to hesitate to act. When we
2 have civil trials, and you may have served as a juror in
3 a civil trial before, you were told it was only necessary
4 to prove that a fact was more likely true than not true
5 by what was called the greater weight of the evidence or
6 the preponderance of the evidence. In criminal cases,
7 however, the state's proof is more powerful than that.
8 It must be proof beyond a reasonable doubt. That would
9 be proof that leaves you firmly convinced of the
10 defendant's guilt. Now, ladies and gentlemen, there are
11 very few things in this world that we know with
12 absolutely certainty, and in criminal cases, the law
13 doesn't require proof that overcomes every possible
14 doubt. If, based upon your consideration of the
15 evidence, you're firmly convinced the defendant is guilty
16 of the crimes charged, then you must find the defendant
17 guilty. If, on the other hand, you think there's a real
18 possibility that the defendant is not guilty, you must
19 give the defendant the benefit of that doubt and find him
20 not guilty.

21 Now, you and I have had certain duties to perform
22 during the trial of the case. As the trial judge it's
23 been my responsibility to preside over the trial, to rule
24 on the admissibility of evidence offered during the
25 trial. You're to consider only the competent evidence

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1 that is before you, the testimony that's been presented
2 from the witness stand, the exhibits that have been made
3 a part of the record, and that alone.

4 I also have the additional duty to charge you the
5 law that's applicable. As the presiding judge, I'm the
6 sole judge of the law. It's your duty as jurors to
7 accept the law and apply the law just as I state it to
8 you now. If any of you have an idea of what the law is
9 or even a notion of what the law ought to be and it's not
10 in concert with what I now tell you the law is, then you
11 must abandon such an idea, because under your oath you've
12 sworn to accept the law and apply the law just as I state
13 it to you.

14 Every case that's tried in this courtroom before a
15 jury, that jury becomes the sole, exclusive judge of the
16 facts in the case. A trial judge can't intimate or state
17 or comment on or make any statement whatsoever to a trial
18 jury about the facts in the case. Since you, the jury,
19 are the sole judges of the facts, you're not to infer
20 from anything I've said during the progress of the trial,
21 any rulings I've made on the admissibility of evidence or
22 otherwise, anything I say to you now in the course of
23 this instruction to you, that I have an opinion about the
24 facts. I don't have an opinion about the facts. Not
25 only does the law of South Carolina, but our constitution

1 prohibits a trial judge, such as I, from having any
2 opinion about the facts. That's a matter solely for you,
3 the jury, to determine. You decide what the effect and
4 the value, the weight and the truth of the evidence
5 presented during the trial.

6 In most all trials there's two types of evidence.
7 There's what's called direct evidence and circumstantial
8 evidence. Direct evidence is the testimony of a person
9 who claims to have actual knowledge of a fact, such as an
10 eyewitness. It's evidence which immediately establishes
11 the main fact to be proved.

12 Circumstantial evidence is proof of a chain of facts
13 and circumstances that indicate the existence of a fact.
14 It's evidence which immediately establishes collateral
15 facts from which the main fact may be inferred. In other
16 words, it's based on inference and not upon personal
17 knowledge or observation. The law makes absolutely no
18 distinction between the weight or the value to be given
19 to either direct or circumstantial evidence. Nor is a
20 greater degree of certainty required of circumstantial
21 evidence than of direct evidence. You should weigh all
22 the evidence in the case; and after weighing all the
23 evidence, if you're not convinced of the guilt of the
24 defendant beyond a reasonable doubt, then you must find
25 the defendant not guilty.

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1 Necessarily, ladies and gentlemen, you must
2 determine the credibility of the witnesses who've
3 testified in the case. Credibility simply means
4 believability. It becomes your duty as jurors to analyze
5 and evaluate the evidence, determine which evidence
6 convinces you of its truth.

7 Now in determining the believability of witnesses
8 who've testified, you can believe one witness over
9 several witnesses. You can believe several witnesses
10 over one witness. In your discretion, you can believe
11 part of the testimony of a witness and you can reject the
12 remaining part of the testimony of that very same
13 witness. You can believe the testimony of a witness in
14 its entirety or you can reject the testimony of a witness
15 in its entirety. You can consider the demeanor of the
16 witness while on the witness stand; did the witness have
17 any interest or bias or prejudice in testifying? Was the
18 witness straightforward or hesitate in answering? Was
19 the testimony of the witness consistent or inconsistent?
20 How did that testimony -- was it weakened or strengthened
21 by other evidence that was presented? It's totally your
22 prerogative to determine the credibility of the
23 witnesses.

24 Now, in order to establish criminal liability,
25 criminal intent is required and must be proven by the

1 state beyond a reasonable doubt. Criminal intent is
2 always a matter that must be determined by a jury from
3 the circumstances surrounding the situation. There's no
4 way to prove intent to a mathematical certainty. There's
5 no way medical science has devised that we can dissect a
6 person's brain and determine what the person had in mind.
7 So the law says that criminal intent may be inferred from
8 the circumstances shown to have existed. It's not
9 necessary to establish intent by direct and positive
10 evidence, but it may be established by inference in the
11 same way as any other fact, taking into consideration the
12 acts of the parties and all the facts and circumstances.
13 Criminal intent, ladies and gentlemen, is a mental state.
14 It's a conscious wrongdoing. It's up to you to determine
15 what the defendant intended to do based upon the
16 circumstances shown to have existed.

17 Now, I instruct you and I emphasize to you, the fact
18 that, in this case, the defendant did not testify is not
19 a factor to be considered by you in anyway in your
20 deliberations, your consideration of the question of the
21 guilty or the innocence of the defendant. That must not
22 be considered by you in any manner whatsoever. A
23 defendant has a constitutional right to remain silent and
24 the assertion of this right must not be considered by you
25 in your deliberations. I'll repeat, under your oath,

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1 you're to draw no conclusions whatsoever from the fact
2 that the defendant in this case chose not to testify.
3 The fact that he did not take the witness stand should
4 not even be discussed by you in the jury room. The
5 burden of proof, as I've told you, is on the state of
6 South Carolina. The defendant is not required to prove
7 his innocence. That burden remains on the state to prove
8 guilt beyond a reasonable doubt.

9 Now, a statement alleged to have been made by the
10 defendant has been admitted into evidence in this case.
11 While the court has determined that the statement is
12 admissible, I instruct you that you make the ultimate
13 decision of whether or not the defendant made the
14 statement. If the defendant did make the statement, you
15 must determine whether the statement was made by the
16 defendant voluntarily and of his own free will. This
17 means that the statement was not caused by pressure or
18 force or fear or threats, coercion or intimidation, hope
19 of any promise of leniency or reward of any kind.

20 Now, in determining whether the statement was
21 voluntary, ladies and gentlemen, you should consider both
22 the characteristics of the defendant and the details of
23 the questioning. Some of the factors that you may
24 consider would be the age of the defendant and education
25 or lack of education of the defendant, the mental ability

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

13 The state has the burden of proving, beyond a
14 reasonable doubt, that the alleged statement was
15 voluntary. If you determine it was, you can give the
16 statement any further consideration that you deem proper.
17 You must decide what weight, if any, should be given to
18 the alleged statement. If you determine that the alleged
19 statement was not a free and voluntary statement of the
20 defendant, you should not consider the statement at all.

21 Now, there's been evidence presented that a witness
22 or witnesses have made prior statements which were not
23 consistent with the witness's present testimony. You may
24 use this evidence to decide whether to believe the
25 witness. You may also use the evidence to -- earlier

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1 contradictory statements to determine the truth of those
2 statements. It's up to you to decide whether to believe
3 the earlier statements or the testimony given at trial.
4 If a witness has shown to have knowingly testified
5 untruthfully concerning any material matter, you may
6 consider this in determining whether to trust the
7 witness's testimony as to other matters. You may reject
8 all the testimony of that witness or give all or part of
9 the testimony you think -- the weight that you feel it
10 deserves.

11 Now, ladies and gentlemen, the defendant in this
12 case, as I've told you, is charged with first degree
13 criminal sexual conduct with a minor. The state must
14 prove beyond a reasonable doubt that the defendant
15 engaged in a sexual battery with the victim. A sexual
16 batter is sexual intercourse, cunnilingus, fellatio, anal
17 intercourse or any intrusion, however slight, of any part
18 of a person's body or of any object into the genital or
19 anal opening of another person's body, except when such
20 an intrusion is accomplished for medically recognized
21 treatment or diagnostic purposes.

22 The state must then prove beyond a reasonable doubt
23 that the victim was less than eleven years old at the
24 time of the sexual battery. Consent or willingness or
25 indifference or ignorance on the part of the minor, if

1 any, as to what was taking place, does not in anyway
2 affect the charge of criminal sexual conduct with a
3 minor.

4 The defendant is also charged with committing
5 criminal sexual conduct with a minor in the third degree.
6 The state must prove beyond a reasonable doubt that the
7 defendant was over the age of fourteen. Next, the state
8 must prove that the defendant wilfully and lewdly
9 committed or attempted a lewd or lascivious act on or
10 with the body or parts of a child under the age of
11 sixteen years, with the intent to arouse, appeal to or
12 gratify the lusts, passions or sexual desires of the
13 defendant or of the child. Wilfully means voluntarily
14 and intentionally with specific intent to do something
15 the law forbids. Lewd means obscene or lustful or
16 indecent or lecherous. Lascivious means tending to
17 insight lust, lewd, indecent, obscene or tending to
18 deprave the morals in respect to sexual relations. Under
19 the statute for criminal sexual conduct with a minor the
20 testimony of a victim need not be corroborated.

21 Now, Mr. Foreman and ladies and gentlemen, I've
22 prepared a verdict form for you on each of the three
23 charges. It's all on one form. There's two possible
24 verdicts you can find on each of these. As I stated to
25 you, each are separate and distinct one from another.

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1 You make a decision on each one independently. There's
2 no significance in which the order of the possible
3 verdicts. One has to be listed before the other. Your
4 verdict on each of these charges should, after you've
5 deliberated, Mr. Foreman, I believe it's self-
6 explanatory. You can just check the appropriate block,
7 guilty or not guilty, based upon your view of the proof
8 that's been presented by the state. Check the
9 appropriate block on each of those. The verdict form is
10 set out. After you've checked each block, you sign your
11 name as foreperson on behalf of your fellow jurors, date
12 it, and we'll receive your verdict back here in the
13 courtroom. All twelve of you must agree upon a verdict.
14 It can't be based upon sympathy or passion or prejudice,
15 emotion, or any other consideration not in evidence in
16 the case.

17 Now, let me remind you, you're free to ask me any
18 questions concerning the law that I've given you in this
19 case, but it's impermissible for me to answer any
20 questions you have regarding the facts of the case.
21 That's your duty, as the sole facts finders, to examine
22 the evidence and make that decision of the facts.

23 At this time, ladies and gentlemen, I'm going to ask
24 if you would to go back to your jury room. Don't start
25 your deliberations just yet. There's a final matter of

1 law that I need to take care of with the attorneys.
2 Hopefully in a few moment we'll have the exhibits back
3 for you with the verdict form, with instructions to begin
4 your deliberations. But for right now, don't start your
5 deliberations. You may retire to your jury room.

6 Everyone else, please remain seated.

7 (WHEREUPON, the jury exited the open court at
8 approximately 12:30 p.m.)

9 THE COURT: Any exception to the charge, from
10 the state?

11 MR. TOOKER: No, sir.

12 THE COURT: From the defense?

13 MR. DEJONG: None on behalf of Mr. Drachslin,
14 Your Honor.

15 THE COURT: All right. If y'all will make sure
16 all the exhibits are in order.

17 MR. TOOKER: Your Honor, are you opposed to us
18 sending the boom box back in the jury room so they can
19 listen to the 911 tape if they want to?

20 MR. DEJONG: As long as it doesn't play DVDs, I
21 don't particularly care.

22 MR. TOOKER: It's got to have a video monitor
23 to play DVDs.

24 MR. DEJONG: I'm not part of the digital age,
25 Mr. Tooker.

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1 THE COURT: If you've got it available, let's
2 just have it ready for them if they ask for that. Mr.
3 DeJong, you're in agreement that they could listen to the
4 911 tape back there, but if they want to play the
5 forensic interview, it'll be done out here because of the
6 redaction.

7 MR. DEJONG: Yes, sir.

8 MR. TOOKER: Yes, sir. And I was going to say,
9 do we just go ahead and include the DVD with the stuff
10 that's going to go back to them and if they say they want
11 to hear it ---

12 THE COURT: Then we'll bring them back out.
13 Here's the verdict form.

14 If you can send the alternate out for me, I'll
15 dismiss her.

16 (WHEREUPON, all admitted exhibits and the verdict
17 form were delivered to the jury, at which time they
18 began deliberating at approximately 12:32 p.m.)

19 THE COURT: Ms. Porter, thank you very much for
20 your service. Your fellow jurors have survived, so we
21 won't need you to -- you can't help them deliberate.
22 You're welcome to stay with us, but you're also free to
23 go.

24 THE JUROR: Okay. Thank you.

25 THE COURT: Thank you very much for serving

1 with us this week.

2 All right. We'll be at ease until we hear from our
3 jury.

4 (WHEREUPON, the court stood at recess awaiting the
5 verdict of the jury.)

6 THE COURT: Can I see the attorney here just
7 for a moment at the bench. I want you to read over the
8 questions before I put them on the record.

9 (WHEREUPON, Messrs. Tooker and DeJong approached the
10 bar.)

11 THE COURT: All right. We've received two
12 notes from the jury. I don't know which order these came
13 in. One is define first degree CSC. The other is define
14 slight penetration.

15 What I propose to do, gentlemen, is to recharge them
16 on the first degree criminal sexual conduct with a minor
17 in its entirety as I charged them recently. Of course,
18 part of that charge uses the phrase, however slight. In
19 fact, it uses the word intrusion, rather than the word
20 penetration. But since they asked for the definition of
21 penetration, I'll tell them that means to enter into, an
22 intrusion. For the definition of slight, I'm going to
23 tell them that is an amount -- that definition is small
24 in amount or size or degree. Again, penetration means to
25 enter into or to -- an intrusion into. Slight would be

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1 small in amount, size or degree. Then I'll charge the
2 law as I did before.

3 Is there any objection for the record?

4 MR. TOOKER: None from the state, sir.

5 MR. DEJONG: Not on behalf of Dr. Drachslin,
6 Your Honor.

7 THE COURT: All right. Let's have our jury
8 come in if they're ready.

9 I'll have these marked as Court Exhibits 1 and 2 in
10 a moment.

11 (WHEREUPON, the jury entered the open court at
12 approximately 2:06 p.m.)

13 THE COURT: Mr. Foreman, you've sent out a
14 couple of questions concerning the law. As I've told you
15 before, I'll be able to address that for you.

16 First of all, you asked to define first degree
17 criminal sexual conduct and then to define slight
18 penetration.

19 For the state to prove a case of first degree
20 criminal sexual conduct with a minor, the state must
21 first prove beyond a reasonable doubt that the defendant
22 engaged in a sexual battery with the victim. A sexual
23 battery is defined as sexual intercourse, cunnilingus,
24 fellacio, anal intercourse or any intrusion, however
25 slight, of any part of a person's body or any object into

1 the genital or anal openings of another person's body,
2 except, of course, when such intrusion is accomplished
3 for medically recognized treatment or diagnostic
4 purposes.

5 The state must also prove, to convict of this
6 charge, that beyond any reasonable doubt the victim was
7 less than eleven years of age at the time of the sexual
8 battery. Again, I mentioned to you that consent or
9 willingness or indifference or ignorance on the part of
10 the minor, if any, as to what was taking place does not
11 in anyway affect the charge of criminal sexual conduct
12 with a minor.

13 Now, slight, of course means small in amount or size
14 or degree. Penetration is to enter into. It's an
15 intrusion. That would be the definition of slight
16 penetration.

17 I hope this is helpful to you. If you need further
18 instructions on the law, I'll be glad to help you with
19 that.

20 If you will retire back to your jury room and
21 continue with your deliberations.

22 (WHEREUPON, the jury exited the open court at
23 approximately 2:09 p.m.)

24 THE COURT: Any objections from the state?

25 MR. TOOKER: No, sir.

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1 THE COURT: From the defense?

2 MR. DEJONG: None on behalf of Mr. Drachslin,
3 Your Honor.

4 THE COURT: All right. Again, we'll be at ease
5 until we hear from our jury. These will be marked as
6 Court exhibits.

7 (WHEREUPON, Court Exhibit Numbers 1 and 2 were
8 marked for identification.)

9 (WHEREUPON, the court stood at recess awaiting the
10 verdict of the jury.)

11 THE COURT: Mr. Foreman, I understand the jury
12 has reached a verdict. Is that correct?

13 MR. FOREMAN: Yes, sir.

14 THE COURT: Is it a unanimous verdict as to all
15 three charges?

16 MR. FOREMAN: (No verbal response.)

17 THE COURT: In other words, all twelve of ---

18 MR. FOREMAN: Yes, sir. Yes, sir.

19 THE COURT: --- you agree on each of the
20 charges?

21 MR. FOREMAN: Yes, sir.

22 THE COURT: If you would hand the verdict form
23 to the bailiff, please.

24 All right. You may publish the verdict, Mr. Clerk.

25 THE CLERK: This is the State of South Carolina

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1 versus Joseph Anthony Drachslin, Sr. Indictment numbers
2 2013-GS-39-1018, 1019 and 1020.

3 We, the jury, unanimously find the defendant, Joseph
4 Anthony Drachslin, Sr., as to the charge of criminal
5 sexual conduct with a minor, **Older Sister** first degree, guilty.

6 As to the charge of criminal sexual conduct with a
7 minor, **Older Sister** third degree, guilty.

8 As to the charge of criminal sexual conduct with a
9 minor, **Younger Sister** third degree, not guilty.

10 Is this your verdict and still your verdict, so say
11 you all by raising your right hand?

12 (WHEREUPON, all jurors raised their right hand.)

13 THE CLERK: Thank you very much.

14 THE COURT: Are there any matters we need to
15 take care of with the jury before they're discharged in
16 this case, from the state?

17 MR. TOOKER: No, sir.

18 THE COURT: From the defense?

19 MR. DEJONG: Not on behalf of Mr. Drachslin,
20 Your Honor.

21 THE COURT: Ladies and gentlemen, thank you
22 very much for your participation in this case. You've
23 performed a valuable service for your county, for your
24 state. It's not an easy task being a jury; not an easy
25 task being a fact-finder, a judge of the facts, but

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1 you've performed admirably. You've listened attentively
2 and you've done a conscientious job in making this
3 decision.

4 You may remember from the qualification on Monday
5 that I told you you could exempt yourself, excuse
6 yourself from jury service if you're called upon in the
7 next couple of years. You don't have to serve more than
8 once every three years. But I hope that you'll waive
9 that exemption because I'm confident that if you find
10 yourself sitting at one of these tables with a contract
11 dispute or a charge against you or an automobile
12 accident, you're going to want good, sound jurors such as
13 yourself deciding what the facts are about your case.

14 You've directly participated in your government.
15 You've been part of the judiciary this week, and I'm
16 grateful. Your state is grateful.

17 Tomorrow we have some matters that will not involve
18 juries that we'll be taking care of. You've certainly
19 welcome to come up here and visit if you'd like, but
20 you're dismissed for the rest of the week. Some of you
21 may need a statement for your employer to show that you
22 have performed jury service. The clerk's office can
23 certainly help you with that. Thank you for working with
24 us this week, ladies and gentlemen. It's been a treat
25 for me to work with good jurors such as yourselves.

1 You're dismissed at this time. I will ask the
2 foreman, if you would, please, sir, to just remain in the
3 hallway. There's additional documents that I need to
4 have you sign that the clerk will bring. The rest of you
5 are dismissed. Thank you very much.

6 Everyone else, please remain seated.

7 (WHEREUPON, the jury exited the open court at
8 approximately 2:25 p.m.)

9 THE COURT: All right. Any matters we need to
10 discuss before sentencing is imposed?

11 MR. TOOKER: May we approach?

12 THE COURT: Yes, sir.

13 MR. DEJONG: I have no post-trial motions.

14 THE COURT: All right, sir. If you'll come
15 forward with your client, please.

16 MR. DEJONG: Come around, Mr. Drachslin.

17 THE COURT: Is there any prior record?

18 MR. TOOKER: The only prior anything was, I
19 think, an AWOL when he was in the military in Wyoming.
20 And I don't even know if that really counts in terms of
21 prior record. But other than that, no, sir.

22 THE COURT: Is there anyone from the state want
23 to be heard?

24 MR. TOOKER: Your Honor, the victims are here.
25 They're present in court. I asked if they wished to

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1 address Your Honor and they said no. This has been, I
2 think, trying enough for them emotionally that they
3 didn't want to have to speak again.

4 Through our conversations in preparation for trial,
5 what was clear was that they want him to be punished,
6 punished very thoroughly. I think the conviction for
7 criminal sexual conduct in the first degree will do that.
8 It's the state's understanding that the minimum amount of
9 time on that charge is twenty-five years. And the only
10 request the state has is that you make that sentence an
11 active sentence and do not afford the defendant the
12 opportunity to serve that sentence on any kind of house
13 arrest.

14 THE COURT: All right. Mr. DeJong, be glad to
15 hear from you, and certainly your client if he would like
16 to address me.

17 MR. DEJONG: Thank you, Your Honor, may it
18 please the court. As Mr. Tooker shared with you, Mr.
19 Drachslin has absolutely no prior record whatsoever. He
20 has been a real mystery to me not in -- just in terms of
21 that, but other issues throughout the trial. He is not,
22 if there is such a thing, and I kind of hesitate to use
23 the word, he is not a normal client in a case like this,
24 Your Honor, to come here with no prior record. He is now
25 seventy-eight years old. Pretty much any active sentence

1 he gets, Your Honor, is going to be a life sentence for
2 him. I don't know what the male life expectancy is, and
3 I'm not trying to be hard on him, but it's just --
4 factual, I suspect he's probably beat the mortality
5 tables at this point in time.

6 He was such a mystery to me, Your Honor, that I did
7 request both a competency and a criminal responsibility
8 on him. Obviously we did not raise insanity as a
9 defense, but nonetheless, I would move that the reports
10 from the Department of Mental Health on the competency
11 and the criminal responsibility be made a court exhibit,
12 Your Honor.

13 MR. TOOKER: No objection from the state.

14 THE COURT: Without objection, they'll be
15 marked as Court Exhibits 3 and 4.

16 MR. DEJONG: They're both under one staple, Ms.
17 Hanks. I'll separate them if you want me to. You can do
18 it as one if you want.

19 THE COURT: We'll just do it as one then.
20 Court Exhibit Number 3.

21 (WHEREUPON, Court Exhibit Number 3 was marked for
22 identification.)

23 MR. DEJONG: Your Honor, just very briefly.
24 Other than his son, daughter-in-law and the three
25 grandchildren, he has no other family in this area. As

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1 I'm sure Your Honor heard, he's originally from
2 Pennsylvania. His wife died some few years ago. They
3 had been married many years. He worked, I believe, as a
4 machinist most of his life. He had retired from that.
5 Drove a school bus for a number of years.

6 When he shared with me he drove a school bus very
7 early on, that really peaked my interest. I was curious
8 as to why he quit driving a school bus. Well, it wasn't
9 because there was any wrongful acts on his part. What he
10 shared with me is the school district simply decided to
11 go to a private contractor to run the school buses and he
12 wasn't picked as one of the drivers.

13 So there's nothing whatsoever in this man's history
14 which would indicate this. I thought perhaps dementia.
15 I'm not a doctor. But very candidly, I don't see that in
16 him, Your Honor. He has no mental health history. I
17 don't know. It's just a one hundred percent total puzzle
18 to me.

19 THE COURT: Thank you, Mr. DeJong.

20 Mr. Drachslin, anything you want to tell me, sir?

21 THE DEFENDANT: Please don't send me for life,
22 sir. Please spare my life. Please spare my life. I
23 will never go to my son's house again.

24 THE COURT: Excuse me. I couldn't hear you.

25 THE DEFENDANT: I said, I will never go to my

1 son's house again. That's just the way I feel.

2 understand his feelings and I respect them. I can't

3 return. I'll go home.

4 THE COURT: Do you have other children?

5 THE DEFENDANT: Yeah, I have one son back in

6 Pennsylvania. Yes, sir. Yes, sir.

7 MR. TOOKER: Your Honor, I don't believe the

8 court reporter is able to hear the defendant.

9 COURT REPORTER: You need to speak up for me,
10 please.

11 THE DEFENDANT: Oh, okay.

12 THE COURT: Anything else you want to tell me,
13 sir?

14 THE DEFENDANT: Pardon me?

15 THE COURT: Is there anything else you'd like
16 to tell me?

17 THE DEFENDANT: I can't think of anything now.
18 I'm just a broken man. A broken man. Quite candidly,
19 sir, if I could, if it would do any better, I'd cut these
20 off. I'd cut them off. I would. I feel that strongly
21 about it. I don't know what on God's earth ever come
22 over me. I really don't. I wish I knew. It was just a
23 -- it was a stupid, stupid act on my part. Very stupid.
24 Very stupid. I have -- I really have no explanation why.
25 It was just a stupid, stupid act. That's all. There was

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1 no intent on my part of any sexual intent or anything.
2 Never entered my mind; not in the slightest. Not in the
3 slightest.

4 I'm so, so sorry. I don't expect my son to ever
5 forgive me. Maybe in time he will. I don't know. I
6 don't know. Have to believe his wisdom; that's all.
7 That's all. That's all.

8 I hope Your Honor can find it in his heart to -- I
9 know I'll have to do some time. I don't deny that. I
10 don't deny that at all. Just, you know, please don't
11 throw my life completely away. I know if I go to prison,
12 I'm dead. That's all there is to it. Bottom line. I
13 don't shirk from that. I know that'll happen. They say
14 as long as you're in complete solitary -- you know, I
15 wouldn't dare go on the yard or anything like that. I'd
16 be dead in a minute. I know how that works. From the
17 incarceration that I've had, I know what will happen. It
18 happened before I was incarcerated. That's why I begged
19 the guards to put me in solitary. They finally did. I
20 had some piece of mind. Other than that, I had none. I
21 was in fear of my life from the get-go. And so I finally
22 convinced the guard to put me in solitary. I do have
23 some piece of mind in solitude. Time to think. Let me
24 have my life back. If I serve some years, I'll serve
25 some years.

1 THE COURT: Excuse me; I didn't hear you.

2 THE DEFENDANT: If I serve some years, I'll
3 serve some years.

4 THE COURT: All right.

5 THE DEFENDANT: I can't shirk from that. I
6 can't shirk from that. Maybe even set up probation,
7 yeah, probation; five years probation. I'd go with that
8 in a minute. I'd go with that in a minute and honor
9 every second of it. I'd see the officer every month, pay
10 whatever fine that you set as far as restitution. I
11 would do that gladly, Your Honor. Gladly. That's all.

12 THE COURT: Thank you, sir.

13 How much time has been served, Solicitor?

14 MR. TOOKER: Since March 12, 2013, so that
15 would end up being three hundred and seventy-seven days.
16 Does that sound right?

17 MR. DEJONG: Something like that, I guess.

18 THE COURT: A little over thirteen months;
19 right?

20 MR. TOOKER: Yes, sir.

21 THE DEFENDANT: Yeah. Yes, sir. Yes, sir.

22 THE COURT: Well, Mr. Drachslin, I can
23 appreciate what you had to say about your remorse and
24 what you fear in the future and certainly it's been a
25 tragedy for a family that was intact and is now divided.

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1 It's obviously clear that your family loved you. And
2 perhaps in your own way, you loved them and just didn't
3 fulfill the obligation you had as a father.

4 I know you're concerned about the relationship with
5 your son, and I am, too. I'm certainly concerned about
6 them. But my most concern is about those children and
7 how they're going to react as they grow older and develop
8 into teenagers and young ladies and interact in their
9 life and have families of their own. They're going to
10 have a lifetime sentence in many ways. Hopefully they
11 can, through family support and a good pastor and
12 counselor, they can overcome some of the issues that have
13 been created in their own life.

14 Case 2012-GS-39-1018, the sentence of the court is
15 defendant be committed to the State Department of
16 Corrections for a period of twenty-five years. Be given
17 credit for his time served.

18 THE DEFENDANT: Oh, dear God.

19 THE COURT: Case 1019, a fifteen year sentence
20 to be concurrent to that previously imposed.

21 Wish you the best, sir.

22 MR. TOOKER: Thank you, Your Honor.

23 MR. DEJONG: Thank you, Your Honor.

24 THE COURT: Court's adjourned until in the
25 morning.

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[END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing
6 is a true, accurate, and complete transcript of record of
7 all the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Circuit Court for Pickens County, South Carolina,
10 on the 23rd day of April, 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 August 21, 2014

16

17

18

19

A handwritten signature in cursive script that reads "Susan Danette Hanks". The signature is written in dark ink and is positioned above a horizontal line.

Circuit Court Reporter

WITNESSES

Rita Garner Burgess

Pickens County Sheriff's Office

3/13/2013

ARREST WARRANT NUMBER

2013A3910300108

ACTION OF GRAND JURY

TRUE BILL

Date

Steven Richardson
Foreperson of Grand Jury

VERDICT

Guilty

Thomas Beckenhauer

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-39-1018

BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAY 21 2013

TERM 2013

THE STATE

VS.

JOSEPH ANTHONY DRACHSLIN SR.

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on

MAY 21 2013

the Grand Jurors of Pickens

County present upon their oath:

That JOSEPH ANTHONY DRACHSLIN SR. did in Pickens County, between the dates of November 1, 2011 and March 12, 2013, commit a sexual battery on [REDACTED], who was less than eleven years of age.

This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

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

Brian Hinton
SOLICITOR

WITNESSES

R. G. Burgess

Pickens County Sheriff's Office

3/13/2013

ARREST WARRANT NUMBER

2013A3910300110

ACTION OF GRAND JURY

TRIMAN 21 2013

Date

Steven Richardson
Foreperson of Grand Jury

VERDICT

Guilty

MB

Thomas Beckenhauer

4/24/14

Foreperson of Petit Jury

Date:

3

DOCKET NO. 2013-GS-39-1019
BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAY 21 2013

TERM 2013

THE STATE

vs.

JOSEPH ANTHONY DRACHSLIN SR.

Indictment for

3661

CRIMINAL SEXUAL CONDUCT WITH A MINOR
3RD DEGREE

VIOLATION § 16-03-0655(C)

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 3RD DEGREE

At a Court of General Sessions, convened on

MAY 21 2013

the Grand Jurors of Pickens

County present upon their oath:

That JOSEPH ANTHONY DRACHSLIN SR. did in Pickens County, between the dates of November 1, 2011 and March 12, 2013, 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 [REDACTED] ^{Older Sister}, 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 §16-03-0655(C) 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.

Brenda Hunter
SOLICITOR

Define first degree
CSC

FEB 10 2014 10:00 AM	COURT'S
	EXHIBIT NO. <u>1</u>
	IDENTIFICATION EVIDENCE
	DKT. # <u>13-1018</u>
	DATE: <u>4-24-14</u>

Define Slight
penetration?

PENDING 800-881-4339	COURT'S
	EXHIBIT NO. <u>2</u>
	IDENTIFICATION EVIDENCE
	DKT.# <u>137018</u>
	DATE: <u>4-24-14</u>

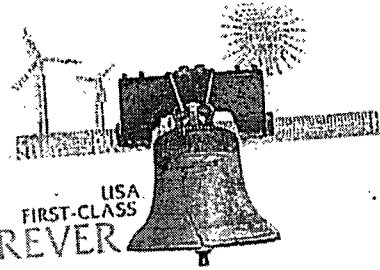
Joseph A. Drachstein Jr.
[REDACTED]

Pickens, S.C. 29617

GREENVILLE SC 29615

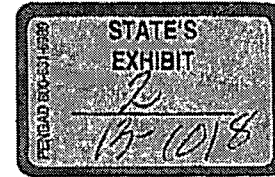
25 APR 2013 PM 11 L

USA
FIRST-CLASS
FOREVER

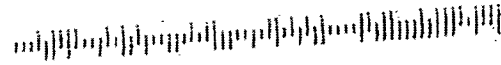


Joseph A. Drachstein Jr.
[REDACTED]

Esley, S.C. 29346



29640123914



Dear Son.

I know you did what you had to do. I don't have any bad feelings toward you. This has been an eye opener for me. I pray you can forgive me as I have taken all thought of ever doing any thing like that ever again. I love your children to much for that.

I will be having a bearing on the 16th of May at 8:30 am. I am hopping I can be free. If I am can you find it in your hart to come an pick me up. I love you very, ~~very~~ very much an the children too.

Your Loving Father

Dad



P.S.

Please Rite back if you will.

Joe Drachstein
12/13/1938

YOUR RIGHTS

SHERIFF'S OFFICE
PICKENS, SC

DATE 3/12/2013

TIME 5:10 PM

JD Before we ask you any questions, you must understand your rights. ✓

JD You have the right to remain silent. ✓

JD Anything you say can be used against you in court. ✓

JD You have the right to talk to a lawyer for advice before we ask you any questions and to have him/her with you during questioning. ✓

JD If you have no money to pay a lawyer's fee, the court will appoint one to represent you without cost if you wish. ✓

JD If you decide to answer questions without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer. ✓

WAIVER OF RIGHTS

JD I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me. ✓

Witness Rita Burger
Witness Brian Bolden

Signed Joseph A. Drachstein Jr.



VOLUNTARY STATEMENT

357

DATE 03-12-13 PLACE 114 MT. Forest Cir. Easley SC TIME STARTED 5:42p M.
 I, the undersigned, Joseph Anthony Drachslin Sr. ⁵⁴²¹⁴⁰ ~~542142~~ am 76 years of age, my date and place of
 birth being [REDACTED] Pennsylvania
 I now live at [REDACTED]

Before answering any questions or making any statements, Brian R. Bolding + Rita Burgess

a person who identified himself as a Deputies - PCSO
 duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

I was out with my hand in [REDACTED] pants today
I did this several months ago. I am truly sorry for
this and am ready to get help in any way.
I have put my finger in for since before [REDACTED] END

[Large diagonal line crossing out the remaining body of the form]

I received a copy of this statement K.D.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 5:48 p.M. on the 12th day of March, 2013.

WITNESS: Brian R. Bolding

WITNESS: Rita Burgess

Joseph A Drachslin Sr.
 Signature of person giving voluntary statement

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 27th day of February, 2015.



David Alexander
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

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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David Alexander
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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

5

ORIGINAL

RECEIVED
FEB 27 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

RESPONDENT,

V.

JOSEPH ANTHONY DRACHSLIN, SR.,

APPELLANT

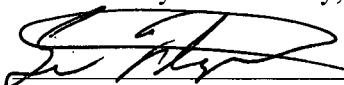
APPELLATE CASE NO. 2014-000945

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Joseph Drachslin, Sr., 359751, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 27th day of February, 2015.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 27th day of February, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.