

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Michael G. Nettles, Circuit Court Judge

RECEIVED

MAY 18 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BARRY EUGENE LAFAVOR,

APPELLANT

APPELLATE CASE NO. 2013-000568

RECORD ON APPEAL

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

MARK FARTHING
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

J. STROM THURMOND, JR.
Solicitor, Second Judicial Circuit
Post Office Box 3368
Aiken, SC 29802-3368
(803) 642-1557

Attorneys for Respondent

INDEX

INDEX	i
PRETRIAL TRANSCRIPT (May 21, 2013)	1
REQUEST BY MR. ROUTZONG	2
RESPONSE BY MRS. WHITTLE	3
RESPONSE BY MR. ROUTZONG	7
RULING BY THE COURT	14
TRIAL TRANSCRIPT (June 26, 2013)	17
JURY VOIR DIRE	18
MOTION FOR A CONTINUANCE BY MR. ROUTZONG	20
RESPONSE BY MS. AGNEW	22
RESPONSE BY MR. ROUTZONG	23
RULING BY THE COURT	24
MOTION TO REQUIRE MINOR 1 TO BE EVALUATED	25
OPENING STATEMENT BY MS. AGNEW	26
OPENING STATEMENT BY MR. ROUTZONG	29
TESTIMONY	
MINOR 1	
By the Court (In-Camera)	31
Direct Examination by Ms. Agnew	32
Cross Examination by Mr. Routzong	47
MINOR 2	
By the Court (In-Camera)	56
Direct Examination by Ms. Agnew	58

Cross Examination by Mr. Routzong.....	72
SUSAN LUKOWIAK	
Direct Examination by Mr. Grimes.....	78
Cross Examination by Mr. Routzong.....	88
VICTORIA WHITTLE	
Direct Examination by Mr. Grimes.....	100
Cross-Examination by Mr. Routzong	108
Redirect Examination by Mr. Grimes	110
TIFFANY PHILLIPS	
Direct Examination by Ms. Agnew.....	113
Cross-examination by Mr. Routzong.....	123
Redirect Examination by Ms. Agnew.....	126
KAYE HAWTHORNE	
Direct Examination by Ms. Agnew.....	127
SHERRY PATTILLO	
Direct Examination by Ms. Agnew.....	133
Cross-Examination by Mr. Routzong	137
KIM SIEVERS	
Direct Examination by Ms. Agnew.....	139
Cross-Examination by Mr. Routzong	149
Proffered Testimony by Mr. Routzong	151
RENEWED MOTION FOR A CONTINUANCE BY MR. ROUTZONG	162
RULING BY THE COURT.....	163
TESTIMONY	
KIM SIEVERS	
Continued Cross-Examination by Mr. Routzong	164
Redirect Examination by Ms. Agnew	170
STATE RESTS.....	173
MOTION FOR A DIRECTED VERDICT BY MR. ROUTZONG	173
CLEVELAND SCOTT	
Direct Examination by Mr. Routzong.....	175
Cross-Examination by Ms. Agnew	176
Redirect Examination by Mr. Routzong	180

BARRY LAFAVOR	
Direct Examination by Mr. Routzong.....	182
Cross-Examination by Ms. Agnew	194
Redirect Examination by Mr. Routzong	203
DEFENSE RESTS	204
RENEWED MOTION FOR DIRECTED VERDICT BY MR. ROUTZONG	204
RESPONSE BY MS. AGNEW	205
CHARGE CONFERENCE.....	205
CLOSING ARGUMENT BY MR. ROUTZONG	213
CLOSING ARGUMENT BY MS. AGNEW	222
MOTION FOR A MISTRIAL BY MR. ROUTZONG.....	234
RESPONSE BY MS. AGNEW	234
RULING BY THE COURT	234
VERDICT FORM AMENDED.....	235
JURY CHARGE.....	237
VERDICT	253
SENTENCING	258
MOTION FOR A NEW TRIAL BY MR. ROUTZONG.....	259
RESPONSE BY MS. AGNEW	260
RULING BY THE COURT	260
RESPONSE BY MR. ROUTZONG.....	261
RESPONSE BY MS. AGNEW	265
RESPONSE BY MR. ROUTZONG.....	265
RULING BY THE COURT	268
INDICTMENTS	269

SENTENCING SHEETS 279

CERTIFICATE OF COUNSEL.....281

State of South Carolina)
County of Aiken) Court of General Sessions
) 2013-GS-02-00593,00590

State of South Carolina)
) Plaintiff
) vs.)
Barry E. Lafavor) Transcript of Record
)
) Defendant)

May 21, 2013
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Ashley Agnew (Hammack), Assistant Solicitor
Attorney for the Plaintiff

Amanda F. Whittle, Esquire
Attorney for the Department of Social Services

Michael D. Routzong, Esquire
Attorney for the Defendant

Lisa H. Davenport, RPR, FCRR
Official Court Reporter

1 (On May 21, 2013, the following proceedings are held:)

2 THE COURT: Mr. Routzong, I'll be glad to hear from
3 you. We're on the record.

4 THE COURT: Is he back there?

5 (The Defendant enters the courtroom.)

6 THE COURT: Mr. Routzong, you have a request you want
7 to put on the record?

8 MR. ROUTZONG: Yes, Your Honor. We actually
9 subpoenaed DSS records in Mr. LaFavor's case and the
10 Department of Social Services sent back a motion to quash
11 the subpoena and I think that was filed in family court.

12 THE COURT: Well, what am I doing here?

13 MR. ROUTZONG: I would say, Your Honor, because it's
14 a general sessions case, it arguably belongs up here, and
15 any decisions about whether the record should be turned
16 over would be properly ---

17 THE COURT: So you have filed a proper subpoena
18 seeking certain records?

19 MR. ROUTZONG: That's correct.

20 THE COURT: And as a response to that subpoena, you
21 have received a motion to quash the subpoena?

22 MR. ROUTZONG: That's correct.

23 THE COURT: So I assume we need to hear the person
24 filing the motion to quash, but they filed it in the
25 family court.

1 MR. ROUTZONG: That's correct.

2 THE COURT: Well...

3 MRS. HAMMACK: Your Honor, she's here.

4 THE COURT: Ma'am?

5 MRS. WHITTLE: I filed it under the case number that
6 was referenced in the subpoena which is 2012A210900067.

7 If that's a family court action, then that's the action
8 from which the subpoena was issued. So that's where I
9 filed my motion.

10 THE COURT: Well, everybody agrees that it's a
11 general sessions case, and if you got a motion to quash
12 the subpoena for a general sessions case, it should be
13 heard by me.

14 Mrs. Whittle?

15 MRS. WHITTLE: Yes, sir.

16 THE COURT: Are you ready -- are you prepared to go
17 forward on your motion to quash?

18 MRS. WHITTLE: Absolutely.

19 THE COURT: I'll be glad to hear from you.

20 MRS. WHITTLE: Under 63-7-1900 ---

21 THE COURT: Hold on a second.

22 MRS. WHITTLE: I'm sorry.

23 THE COURT: 63-7- -- I'm listening.

24 MRS. WHITTLE: 1900.

25 THE COURT: Before you start your argument, what has

1 he subpoenaed?

2 MRS. WHITTLE: He has subpoenaed any and all records
3 regarding the minor children Allison Whittle, Breanna
4 Michael, Minor 1, and A.M.

5 THE COURT: Okay. And you move to quash that
6 subpoena?

7 MRS. WHITTLE: Yes, sir.

8 THE COURT: And your position is based on Section
9 63-7-1900.

10 MRS. WHITTLE: Yes, sir.

11 THE COURT: All right. Do you have a copy of that?

12 MRS. WHITTLE: Yes, sir. May I approach?

13 THE COURT: You may.

14 (The document is handed to the Court.).

15 THE COURT: Thank you.

16 MRS. WHITTLE: There are other statutes attached to
17 that, but if I may explain something extremely briefly.
18 When DSS gets a phonecall alleging abuse or neglect, one
19 of three things happen: We get a phonecall and we either
20 accept it for an intervention or we don't -- or an
21 investigation or we don't even accept it. So sometimes we
22 get a phonecall and there is no investigation; therefore,
23 that wouldn't be an indicated case.

24 Secondly, sometimes we do accept the intake and start
25 an investigation, but the result of that investigation is

1 it's unfounded; therefore, it wouldn't be indicated.
2 Thirdly, sometimes we get a phonecall. We accept it. We
3 do an investigation and it's indicated.

4 Section 63-7-1900 deals with indicated cases -- who
5 we can release records of indicated cases. Mr. Routzong's
6 client is Mr. Lafavor. He's not listed as a person for
7 whom Mr. Routzong seeks records. So under 63-7-1900
8 Mr. Routzong can't just subpoena records for just random
9 individuals from the Department of Social Services, first.

10 THE COURT: Please point me in the direction you want
11 me to look at.

12 MRS. WHITTLE: 63-7-1900.

13 THE COURT: B?

14 MRS. WHITTLE: Well ---

15 THE COURT: Hold on a second.

16 MRS. WHITTLE: I'm sorry.

17 THE COURT: Ma'am, are you okay back there?

18 UNKNOWN AUDIENCE MEMBER: I'm sorry.

19 THE COURT: We're getting you some water. Let's see
20 if that will help you. Okay? Let Mr. McCarley in,
21 please.

22 Section B, ma'am, gives -- it's the statutory
23 authority to give access to those records and it lists the
24 following people, agencies, and entities; is that correct?

25 MRS. WHITTLE: Yes, sir.

1 THE COURT: And then it goes, like, 1 through 23,
2 perhaps?

3 MRS. WHITTLE: Yes, sir. So those are of indicated
4 cases. So if we had cases regarding all of those people
5 that were not indicated or that were not even
6 investigated, that doesn't even fall under 19 -- this
7 particular statute, but even so, if there is an indicated
8 case on me at the Department of Social Services,
9 Mr. Routzong shouldn't be able to send a subpoena to DSS
10 to get records of me just because he's representing a
11 defendant. So that's why ---

12 THE COURT: Well, is that "a defendant" in this
13 particular case accused of sexually abusing girls for whom
14 the records are sought?

15 MRS. WHITTLE: Well, I think that's what he's trying
16 to find out, but under these exceptions there's not an
17 exception for defendants who have been charged with a
18 crime.

19 THE COURT: All right.

20 MRS. WHITTLE: I can release information to the
21 solicitor's office if they are having a case that involves
22 a child for whom we've been involved, too, and that's
23 under --

24 THE COURT: Four.

25 MRS. WHITTLE: -- four.

1 THE COURT: Enforcement agency, perhaps?

2 MRS. WHITTLE: Yes, sir. But there is no exception.

3 You know, if Mr. ---

4 THE COURT: Well, let's assume that you have to
5 release it to the solicitor who is in charge, i.e.,
6 Miss Agnew and let's assume Mr. Routzong's client is
7 charged with CSC or whatever it is in this particular case
8 and he files the appropriate Rule Five. Isn't that what
9 it's called? A Rule Five or Brady Motion? Is not the
10 state then required to turn it over?

11 MRS. WHITTLE: Well, the state would pursuant to
12 that, but my law is that all reports made are confidential
13 and any person who improperly disseminates is guilty of
14 misdemeanor and upon conviction be made fined \$1,500 or
15 imprisoned. So I don't want to go to jail and I didn't
16 see an exception here. So my response was to file a
17 motion to quash. I don't look good in orange and I got a
18 lot to do.

19 THE COURT: You don't look good in orange?

20 MRS. WHITTLE: I don't look good in an orange
21 jumpsuit. I don't have time to go to jail. And under
22 63-7-1990(b) there is no exception for releasing
23 information to a defendant in a criminal case.

24 THE COURT: Mr. Routzong?

25 MR. ROUTZONG: If it please the Court, Your Honor.

1 Under the following article, number five, says, "The
2 person who is named in the report or investigation
3 pursuant to this article as having abused or neglected a
4 child" -- there is no definition of abused in this title
5 that I could find -- "that person's attorney and that
6 person's guardian ad litem." That's an exception.

7 I would argue, Your Honor, that makes this
8 information subpoena -- subject to a subpoena.

9 MRS. WHITTLE: And, Your Honor, as an officer of the
10 Court, I would inform the Court that we do have one
11 indicated case and that one indicated case would fall
12 under 63-7-1990 and of that one indicated case his
13 client's name is not even mentioned.

14 THE COURT: You want me to do in-camera review to
15 verify that, Mr. Routzong, or do you want -- surely you
16 can trust Mrs. Whittle's word on that. And you're not
17 going to hurt my feelings or hers if you want me to do a
18 in-camera review.

19 MR. ROUTZONG: That probably -- in the context of due
20 diligence, Your Honor, that probably would be the minimum.

21 THE COURT: The minimum?

22 MR. ROUTZONG: Well ---

23 THE COURT: Sir?

24 MR. ROUTZONG: That should probably be the minimum I
25 should ask of the Court to do.

1 THE COURT: How about the maximum? What do you want
2 me to do?

3 MR. ROUTZONG: It sounded like from what Mrs. Whittle
4 is saying maybe there is a lack of specificity in my ---

5 THE COURT: Subpoena.

6 MRS. WHITTLE: That's not ---

7 THE COURT: Ma'am, wait a minute.

8 MRS. WHITTLE: I'm sorry.

9 THE COURT: Just talk to me.

10 MR. ROUTZONG: That was what I was wondering. That
11 was the impression I got that maybe there was a lack of
12 specificity. I can ask it more exactly. For example, I
13 could ask are there -- I could ask them to turn over any
14 records where Mr. Lafavor is mentioned, any records of
15 prior allegations of criminal sexual conduct that were
16 subsequently found to be unfounded. Those would be the
17 kind of things that I would need.

18 THE COURT: Well, you could certainly withdraw that
19 subpoena and reissue another one. We may be right back in
20 here. It is up to you. Mrs. Whittle says there is one
21 case in there founded that mentions your client's name and
22 I assume if that's the case, Mrs. Whittle, under that
23 subsection five, would that be -- would you comply with it
24 then?

25 MRS. WHITTLE: His name is not -- his client's name

1 is not mentioned. So even though it's indicated, his
2 client is not mentioned.

3 THE COURT: I see.

4 MRS. WHITTLE: Now, I think -- he just talked about
5 something that's entirely different and that's an
6 unfounded case. An unfounded case is the opposite of an
7 indicated case and that falls under 63-7-2000. If he
8 asked me for information on unfounded cases, I would have
9 to cite 2000, and I don't know of a situation where I can
10 release information from unfounded cases.

11 THE COURT: But if there is any DSS records that are
12 pertinent and relevant to this case, obviously, you'll
13 turn it over to the solicitor's office and then you got to
14 turn them over under the rules; is that correct, Ms.
15 Agnew?

16 MRS. HAMMACK: If they are relevant to this case,
17 Your Honor. We don't have any records from ---

18 THE COURT: I am not saying that you do. I am saying
19 if there were.

20 MRS. HAMMACK: Yes, Your Honor.

21 THE COURT: Mr. Routzong, anything else?

22 MR. ROUTZONG: Under Section 940 in the context of
23 unfounded cases, this is -- I don't know if you have a
24 copy of 63-7-940.

25 MRS. HAMMACK: Your Honor.

1 (A document is given to the Court.)

2 THE COURT: But your subpoena doesn't deal with
3 unfounded cases, does it?

4 MR. ROUTZONG: Actually, Your Honor, I guess the
5 argument would go that we're looking for anything. It
6 could be an unfounded case. That would be just -- if
7 there were prior allegations that were subsequently
8 unfounded, that would go to the veracity of the accuser's
9 statements. If they made prior accusations and they were
10 subsequently found to be untrue, I would think that would
11 be relevant for cross examination and impeachment
12 purposes, Your Honor.

13 THE COURT: Well, it says here, "Information
14 concerning unfounded cases have to be held for five years.
15 They're not subject to disclosure under the Freedom of
16 Information. Access to and use of this information
17 contained in unfounded cases must be strictly limited to
18 the following purposes and entities." Number one, it
19 allows Miss Agnew to get it. Number two, sheriff's office
20 or any other law enforcement agency, similar to three.
21 Four, as evidence in a court proceeding if admissible
22 under the rules of evidence as determined by a judge of
23 competent jurisdiction.

24 Mrs. Whittle, what does that mean to you?

25 MRS. WHITTLE: That means to me that you could do

1 in-camera review of all of the unfounded cases to
2 determine whether or not there was application pursuant to
3 subsection four. Would the Court allow an order to be
4 issued for me to submit the unfounded case information to
5 the Court for an in-camera review? I'll be glad to draw
6 that order.

7 THE COURT: Mr. Routzong, that should satisfy you,
8 should it not?

9 MR. ROUTZONG: As long as the Court got access to the
10 entirety of the records, I think that would be
11 satisfactory.

12 MRS. WHITTLE: I like practicing law.

13 THE COURT: I don't think that Mrs. Whittle is going
14 to go through and cherry-pick them. I think she's going
15 to give me all of them.

16 Mrs. Whittle, I appreciate that offer. Would you
17 please do so and make the order -- share it with
18 Mr. Routzong and make sure it's broad enough to cover what
19 y'all have on file. Please send me the order. Let me
20 sign the order. Make sure y'all get it back and review it
21 along with Miss Agnew and then we'll need to arrange some
22 time. I'd rather you hand-deliver those things to me
23 while I'm here and I can do it while I'm here and then I
24 can return them or we can get together and I'll tell you
25 the ones I think that may be relevant in the prosecution.

1 MRS. WHITTLE: How long will you be here? Will you
2 be here Friday? Okay. I'll get those to you on Thursday
3 then. Is that okay?

4 THE COURT: Well, when is this case set for trial?
5 We got timeframes? Are we dealing with timeframes?

6 MRS. HAMMACK: The week of June 10th; the next term,
7 Your Honor.

8 MRS. WHITTLE: I can get them to you tomorrow, Your
9 Honor.

10 MRS. HAMMACK: It'll be in front of Judge Cole.

11 THE COURT: Ma'am?

12 MRS. HAMMACK: It's set for the June 10th term where
13 Judge Cole will be here.

14 THE COURT: Mrs. Whittle, would it be an imposition
15 to bring them to me Monday morning -- Monday at your
16 convenience in Barnwell?

17 MRS. WHITTLE: That would be wonderful.

18 THE COURT: Does that give you enough time to do it
19 all?

20 MRS. WHITTLE: Yes, sir.

21 THE COURT: If you see that you don't have enough
22 time just, obviously, pick up the phone and tell me you
23 need a few more days, but if you could bring them to me
24 over there, I can do that next week and get them
25 hand-delivered back to you and so they won't get out of my

1 presence.

2 MRS. WHITTLE: Thank you.

3 THE COURT: Mr. Routzong, that's the way I'm going to
4 handle it.

5 MR. ROUTZONG: Yes, sir.

6 THE COURT: Now, you want to tell me what you're
7 looking for so I'll know what.

8 MR. ROUTZONG: Therein lies a good question, Your
9 Honor, obviously, and doing the little bit of research
10 from other states where they've had a similar problem, the
11 defense advocates in those cases pointed out that one
12 would have to look at it with an advocate's eye. The
13 courts have held that that is probably asking too much.
14 To answer your question exactly, I would be looking for
15 anything having to do with Mr. Lafavor, his relationship
16 with these children, anything having to do with prior
17 allegations that were unfounded.

18 THE COURT: Well, here's what I want you to do. How
19 about before Monday list out what you're asking me to be
20 specifically looking for and let's put that as an addendum
21 to the order as to what you're requesting me to do
22 in-camera review to see if that information is in there?

23 MR. ROUTZONG: Yes, sir.

24 THE COURT: Is that fair?

25 MR. ROUTZONG: Yes, sir, very fair.

1 THE COURT: All right. And if it is founded, the
2 state is going to use it, and, obviously, it is going to
3 be turned over to Miss Agnew and she's obligated under the
4 rules to give you that. So that sort of ought to take
5 care of that, too, shouldn't it?

6 MR. ROUTZONG: Yes, sir.

7 THE COURT: Are we in good shape every way around?

8 MRS. WHITTLE: Yes, sir.

9 (End of Transcript of Record.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

1

2

3

4

State of South Carolina)

5

County of Aiken)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

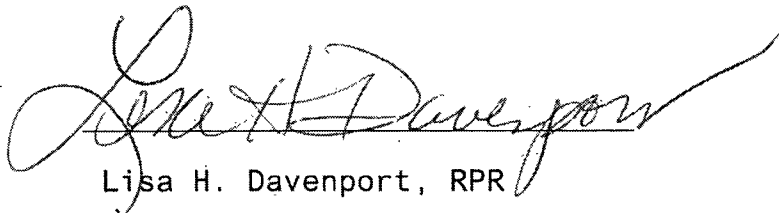
24

25

I, Lisa H. Davenport, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina at the time of this hearing, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Aiken County, South Carolina, on the 21st day of May, 2013.

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

January 19, 2015



Lisa H. Davenport, RPR

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT

2013-GS-02-00590

State of South Carolina,)
))
Plaintiff,)
))
v.) Transcript of Record
))
Barry Eugene Lafavor,)
))
Defendant.)
))
_____)

June 26, 2013
Aiken, South Carolina

B E F O R E: . .

The Honorable Michael G. Nettles, Judge and a jury

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

Ashley Agnew, Esquire
Sam Grimes, Esquire
Attorneys for the State

Michael D. Routzong, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

1 my stay here.

2 You have been subpoenaed to take part in a term of
3 court. I'm presiding over General Sessions, which is better
4 known as criminal court. You are a potential juror for
5 this term of court.

6 The first case that we're going to try is the State of
7 South Carolina verses Barry E. Lafavor, and there are a
8 number of different charges which I'm going to go over with
9 you. I hold in my hand these indictments and they are just
10 that, they are the paper work for this judicial proceeding.
11 It has absolutely no evidentiary value whatsoever. As Mr.
12 Lafavor sits before you he is presumed innocent to me, you,
13 the solicitor's office. He is presumed to be innocent.

14 Mr. Lafavor is being charged with criminal sexual
15 conduct with a minor and this allegation -- this allegation
16 arose out of events from July 4, 2011 to May 1, 2012. There
17 is another allegation which is criminal sexual conduct with
18 a minor, third degree. The allegation is that these events
19 took place from July 4, 2011 to May 1, 2012. Another
20 allegation of criminal sexual conduct with a minor with the
21 conduct arising out of events that took place July 5, 2011
22 to May 1, 2012. There is another allegation of criminal
23 sexual conduct with a minor and this allegation allegedly
24 took place on or about July 4, 2011, there is one charge of
25 criminal solicitation of a minor. The allegation allegedly

State v. Lafavor 6/24/13

9

1 arose from an incident that occurred July 4, 2011 to May 1,
2 2012.

3 Ladies and gentlemen of the jury, each of you have been
4 qualified. None of you have exercised an exemption and I'm
5 gong to ask you a number of questions. Although y'all have
6 been qualified these questions are to determine whether you
7 can be a fair and impartial juror according to the facts of
8 this particular case. I'll remind you that you are still
9 under oath. Pay very close attention to the questions.
10 You're truthful answers to these very important matters and
11 I'm going to ask that you give your undivided attention.

12 The defendant in this case is Barry E. Lafavor. I'm
13 going to ask that he stand and turn around and face the jury
14 panel.

15 (Mr. Lafavor stands.)

16 THE COURT: Thank you, Mr. Lafavor, you can have a seat.

17 Is anyone related by blood or marriage or have a close
18 social, business or personal relationship with Mr. Lafavor,
19 if so please stand.

20 (Potential juror stands.)

21 THE COURT: Yes, sir. I'm going to ask that you come to
22 the forward.

23 (Off the record bench conference with potential juror,
24 counsel and the Court.)

25 (No. 17 stays.)

1 there a lot of documentary evidence in this case?

2 MS. AGNEW: There's not a lot, Your Honor. The state
3 anticipates about three pictures and one other piece of
4 evidence.

5 THE COURT: Okay. Before we leave today, if it doesn't
6 take too long, I'm going to ask you to show that to the
7 defense and if there's something y'all cans stipulate to,
8 let's do that.

9 MS. AGNEW: Absolutely.

10 THE COURT: And if there's not then we can address that
11 at 2:30 as far as admissibility to the extent we can.

12 Anything from defense?

13 MR. ROUTZONG: No, sir.

14 THE COURT: We'll stand at ease until 2:30, 2:30 sharp.

15 (Court in recess for lunch at 1:06 p.m.)

16 (Court in session after lunch at 2:30 p.m.)

17 THE COURT: All right. I understand we have some
18 matters we'd like to place on the record. I know the
19 defense has some matters and you're recognized.

20 MR. ROUTZONG: That's correct, Your Honor. We move for
21 a motion for continuance.

22 THE COURT: Yes, sir.

23 MR. ROUTZONG: Your Honor, back in March of this year I
24 requested from DSS via subpoena to receive all the DSS
25 records pertaining to this family, the accusers. About a

State v. Lafavor 6/24/13

29

1 week later DSS moved in family court to quash the subpoena.
2 Amanda Whittle representing DSS.

3 We had a hearing here in General Sessions Court, May 21
4 and at that time, Judge Early ordered that all the records
5 be given to him for his review to see if there was anything
6 material or relevant. Around June 17, actually June 18, I
7 think I spoke with Adam Ness, his clerk. We reviewed what
8 had been found in the record. I mentioned to them at that
9 time I intended to ask for a continuance. The records
10 weren't actually made available to me, I believe that was a
11 Tuesday, so the records were made available to me, I think,
12 the following Thursday. I think Mr. Thompson from our
13 office picked them up around Noon on Thursday.

14 Your Honor, this is the file -- furnished to me. As
15 the Court can see that's a substantial amount of material.
16 I don't think that it's fair to the defendant or of the
17 Court for me to actually say that I've had time to review
18 these records. I've only skimmed the surface of them in the
19 last couple of days as I've been preparing for two trials
20 that were scheduled for this week.

21 Your Honor, normally, that's why I requested back in
22 March to give myself time to actually review and
23 investigate. This is a very superficial reviewing of these
24 records, Your Honor, I count pages missing. There's one
25 page that says one of three, but nothing following. I don't

1 know if there's anything relevant there or not. Certainly,
2 I can't determine what's relevant or material and I don't
3 think the Court should rely on Judge Ness's (sic) law clerk
4 or Ms. Agnew to determine whether or not something is
5 relevant. I think that's in the purview of the defense to
6 determine that and at least present it to the Court or --

7 THE COURT: Well, you've had an opportunity. You've
8 have at least Thursday to read those documents, most of
9 which don't apply to the individual victims and none of it
10 applies to the defendant, does it?

11 MR. ROUTZONG: I have no idea, Your Honor.

12 THE COURT: Oh, you haven't read them?

13 MR. ROUTZONG: No, sir, I've only scratched the surface
14 of them. I started --

15 THE COURT: Well, you've had since Thursday to do it.
16 I'll be glad to hear from the solicitor.

17 MS. AGNEW: Thank you, Your Honor. On March 14 of this
18 year we had a bond hearing in this case in front of Judge
19 Early. At that time he declined to modify bond, but at the
20 defense's request he did say that it would be revisited if
21 this case was not tried by the June term. So essentially,
22 we had a date certain for this term. After the In Camera
23 hearing of the DSS records those were determined to be
24 discoverable, not relevant or material. Those were turned
25 over to both our office and the public defender's office on

State v. Lafavor 6/24/13

31

1 Thursday morning. Having gone through those records, the
2 vast majority of them are doctor's records where various
3 children in this family, only two of them were involved in
4 this case, went to the doctor. There's also a lot of
5 consent to release medical records. The defendant is not
6 listed anywhere in those records. This case has already
7 been continued the week of June 10 in front of Judge Cole,
8 as well.

9 THE COURT: Okay. All right. Yes, sir.

10 MR. ROUTZONG: Your Honor, in response, as far as this
11 being a date certain. That was a bond hearing and that's
12 not -- I wouldn't consider that -- denominate that as a date
13 certain. The continuance was not the defense's fault. I did
14 not ask for a continuance. The only thing I've ever asked
15 for were the records. I believe, Your Honor, under the
16 statute that they would have been discoverable the state --
17 we could have bypassed this altogether if the state has
18 requested these records to begin with. I don't know, Your
19 Honor, it's hard for me to guess. It's pretty much over 500
20 pages. I don't think it's reasonable for anyone to think
21 that I can go through all these pages when I've just gone
22 through the first couple and found discrepancies that Mr.
23 Ness didn't even point out.

24 THE COURT: All right. Have you had an opportunity to
25 review the documents?

1 MS. AGNEW: Yes, Your Honor.

2 THE COURT: All right. Although it does appear to be a
3 stack of papers, it doesn't require that you read all of
4 them in detail once you find out what the document is, isn't
5 that correct?

6 MS. AGNEW: That's correct, Your Honor.

7 THE COURT: And you've read all of them in its entirety?

8 MS. AGNEW: Yes, sir.

9 THE COURT: All right. Very good. How long did it take
10 you to do that?

11 MS. AGNEW: Probably took me a few hours.

12 THE COURT: All right.

13 MR. ROUTZONG: I wonder if Ms. Agnew realized that there
14 were pages missing.

15 THE COURT: Well, what I'm going to do is, I'm going to
16 make -- allow you to make those documents part of the record
17 in your motion for continuance is noted but denied, but
18 you're protected on the record.

19 I'm going to ask that these documents be placed under
20 seal by the Clerk's office and made a part of the record.

21 THE CLERK: Can we just make a copy of what Mr. --

22 THE COURT: Certainly.

23 MS. AGNEW: Your Honor, if I may, I think the Clerk's
24 office has the original --

25 THE CLERK: We have the original in our office.

State v. Lafavor 6/24/13

33

1 THE COURT: Very good. We will make the original a part
2 of the record and keep it sealed and it will be there for
3 appellate review, if necessary.

4 Anything further?

5 (Court's Exhibit No. 2, two
6 packages sealed by Order of the Court.)

7 MR. ROUTZONG: There was a motion, Your Honor, to
8 require Minor 1 to be evaluated.

9 I know Your Honor has already gotten a copy of the
10 motion and basically I think in the interest of -- the Court
11 adopt the Delaney Guidelines in West Virginia verses
12 Delaney. Those guidelines are the nature of the examination
13 requested and intrusiveness inherent in that examination of
14 victims result in physical and/or emotional effects of the
15 examination on the victim, the probative value of the
16 examination to the issue before the Court, remoteness in
17 time of the examination to the alleged criminal act, and the
18 evidence already available for the defendants use and that's
19 cited in that case, Your Honor.

20 Just go down, my response to each one of those
21 guidelines, Your Honor, Minor 1 has been involved in
22 mental health counseling and expressed a desire to continue.
23 I found that out by viewing one of the videos. She's in her
24 early teens. The accuser was six at the time of the trial.
25 That means she would be (inaudible) the nature of any

1 fact, quite often they can't be corrected. So that's why
2 it's important for y'all to pay close attention when the
3 witnesses take the witness stand and testify. These are
4 important matters and I'm confident that you're going to do
5 that.

6 State's recognized with regard to opening statements.

7 MS. AGNEW: Thank you, Your Honor.

8 STATE - OPENING STATEMENT

9 THE COURT: Yes, ma'am.

10 MS. AGNEW: Mr. Routzong, Madam Clerks, members of the
11 jury, this is a case about two little girls, two sisters.
12 Minor1 is 14 and Minor2 is 12. Even though they're sisters
13 they're very different little girls. Minor1 loves to talk.
14 Minor2 is pretty shy. She's quiet. Minor1 is a teen-ager
15 and I'm pretty sure her favorite thing in the entire world
16 is her cell phone. Minor2, she loves her animals. Her pet
17 dogs, her pet turtles, and her pet ferret. Minor1 likes
18 school, but I'm pretty sure it's mostly just to see her
19 friends. Minor2 loves school. She's very concerned about
20 her school performance.

21 Now, although these sisters are very different girls,
22 they have one thing in common. Minor1 and Minor2, as
23 you'll hear today, were targeted by that man, and they were
24 the victims of his sexual abuse.

25 Now, he's not related to them, but you'll hear that for

State v. Lafavor 6/24/13

47

1 a year, from July 2011 to May 2012, he took advantage of a
2 family tragedy. Their house burned. He took advantage of
3 that and worked his way into Minor1 and Minor2 's lives,
4 their home, and their beds.

5 Members of the jury, this isn't going to be a pretty
6 case. It's going to be awful, and it's going to make you
7 feel uncomfortable. This isn't like TV. The victims aren't
8 actors. The victims are real people. Minor1 and Minor2 .

9 This case didn't take 30 minutes to solve including
10 commercial breaks, but was the result of a five month
11 investigation. And unlike TV we don't have fancy equipment
12 and purple light and computers that will find DNA evidence
13 that solves the whole case. This isn't a case about DNA.
14 This isn't a case about family. This is a case about what
15 that man did in secret to these girls.. You'll hear from
16 them today.

17 Now, members of the jury, the judge has talked to you a
18 little bit about the law. And there's a whole lot of legal
19 language and he's going to explain it to you later, but I
20 just want to give you an idea of what to look for.

21 Like he told you earlier there's three charges in this
22 case. Criminal sexual conduct with a minor in the third
23 degree. One for Minor2 and two for Minor1 , and basically
24 what I'm asking you to listen for is touching. Touching by
25 the defendant for his pleasure.

1 Now, there's also a charge of criminal sexual conduct
2 with a minor second degree, and that's a little different.
3 That charge is also involving Minor1 . That's a little bit
4 more than touching. That's touching with penetration of the
5 vagina in this case, and that's penetration however slight,
6 so listen to that throughout the testimony.

7 The last charge I want you to listen for is
8 solicitation. Again, that's with Minor1 , the 14 year old,
9 and I want you to listen for the defendant communicating
10 with her to persuade her to engage in sexual acts.

11 Like I said, it's going to be awkward, and it's going
12 to be uncomfortable, but it's important. I want y'all to
13 listen to everybody who gets up here and talks. I want
14 y'all to look at the evidence and use your common sense.
15 Y'all have all got it. Y'all brought it with you. Listen
16 to what's reasonable, what makes sense and what's right.

17 Now, the judge talked to you about presumption of
18 innocence and you're going to hear a whole lot more about
19 that today. And he's absolutely right, the defendant is
20 presumed innocent until he's proved guilty by the evidence
21 and the testimony.

22 And members of the jury, at the end of this case, all
23 that evidence that you're going to see and all that
24 testimony you're going to hear is going to take the
25 presumption of innocence and the only thing left will be a

State v. Lafavor 6/24/13

49

1 verdict of guilty.

2 Thank you.

3 THE COURT: Mr. Routzong, you're recognized.

4 MR. ROUTZONG: Thank Your Honor.

5 DEFENSE - OPENING STATEMENT

6 The solicitor told you this case was about two little
7 girls and she went through all their differences. Ladies and
8 gentlemen I disagree with that. What this case is about is
9 really two little girls and what they have in common and
10 what they have in common is they told investigators that
11 nothing happened.

12 The judge has told you about the presumption of
13 innocence. I'm going to break that down a little bit for
14 you so that you can truly understand what you did when you
15 took that oath and you said that you were going to listen to
16 the evidence and you were going to presume that the
17 defendant is innocent.

18 Presumption of innocence means that the state has their
19 case wrong. That they're wrong about what happened, and it
20 also means that the witnesses are either mistaken or they're
21 being untruthful. If you don't adopt that position
22 throughout this trial up and including the time you leave
23 for deliberations, until you've all come to a decision about
24 what the truth is. If you don't keep that in mind you have
25 broken your oath and justice will not have been done here.

1 Ladies and gentlemen, she's right. This is kind of an
2 ugly case. You're going to hear ugly things. Just remember
3 you took that oath and you're presuming the state's got
4 their case wrong and the victim's are either not telling you
5 the truth or they're mistaken and at the end of this trial,
6 ladies and gentlemen, speak the truth, because it will be
7 apparent.

8 THE COURT: Madam Solicitor, you may call your first
9 witness.

10 MS. AGNEW: Thank you, Your Honor.

11 The state calls Minor 1

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

14 (WHEREUPON Minor 1 was sworn
15 to tell the truth.)

16 THE CLERK: Walk around and come sit in the witness box.
17 State your full name and spell your last for us, okay.

18 Minor 1 : My name is Minor 1 . How to spell
19 my last name is Minor 1

20 THE COURT: Very good.

21 Mr. Foreman, ladies and gentlemen of the jury we have
22 to take up one legal matter outside of your presence. I'm
23 going to ask you do not discuss this matter. We'll be back
24 with you momentarily.

25 (Jury out at 3:19 p.m.)

State v. Lafavor 6/25/13

51

1 THE COURT: Minor 1 , how are you doing?

2 Minor 1 : Good.

3 THE COURT: I'm going to ask you just a few questions,
4 if you don't mind. I assume you're probably never testified
5 in a court before have you?

6 Minor 1 : Shakes head. (Negative response.)

7 THE COURT: Well, I'm just going to ask you some
8 questions.

9 You know that you've talked in some detail with the
10 solicitor's office about what this is about and you're
11 familiar with that, but my question to you is do you
12 understand the difference between a truth and a lie?

13 Minor 1 : Yes, sir.

14 THE COURT: Okay. What do you think the ramifications
15 of telling a lie is; what happens if you tell a lie?

16 Minor 1 : You get in really big trouble.

17 THE COURT: Okay. And you understand that you've taken
18 a solemn oath to tell the truth here today?

19 Minor 1 : Yes, sir.

20 THE COURT: And will you do that?

21 Minor 1 : Yes, sir.

22 THE COURT: All right. Very good.

23 Any query with regard to her competency to testify from
24 the state?

25 MS. AGNEW: Not from the state, Your Honor.

Minor 1

- Direct Examination.

52

1 THE COURT: Any from defense?

2 MR. ROUTZONG: Not at this point. I renew my objection.
3 I think this requires a professional psychiatrist to
4 actually make this determination. I don't have any other
5 questions for her right now, Your Honor.

6 THE COURT: Very good.

7 MR. ROUTZONG: Other than my objection.

8 THE COURT: Your objection is noted.

9 We're ready for the jury.

10 I do, indeed, find that she's competent to testify.

11 (Jury in 3:21 p.m.)

12 THE COURT: Yes, ma'am, you're recognized.

13 MS. AGNEW: Thank you, judge.

14 Minor 1

- DIRECT EXAMINATION

15 BY MS. AGNEW:

16 Q Now, Minor 1, before we start, I'm going to ask you a
17 really big favor, okay? Every time you talk I want you to
18 talk really loud and that microphone you're holding in your
19 hand, hold it up to your mouth so everybody can hear you,
20 okay.

21 Now, tell me Minor 1, how old are you?

22 A Fourteen.

23 Q When is your birthday?

24 A

25 Q What year?

Minor 1 - Direct Examination

53

1 A

2 Q Where do you go to school?

3 A

4 Q What grade are you in?

5 A I was in seventh but now I'm in the eighth.

6 Q Okay. Now, tell me, Minor 1, where do you live?

7 A

8 Q What town is that in?

9 A

10 Q Give me just a second.

11 (Pause.)

12 BY MS. AGNEW:

13 Q Now, Minor 1, I want to show you a set of pictures,
14 okay. We're going to go through them one by one.

15 First, I'm going to show you what's been marked as
16 State's Exhibit No. 1. Do you recognize that?

17 A Nods head. (Affirmative response.)

18 Q What is it?

19 A My house.

20 Q Okay. Where are you looking at the house from in that
21 picture?

22 A The front.

23 Q Okay. Now, I'm going to show you what's been marked as
24 State's Exhibit No. 2; do you recognize that?

25 A Yes.

Minor 1 - Direct Examination

54

1 Q What is it?

2 A My living room.

3 Q Okay. And I'm going to show you what's been marked as
4 State's Exhibit No. 3; do you recognize that?

5 A Yes.

6 Q What is it?

7 A My living room.

8 Q Okay.

9 MS. AGNEW: Your Honor, at this time we'd move State's
10 Exhibits one through three into evidence.

11 THE COURT: Any objection from defense?

12 MR. ROUTZONG: No.

13 THE COURT: State's Exhibit Nos. one through three are
14 in evidence without objection from defense.

15 (State's Exhibit No. 1, photo, was
16 marked and entered.)

17 (State's Exhibit No. 2, photo, was
18 marked and entered.)

19 (State's Exhibit No. 3, photo, was
20 marked and entered.)

21 BY MS. AGNEW:

22 Q Now, Minor 1, tell me this, who lives with you right
23 now?

24 A My mom, my step-mom, my two sisters, my little brother
25 and my baby sister and her boy friend.

Minor 1

- Direct Examination

55

1 Q Okay. Will you tell me what your sister's names are?

2 A Minor 2 , A.M. and K. .

3 Q Okay. And what about your brother?

4 A J.C. .

5 Q Do you have any pets?

6 A A lot.

7 Q What kind of pets do you have?

8 A Dogs and turtles and ferrets.

9 Q Do you have a favorite?

10 A My dog.

11 Q Now, tell me this, Minor 1 , do you know what the truth
12 is?

13 A Yes, ma'am.

14 Q Can you tell me what the truth is?

15 A (No response)

16 Q Well, tell me this, if somebody says something that's
17 real; what is that?

18 A The truth.

19 Q If somebody says something that is not real; what is
20 that?

21 A A lie. . . .

22 Q Do you know what can happen if you tell a lie?

23 A You get in really big trouble.

24 Q And what did you promise to do here today?

25 A Tell the truth.

Minor 1

- Direct Examination

56

1 Q Okay. Now, tell me this, Minor 1, you said that you
2 just finished seventh grade and you're about to go into
3 eighth grade. Last school year, 2012 to 2013, what grade
4 were you in?

5 A Seventh.

6 Q And where did you go to school?

7 A Well, I started at then I moved to

8
9 Q Okay. Now, the school year before that, 2011 to 2012,
10 what grade were you in at that time?

11 A Fifth grade?

12 Q The grade before seventh grade?

13 A Sixth.

14 Q And where did you go to school when you were in sixth
15 grade?

16 A

17 Q Okay. Where did you live in sixth grade?

18 A In the house I'm living in now.

19 Q Okay. Is that on ?

20 A Yes, ma'am.

21 Q Okay. Now, tell me this Minor 1, who lived in your
22 house with you?

23 A My mom, my step-mom, my baby sisters, my brother and my
24 sister, my little brother and Barry.

25 Q And what?

Minor 1

- Direct Examination

57

1 A Barry.

2 Q Okay. Can you tell me who Barry is?

3 A (No response.)

4 Q Well, who was Barry?

5 A A man.

6 Q Is he related to you?

7 A No.

8 Q Was he related to your sisters?

9 A No.

10 Q Was he related to your brother?

11 A No.

12 Q Was he related to your momma?

13 A No.

14 Q Was he related to your step-mom?

15 A No.

16 Q Okay. Do you remember when he started living with you?

17 A No.

18 Q Okay. But he was living with you when you were in
19 sixth grade?

20 A Yes, ma'am.

21 Q Okay. Tell me what was Barry like at first?

22 A Okay to get along with.

23 Q Did he always stay that way?

24 A No.

25 Q What happened?

Minor 1

- Direct Examination

58

- 1 A He started scaring me.
- 2 Q Who would he scare you?
- 3 A He would say he was going into combat.
- 4 Q Can you tell me what going into combat is?
- 5 A Going back to the army time.
- 6 Q What would he do when he would go into combat?
- 7 A Like hit stuff and throw stuff, break stuff.
- 8 Q Okay. Tell me this, Minor 1, how old is Barry?
- 9 A I don't know.
- 10 Q Is he your age?
- 11 A No.
- 12 Q Is he your sister's age?
- 13 A No.
- 14 Q Is he your brother's age?
- 15 A No.
- 16 Q Is he your momma's age?
- 17 A No.
- 18 Q Is he older or younger than your momma?
- 19 A Older.
- 20 Q Okay. When he was living with you did he have a job?
- 21 A Yes.
- 22 Q Do you know where he worked?
- 23 A The t-shirt shop.
- 24 Q What did he do at home when he wasn't working?
- 25 A Mostly clean and stuff.

Minor 1 - Direct Examination

59

1 Q Okay. Did you like Barry?

2 A At first.

3 Q Well, tell me this, Minor 1. Do you know what a good
4 touch is?

5 A Yes, ma'am.

6 Q Can you give me an example of a good touch?

7 A Like a touch on the shoulder.

8 Q Okay. Do you know what a bad touch is?

9 A Yes, ma'am.

10 Q What's an example of a bad touch?

11 A Like touch on a private.

12 Q Okay. Now, Minor 1, has anybody ever bad touched you?

13 A Yes, ma'am.

14 Q Who?

15 A Barry.

16 Q Okay. Give me one more second, okay. Be right back.

17 (Pause.)

18 BY MS. AGNEW:

19 Q Can you tell me, Minor 1, where on your body did Barry
20 bad touch you?

21 A My private.

22 Q I'm sorry?

23 A My private area.

24 Q Okay. What I'm going to do is I'm going to show you
25 this really big poster of a little girl. Can you point on

Minor 1

- Direct Examination

60

1 this poster where Barry had touched you?

2 A (Witness complies.)

3 Q Now, tell me, Minor 1 what part of Barry's body touched
4 your private area?

5 A His hand.

6 Q His hand, okay. Do you know what his hand would do
7 when he would touch you?

8 A Rub.

9 Q Okay. What grade were you in when he had touched you?

10 A Sixth.

11 Q Sixth grade. Where did it happen?

12 A In the back room or in the living room.

13 Q Of which house?

14 A The one I'm living in now.

15 Q Okay. You said it happened in the back room or the
16 living room. Would anybody else be around?

17 A They would be sleeping.

18 Q Okay. So what time of day was it?

19 A Night.

20 Q Would Barry ever say anything to you?

21 A No.

22 Q How many times did he touch your private area?

23 A I don't know.

24 Q Was it once?

25 A Shakes head. (Negative response.)

Minor 1

- Direct Examination

61

1 Q You have to answer out loud for me, okay?

2 A No.

3 Q Okay. Was it more than once?

4 A Yes.

5 Q Was it like five times?

6 A Yes, ma'am.

7 Q Okay. Did it always happen the same way?

8 A Yes.

9 Q Did he always touch the same private area?

10 A Yes, ma'am.

11 Q Okay. Tell me this, Minor 1 what would you be wearing?

12 A My night clothes.

13 Q Okay. What kind of night clothes do you wear?

14 A Some times I wear pajamas, sometimes I wear a night
15 shirts.

16 Q Okay. Now, when Barry would bad touch you would he
17 touch you on top of your night clothes or underneath your
18 night clothes?

19 A Underneath.

20 Q Okay. Would you wear panties when you would sleep?

21 A Yes, ma'am.

22 Q Would he touch you on top of your panties or underneath
23 your panties?

24 A Underneath.

25 Q Okay. Now, tell me this, Minor 1 when Barry would

Minor 1

- Direct Examination

62

1 touch your private area would his hand stay on the outside
2 of your private area or would it ever go on the inside?

3 A Sometimes on the inside.

4 Q Okay. Do you remember the very first time this
5 happened?

6 A July 4.

7 Q Okay. Was it July 4 of this last year, 2012?

8 A No, ma'am.

9 Q Was it July 4 of the year before that in 2011.

10 A It was in sixth grade.

11 Q Okay.

12 A The summer. I just got out of fifth grade.

13 Q Okay. How can you remember that it was July 4?

14 A Because that was a special day because I got to see my
15 boyfriend one more time.

16 Q Where did it happen on July 4?

17 A In a car.

18 Q Whose car?

19 A His.

20 Q Do you have any idea what kind of car it was?

21 A It was some kind of silver car.

22 Q Okay. And where was he at?

23 A In the front seat.

24 Q Where were you at?

25 A The other front seat.

Minor 1

- Direct Examination

63

1 Q Okay. You weren't driving were you?

2 A No.

3 Q Okay. Who was driving?

4 A Him.

5 Q Was anybody else in the car?

6 A My sisters.

7 Q Which sisters?

8 A Minor 2 and A.M.

9 Q Did they see anything?

10 A No.

11 Q Okay. Did he say anything to you?

12 A Huh-uh. (Negative response.)

13 Q Okay. Minor 1 did Barry ever ask you to touch him
14 anywhere?

15 A No.

16 Q Did he ever make you touch him anywhere?

17 A No.

18 Q Did he ever ask you to do anything else?

19 A One thing.

20 Q What did he ask you to do?

21 A Make love to him.

22 Q I'm sorry?

23 A Make love to him.

24 Q Okay. Will you do me a favor and keep speaking into
25 that microphone for me, okay. Do you remember when he asked

Minor 1 - Direct Examination

64

1 you to make love to him?

2 A No.

3 Q Do you remember what grade you were in?

4 A Same grade, sixth.

5 Q Okay. Did you ever see Barry touch anybody else?

6 A Well, one time -- it wasn't touch. I walked out the
7 room to pretend like I was mad, he was on top of my sister.

8 Q Which sister?

9 A Minor 2

10 Q Do you remember when that was?

11 A Huh-uh. (Negative response.)

12 MS. AGNEW: Judge, I'm sorry. Can we just make sure
13 that the jury can hear?

14 THE COURT: Can the jury hear fairly well?

15 (Jury response in the affirmative.)

16 THE COURT: Well, let us know if you have some
17 difficulty. Raise your hand.

18 BY MS. AGNEW:

19 Q Make sure you speak up for me, okay. Minor 1 did you
20 ever tell anybody?

21 A No.

22 Q Why come?

23 A I was scared.

24 Q What were you scared of?

25 A That he would go in combat.

Minor 1

- Direct Examination

65

1 Q Okay. Did you ever talk to a counselor about this?

2 A The counselor at Aiken/Barnwell.

3 Q Okay. What's her name?

4 A Miss Sherry.

5 Q Okay. Did you tell Miss Sherry about this?

6 A Yes, ma'am.

7 Q How come you told Miss Sherry about this?

8 A Don't know.

9 Q Okay. Well, tell me this, did you have to go to the
10 Child Advocacy Center?

11 A Yes, ma'am.

12 Q Did you talk to anybody there?

13 A I don't remember the person I talked to the first time.

14 Q Okay. Did y'all talk about Barry?

15 A Yes, ma'am.

16 Q The first time that you went to talk about Barry did
17 you tell them at the Child Advocacy Center what happened?

18 A No, ma'am.

19 Q What did you tell them?

20 A I told them a lie.

21 Q Why did you tell them a lie?

22 A Scared.

23 Q Okay. Did Barry say anything to you before you went to
24 the Child Advocacy Center the first time?

25 A Yes.

Minor 1

- Direct Examination

66

1 Q What did he say to you?

2 A That he was going to get me a touch screen phone.

3 Q He was going to get you a touch screen phone just
4 because?

5 A Just so I would lie.

6 Q Okay. Did he get you a touch screen phone?

7 A No.

8 Q Now, did you go back to the Child Advocacy Center?

9 A Yes, ma'am.

10 Q Okay. What did they talk to you about the second time
11 you went there?

12 A The same thing.

13 Q What did you tell them that time?

14 A The truth.

15 Q Okay. Give me just a second, okay.

16 MS. AGNEW: Beg the Court's indulgence.

17 (Pause.)

18 BY MS. AGNEW:

19 Q Now, Minor 1 we were talking about July 4 a few minutes
20 ago and you said the first time something happened you were
21 in the car with Barry. Do you remember where you were
22 going?

23 A To the fireworks show.

24 Q Okay. Were you in South Carolina when he started
25 touching you in the car?

Minor 1

- Cross-Examination

67

1 A Yes, ma'am.

2 Q Okay. Thank you. Mr. Routzong is going to ask you
3 some questions. Answer his questions, okay?

4 A Nods head. (Affirmative response.)

5 THE COURT: Mr. Routzong, you're recognized.

6

Minor 1

- CROSS-EXAMINATION

7 BY MR. ROUTZONG:

8 Q Good afternoon, Minor 1 .

9 A Afternoon.

10 Q I just want to say you don't have to be frightened of
11 me or anybody else in here. No matter what the truth is you
12 can tell it. Okay.

13 A Okay.

14 Q Do you remember speaking to someone at the Child
15 Advocacy Center?

16 A Yes, sir.

17 Q And that was in May, wasn't it?

18 A Yes, sir.

19 Q Do you remember what you told her at that time; do you
20 remember that you told her that you say things that you
21 don't mean, that you don't mean what you say because you're
22 mad?

23 A Yes, sir.

24 Q You don't remember telling them that?

25 A I don't remember which lady you're talking about,

Minor 1

- Cross-Examination

68

1 because I talked to two.

2 Q It was Anne Laver. And you remember telling her that
3 sometimes you see visions and that sometimes a girl comes to
4 you that had already died and she died from leukemia and
5 that girl --

6 MS. AGNEW: Judge, I'm sorry. I can't hear her
7 responses to him.

8 THE COURT: You can come stand right over here. Bear
9 with us just one moment.

10 I'm going to ask you, if you could, I know it's a very
11 difficult process you're going through, but just speak as
12 loudly you can into the microphone. You're doing good.

13 Minor 1 : Yes, sir.

14 BY MR. ROUTZONG:

15 Q Do you remember telling Anne that you see visions?

16 A Yes, sir.

17 Q And even up until May you still saw visions?

18 A Yes, sir.

19 Q And do you remember that telling her that that ghost of
20 that young girl, she's with you all the time?

21 A Yes, sir.

22 Q And do you remember that you told Anne that sometimes
23 you thought you were having visions of Barry, but that
24 little girl told you it wasn't real?

25 A Yes, sir.

Minor 1 - Cross-Examination

69

1 Q Do you remember that; you weren't scared when you told
2 her that, right?

3 A I was scared. It was all a lie.

4 Q Did you say you were scared?

5 A It was all a lie.

6 Q Well, let's go to that a little bit. I think when Ms.
7 Agnew just talked to you you said that you told a lie
8 because you were scared and you also told a lie when
9 somebody promised you something; isn't that right. Did
10 anybody promise you anything right now?

11 A Shakes head. (Negative response.)

12 Q No one threatened you that you might get put in foster
13 care?

14 A No, sir.

15 Q They didn't?

16 A No, sir.

17 Q Well, your Aunt Vickie didn't tell you that you could
18 get in trouble and might have to go to foster care?

19 A No, sir.

20 Q No one said that?

21 MS. AGNEW: Your Honor, I believe she's answered the
22 question.

23 THE COURT: I'm going to allow him some leeway, it's
24 cross-examination.

25 BY MR. ROUTZONG:

Minor 1

- Cross-Examination

70

1 Q On July 4, the sun was still shining when you were in
2 the car?

3 A No, it was dark.

4 Q It was already dark. How dark was it, was the sun up a
5 little bit?

6 A Shakes head. (Negative response.)

7 Q Completely dark?

8 A It was not completely dark.

9 Q So the sun was up a little bit?

10 A It was very faint light.

11 Q I think you already testified that -- or at least I got
12 from this -- let me ask if this is true. If Barry got upset
13 it made you scared?

14 A Yes, sir.

15 Q It made you so scared you wanted him out of the house?

16 A Yes, sir.

17 Q And you told several people you wanted him out of the
18 house?

19 A Yes, sir.

20 Q Who'd you tell?

21 A My momma.

22 Q Your mom. Okay. Anybody else?

23 A Not that I know of or remember.

24 Q Never told anybody --

25 A I told everybody in the house.

Minor 1

- Cross-Examination

71

1 Q You told everybody in the house. And that was because
2 he got mad and that scared you?

3 A That wasn't the only reason.

4 Q He never hit you or anything?

5 A He did.

6 Q He did hit you. Well, when you got mad usually didn't
7 you tell the folks at the CAC that it was off somewhere
8 else, didn't he -- a building?

9 A It was around our house.

10 Q And that's the first time that you realized that he had
11 a temper and that's why you wanted him out of the house?

12 A No.

13 Q That's not -- that's not what you told those folks?

14 A (No response.)

15 Q It's okay. You can answer.

16 A It's not the reason why I wanted him out of the house.

17 Q Well, you didn't tell anybody about any of this until
18 much later after that; isn't that correct?

19 A (No response.)

20 Q So the initial reason you wanted him out of the house
21 was because you say you were afraid of him?

22 A (No response.)

23 Q Let me ask you, where is your dad at?

24 A He's at his house.

25 Q Your mom and him aren't together any more?

Minor 1

- Cross-Examination

72

1 A No.

2 Q But you'd like them to be back together?

3 A (No response.)

4 Q Minor 1 I just have a couple more questions. Just bear
5 with me, please.

6 There was a time when Barry caught you stealing some
7 stuff; isn't that true?

8 A Nods head. (Affirmative response.)

9 Q Did he tell your mom?

10 A Yes.

11 Q Did that make you mad?

12 A Shakes head. (Negative response.)

13 Q You weren't mad?

14 A No.

15 Q Let me ask you a little bit more, if I can about
16 Shelby. When Shelby appeared to you did you know who she
17 was?

18 A Yes.

19 Q You did. Had you ever met Shelby before when she was
20 alive?

21 A Nods head. (Affirmative response.)

22 Q You did. Where did you meet her at?

23 A She was my best friend.

24 Q She was your best friend. How long had you known her?

25 A A long time. Since we were in first grade.

Minor 1

- Cross-Examination

73

1 Q Since you were in first grade. When did Shelby pass
2 away?

3 A The year I got out of fifth grade.

4 Q And what -- was it right in fifth grade when Shelby
5 started visiting you again after she was dead; when did that
6 start happening?

7 A Over the summer.

8 Q Over the summer. She appeared to you several times?

9 A The day before the fire happened.

10 Q The day before the fire happened. Did she warn you
11 about the fire?

12 A (No response.)

13 Q Let me ask you something --

14 THE COURT: Minor 1, I'm going to ask you if you can
15 answer. Sometimes in conversation we have a tendency to
16 shake our heads or to nod affirmatively. So rather than
17 shaking your head like this, you need to say no. If you're
18 nodding your head you need to say yes. Is that fair enough.

19 Minor 1 : Yes, sir.

20 THE COURT: All right. Very good.

21 BY MR. ROUTZONG:

22 Q So Shelby, after she passed away she came to see you
23 before the fire?

24 A Yes, sir.

25 Q What did she tell you?

Minor 1

- Cross-Examination

74

1 A She didn't say anything.

2 Q She just appeared?

3 A (No response.)

4 Q Do you remember when you told the CAC interviewer that
5 you had visions and some of your visions were of Barry and
6 Shelby told you that it wasn't real?

7 A Yes, sir.

8 Q You do remember that?

9 A (No response.)

10 Q When Shelby came to you sometimes she told you you
11 ought to run. When Shelby comes to you she tells you you
12 ought to run?

13 A I didn't hear what you said.

14 Q Let me see if I can ask it this way. Did Shelby ever
15 tell you you should lie?

16 A No.

17 Q No. Do you think Shelby ever lied to you?

18 A No.

19 Q When was the last time you saw Shelby?

20 A Last year.

21 Q Last year. Do you remember what month; was it in the
22 fall of the year?

23 A I don't remember.

24 Q You don't remember. Minor 1, you're supposed to tell
25 the truth here. Okay. I'm going to ask you one more

Minor 1

- Cross-Examination

75

1 question. Did Shelby ever tell you to lie about Barry?

2 A No, sir.

3 Q Do you believe that Shelby told you the truth?

4 A Yes, sir.

5 MR. ROUTZONG: I don't have anything else.

6 THE COURT: Redirect?

7 MS. AGNEW: No, Your Honor.

8 THE COURT: Very good. You may step down. Thank you,
9 ma'am.

10 You may call your next witness.

11 MS. AGNEW: State calls Minor 2

12 THE COURT: Okay. While we're getting Minor 2, Mr.
13 Foreman, ladies and gentlemen of the jury, we're going to
14 have to take up a legal matter outside of your presence. I'm
15 going to ask you to retire to the jury room. Do not discuss
16 the case. Thank you.

17 (Jury out at 3:52 P.M.)

18 MS. AGNEW: And Judge before she gets up there, I
19 apologize. Somebody didn't go to the bathroom during the
20 break. I wonder if we might have a few seconds.

21 THE COURT: That will be fine.

22 (Court in recess. A short break was taken.)

23 (Court in session after short break.)

24 THE COURT: Yes, ma'am. Please come forward. I'm going
25 to ask you to place your left hand on the Bible and raise

Minor 2

- Direct Examination

76

1 your right hand while the clerk administers the oath.

2 (WHEREUPON, Minor 2 was
3 sworn to tell the truth.)

4 THE CLERK: Go around and have a seat in the chair.

5 THE COURT: Yes, ma'am. State your full name, please,
6 ma'am.

7 Minor 2 : Minor 2

8 THE COURT: All right. I'm going to ask that you speak
9 up very loudly so the court reporter and everybody else can
10 hear you.

11 Minor 2 : Minor 2

12 THE COURT: Okay. How old are you? Do you go by
13 Minor 2 ?

14 Minor 2 : Minor 2

15 THE COURT: Minor 2 . All right. Minor 2 , how old are
16 you?

17 Minor 2 : 12.

18 THE COURT: How far did you go in school; how far are
19 you, sixth grade, maybe?

20 Minor 2 : I'm going in the sixth.

21 THE COURT: All right. Going in the sixth. All right.
22 What kind of grades do you make; A's and B's, maybe, C's?

23 Minor 2 : Um -- Like A, B. Sometimes F's.

24 THE COURT: Okay. All right. You had talked with the
25 solicitor's office about what we're doing here. You

Minor 2

- Direct Examination

77

1 understand why we're here?

2 Minor 2 : Yes, sir.

3 THE COURT: You know the solicitor's office is going to
4 be asking you about things that transpired, things that you
5 say transpired; you understand that?

6 Minor 2 : Yes, sir.

7 THE COURT: And you understand that you've taken an oath
8 to tell the truth; do you understand that?

9 Minor 2 : Yes, sir.

10 THE COURT: Do you understand the different between the
11 truth and a lie?

12 Minor 2 : Yes, sir.

13 THE COURT: Which is a good thing to tell?

14 Minor 2 : Truth.

15 THE COURT: Okay, and what happens to you if you tell a
16 lie?

17 Minor 2 : You get in trouble.

18 THE COURT: Okay. And you understand that this is a
19 very, very important matter?

20 Minor 2 : Yes, sir.

21 THE COURT: And will you promise to tell the truth?

22 Minor 2 : Yes, sir.

23 THE COURT: All right. Very good.

24 Any query from the state with regard to the issue of
25 competency?

Minor 2

- Direct Examination

78

1 MS. AGNEW: No, Your Honor.

2 THE COURT: Any from defense?

3 MR. ROUTZONG: No, sir.

4 THE COURT: Very good. We're ready for the jury.

5 I do, indeed, declare that she's competent to testify.

6 (Jury in at 3:38 P.M.)

7 THE COURT: Yes, ma'am. I'm going to remind you that
8 you're still under oath and answer the questions that the
9 solicitor has for you.

10 Very good.

11

Minor 2

- DIRECT EXAMINATION

12 BY MS. AGNEW:

13 Q Now, Minor 2 , when you answer questions answer into
14 that microphone and speak really, really loud, okay. Louder
15 than you're very spoken before.

16 What's your full name?

17 A Minor 2 .

18 Q And how old are you, Minor 2 ?

19 A .

20 Q Where do you go to school?

21 A .

22 Q And what grade did you just finish?

23 A Fifth.

24 Q So what grade are you going to be in next year?

25 A Sixth.

Minor 2

- Direct Examination

79

1 Q Okay. Can you tell me when's your birthday?

2 A

3 Q Of what year?

4 A

5 Q Okay, and where do you live?

6 A

7 Q Okay, and what town is that in?

8 A

9 Q Keep talking real loud for me, okay. Who lives with
10 you at ?

11 A My mom --

12 THE COURT: We're going to ask if you could, just speak
13 up a little bit louder. The jury is having a difficult time
14 hearing.

15 BY MS. AGNEW:

16 Q Speak really loud. Yell to me if you need to, okay.
17 Really, really loud, tell me who lives with you right now?

18 A My mom, my step-mom, my two sisters and my brother.

19 Q Okay. Tell me your sister's names?

20 A A.M. and Minor 1

21 Q And your brother's name?

22 A J.C.

23 Q Do you have any pets at home?

24 A Yes, ma'am.

25 Q Okay. Really loud, tell me about your pets?

Minor2

- Direct Examination

80

- 1 A I have one ferret, three turtles. Five dogs.
- 2 Q Which one is your favorite?
- 3 A My dog.
- 4 Q What's your dog's name?
- 5 A Lavita.
- 6 Q What?
- 7 A Lavita.
- 8 Q Okay. Tell me this, Minor2 , do you know what the
- 9 truth is?
- 10 A Yes, ma'am.
- 11 Q Do you know what a lie is?
- 12 A Yes, ma'am.
- 13 Q If somebody says something that's real what would that
- 14 be?
- 15 A Truth.
- 16 Q And if somebody said something that wasn't real what
- 17 would that be?
- 18 A Lie.
- 19 Q What can happen if you told a lie?
- 20 A You can get in trouble.
- 21 Q Okay. And what did you promise to tell today?
- 22 A The truth.
- 23 Q Tell me this, Minor2 , you said you just finished fifth
- 24 grade and you're going into sixth grade. So last school
- 25 year, 2012, 2013, what grade were you in?

Minor 2

- Direct Examination

81

1 A Fifth.

2 Q And the school year before that, 2011 to 2012, what
3 grade were you in?

4 A Fourth.

5 Q And where did you go to school when you were in the
6 fourth grade?

7 A

8 Q Okay. And where did you live when you were in the
9 fourth grade?

10 A With my momma.

11 Q Okay. Did you live at ?

12 A Yes, ma'am.

13 Q Okay. Tell me this when you were in fourth grade who
14 else lived with you and your momma at ?

15 A Barry.

16 Q Did anybody else live with you?

17 A Shakes head. (Negative response.)

18 Q Your brothers and sisters didn't live with you?

19 A Yes, ma'am.

20 Q Tell me this, who's Barry?

21 A A guy that I used to know.

22 Q Okay. Is he related to you?

23 A Yes.

24 Q How is he related to you?

25 A By Marie.

Minor 2

- Direct Examination

82

- 1 Q Is Marie related to you?
- 2 A Yes.
- 3 Q How's Marie related to you?
- 4 A Um --
- 5 Q Is she your cousin?
- 6 A Shakes head. (Negative response.)
- 7 Q Is she your sister?
- 8 A No.
- 9 Q Is she your aunt?
- 10 A No. She used to be.
- 11 Q Okay. Tell me this, what do you call Barry?
- 12 A (No response.)
- 13 Q Did you call him anything else?
- 14 A Shakes head. (Negative response.)
- 15 Q Okay, you have to speak out loud for me, okay.
- 16 A No.
- 17 Q Okay. Do you remember when Barry started living with
- 18 you?
- 19 A (No response.)
- 20 Q Do you remember what grade you were in?
- 21 A Fourth.
- 22 Q Okay. Do you know why he started living with you?
- 23 A No.
- 24 Q What was he like at first?
- 25 A He was my friend.

Minor2

- Direct Examination

83

1 Q Did he stay your friend?

2 A Kind of.

3 Q Okay. What did he do while he lived with you?

4 A He used to take us to the store and take us to
5 softball.

6 Q And keep talking really loud for me, okay. Did he have
7 a job?

8 A Yes, ma'am.

9 Q Okay. Would you see him at home when he wasn't
10 working?

11 A Yes, ma'am.

12 Q Tell me, Minor2, did you like Barry?

13 A At first.

14 Q Okay. Did you like him later?

15 A (No response.)

16 Q You said at first. What changed?

17 A (No response.)

18 Q Well, tell me this, Minor2, did Barry ever get mad at
19 you?

20 A Kind of.

21 Q Kind of. What would happen?

22 A (No response.)

23 Q Can you tell me what would happen when Barry kind of
24 got mad?

25 A (No response.)

Minor 2

- Direct Examination

84

- 1 Q Minor 2 , would he say anything?
- 2 A No, ma'am.
- 3 Q Would he do anything?
- 4 A I don't know.
- 5 Q Well, let me ask you something else, okay. Do you know
- 6 what a good touch is?
- 7 A Nods head. (Affirmative response.)
- 8 Q You've got to answer out loud for me.
- 9 A Yes, ma'am.
- 10 Q What's a good touch?
- 11 A Like when they touch you on the arm.
- 12 Q Okay. Is a hug a good touch?
- 13 A I don't know.
- 14 Q Okay. Do you know what a bad touch is?
- 15 A Yes, ma'am.
- 16 Q What's a bad touch?
- 17 A (No response.)
- 18 Q Minor 2 you've got to answer out loud for me, okay.
- 19 Can you tell me what a bad touch is?
- 20 A When someone touches you in the wrong place.
- 21 Q What would the wrong place be?
- 22 A My private areas.
- 23 Q Okay. If I showed you a really big picture of a little
- 24 girl, can you show me where the private areas are?
- 25 A Yes, ma'am.

Minor2

- Direct Examination

85

1 Q Okay. Can you reach this. Point to me on this poster
2 where a girl's private areas are?

3 A Right there and right there.

4 Q Okay. Now, tell me this, Minor2 did anybody ever bad
5 touched you?

6 A Yes, ma'am.

7 Q Can you tell me who bad touched you?

8 A Barry.

9 Q Okay. Do you know how old you were when he bad touched
10 you?

11 A I was in fourth grade.

12 Q Okay. And where were you when he bad touched you?

13 A I was in the bed.

14 Q Okay. The bed in what house?

15 A My house.

16 Q Okay. Is that house on ?

17 A Yes, ma'am.

18 Q Tell me this, what room was your bed in?

19 A It was in the --

20 Q Was it in a bedroom?

21 A Yes, ma'am.

22 Q Was there one bed in there or more than one bed?

23 A There was two beds.

24 Q Okay. I'm going to borrow this picture and tell me,

25 Minor2 I'm showing you what's in evidence as State's

Minor 2

- Direct Examination

86

1 Exhibit No. 3. Do you know what that is?

2 A Nods head. (Affirmative response.)

3 Q You have to answer out loud for me?

4 A Yes, ma'am.

5 Q Really loud, okay.. Where is that or what is that?

6 A The room.

7 Q At?

8 A

9 Q Okay. Did you ever sleep in any of those beds?

10 A Yes, ma'am.

11 Q You said when Barry touched your private area it
12 happened in the bed. Did it happen in one of those beds?

13 A Yes, ma'am.

14 Q Which bed did it happen in?

15 A That one.

16 Q Okay. Can you point out which bed it happened in?

17 A That one. (Indicating.)

18 Q Okay. Now, Minor 2 when Barry touched your private
19 area what part of his body did he touch you with?

20 A His hand.

21 Q Okay. And you said it happened on that bed in your
22 room. What time of day did it happen?

23 A It was at night time.

24 Q Was anybody else around?

25 A My mom.

Minor 2

- Direct Examination

87

1 Q Okay. Speak really loud into the microphone?

2 A My mom.

3 Q What was your mom doing?

4 A She was sleeping.

5 Q Okay. Did Barry say anything to you?

6 A No.

7 Q Did he ever say anything to you about it?

8 A No.

9 Q Did he ask your permission before he touched you?

10 A No.

11 Q Okay. Tell me this, Minor 2 did Barry touch your
12 private area one time?

13 A More than one time.

14 Q Okay. Do you remember how many times?

15 A No, ma'am.

16 Q But you said it was more than one time?

17 A Yes, ma'am.

18 Q Was it five times?

19 A (No response.)

20 Q Or can you give me a number?

21 A Three or four times I think.

22 Q Okay. And when Barry would touch your private area did
23 it happen in the same place every time?

24 A Yes, ma'am.

25 Q Okay. And what grade were you in each time he touched

Minor 2

- Direct Examination

88

1 your private area?

2 A Fourth.

3 Q When he would touch your private area what would you be
4 wearing?

5 A Some shorts and a shirt.

6 Q Say it again real loud?

7 A Shorts.

8 Q Shorts. Okay. Would you be wearing panties?

9 A Yes, ma'am.

10 Q Okay. Really loud for me. Talk into that microphone?

11 A Yes, ma'am.

12 Q When Barry would touch your private area would it be on
13 top of your shorts and panties or underneath them?

14 A On top.

15 Q Okay. And each time that he did it was it always on
16 top of your clothes?

17 A Yes, ma'am.

18 Q Okay. And was there every a time when he did say
19 something?

20 A Shakes head. (Negative response.)

21 Q Okay. Answer out loud for me?

22 A No, ma'am.

23 Q Okay. Tell me this, Minor 2 did he ever ask you to
24 touch him?

25 A No, ma'am.

Minor 2

- Direct Examination

89

1 Q Did he ever make you touch him?

2 A No, ma'am.

3 Q Did you ever tell anybody?

4 A Yes, ma'am.

5 Q Who'd you tell?

6 A My momma.

7 Q Okay. What happened when you told your momma?

8 A She went to --

9 Q Really loud for me? What happened when you told your
10 mom?

11 A Nothing.

12 Q Okay. Well, tell me this Minor 2 Did you go to the
13 Child Advocacy Center?

14 A Yes, ma'am.

15 Q Did they have -- did you go in a room to talk to
16 somebody?

17 A Yes, ma'am.

18 Q Okay. Talk loud for me?

19 A Yes, ma'am.

20 Q Did they ask you about Barry?

21 A Yes, ma'am.

22 Q And did you tell them what Barry did?

23 A Yes, ma'am.

24 Q Are you sure?

25 A Yes, ma'am.

Minor 2

- Direct Examination

90

1 Q Okay. Do you remember telling the lady at the Child
2 Advocacy Center that nothing happened?

3 A (No response.)

4 Q Do you remember that?

5 A Shakes head. (Negative response.)

6 Q You don't remember?

7 A No.

8 Q Okay. Well, let's talk about this, did you talk to
9 Miss Kim about this case?

10 A Yes, ma'am.

11 Q Okay. And what did she ask you about?

12 A She asked me about him.

13 Q About who?

14 A Barry.

15 Q And what did you tell her?

16 A I told her that something --

17 Q Okay. Minor 2 do you have a boyfriend?

18 A Yes, ma'am.

19 Q Have you had a boyfriend before?

20 A No, ma'am.

21 Q Has anybody asked to be your boyfriend before?

22 A Yes, ma'am.

23 Q Who asked to be your boyfriend?

24 A (No response.)

25 Q Minor 2 who asked to be your boyfriend?

Minor 2

- Direct Examination

91

1 A Um -- (No response.)

2 Q You gotta answer out loud for me, okay.

3 A (No response.)

4 Q Can you tell me?

5 A Yes, ma'am.

6 Q Who asked to be your boyfriend, Minor 2

7 A (No response.)

8 Q Did anybody ever write you a letter about being your
9 boyfriend?

10 A Yes, ma'am.

11 Q Who wrote you a letter?

12 A Barry.

13 Q Do you know what happened to that letter?

14 A (No response.)

15 Q You gotta answer out loud for me, okay. Do you know
16 what happened to that letter?

17 A No, ma'am.

18 Q Okay. Were you and Barry boyfriend and girlfriend?

19 A Yes, ma'am.

20 Q Okay. Give me just a second, okay.

21 (Pause.)

22 BY MS. AGNEW:

23 Q Thank you, Minor 2

24 A You're welcome.

25 Q Mr. Routzong is going to ask you some questions and you

Minor 2 - Cross-Examination

92

1 answer his questions, okay.

2 THE COURT: Mr. Routzong, you're recognized, cross-
3 examination.

4 Minor 2 - CROSS-EXAMINATION

5 BY MR. ROUTZONG:

6 Q Good afternoon, Minor 2 , how are you?

7 A Good.

8 Q You don't have to be afraid of me. I'm not going to do
9 anything to you. I'm not going to let anything happen to
10 you.

11 You've already told us you know the difference between
12 the truth and a lie. And you said what would happen when
13 you tell a lie is that you would get in trouble. But you
14 also know that when you tell a lie other people will get in
15 trouble.

16 You remember last year you talked to a couple people at
17 the Child Advocacy Center and Investigator Sievers, Ms. Kim,
18 and you told her and all them that nothing happened, didn't
19 you, and that was the truth wasn't it?

20 A (No response.)

21 Q And you told them that you didn't know why Barry was
22 out of the house, right?

23 A Yes, sir.

24 Q In fact, you said that you had never seen anything
25 happen and no one had done anything to you. You said that

Minor 2

- Cross-Examination

93

1 several times, right?

2 A (No response.)

3 Q And you know the lady asked you just like Ms. Ashley
4 did, you know who you could tell if something bad did
5 happen, but you didn't tell anybody; isn't that right?

6 A Yes, sir.

7 Q You didn't say anything about this until November,
8 around that time. Was Barry living with you all those times
9 when you said nothing happened?

10 A (No response.)

11 Q It's okay if you don't remember. You can just say you
12 don't remember.

13 A No. I don't remember.

14 Q So you remember that there was a time when Barry wasn't
15 living with you. That was for a long time. He hasn't been
16 back with you since then has he, and the whole last summer
17 he wasn't living with you?

18 A (No response.)

19 Q It's okay if you don't remember?

20 A I don't remember.

21 Q Do you feel pretty safe in your home, though?

22 A Yes, sir.

23 Q And who else is there with you now?

24 A My sisters and my brother.

25 Q Did you just move back home or were you living

Minor 2

- Cross-Examination

94

1 somewhere else?

2 A We moved at --

3 Q Do you think it was this year you moved back?

4 A Yes, sir.

5 Q Where were you living before, that?

6 A With my aunt.

7 Q When did you move out to your aunt's house?

8 A When I was going in fifth grade.

9 Q When was that; was that just last year?

10 A Yes, sir.

11 Q Was it in the fall of the year, after you started
12 school?

13 A Yes, sir.

14 Q Are you sure?

15 A Nods head. (Affirmative response.)

16 Q Okay. Did you want to move back home?

17 A Yes, sir.

18 Q How come you had to go live with your Aunt Vickie?

19 A Because of Barry.

20 Q Is it because some folks from the Department of Social
21 Services made you move out?

22 A Yes, sir.

23 Q Because Barry wasn't living with you at that time,
24 right, last fall?

25 A (No response.)

Minor 2

- Cross-Examination

95

1 Q Let me ask this question another way. When you were in
2 school last year Barry wasn't at your house was he?

3 A (No response.)

4 Q You remember back in July you told the Child Advocacy
5 Center that Barry had already moved back out in July and you
6 didn't know why. Do you remember saying that?

7 A (No response.)

8 Q Okay. I just want to make sure these folks understand
9 exactly what you testified to. Last fall Barry wasn't at
10 home when you. You were in school. He had already moved
11 out, right? And then the Department of Social Service folks
12 and they came and they took you away and they put you in
13 your aunt's house and all that happened before you told the
14 story about Barry; isn't that right?

15 A (No response.)

16 Q And then after you told the story earlier this year you
17 got to move back in with your mom; isn't that right?

18 A (No response.)

19 Q Because now you're living at home?

20 A (No response.)

21 Q And all those times that you told these folks that
22 Barry touched you, you're saying it was just with a hand, he
23 never was on top of you, right?

24 A (No response.)

25 Q He was never on top of you?

Minor 2

- Cross-Examination

96

1 A (No response.)

2 MR. ROUTZONG: I don't have any other questions, Your
3 Honor.

4 THE COURT: Any redirect?

5 MS. AGNEW: No, Your Honor.

6 THE COURT: You may step down. Thank you, ma'am.
7 Counsel approach the bench.

8 (Off the record bench conference with counsel and the
9 Court.)

10 THE COURT: Mr. Foreman, ladies and gentlemen of the
11 jury, I want to thank you for your service. Y'all have had
12 a full day of jury service. Thank you for your attention
13 and your patience.

14 We're going to rest for the evening. We don't have a
15 witness that we can finish in a timely fashion today. So
16 we're going to start back in the morning at 9:30, 9:30
17 sharp.

18 Once again, no discussion among yourselves or with
19 anyone else. Do not do any independent investigation. No
20 social media. We'll see you back at 9:30, 9:30 sharp.

21 Thank you.

22 (Jury out for the day at 4:30 p.m.)

23 THE COURT: Anything from the State before we recess for
24 the evening?

25 MS. AGNEW: No, Your Honor.

State v. Lafavor 6/25/13

99

1 MR. ROUTZONG: No, sir.

2 THE COURT: We're ready for the jury.

3 (Jury in at 9:40 a.m.)

4 THE COURT: Mr. Foreman, ladies and gentlemen of the
5 jury, everybody looks well rested and ready to proceed.

6 First of all, I want to thank you for being here and being
7 here on time.

8 We've had some difficulty in that one of the jurors has
9 not show up. He has called and told us what his difficulty
10 is. We're sending a deputy out to his home to make sure his
11 communication with the Court is correct. None the less,
12 we're going to proceed forth with an alternate. Ms. Pamela
13 Cook, you have been activated to an active juror. You will
14 participate in the deliberation. I'll ask that you have a
15 seat right beside the foreman.

16 Mr. Foreman, ladies and gentlemen of the jury, this is
17 an important case and I'll ask that you pay very close
18 attention as we proceed forward with a very serious matter.

19 Madam Solicitor, you're recognized.

20 MR. GRIMES: State calls Susan Lukowiak.

21 THE COURT: Ms. Lukowiak, if you could come forward and
22 place your left hand on the Bible and raise your right hand
23 as the clerk administers the oath.

24 (WHEREUPON, Susan Lukowiak was
25 sworn to tell the truth.

Susan Lukowiak - Direct Examination

100

1 THE CLERK: Have a seat in the witness box stating your
2 full name and spelling your last for the court, please.

3 THE COURT: There are two steps right there, be careful.
4 Come in, have a seat real close to that microphone and speak
5 loudly and slowly in order that we can hear everything that
6 you've got to say and let's start with your full name.

7 MS. LUKOWIAK: Susan Carol Lukowiak, L-u-k-o-w-i-a-k.

8 THE COURT: I'm glad you spelled that last one. Very
9 good.

10 Mr. Solicitor, you're recognized.

11 SUSAN LUKOWIAK - DIRECT EXAMINATION

12 BY MR. GRIMES:

13 Q Susan, do you go by Susan or Sue?

14 A Sue.

15 Q Sue. Where do you live?

16 A , , South Carolina,

17 Q And who lives there with you?

18 A Myself, Susan Lukowiak, Allison Mikell Little, my
19 stepchildren, Minor 1 , Minor 2 , A.M.

20 A.M. , J.C.

21 Q And how long have you lived there?

22 A Five years.

23 Q What is your relationship with the children in this
24 case?

25 A They're my stepchildren.

Susan Lukowiak - Direct Examination

101

1 Q And what is your relationship with their mother?

2 A She's my partner.

3 Q And her name is?

4 A Allison Mikell Little.

5 Q Okay. Does she go by any other name?

6 A Allison Denise or Neechie.

7 Q Some people call her Denise or Neechie?

8 A Yes, sir.

9 Q How old is Minor 1

10 A 14.

11 Q How old is Minor 2 ?

12 A 12.

13 Q And what do they call you?

14 A Momma Sue.

15 Q And in April/May of last year who all was living at
16 your house?

17 A Myself, Susan Lukowiak, Allison Mikell Little, Victoria
18 Granger, Minor 1 , Minor 2 , A.M.

19 J.C. , Vitoria Granger and Barry Lafavor.

20 Q Does Victoria Granger still live there?

21 A No, sir. She passed away.

22 Q Who -- is Barry Lafavor related to you?

23 A No, sir.

24 Q Is he related to anyone else in the house?

25 A No, sir.

1 Q How did he come to live there?

2 A He found out through his cousin Marie Scott about our
3 house fire.

4 Q This -- where was this house fire?

5 A On the same property where we live now.

6 Q The house that you're living in now is it a mobile
7 home?

8 A Yes, sir.

9 Q And the house that was there before, is that what
10 you're referring to that burned down?

11 A Yes, sir.

12 Q Okay. After he heard about this house fire what did he
13 do for y'all?

14 A He brought clothes for us and the kids. Odds and ends,
15 phone cords that had burned up in the fire. Just little
16 odds and ends, stuff we needed.

17 Q And at some point did he begin living in the house?

18 A He slowly moved himself in.

19 Q Whose idea was that?

20 A It was pretty much his. He didn't ask. We didn't ask.

21 Q Did he have a job?

22 A Yes, sir.

23 Q Where did he work?

24 A A t-shirt shop on Richland Ave in Aiken.

25 Q When he came to live with y'all who was paying the

1 bills?

2 A It was us, but also he helped out as well.

3 Q Who would play with the children?

4 A He would, mostly.

5 Q If the children needed to go somewhere who would take
6 them?

7 A Mostly him.

8 Q Did he have a vehicle?

9 A It was our vehicle. He used it.

10 Q What were the sleeping arrangements in the house?

11 A We had a bunk bed and there was also a twin, as well,
12 which was maybe a foot away from the twin bed -- not the
13 twin bed, the bunk bed in the living room.

14 Q This is State's Exhibit No. 3. What is this room, if
15 you could show us?

16 A Okay. This is the bunk bed --

17 Q Let me hold it up.

18 A -- okay. This is the bunk bed here, which is still in
19 the living room. This is the twin bed. Okay. Mostly --

20 Q I'm just going to ask you if you can talk and they can
21 hear.

22 A Okay.

23 Q Who slept on the bunk bed?

24 A I, myself, Susan Lukowiak, Allison Mikell Little, we
25 slept on the bottom bunk. Barry and Minor², which is our

1 middle child, which is 12, they slept on the top bunk.

2 Before they slept on the top bunk it was A.M. and Minor 2

3 who slept on the twin sides, which is next to the front

4 door. We have a -- I don't know what you'd call it -- I

5 can't remember what you call it, but it's like a side thing.

6 A window without being a window. When Granger was there we

7 had a recliner in the living room as well. She slept there.

8 And their grandfather Poole who was alive at the time, he

9 slept in the back room.

10 So essentially this living room had the bunk beds and the

11 twin bed in the same room?

12 A Yes, sir.

13 Q I want to talk about Barry playing with the children.

14 How did he act around the children?

15 A At first he was good with all of us. He had a good

16 attitude. He laughed and played with them.

17 Q And that changed?

18 A It changed after a while.

19 Q And how did that change?

20 A Well, he really -- I mean, the girls started having

21 attitudes and got mad with Lexie and Minor 2 and A.M.

22 started fighting over him. J.C. he paid no attention

23 to. He always got mad with him.

24 Q When Barry was living there how did he act towards you

25 and Allison?

Susan Lukowiak - Direct Examination

105

1 A When he was confronted with a couple of things he
2 denied, there were arguments specially when he was
3 confronted about certain things. He denied it and started
4 getting attitudes.

5 Q Did he ever act violent or threatening?

6 A I'm sorry?

7 Q Did he ever act violent or threatening?

8 A Yes.

9 Q How would that go?

10 A Well, the violence, he would be in a stance, a karate
11 stance, do heavy breathing. I'll have to stand up to do
12 this. Do a karate stance like this. (Indicating.) Throws
13 bricks around on the tree or in the bricks. Sort of stuff
14 like that.

15 Q Did he describe that to you?

16 A It didn't have to be described. I'd watch it, along
17 with the kids. It scared them. Like a fiery look in his
18 eyes. The kids were afraid of him after that.

19 Q Do you remember Barry ever leaving the house?

20 A They would go on little walks, especially with the
21 kids.

22 Q Do you remember the time Barry didn't live there
23 anymore?

24 A Yes.

25 Q Okay. Whose idea was it for him to leave?

1 A His.

2 Q And after did he left your house did you have any more
3 contact with him?

4 A Yes, sir.

5 Q Do you recall the time -- well, why did he leave the
6 house?

7 A Well --

8 MR. ROUTZONG: Objection, Your Honor. Speculation.

9 THE COURT: Sustained.

10 A -- the first time he left --

11 MR. ROUTZONG: Your Honor, objection.

12 THE COURT: Well, we don't know what she's saying. I'm
13 going to ask that you rephrase the question.

14 BY MR. GRIMES:

15 Q Do you recall when Barry was asked to leave the house?

16 A Yes.

17 Q And why was that?

18 A The first time we asked him to leave the house, the
19 night before we had told Barry -- he was sitting at the foot
20 of the twin size bed, with Minor 2 laying there. He was told
21 specifically to get on the top bunk before we went to sleep
22 after Minor 2 fell asleep and he did not by the next morning.
23 The next morning when we got up we woke up to a knock at the
24 door. I got up, open the door. It was Tiffany, Allison's
25 sister's partner. I let her in. Barry was caught by

Susan Lukowiak - Direct Examination

107

1 myself, Susan Lukowiak, Allison Mikell Little, my partner,
2 Tiffany, Allison's partner's sister and also Vickie Little.
3 Barry had his right arm, right leg, over Minor2 , my
4 stepdaughter on the twin bed. He was woken up.

5 Q Is that the bed in this picture?

6 A Yes, sir.

7 Q In Exhibit No. 3?

8 A Yes, sir.

9 Q This one right here?

10 A Yes, sir.

11 Q Was Barry asked to leave after that?

12 A Yes, sir.

13 Q After Barry left the house, do you remember an
14 investigation in this case?

15 A Vaguely.

16 Q Do you remember Investigator Sievers?

17 A Yes, sir.

18 Q Did the kids ever go to live with their Aunt Vickie?

19 A Temporarily, yes.

20 Q Do you recall at the time if they were supposed to have
21 any contact with Mr. Lafavor?

22 A I remember that they were not supposed to, but it did
23 happen, on my behalf.

24 Q Excuse me?

25 A It did happen on my behalf.

1 Q On your behalf. How did that happen?

2 A Phone call.

3 Q Okay.

4 A A couple of them.

5 Q And how would you do that phone call?

6 A He would call my cell phone asking for only Minor 2 .

7 Q And --

8 A I'm sorry. Let me rephrase that. Minor 2 .

9 Q And when he would call your cell phone asking for her,
10 how did you arrange for them to speak?

11 A He would ask to talk to only Minor 2 and I would get
12 threats by him over the phone that if he did not talk to
13 Minor 2 he would pretty much not help us out with paying any
14 bills or anything else of that nature. I can't remember
15 exactly what it was at this point.

16 Q Would you be a part of these phone conversations?

17 A When it was at the house, yes. At our house. I'm
18 sorry.

19 Q Excuse me?

20 A At our house. Yes.

21 Q Do you recall any conversation regarding flowers?

22 A Yes, when he called my phone. Allison knew nothing
23 about it.

24 Q What was that conversation about?

25 A He told me he was going to have flowers sent to

Susan Lukowiak - Cross-Examination

109

1 Minor2 's school for Minor2 stating that the flower was
2 going to be from her mom, and her mom didn't know about the
3 flower.

4 Q And the flower was going to be sent to the school?

5 A Yes, sir.

6 Q And was this after the point where we discussed --
7 where we're talking about whether or not he was supposed to
8 be talking to Minor2 or not?

9 A Yes.

10 Q One moment.

11 (Pause.)

12 BY MR. GRIMES:

13 Q When -- do you recall when the children went to go stay
14 with their Aunt Vickie?

15 A Yes.

16 Q At that time was Barry still in the house?

17 A Yes, sir.

18 Q Do you see Barry Lafavor in this courtroom?

19 A Yes, sir.

20 Q Where is he seated?

21 A Between the black lady and that man right there.

22 Q What's he wearing?

23 A Dark gray suit, light blue shirt. He's got -- I want
24 to say salt and pepper hair.

25 Q Is that the Barry Lafavor that lived at the house with

1 you and Allison?

2 A Yes, sir.

3 Q Is that the Barry Lafavor that you discussed playing
4 with the kids?

5 A Yes, sir.

6 Q Is that the Barry Lafavor that talked on the phone with
7 Minor 2 ?

8 A Yes, sir.

9 Q Is that the Barry Lafavor that talked to you about the
10 flowers?

11 A Yes, sir.

12 Q Please answer any questions defense may have for you.

13 THE COURT: Cross-examination, Mr. Routzong.

14 SUSAN LUKOWIAK - CROSS-EXAMINATION

15 BY MR. ROUTZONG:

16 Q Morning.

17 A Morning.

18 Q You became aware of an allegation against Mr. Lafavor
19 in April of last year; is that correct?

20 A What allegation?

21 Q The allegation that he touched me at a party at Jerry's
22 house in April of last year?

23 A I'm sorry. Rephrase that?

24 Q In April of last year there was a party and you became
25 aware after that party that Minor 1 had made an allegation

Susan Lukowiak - Cross-Examination

111

1 against Mr. Lafavor?

2 A She brought up something about that, yes.

3 Q Okay.. What was that allegation?

4 A Okay.. Rephrase that part?

5 Q The allegation was that he touched her?

6 A He -- I was -- I was told that he had tried to kiss her
7 and she pushed him away.

8 Q You made a statement to law enforcement May 1, after
9 that party and after that allegation; is that correct?

10 A I'm sorry. I don't remember that.

11 Q You don't remember?

12 A No, I do not.

13 Q I have a copy of the statement. Would you like to take
14 a look at it to refresh your memory?

15 A I'll look at it. It's the best I can do.

16 Q If you'll look at the bottom, is that your signature on
17 that?

18 A Well, if I remember correctly, I had a seizure during
19 this time. I was told about this seizure. I do have a
20 history of seizures.

21 Q My question was, is that your signature on the bottom
22 of that paper?

23 A That is my seizure -- I mean, my signature, but like I
24 said, I did have a seizure around this time.

25 Q And you recognize that statement. That is your

1 handwriting?

2 A This is my handwriting. Yes.

3 Q I'm sorry. Can you say that a little bit louder,
4 please?

5 A This is my handwriting, yes.

6 Q Thank you. In that statement you told the police that
7 the only one that said anything bad about him was Minor I is
8 that correct?

9 A I honestly do not remember that. I just read that. I
10 do not remember saying that.

11 Q But it is your statement?

12 A Did I not just say I had a seizure?

13 Q Yes, ma'am.

14 A What part of that do you not understand?

15 Q This is your statement?

16 A I -- do you not --

17 THE COURT: First of all, this isn't a conversation
18 where you -- he ask the questions, you provide the answer.
19 You can't ask him a question rhetorical or otherwise.
20 Listen to the question. Typically, it's going to call for a
21 yes or no answer, then you can explain. Does that sound
22 fair enough?

23 MS. LUKOWIAK: Fair enough.

24 THE COURT: Mr. Routzong.

25 BY MR. ROUTZONG:

Susan Lukowiak - Cross-Examination

113

1 Q And in your statement you told the investigator that
2 the other kids said that Lexie was just saying this about
3 Barry touching her just to get him kicked out of the house;
4 isn't that correct?

5 A Yes.

6 Q And that she wanted to take control over the house,
7 Minor 1 wanted to take control; isn't that correct?

8 A Yes, at the time.

9 Q And that's her personality?

10 A When she's mad.

11 Q When she's mad?

12 A Yes, when she's mad.

13 Q When she's mad does she tell lies?

14 A No.

15 Q But you know her to be a liar; she does tell lies?

16 A No, she doesn't tell lies. She does not lie.

17 Q You said there came a time when Barry moved out of the
18 house. That was after the first -- this allegation we're
19 talking about right here, that was around May of last year;
20 is that correct?

21 A Yes.

22 Q But you guys, after this allegation May 1, sometime
23 after that he moved out, but sometime after that you guys
24 invited him back for one more night; isn't that correct?

25 A It was actually for more than one night, because he had

1 told us that he would help us out with paying the bills
2 because we needed help with the bills. That's why we let
3 him back in.

4 Q Even after this allegation?

5 A Yes.

6 Q And this time that you're referring to here, that was
7 the time there was a knock on the door and you got up and
8 you, allegedly, these events happening with Minor2 and Mr.
9 Lafavor; is that correct?

10 A Yes.

11 Q This was around, this would have been some time in May
12 that this happened?

13 A I can't remember exactly.

14 Q Would it have been May or closer to June; was it in the
15 spring time or was it in the summer time?

16 A It was in the summer.

17 Q It was in the summer time; June?

18 A I'm trying -- I know this has been last year. I'm
19 trying to remember. So much has been happening.

20 Q Obviously, it was before the kids went --

21 A Yes, it was before that.

22 Q -- to stay with their Aunt Vickie?

23 A Yes.

24 Q And that happened around July 3, before July 3; isn't
25 that the case?

Susan Lukowiak - Cross-Examination

115

1 A Yes.

2 Q So sometime is June or May?

3 A Yes, it was around that time.

4 Q Isn't it true that the first time you made any mention
5 of this allegation was in the latter part of September,
6 around the 26?

7 A Could I see that paper again, please?

8 Q This is a different statement. This is a statement --

9 A Sometime -- I'd like to look at it again, thank you.

10 Q Here's the back -- the third page of that statement.

11 A Thank you.

12 Q That's your signature on the bottom of that; isn't that
13 correct?

14 A Yes, this is my -- signature.

15 Q And the date on that is September 26?

16 A Yes, September 26. That's -- I needed to see that. I
17 do have a comprehension problem.

18 Q You don't have any doubt that's your statement?

19 A No, there's no doubt. I just had to be reminded.

20 Q So let me go back and be sure what you testified.

21 These events happened before July -- the first part of July
22 because the kids were already out of the house; they were
23 with their Aunt Vickie?

24 A Yes.

25 Q And these events happened, you saw them, and you took

1 note of them and you were angry about them; isn't that
2 correct?

3 A Who wouldn't be.

4 Q And yet, there were how many opportunities from June,
5 July, August, September and you never said anything to law
6 enforcement about this event until the last part --
7 September 26. Is that your testimony; right?

8 A What parent -- that's the question, never mind.

9 THE COURT: The question has been posed requires a yes
10 or no answer. You can explain.

11 A What's the question, please?

12 BY MR. ROUTZONG:

13 Q The question was these events that you're alleging
14 today took place sometime in either May or June of last year
15 and you don't say anything to anybody about it until
16 September 26; isn't that correct?

17 A Yes, that's correct. It's because I was scared. I was
18 frightened. I didn't know what to do.

19 Q Well, that's a good question because you said something
20 earlier that kind of puzzled me. You said that Marie Scott
21 was the one that -- you said you had known her before. You
22 said that was Barry's cousin?

23 A Yes, she is Barry's cousin.

24 Q And that's how you came to know Mr. Lafavor?

25 A Yes.

Susan Lukowiak - Cross-Examination

117

1 Q And this was after your house burned down?

2 A Yes.

3 Q And he brought clothes for the kids and small things
4 for everybody?

5 A Yes.

6 Q Then you said he slowly moved himself in.

7 A Yes. He didn't have permission or nothing.

8 Q He didn't have permission to move into your house?

9 A No. He did not. He didn't ask. He just assumed -- I
10 mean --

11 Q He just moved himself into your house and you don't
12 know how to dial 911 and to call the police and say, hey,
13 there's a guy in here and he won't leave. Is that what
14 you're telling these people here?

15 A What were we supposed to do?

16 Q The question was, do you know how to dial 911 and call
17 the police?

18 A Yes, I know how to -- we knew how to call 911.

19 Q You didn't call 911 because he didn't move himself in,
20 you asked him to come in; isn't that correct?

21 A We didn't ask him.

22 Q Did you ask him to leave?

23 A No, we did not. That defeats the purpose.

24 Q I can see what your purpose is. I agree, it does
25 defeat the purpose. You say you're so scared of him, but he

1 wasn't in the house was he?

2 A Yeah, but that's after the fact.

3 Q The question was, he wasn't in your house sometime
4 since May or June, he wasn't in the house was he?

5 A No, he was not.

6 Q And you're so frightened of him you can't tell
7 Investigator Sievers or someone in the sheriff's department
8 until September 26 that this event happened; is that
9 correct?

10 A Yes, that is correct, but when we finally did something
11 about it -- I mean, we were confused. We didn't know what
12 to do at the time until we found out everything. We didn't
13 know what to do. We were stuck.

14 Q This was after the kids had been sent over to Aunt
15 Vickie's house; isn't that correct? That was in July,
16 right?

17 A Yes, that is correct. I mean, for heaven sakes the
18 mother is diabetic. I mean, she almost died October of last
19 year. She had 10 minutes to live.

20 Q You testified something about all these phone calls and
21 text messages; is that correct?

22 A Yes.

23 Q Do you have any records about those?

24 A I don't.

25 Q Have any phone records?

Susan Lukowiak - Cross-Examination

119

1 A No.

2 Q Are you aware if any phone records exist?

3 A No.

4 Q So what we're doing is we're relying on your word that
5 all that happened; is that correct?

6 A I don't know. I lost my phone.

7 Q You're aware of the allegation that Marie Scott
8 molested Minor 1

9 A It's been --

10 Q You're aware of the allegation that Gerald Carlyle
11 molested Minor 1

12 A No, he did not. And her mother will tell you that
13 herself.

14 Q Ms. Lukowiak --

15 A Yes, sir.

16 Q -- do you admit or deny that you told Investigator
17 Sievers that Minor 1 said she lied and that it didn't happen?

18 A Do I --

19 Q This would have been on May 7 or around -- on or around
20 May 7 of last year, 2012?

21 A Do I admit that she lied?

22 Q Do you admit or deny that you told Investigator Sievers
23 that?

24 A I admit it.

25 Q You admit that Minor 1 lied?

1 A Well --

2 Q You admit that you told Investigator Sievers that
3 Minor 1 lied?

4 A I'm trying to retract what I -- when was this?

5 Q May of last year, 2012?

6 A Believe it or saying it?

7 Q Is that a yes, you did say it?

8 A Yeah, I did say that. I just don't know what it was
9 about.

10 Q And you just told us a few minutes ago that Minor 1
11 doesn't lie?

12 A I don't remember what it was about, though. That's the
13 thing. It has to be from a face for me to -- see, I can't
14 -- it's -- in order for me to remember something, certain
15 things I have to see from a face. I would have to look at
16 the paper.

17 Q This is an incident report. My question is do you
18 admit or deny that you told Investigator Sievers that Minor 1
19 lied about those events, about being touched, that she's a
20 liar? Did you tell Investigator Sievers that?

21 A About the touching, she did not lie about that.

22 Q My question was did you tell -- do you admit or deny
23 that you told Investigator Sievers that Minor 1 lied and the
24 touching didn't happen, and that would have been in May of
25 2012, last year? Do you admit or deny that?

Susan Lukowiak - Cross-Examination

121

1 A I'm going to deny that.

2 Q Ms. Lukowiak, do you admit or deny telling Investigator
3 Sievers that there was an argument in the family when Minor 1
4 yelled out that Barry touched her. Susan stated -- did you
5 state to Investigator Sievers that none of the other
6 children said they were being touched? Do you admit or deny
7 that much?

8 A I admit that, at that point.

9 Q Do you admit or deny that Minor 1 said that she was
10 doing this just to get Barry out of the house and that's
11 what you told Investigator Sievers?

12 A I admit that.

13 Q Do you admit or deny that back in May of last year you
14 told Investigator Sievers that Minor 1 is the only kid that
15 said anything bad about Barry?

16 A At that time, yes.

17 MR. ROUTZONG: I have no further questions, Your Honor.

18 THE COURT: Any redirect?

19 MR. GRIMES: Nothing, Your Honor.

20 THE COURT: All right. You may step down.

21 You may call your next witness.

22 MR. GRIMES: State calls Vickie Whittle.

23 THE COURT: Yes, ma'am. Please come forward. Place
24 your left hand on the Bible and raise your right hand while
25 the clerk administers the oath.

Vickie Whittle - Direct Examination

122

1 (WHEREUPON, Vickie Whittle, was
2 sworn to tell the truth.)

3 THE CLERK: Have a seat in the witness box, stating your
4 full name and spelling your last for the Court, please.

5 THE COURT: Pull up real close to that microphone, speak
6 loud and clearly and slowing in order for me to hear
7 everything you've got to say. Start with your name, please.

8 MS. WHITTLE: My name is Victoria Whittle. I go by
9 Vickie. It's W-h-i-t-t-l-e.

10 THE COURT: Very good.

11 Yes, sir.

12 VICTORIA WHITTLE - DIRECT EXAMINATION

13 BY MR. GRIMES:

14 Q Good morning, Vickie.

15 A Morning.

16 Q How are you related to the people in this case?

17 A I'm their aunt.

18 Q Whose aunt?

19 A I'm Minor 1 and Minor 2 's aunt.

20 Q Okay. Well, I guess you can be an -- how are you
21 related to their mother?

22 A I'm her sister.

23 Q And do you know Barry Lafavor?

24 A Yes, I do.

25 Q How do you know Barry Lafavor?

Vickie Whittle - Direct Examination

123

1 A Through my sister.

2 Q Okay. How long have you known him?

3 A For about two years.

4 Q How did you first come to know Barry Lafavor?

5 A Through my sister.

6 Q Where would you see Barry Lafavor?

7 A At her house.

8 Q Did he live there?

9 A Yes, he did.

10 Q Have Minor1 and Minor2 lived with you in the last few
11 years?

12 A Yes, they have.

13 Q And who else came to live with you?

14 A Minor1 Minor2 , J.C. and -- sorry, I'm nervous.

15 Q Why did they come to live with you?

16 A Because she wasn't able to take care of the kids.

17 Q When you say she, your sister?

18 A My sister. Yes.

19 Q They came to live with you. Do you live in Aiken?

20 A Yes, I do. Well, Aiken County.

21 Q And you have some children of your own?

22 A Yes. I have five girls.

23 Q So when they came to live with you how many people were
24 staying at your house?

25 A 13 people.

1 Q And was that an easy thing to do?

2 A No, I felt like a circus.

3 Q How long did they live with you?

4 A For almost a year.

5 Q Do you remember when it began?

6 A It was the beginning of May of 2012, I believe.

7 Q And where are they living now?

8 A They are back with their mom.

9 Q When did that begin?

10 A Mother's Day of this year.

11 Q Okay. When -- do you recall talking to law enforcement
12 about this case?

13 A Yeah, I talked to Kim Sievers.

14 Q Is that something you called and initialed or was that
15 somebody else that did that?

16 A No, sir. I came over there to visit my sister and she
17 was already there.

18 Q When the girls came to stay with you did they have cell
19 phones?

20 A Yes, they did.

21 Q Did they get to keep those cell phones?

22 A No, sir, they didn't.

23 Q Why was that?

24 A Because they was able to talk to Barry on those cell
25 phones and there was supposed to be no contact.

Vickie Whittle - Direct Examination

125

1 Q Supposed to be no contact with whom?

2 A With Barry.

3 Q And so did you take those cell phones?

4 A Yes, I did.

5 Q After the girls came to stay with you do you recall a
6 time where any of them went back and stayed with their -- at
7 their mom's house?

8 A Minor 2 went -- Minor 2 stayed there for a little while.

9 Q Okay. And do you recall about when it was?

10 A I would say that was probably about -- between May and
11 June.

12 Q Do you recall anything particular happening when that
13 occurred?

14 A Yes, sir. I went to go check on my sister because she
15 wasn't answering the phone, and I walked in and I seen them
16 laying in the bed, Minor 2 and Barry laying in the bed.

17 Q And how were they laying in the bed?

18 A She was on her right side and he was on his back with
19 her arm around his chest and her legs thrown over his legs.

20 Q I'm sorry, how were her legs?

21 A Throw over his legs.

22 Q Do you recall what happened at that point?

23 A She got up and ran to the restroom, bathroom.

24 Q When did she get up and run to the restroom?

25 A Soon as she realized I was there.

1 Q At that point, what was your understanding about
2 whether Barry was supposed to be in contact with her?

3 A I don't understand the question.

4 Q When that occurred, do you recall whether Barry was
5 supposed to be staying there or not?

6 A No, he wasn't supposed to be there.

7 Q After that point, did you ever see Barry at that house
8 again?

9 A Yes, I did.

10 Q What happened when that occurred?

11 A I went in the bathroom to use the restroom and beside
12 the bathroom tub is like a little closet and she had a
13 sheet that was covering basically a closet. I walked in the
14 bathroom and moved the sheet and he was knelt down hiding
15 from us.

16 Q And this was at their house?

17 A Yes, it was.

18 Q And that's on ?

19 A Yes, it was.

20 Q Were you looking for him at that point?

21 A Yes, I was, actually.

22 Q Why?

23 A I seen his shoes on the floor.

24 Q At the house?

25 A Yes.

Vickie Whittle - Direct Examination

127

1 Q Was he supposed to be there at that point?

2 A No, sir.

3 Q Do you recall seeing him another time at the house?

4 A Yes, sir. My sister called me and told me that she
5 wanted him out of her house and wanted me to come and kick
6 him out and so I did. I went there and told him he needed
7 to leave, and I followed him around the house to make sure
8 everything was fine with it, and we went in the back room
9 and there was a -- like a black duffle bag -- there was a
10 black duffle bag that he had picked up and he started
11 pulling out panties and I asked him who those belonged to
12 and he told me Minor 2.

13 Q And those were in the bag?

14 A In the duffle bag, yes, sir.

15 Q Who did that duffle bag belong to?

16 A Barry.

17 Q Did he explain to you why they were in there?

18 A No, sir.

19 Q Have you seen Barry since that day?

20 A No, sir.

21 Q Was that at the time the children were living with you?

22 A I'm sorry?

23 Q Did that occur while the children were living with you?

24 A Yes.

25 Q Do you recall an incident involving flowers

1 A Yes, sir.

2 Q Okay. Can you tell us a little bit about that?

3 A The school had called me and told me there was flowers
4 up there at the school and I told them not to give them to
5 Minor2 that they was for her. That I would be up there in
6 a minute to get them. I went to the school and got the
7 flowers.

8 Q What kind of flowers was it?

9 A It was a pink rose with baby's breath on it and a
10 little card.

11 Q What did you do with the card?

12 A I called Kim Sievers and she came and got the card.

13 Q She took the card from you?

14 A Yes, sir.

15 Q Do you recall at any point last year either Minor1 or
16 Minor2 ever saying that they had been touched
17 inappropriately?

18 A Yes, sir.

19 Q Kind of tell us a little bit about the time when that
20 occurred?

21 A They was having an argument in the yard and --

22 Q When you say they, who was they?

23 A -- as in Minor1 and my sister was arguing back and
24 forth and --

25 Q Was this at your house?

Vickie Whittle - Direct Examination

129

1 A Yes, sir.

2 Q All right.

3 A And she said that I told you that I had been messed
4 with but you didn't believe me.

5 Q When did you say that was?

6 A I don't remember that. I don't remember the date.

7 Q Would it be last year?

8 A Yes, sir.

9 Q And you said you're familiar with Barry Lafavor; is
10 that correct?

11 A Yes, sir.

12 Q Do you see him in this courtroom?

13 A Yes, I do.

14 Q And where is he seated?

15 A Middle chair.

16 Q What is he wearing?

17 A Gray suit with -- looks like a black tie.

18 Q Is that the Barry Lafavor that was living with your
19 sister and these children on ?

20 A Yes, sir.

21 Q Is that the Barry Lafavor that you saw in the bed with

22 Minor 2

23 A Yes, sir.

24 Q Is that the Barry Lafavor that you saw in the shower?

25 A Yes, sir.

Vickie Whittle - Cross-Examination

130

1 Q And with the bag with the panties in it?

2 A Yes, sir..

3 Q Please answer any questions defense counsel has for
4 you.

5 THE COURT: Cross-examination, Mr. Routzong.

6 VICKIE WHITTLE - CROSS-EXAMINATION

7 BY MR. ROUTZONG:

8 Q Morning.

9 A Morning.

10 Q Those phone calls that were made, you say were made,
11 that was on your phone, right?

12 A Those phone calls?

13 Q You just testified that there were some phone calls
14 made by Mr. Lafavor to some of the girls?

15 A No, sir, that was their phone, their cell phones that
16 they came to my house with.

17 Q That was their personal phones?

18 A Yes, sir, that he had bought them.

19 Q When you saw -- when you say you saw these events that
20 happened, in the bed, the underwear and all that stuff, you
21 didn't call the police did you?

22 A No, I didn't.

23 Q Do you admit or deny that you told law enforcement that
24 Lexie is known for lying and stealing?

25 A Yes, I did.

Vickie Whittle - Cross-Examination

131

1 Q Do you admit or deny that you told law enforcement on
2 July 5 of last year, 2012, that Minor 1 told you that while
3 you were leaving the Child Advocacy Center on May 11 that
4 she had just lied to that lady?

5 A Yes, she did.

6 Q The interview with the Child Advocacy Center person was
7 on May 11 of 2012; correct?

8 A I'm not sure.

9 Q But you told -- when did the kids get placed with you?

10 A It was the beginning of May when they first started
11 living with me.

12 Q And they didn't go back home with their mom until the
13 first part of this year; correct?

14 A Yeah, that was Mother's Day is when they went home.

15 Q Who placed them with you?

16 A Marilyn Harris, I believe is her last name.

17 Q She's with DSS?

18 A No, actually she's with Child's Place.

19 Q They work with DSS?

20 A Yes, sir.

21 Q When was that incident that you testified about where
22 you saw allegedly Mr. Lafavor in bed with Minor 2 and found
23 him in the bathroom?

24 A I don't remember the dates.

25 Q Would you say it was in -- was it in 2012?

1 A Yeah.

2 Q It was before the first allegation at that party in
3 April?

4 A I'm not sure.

5 Q And that was at your sister's house?

6 A Yes, it was.

7 Q And you know that Mr. Lafavor was staying there up
8 until May?

9 A Yes.

10 Q And you don't remember when this was?

11 A I don't remember the dates.

12 Q So you can really say whether or not he was supposed to
13 be there?

14 A Well, I was told that he wasn't supposed to be there.

15 Q When were you told that?

16 A I don't remember.

17 Q So it was after Mr. Lafavor left?

18 A I don't remember.

19 MR. ROUTZONG: I don't have any further questions, Your
20 Honor.

21 THE COURT: Any redirect?

22 MR. GRIMES: Just a couple of questions.

23 VICKIE WHITTLE - REDIRECT EXAMINATION

24 BY MR. GRIMES:

25 Q At the time that you saw Barry in the bed with Minor 2

Vickie Whittle - Redirect Examination

133

1 had the kids already come to stay with you?

2 A Yeah, the kids had already come and stayed with us and
3 the only one there was Minor 2

4 Q Okay. To your knowledge was law enforcement already
5 involved in this case?

6 A Yes, they were.

7 Q Okay. At the time that you saw Barry Lafavor leave the
8 house and take the panties out of his flight bag was law
9 enforcement involved in this case?

10 A Yes.

11 Q And were the children staying with you at that point?

12 A Yes, they were.

13 MR. GRIMES: No further questions.

14 THE COURT: You may step down.

15 Mr. Foreman, ladies and gentlemen of the jury, we're
16 going to take a recess so you can refresh yourselves. Once
17 again, do not discuss this case in any way shape or form.
18 (Jury out at 10:41 a.m.)

19 THE COURT: Anything from the state before we recess?

20 MS. AGNEW: No, Your Honor.

21 THE COURT: Anything from defense?

22 MR. ROUTZONG: No, sir.

23 THE COURT: How many more witnesses do you anticipate?

24 MS. AGNEW: Five, Your Honor.

25 THE COURT: Okay. Very good. We'll take about a five

1 minute recess.

2 (Court in recess for short break.)

3 (Court in session after short break.)

4 THE COURT: Please be seated.

5 Anything from the state before we bring the jury out?

6 MS. AGNEW: No, Your Honor.

7 THE COURT: Anything from defense?

8 MR. ROUTZONG: No, sir.

9 (Jury in at 10:58 a.m.)

10 THE COURT: Mr. Foreman, ladies and gentlemen of the
11 jury, thank you for your patience and your attention.

12 State you're recognized. You may call your next
13 witness.

14 MS. AGNEW: Thank you, Your Honor. State calls Tiffany
15 Phillips.

16 THE COURT: Ms. Phillips, please come forward and place
17 your left hand on the Bible and raise your right hand for
18 the clerk to administer the oath.

19 (WHEREUPON, Tiffany Phillips was
20 sworn to tell the truth.)

21 THE CLERK: Have a seat in the witness box, stating your
22 full name and spelling your last for the Court, please.

23 THE COURT: Have a seat in the witness chair. I'm going
24 to ask that you pull up real close to that microphone and
25 speak loudly, clearly and slowly in order for me to hear

Tiffany Phillips - Direct Examination

135

1 everything that you've got to say. Let's start with your
2 full name.

3 MS. PHILLIPS: Tiffany Phillips. P-h-i-l-l-i-p-s.

4 TIFFANY PHILLIPS - DIRECT EXAMINATION

5 BY MS. AGNEW:

6 Q Thank you, Tiffany. Can you tell the jury where you
7 live?

8 A

9 Q Where is that at?

10 A , South Carolina.

11 Q Okay. How long have you lived there?

12 A 12 years.

13 Q Can you tell us how you're related to everybody
14 involved in this case?

15 A Vickie Whittle's partner --

16 Q Okay, and --

17 A -- and Vickie Whittle is the girl's aunt.

18 Q What do the kids call you?

19 A Aunt Tiffany.

20 Q Okay. Do you know Barry Lafavor?

21 A Yes.

22 Q Are you related to him?

23 A No.

24 Q How do you know him?

25 A Through the girls and Denise.

1 Q Okay. And by Denise who are you talking about?

2 A Allison, the girls mom.

3 Q Okay. Is Denise her middle name?

4 A Yes.

5 Q Okay. So how long have you known Barry Lafavor.

6 A About two years.

7 Q Now, tell me this, how did you first get involved in
8 this case?

9 A When the kids were placed with us.

10 Q Okay. I'm going to ask you a really big favor, either
11 speak really, really loud or hold that microphone in your
12 hands so that I can hear you better, okay?

13 A Okay.

14 Q When were the kids placed with you?

15 A In July of 2012.

16 Q Okay. And who placed the kids with you?

17 A Children's Place.

18 Q Is that part of DSS?

19 A Yes, ma'am.

20 Q Before the kids were placed with you where were they
21 living?

22 A with their mother in

23 Q Is that in Aiken County?

24 A Yes, ma'am.

25 Q Do you know why DSS placed the kids with you?

Tiffany Phillips - Direct Examination

137

1 A Because --

2 MR. ROUTZONG: Objection, Your Honor. Speculation.

3 BY MS. AGNEW:

4 Q To your knowledge why were the kids placed with you?

5 A Because Allison wasn't capable of taking care of the
6 kids any more.

7 Q Okay. What's your understanding of Allison's health
8 condition?

9 A She's always sick. In and out of the hospital. She
10 has a lot of health issues.

11 Q Now, you said that the girls, that all the kids were
12 initially placed with y'all in July of 2012; is that when
13 they first started staying with you?

14 A No, ma'am. They first started staying with us at the
15 end of the school year, which would have been June 1, 2012.

16 Q Whose idea was it for them to start staying with you?

17 A The kids wanted to come over because there was stuff to
18 do at the house.

19 Q Did all the kids come stay with you at first?

20 A No, ma'am.

21 Q Who all came?

22 A A.M., J.C. and Minor 1
23 came.

24 Q Who didn't come stay with you?

25 A Minor 2 did not.

1 Q Where did she stay?

2 A She still stayed at her momma's.

3 Q When did you first talk to law enforcement about this
4 case?

5 A Miss Kim called us about the kids.

6 Q Okay. So Miss Kim called you, you didn't call Miss
7 Kim?

8 A No, ma'am.

9 Q Okay. Now, tell me, while the girls were staying with
10 you did they have cell phones?

11 A Yes, they did.

12 Q Did you give them cell phones?

13 A No, I did not.

14 Q Did they keep their cell phones while they were living
15 with y'all?

16 A No, ma'am, they did not.

17 Q How come?

18 A Because they were having contact with Barry.

19 Q What was your understanding about whether they were
20 supposed to have contact with Barry?

21 A It was a no contact at all by him.

22 Q Who said they weren't to have contact with him?

23 A Miss Kim informed us. Miss Kim Sievers told us that
24 they were not allowed any contact with him at all.

25 Q Okay. Do you know -- the contact the kids were having

Tiffany Phillips - Direct Examination

139

1 on those cell phones, do you know who was initiating that
2 contact?

3 A He was calling.

4 Q Who's he?

5 A Barry.

6 Q Now, you said before the girls started -- before the
7 kids were officially placed with you that they were staying
8 with you in June, but Minor 2 was staying at home with her
9 mom?

10 A Yes.

11 Q Did anything unusual happen during that time?

12 A Yes.

13 Q Tell us about that?

14 A One night Allison called and she wasn't doing too well.
15 We called back, like two or three hours later and she didn't
16 answer the phone. She didn't answer the phone so we rode
17 out there.

18 Q Let me stop you for just a second. When you say we who
19 are you talking about?

20 A Me and Vickie. Vickie and I.

21 Q Okay. So what happened after you rode out there?

22 A We went in and Barry was laying in the bed with
23 Minor 2

24 Q Okay. Was that the only time that you saw that?

25 A No, ma'am.

1 Q The first time, when was that?

2 A It was in June.

3 Q Okay. And you said there was another time that
4 happened?

5 A That was also in June, also.

6 Q Okay. At that point, what was your understanding of
7 whether Barry was supposed to have contact with Minor 2

8 A He wasn't supposed to be around the kids.

9 Q Did you ever notice anything odd on any of the girls?

10 A Yes. On Minor 2

11 Q What did you notice?

12 A She had a hickie on her neck.

13 Q How old was she?

14 A 12.

15 Q Had she been at your house before that?

16 A No.

17 Q Do you know where she had been?

18 A She had been with Barry.

19 Q After you came over to the house in June and saw Barry
20 in the bed with Minor 2 did you ever see him over at that
21 house again?

22 A Yes.

23 Q When was that?

24 A It was about a week after that incident. He was there
25 also.

Tiffany Phillips - Direct Examination

141

1 Q Okay. Did you see him at the house after all of the
2 kids had been officially placed with you?

3 A Yes, ma'am.

4 Q Can you tell us about that?

5 A We went out to get some of the kids belongings and
6 Vickie had to go to the bathroom and Denise was actually in
7 the backroom and she kept telling her to hurry up, hurry up.
8 When she went into the bathroom Barry was actually hiding in
9 the closet in the bathroom.

10 Q How was he hiding?

11 A Behind the curtain.

12 Q Okay. Do you know if she was supposed to be there
13 then?

14 A No, he wasn't supposed to be there either.

15 Q Did you see him over at the house after that?

16 A Yeah, one other time..

17 Q Do you remember when that was?

18 A It was in July, also.

19 Q Okay. What happened when you saw him over at the house
20 that time?

21 A Allison asked us to -- she called us out there and
22 asked us to have him --

23 MR. ROUTZONG: Objection, Your Honor.

24 THE COURT: Sustained.

25 BY MS. AGNEW:

1 Q So whose idea was it for you to come out to the house
2 that day?

3 A Denise -- Allison's.

4 Q Okay. So you go over to the house, what happened when
5 you came over to the house?

6 A We asked Barry to get his belongings and make sure that
7 he got all his stuff out of the house so there was no reason
8 for him to come back. And Vickie and I both followed him to
9 the back bedroom and he was getting his belongings. And out
10 of his -- what do you -- his bag that he carries when umping
11 for the team, he pulled out panties and they were Minor2
12 panties.

13 Q He told you they were Minor2 panties?

14 A Yes, ma'am.

15 Q Did he tell you why he had them in his bag?

16 A No. I did not want to know.

17 Q Have you seen Barry since then?

18 A Not -- I seen him after that, yes, one other time.

19 Q Okay. At any point in time during this last year did
20 either Minor1 or Minor2 ever say anything about being
21 touched inappropriately?

22 A Yes, ma'am.

23 Q Who said something.

24 A Minor1 did.

25 Q Where was she at when she said something?

Tiffany Phillips - Direct Examination

143

1 A She was at my house.

2 Q Do you know who she was talking to?

3 A She was talking to her mother.

4 Q Where were they?

5 A She was at the top of the fence and her mother was at
6 the bottom of the fence.

7 Q Where were you at?

8 A I was standing on the porch.

9 Q How could you hear her?

10 A Because she was screaming at her.

11 Q Now, when did this happen, first of all?

12 A This was in July, 2012.

13 Q Now, Tiffany, you can't tell me who Minor 1 said touched
14 her, but did she say where it happened?

15 A At her mom's house and also she said it happened on 4th
16 of July, also.

17 Q Again, you can tell me who Minor 1 said touched her, but
18 did she tell you when it happened?

19 A Several times.

20 Q Did -- after that, did either Minor 1 or Minor 2 ever
21 say anything to you about someone touching them
22 inappropriately?

23 A Yes.

24 Q Who?

25 A Barry.

1 Q No, who said something to you?

2 A It was Minor 1

3 Q Okay. When did she say something to you?

4 A We were talking at the end of my driveway and she was
5 telling me.

6 Q Okay. Was this before or after they started living
7 with you?

8 A This was after they lived with me.

9 Q Okay. Tell me this, Tiffany, do you see Barry Lafavor
10 in the courtroom today?

11 A Yes, ma'am.

12 Q Okay. Can you tell me where he is?

13 A He's sitting right over here.

14 Q Okay. What's he wearing?

15 A He's wearing a tie and it looks like a gray suit.

16 Q Okay. Is that the Barry Lafavor that lived with
17 Allison and the kids.

18 A Yes, ma'am.

19 Q Is that the Barry Lafavor that you found in the house
20 in the bed with Minor 2.

21 A Yes, ma'am.

22 Q Is that the Barry Lafavor that you found Minor 2
23 panties in his bag?

24 A Yes, ma'am.

25 MS. AGNEW: Your Honor, let the record reflect that the

Tiffany Phillips - Cross-Examination

145

1 witness has identified the defendant.

2 By MS. AGNEW:

3 Q Tiffany, please answer any questions that Mr. Routzong
4 has for you, okay.

5 A Yes, ma'am.

6 TIFFANY PHILLIPS - CROSS-EXAMINATION

7 BY MR. ROUTZONG:

8 Q Morning.

9 A Morning.

10 Q All these events that you're talking about, they
11 happened in June?

12 A In June and July, yes.

13 Q June and July. Well, when these happened, like when
14 the first time that you saw, allegedly, Mr. Lafavor doing
15 something he allegedly ought not to have been doing to
16 Minor2 when you saw that you made him stop and you got on
17 911 and you called the police; isn't that correct?

18 A No.

19 Q That -- not the first time?

20 A No.

21 Q How about the second time?

22 A No.

23 Q Third?

24 A There wasn't a third time.

25 Q There was only two?

- 1 A Yes.
- 2 Q Neither time?
- 3 A No.
- 4 Q These two times, are you sure it wasn't in July when it
5 happened?
- 6 A Huh-uh. (Negative response.)
- 7 Q You're not sure?
- 8 A No, it wasn't. They were at my house then, in July.
- 9 Q Had you been in contact with DSS?
- 10 A No.
- 11 Q Marilyn Harris?
- 12 A Marilyn Harris, yeah.
- 13 Q She told you she was going to place the kids with you
14 and Vickie?
- 15 A That was July 1 when that happened, yes.
- 16 Q But she told you it was going to be coming your way?
- 17 A No, huh-uh. (Negative response.)
- 18 Q Never did?
- 19 A No.
- 20 Q She just showed up on July 1 and told -- here they are
21 and that was it? Here they are?
- 22 A No. Allison had a meeting with her and the children
23 were supposed to be there.
- 24 Q That was in June?
- 25 A No, that was July 1.

Tiffany Phillips - Redirect Examination

147

1 Q So on July 1 they just -- unbeknownst to you they just
2 showed up at the house?

3 A No. There was an appointment. There was an on-going
4 case with Allison and the kids and the kids were required to
5 be there. Whether they spent the night off or not they were
6 supposed to be at Allison's home so that Ms. Harris could
7 make sure they were okay.

8 Q All that took place in June, the meetings --

9 A No.

10 Q -- the appointments?

11 A The date that they were placed with us was July 1.

12 Q Right, but before -- let me ask the question this way.
13 You didn't know anything they just showed up July 1 and you
14 didn't know a thing about it?

15 A No, they were -- it was an on-going case.

16 Q So you knew about it before July 1 that they were
17 coming your way?

18 A No, not the kids were coming my way. I wasn't
19 expecting that at all. They were just spending time at my
20 house.

21 Q Well, when did you know that they were going to be at
22 your house --

23 A When --

24 Q -- that they were coming to you?

25 A -- she told us that day that they had to be placed in

1 our care or go into DSS.

2 Q And what day was that?

3 A July 1.

4 Q So July 1 was the first day. They showed up and here
5 you go, boom?

6 A Pretty much.

7 Q 13 kids.

8 A No, it was nine.

9 Q Nine?

10 A Uh-huh. (Affirmative response.)

11 MR. ROUTZONG: I don't have any other questions.

12 THE COURT: Redirect?

13 MS. AGNEW: Very briefly, Judge.

14 TIFFANY PHILLIPS - REDIRECT EXAMINATION

15 BY MS. AGNEW:

16 Q Tiffany, Mr. Routzong asked you about the fact that you
17 didn't call 911 as soon as you saw Barry in bed with

18 Minor2 Was law enforcement already involved at that time?

19 A Yes, ma'am.

20 Q Did you tell Investigator Sievers about this happening.

21 A Okay.

22 THE COURT: You may step down.

23 You are recognized and you may call your next witness.

24 MS. AGNEW: State calls Kaye Hawthorne.

25 THE COURT: Yes, ma'am. Please come forward. Place

Kaye Hawthorne - Direct Examination

149

1 your left hand on the Bible and raise your right hand as the
2 clerk administers the oath.

3 (WHEREUPON, Kaye Hawthorne was
4 sworn to tell the truth.)

5 THE CLERK: Have a seat in our witness box, state your
6 full and an spelling your last for the Court, please.

7 THE COURT: Watch your step. Pull up real close to that
8 microphone and we'll ask you to speak loudly, clearly and
9 slowly so that we can hear everything you've got to say.
10 I'm going to ask you your full name.

11 MS. HAWTHORNE: My full name is Barbara Kaye Hawthorne.
12 Hawthorne is spelled H-a-w-t-h-o-r-n-e.

13 KAYE HAWTHORNE - DIRECT EXAMINATION

14 BY MS. AGNEW:

15 Q Ms. Hawthorne, if you don't mind, I need you to speak
16 real loud for me, okay?

17 A Okay.

18 Q Tell the jury where do you live?

19 A I live on in

20 Q How long have you lived in Aiken?

21 A All my life, 53 years.

22 Q Okay. Are you working anywhere right now?

23 A No.

24 Q Do you have kids?

25 A I have two.

1 Q Do you have pets?

2 A Five. Five dogs and two cats.

3 Q Back in October of 2012, were you doing any side work
4 or helping anybody with work?

5 A I did.

6 Q What were you doing?

7 A I was helping my friend. Her daughter had cancer and I
8 was answering the phones at my house for the florist.

9 Q Okay. And keep speaking real loud.

10 A Okay. For Everlasting Memories.

11 Q Okay. Was your friend the florist or was she running
12 the flower shop?

13 A Well, it was kind of like a joint venture for my
14 husband, her and myself. She had some family problems and
15 was trying to leave, but it just was not really taken off or
16 doing anything special.

17 Q And you said you were answering the phones to help out?

18 A Right.

19 Q Were you answering the phones on October 12, 2012?

20 A I did.

21 Q Did you receive a phone call from Barry Lafavor?

22 A I did.

23 Q How'd you know it was him?

24 A When he told me his name I recognized it and asked him
25 if he had been an umpire for the BRA because my kids played

Kaye Hawthorne - Direct Examination

151

1 baseball and he was an umpire at the time, so that's how I
2 knew him.

3 Q Okay. And was he who you thought he was?

4 A He was.

5 Q Okay. Why did he call Everlasting Memories that day?

6 A He wanted to send some flowers to two of his kids and
7 so I took the order.

8 Q Okay. Did he tell you they were his kids?

9 A I don't think he stated his kids, but to two kids.

10 Q Okay, and do you remember who those kids were?

11 A One of them was Andrea -- Andrea -- the other one was

12 Minor 2

13 Q Okay.

14 A I can't remember the last name. I'm sorry.

15 Q Well, I know it's been a few months. Do you happen to
16 remember what kind of flowers they were?

17 A One of the girls -- the first girl, she got silk
18 flowers. He wanted a silk bouquet sent to her on the 12th.

19 Q Okay.

20 A And on the 15th, he wanted a fresh cut sent to Minor 2

21 He preferred a rose, he didn't care what color, but he
22 wanted a rose.

23 Q Okay. I don't know a whole lot about flowers. Can you
24 tell me what a fresh cut means?

25 A Fresh cut means something live.

1 Q Okay. Thank you.

2 A You're welcome.

3 Q Did he want a card included with these flowers?

4 A He did. The first card said Happy Birthday. I think it
5 went to Andrea, if I've got her name pronounced right. It
6 said: Happy Birthday, Love, Uncle Barry. The second card
7 for Minor2 the first time he wanted two cards put in it to
8 say Happy Birthday, love, Barry on one card. The second
9 card was to say, love, Mom.

10 Q Why do you say the first time he wanted to cards?

11 A Because he called and changed it. He wanted one card
12 to read, Happy Halloween, love, Mom.

13 Q Okay. Now, Ms. Hawthorne, I'm going to show you what's
14 been pre-marked as State's Exhibit No. 4.

15 A Okay.

16 Q Will you take a look at that and tell me if you
17 recognize it?

18 A I do.

19 Q Okay. What is it?

20 A That's exactly what I put on the card.

21 Q Okay. The card to who?

22 A To Minor2

23 Q Okay. And whose handwriting is it?

24 A It's mine.

25 MS. AGNEW: Your Honor, at this time, I would move

Kaye Hawthorne - Direct Examination

153

1 State's Exhibit No. 4 into evidence.

2 THE COURT: Any objection from defense?

3 MR. ROUTZONG: No, sir.

4 THE COURT: In evidence without objection.

5 (State's Exhibit No. 4, card, was
6 marked and entered.)

7 BY MS. AGNEW:

8 Q Now, Ms. Hawthorne, where did he want you to send those
9 flowers to Minor2

10 A It went to a school, an elementary school, which I
11 think was

12 Q Okay. Now, all this time did you just talk to him on
13 the phone, did you ever see him?

14 A I did, because he was wanting to know if he could meet
15 somewhere to pay or if he could come by and pay and after I
16 knew where he was, I said, well, where do you work, and he
17 told me the T-shirt Shop and I told him, I said, well, I've
18 got to go pay taxes that day and it's on my way so why don't
19 I just drop by and pick it up and he said, okay. So I met
20 him at his work and picked up the money for the flowers.

21 Q And the man that you met at his work and picked up the
22 money, do you see him in this courtroom today?

23 A Yes, ma'am.

24 Q Where is he sitting?

25 A Over there, the second gentleman.

1 Q Okay. Did you deliver those flowers yourself?

2 A I did.

3 Q And do you remember where you delivered the flowers to

4 Minor 2

5 A It was , I believe it was.

6 Q And were those flowers delivered with that card I just
7 showed you?

8 A Yes, ma'am.

9 Q Give me just one second, okay?

10 A Okay.

11 Q Thank you, Ms. Hawthorne. Mr. Routzong is going to ask
12 you a couple of question, okay?

13 A Okay.

14 MR. ROUTZONG: I don't have any other questions, Your
15 Honor.

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

17 MS. HAWTHORNE: Thank you.

18 THE COURT: You may call your next witness.

19 MS. AGNEW: The state calls Sherry Pattillo.

20 THE COURT: Yes, ma'am. Please come forward and place
21 your left hand on the Bible and raise your right hand as the
22 clerk administers the oath.

23 (WHEREUPON, Sherry Pattillo was
24 sworn to tell the truth.)

25 THE CLERK: Have a seat in the witness box stating your

Sherry Pattillo - Direct Examination

155

1 full name, spelling your last for the Court, please.

2 MS. PATTILLO: Okay.

3 THE COURT: Watch your step. Have a seat in the witness
4 chair. Pull up real close to that microphone and speak
5 loudly, clearly and slowly so that we can hear everything
6 that you've got to say. We'll start with your full name.

7 MS. PATTILLO: Okay. My full name is Sherry Lynn
8 Pattillo. Last name P-a-t-t-i-l-l-o.

9 MS. AGNEW: Let's wait for the crickets to stop.
10 (Crickets chirping in the courtroom.)

11 SHERRY PATTILLO - DIRECT EXAMINATION

12 BY MS. AGNEW:

13 Q Ms. Pattillo, where do you work?

14 A I work at the VA in Augusta, Georgia.

15 Q Okay. How long have you been doing that?

16 A I started there the end of March, this year.

17 Q Where did you work, let's say, June to October 2012?

18 A I worked at the Aiken Barnwell Mental Health Center,
19 here in Aiken.

20 Q What exactly is Aiken Barnwell Mental Health?

21 A Aiken Barnwell Mental Health Center is -- provides
22 counseling, basically. I mean, I was on the children's side,
23 so I guess I could tell you more about the children's side.
24 We provide counseling to children with various problems. We
25 get referrals from DSS, kids that are in foster care come in

1 there, Child Advocacy Center sends people there, schools.

2 So I mean all kinds of stuff, behavioral problems, problems
3 at home. A variety of things.

4 Q So do you only see kids that have mental health issues,
5 because that's the name of it?

6 A No, I wouldn't say so. I mean, we have kids just with
7 problems with the parents. You know, mom and daughter
8 having relationship problems or things like that or problems
9 at school. So we really can't turn away kids. So kid needs
10 to come talk to someone, could be a friend died or something
11 like that. We'll see them.

12 Q Now, you started going into this, but let me ask you
13 what specifically was your job at Aiken Barnwell Mental
14 Health?

15 A I am a licensed independent social worker, clinical.
16 So provide therapy to children and families. Children as
17 young as four up until 18, 19, you know, college age.

18 Q All right. You said clinical. Should I be calling you
19 doctor?

20 A No. No. Master level.

21 Q Okay.

22 A Just clinical. Meaning doing therapy.

23 Q All right. Well, during your time at Aiken Barnwell
24 Mental Health did you ever have a chance to speak with

25 Minor 1 or Minor 2 ?

Sherry Pattillo - Direct Examination

157

1 A Minor 1 was a client of mine. Minor 2 was her sister.
2 So I'd see -- I'd see Minor 1 for individual therapy. I'd
3 see Minor 2 in the waiting room and things like that. So it
4 would just be kind of like, hi, with Minor 2

5 Q So you didn't actually see Minor 2 for therapy?

6 A We did a family session once. Minor 2 therapist and
7 myself with she was living with her aunts. We had done a
8 family session at that time. So I had just seen her that one
9 time in that session.

10 Q Okay. Now, you said you saw Minor 1 for therapy. When
11 did you start seeing Minor 1

12 A I believe, I'm going off my memory here. I believe it
13 was March of 2012 when I started seeing her.

14 Q Okay. Do you remember why you started seeing her?

15 A She was brought in -- the children -- she was on ADHD
16 medications for -- from somewhere else and I think they
17 didn't want to provide the medication any more. So they
18 were coming in saying she needed her ADHD medications for
19 school.

20 Q Okay. When you started seeing her in March 2012, who
21 would bring her to her appointments?

22 A When I saw her her uncle brought her. It was -- they
23 called him Uncle Barry, had brought them to the
24 appointments.

25 Q Okay.

1 A And then her mother's partner who they referred to as
2 Momma Sue had brought her on one occasions.. Then after that
3 they were living with the two aunts and the aunts would
4 bring them.

5 Q Okay. Now, how often did you meet with Minor 1

6 A It was inconsistent when she was living with her
7 mother, but once they were in te custody of Vickie Little
8 and her partner, Tiffany, I saw them -- I saw her weekly.

9 Q Okay. Now, during all of your interactions with
10 Minor 1 did she ever disclose anything to you?

11 A She did disclose. She disclosed sexual abuse to me.

12 Q Okay. Now, you can't go into details about this, but
13 when did she disclose this to you?

14 A The first time she disclosed it was June of 2012.

15 Q Okay. What did you do as a result of Minor 1 disclosing
16 sexual abuse to you?

17 A I had to report that, so I reported it to DSS and to
18 law enforcement. So I reported it to Investigator Kim
19 Sievers.

20 Q Okay. Give me just one second, okay?

21 A Okay.

22 Q Thank you, Ms. Pattillo. Answer any questions that Mr.
23 Routzong has for you.

24 A Okay.

25 THE COURT: Mr. Routzong, you're recognized for cross-

Sherry Pattillo - Cross-Examination

159

1 examination.

2 SHERRY PATTILLO - CROSS-EXAMINATION

3 BY MR. ROUTZONG:

4 Q Morning.

5 A Morning.

6 Q When did you start working for Aiken Mental Health?

7 A I started working there in November 2009.

8 Q You're not aware of whether or not Minor 1 had been seen
9 at Aiken Mental Health before that?

10 A I'm sorry, I don't have access to her records. I
11 believe she may have been. I'm not sure on that, because I
12 noticed she was getting ADHD medicines from somewhere else.
13 She could have possibly in the past been getting them from
14 mental health. I don't know.

15 Q You were aware that there were prior allegations that
16 she made against other people other than Mr. Lafavor?

17 A I believe I'd heard something about that. I can't
18 really recall much about that because that was before I had
19 seen her.

20 Q And you weren't just seeing her because she had family
21 relationships at home with parents and all that, it was
22 something more profound going on with her; isn't that
23 correct?

24 A I'm not sure what you mean about that?

25 Q Something more profound other than just arguing with

Sherry Pattillo - Cross-Examination

160

1 her mom or dad or being belligerent with her teachers.

2 There was something else going on with her, wasn't it?

3 A I guess I'm not sure what you're getting at. When I.

4 first saw her they were seeking ADHD medication. And

5 actually Barry had brought them in the first time I'd seen

6 her and he had said that they were fine, this girl was an

7 angel, that she was fine besides needing her ADHD

8 medications. And like I said, I hardly saw them while they

9 were in that home, so once they were then living with their

10 aunts, so obviously there was an adjustment and there was

11 disclosure and so that kind of became a lot of the focus.

12 Q You were made aware that Minor 1 had problems with lying

13 and stealing when you were seeing her?

14 A I believe in the home she had with the aunts there were

15 some incidents of that.

16 Q Okay. Thank you.

17 THE COURT: Any redirect?

18 MS. AGNEW: No, Your Honor.

19 THE COURT: Okay. You may step down. Thank you.

20 MS. AGNEW: And Your Honor, I apologize, I should have

21 been doing this earlier, the witnesses that have already

22 testified, a lot of them have to go back to work. May they

23 be released from their subpoenas?

24 THE COURT: All right. Any objection from defense?

25 MR. ROUTZONG: No, sir.

Kim Sievers - Direct Examination

161

1 THE COURT: All right. Very good. They are free to
2 leave. Thank you.

3 MS. PATTILLO: Thank you.

4 THE COURT: Go ahead and call your next witness.

5 MS. AGNEW: State calls Investigator Kim Sievers.

6 THE CLERK: Place your left hand on the Bible and raise
7 your right.

8 (WHEREUPON, Kim Sievers, was sworn
9 to tell the truth.)

10 THE CLERK: Have a seat in the witness box stating your
11 full name and spelling your right for the Court, please.

12 THE COURT: Watch your step, Officer Sievers. Pull up
13 close to that microphone and speak loudly, clearly and
14 slowly so we can hear everything that you've got to say.
15 Let's start with your full name and spell your last.

16 MS. SIEVERS: I'm Kimberly Sievers, S-i-e-v-e-r-s.

17 KIM SIEVERS - DIRECT EXAMINATION

18 BY MS. AGNEW:

19 Q Investigator Sievers, where do you work?

20 A For the Aiken County Sheriff's Office.

21 Q And how long have you been doing that?

22 A About 14 and a-half years.

23 Q And what's your position there?

24 A I'm a juvenile investigator.

25 Q So what does it mean to be a juvenile investigator?

1 A I investigate crimes committed by juveniles, I
2 investigate child abuse, sexual abuse. That type of crime.

3 Q Were you working as a juvenile investigator on May 1,
4 2012?

5 A Yes, I was.

6 Q And on that date did you become involved in this case?

7 A I did.

8 Q How'd you first get involved?

9 A I got a call to respond to Elementary School
10 in reference to J.C. . There was some
11 accusations of some sexual abuse.

12 Q Did you speak to J.C. that day?

13 A I did.

14 Q And after you talked with him did you meet with any of
15 his siblings?

16 A I did.. I met with all of them.

17 Q Okay.

18 A A.M. , Minor2 and Minor1

19 Q All right: In order of oldest to youngest, can you
20 give them to us?

21 A Minor1 I think A.M. and Minor2 I think: I'm not
22 sure about A.M. and Minor2

23 Q That was kind of a trick question. When you talked to
24 all of the siblings did any of them disclose anything to you
25 at that time?

Kim Sievers - Direct Examination

163

1 A Minor 1 did.

2 Q What did she disclose to you?

3 A She disclosed sexual abuse.

4 Q Was that on May 1, 2012?

5 A When she told me, yes.

6 Q Okay. After you spoke with the kids what did you do?

7 A After I spoke with all the kids, I went to the home at
8 in , located in Aiken County
9 to do a well being check to see how things were and what was
10 going on.

11 Q What was your understanding of who was living in that
12 home?

13 A At the time, it was Allison Little, Susan Lukowiak, the
14 four children and Barry Lafavor.

15 Q Okay. Who did you speak with when you went to the
16 house?

17 A Allison Little and Susan Lukowiak.

18 Q Who initiated that contact with the family?

19 A I did.

20 Q Had they previously called you?

21 A No.

22 Q Now, what's your understanding of the relationship
23 between everybody in that house at that time?

24 A At the beginning Allison Little, the mother of the
25 A.M. , Minor 2 Minor 1 and J.C. Susan Lukowiak was

1 -- they called her Momma Sue. She was Allison's partner.
2 And everybody seemed to refer to Barry as Uncle Barry, but I
3 did find out there was no relation. He was just living
4 there. A family friend.

5 Q Okay. At that time did you instruct Allison in any
6 way?

7 A I did. I told Allison that until this could be
8 investigated that Barry Lafavor was to have no contact with
9 the children and that he could not stay there.

10 Q After you talked to the kids, after you went to the
11 house, what did you do?

12 A I referred the children to the Child Advocacy Center to
13 have a forensic interview.

14 Q Okay. What's your understanding of what they do at the
15 Child Advocacy Center?

16 A They do forensic interviews, they do all sorts of
17 things. They do counseling, they do medical exams for
18 children that -- abuse, neglect, sexual abuse. That type of
19 thing.

20 Q Okay. And do you know when the kids were interviewed
21 that time at the Child Advocacy Center?

22 A I do. It was -- the first time they were seen on May
23 11, 2012.

24 Q Okay. And do you know how many of the kids were
25 interviewed at the Child Advocacy Center?

Kim Sievers - Direct Examination

165

1 A All four children were seen on that day.

2 Q Okay. After the children were interviewed at the Child
3 Advocacy Center on May 11, 2012 what was your position on
4 the case?

5 A Due to no disclosure at that point I closed my case.

6 Q Okay:

7 THE COURT: All right. We're going to take about a five
8 minute recess. Everyone just keep your seat.

9 Mr. Foreman, you may take the jury to the jury room.
10 (Jury out at 11:39 a.m.)

11 THE COURT: I understand one of the jurors needed to be
12 excused. So we'll just wait right here.

13 (Pause.)

14 (Jury in at 11:46 a.m.)

15 THE COURT: Mr. Foreman, ladies and gentlemen of the
16 jury, I want to -- once again, if you're having any problems
17 whatsoever, we don't want to hold you hostage. If there are
18 any problems let us know and we'll accommodate you in any
19 way we can.

20 Yes, ma'am, you're recognized.

21 MS. AGNEW: Thank you, Judge.

22 BY MS. AGNEW:

23 Q Now just a few minutes ago when we stopped, you said
24 that after the kids went to the Child Advocacy Center on May
25 11, 2012, that you were closing the case?

1 A I did.

2 Q Did that change?

3 A It changed on June 20, 2012.

4 Q What happened on June 20, 2012 that made you go back
5 and reopen the investigation?

6 A I received a phone call from Sherry Pattillo with Aiken
7 Barnwell Mental Health. She was the counselor with the
8 children, for Minor1 and Minor1 was again disclosing sexual
9 abuse.

10 Q Okay. So at that time did you decide to continue your
11 investigation?

12 A I did.

13 Q All right. Did you speak with anybody else on June 20,
14 2012?

15 A I did. I spoke with Allison Little, the mother of the
16 children, as well as, Barry Lafavor. I spoke with him on the
17 phone, as well, and advised that they had both -- or advised
18 both of them that Barry Lafavor was not to have any contact
19 with the children until this could be investigated. That
20 this case was being reopened.

21 Q Well, at that time -- well, let me ask you this, let's
22 jump forward a couple of weeks to July of 2012. Did you
23 talk to anybody on July 5?

24 A I did. I spoke with the Aunt, Victoria Little, Vickie
25 Little.

Kim Sievers - Direct Examination

167

1 Q Okay. You state she's the aunt. Who's she the aunt
2 of?

3 A She's the aunt of Minor 1 and Minor 2 She is the sister
4 of Allison.

5 Q Okay. And when you spoke -- what was your
6 understanding of the child care arrangement at that point in
7 time?

8 A I believe that the children had already been placed
9 there --

10 Q When you say there, where are you talking about?

11 A At Victoria Whittle's house.

12 Q Okay. After you talked with Aunt Vickie, what did you
13 do then?

14 A After I spoke with her, you know, she told me some
15 things that were going on and I referred the children to the
16 Child Advocacy Center, again.

17 Q Which children did you refer this time?

18 A Minor 1 Minor 2 and A.M.

19 Q Okay. Did you go to their interviews at the Child
20 Advocacy Center?

21 A I did.

22 Q And when were they interviewed?

23 A They were interviewed -- the second interview was July
24 30, 2012.

25 Q Okay. Did you speak to anybody at the Child Advocacy

1 Center when you went there?

2 A I did. I spoke to Tiffany Phillips.

3 Q Who is Tiffany Phillips?

4 A She is the partner of Vickie Whittle.

5 Q Okay.

6 A I'm sorry -- Yeah, Vickie Whittle.

7 Q All right. And did you ever end up speaking with her
8 -- with -- I'm sorry. You said she was the partner of
9 Vickie Whittle?

10 A Right.

11 Q Did you ever talk to Vickie Whittle again in this
12 investigation?

13 A I did. I spoke with her again on October 15.

14 Q Why did you talk to her on October 15?

15 A Because she had called and notified me about some
16 flowers that were sent to Minor2 school.

17 Q Okay. Did you see those flowers?

18 A I think Victoria did bring them out to show them to me,
19 because she had gotten them from the school.

20 Q They have a card with them?

21 A Yes, they did.

22 Q Did you see the card that came with them?

23 A Yes, I did.

24 Q I'm showing you what's been moved into evidence as
25 State's Exhibit No. 4. Do you recognize that?

Kim Sievers - Direct Examination

169

1 A That's the card that Vickie Whittle gave to me that
2 came with the flowers.

3 Q Okay. Did you speak with anybody at the flower shop
4 after this?

5 A I did. I spoke with Kaye Hawthorne.

6 Q Okay. At that time, what was your understanding of who
7 sent those flowers?

8 A After speaking with Kaye Hawthorne I knew that Barry
9 Lafavor had sent the flowers.

10 Q Okay. Now, at this point, what did you do?

11 A After that happened I got warrants on Barry Lafavor.

12 Q Do you remember when those warrants were served?

13 A They were served on October 16, 2012.

14 Q Okay. Now, Investigator Sievers, do you know how old
15 Barry Lafavor is?

16 A 53 years old, I believe.

17 Q Do you happen to know his birthday?

18 A His birthday is

19 Q Okay. Investigator Sievers, we were just in October.
20 Let's jump forward just a little bit to November 14, 2012.
21 Did you have a chance to speak to anybody that day?

22 A I did. I spoke to Minor 2

23 Q Where did you talk to her at?

24 A At the Child Advocacy Center.

25 Q When you spoke to her at that time did she disclose

1 anything to you?

2 A She did. She disclosed sexual abuse.

3 Q Did she tell you where that sexual abuse occurred?

4 A At her home on . . . located in Aiken
5 County.

6 Q Did she tell you when that sexual abuse occurred?

7 A I don't believe she told me when.

8 Q Now, tell me this, Investigator Sievers, on November
9 14, 2012, where was Barry Lafavor.

10 A In jail.

11 Q To your knowledge was he having any contact with
12 Minor2 at that time?

13 A Not unless he was arrested.

14 Q Okay. On May 11, 2012, Minor2 first interview at
15 the Child Advocacy Center, do you know if she disclosed
16 anything?

17 A She did not disclose.

18 Q On May 11, 2012, was Barry Lafavor in jail?

19 A No, he was not.

20 Q To your knowledge was he having contact with Minor2 at
21 that time?

22 A Yes, he was.

23 Q On July 30, 2012, the date of Minor2 Child Advocacy
24 Center, did she disclose anything?

25 A No, she did not.

Kim Sievers - Cross-Examination

171

1 Q On July 30, 2012, was Barry Lafavor in jail?

2 A No, he was not.

3 Q And on July 30, 2012, to your knowledge, was he still
4 having contact with Minor2

5 A Yes, he was.

6 Q After you spoke with Minor2 at the Child Advocacy
7 Center on November 14, 2012, what did you do?

8 A I obtained warrants for Barry Lafavor.

9 Q Just a second.

10 Now, Investigator Sievers, do you see Barry Lafavor in
11 the courtroom here today?

12 A Yes, I do.

13 Q Where is he at?

14 A Sitting in the middle seat at the table.

15 Q Is that the Barry Lafavor that we've been talking about
16 all this time?

17 A Yes, it is.

18 Q Is that the Barry Lafavor that you told not to have
19 contact with these children during your investigation?

20 A Yes, it is.

21 MS. AGNEW: No further questions.

22 THE COURT: Cross-examination?

23 KIM SIEVERS - CROSS-EXAMINATION

24 BY MR. ROUTZONG:

25 Q Morning.

1 A Morning.

2 Q So around June 12, you were going to close this case,
3 2012?

4 A After the initial interview at the Child Advocacy
5 Center, I believe that was on May 11, 2012.

6 Q On May 11 you were going to close it.

7 A I believe that's the first time they were interviewed
8 at the Child Advocacy Center, yes.

9 Q And that's because Minor2 and Minor1 told the Child
10 Advocacy Center person interviewer that nothing happened?

11 A Yes.

12 Q And that wasn't the first time that Minor2 said
13 nothing happened. She's actually told you nothing happened
14 on May 1; is that correct?

15 A Correct.

16 Q And Minor2 told everybody on July 30 at the second
17 Child Advocacy Center interview that nothing happened?

18 A Yes.

19 Q Are you aware of the allegations in the past involving
20 Marie Scott and Gerald Carlyle; isn't that correct?

21 MS. AGNEW: Your Honor, I'm going to object. I think we
22 need to have a conversation at side-bar.

23 THE COURT: Certainly. Come forward.

24 (Off the record bench conference with counsel and the
25 Court.)

Kim Sievers - Proffer

173

1 THE COURT: Mr. Foreman, ladies and gentlemen of the
2 jury, it's 12:00 o'clock Noon, and what a better time for us
3 to attend to a legal matter while y'all go eat.

4 We're going to recess until 2:00 o'clock. Once again,
5 do not do any independent investigation. Do not engage in
6 any endeavors on social media. Do not discuss the case
7 amongst yourselves or anyone else.

8 These are very important matters. We know that we've
9 lost one juror. We've got one spare left, so everybody be
10 careful and we want to see y'all back at 2:00 o'clock. 2:00
11 o'clock sharp.

12 Thank you very much.

13 (Jury out at 12:00 p.m.)

14 THE COURT: Mr. Routzong, you may proffer whatever
15 testimony you intend to use.

16 KIM SIEVERS PROFFER TESTIMONY

17 MR. ROUTZONG: Investigator Sievers, you're aware of the
18 allegations of molestation involving a previous boyfriend
19 and a person named Gerald Carlyle who may be the same
20 person, that's not clear, and Marie Scott; is that correct?

21 INVESTIGATOR SIEVERS: I'm -- I remember it coming out
22 something about Marie Scott molesting, I believe, Minor 1 in
23 the the past. And Gerald Carlyle was my case, but that was
24 quite a few years ago and I don't remember much about it.

25 MR. ROUTZONG: If she doesn't remember, Your Honor,

Kim Sievers - Proffer

174

1 there's not much more I can ask about that.

2 THE COURT: Well, I'm not real sure -- I think she did
3 remember that was her case. Is that correct?

4 INVESTIGATOR SIEVERS: I remember having him as a
5 defendant. Probably six or seven years ago, maybe.
6 Something like that, but I don't remember.

7 MR. ROUTZONG: Do you remember whether Gerald Carlyle
8 was living in the same house?

9 INVESTIGATOR SIEVERS: Oh, no. No, I don't.

10 MS. AGNEW: Your Honor, if I may proffer.

11 Gerald Carlyle has been in prison since 2008. He was
12 convicted of sexual abuse with people not involved in this
13 case at all and allegations from when he was about 14 years
14 old.

15 THE COURT: All right. So essentially, that's something
16 that you wanted to inquire about but after she indicated
17 that she does not have any knowledge of that, you don't
18 intend to introduce that?

19 MR. ROUTZONG: The answer to your question, Your Honor,
20 is I would like to introduce it from the standpoint that
21 there's been more than one allegation made by the same
22 person, and it could have been founded or maybe unfounded,
23 that may mean this is a --

24 THE COURT: I think what she's saying is she's not
25 certain this victim was the one who made the allegation.

Kim Sievers - Proffer

175

1 Is that correct?

2 INVESTIGATOR SIEVERS: I'm pretty sure she wasn't.

3 MR. ROUTZONG: Now, this is from the DSS records.

4 According that six year old Minor1 stated that her pee-pee
5 hurt and that her Mom, , boyfriend took her to the
6 bedroom with her pants down and her two sisters were taken
7 -- now, this is kind of cut off on the end, so I may not be
8 exactly right here -- but it says her two sisters, Minor2
9 and A.M. were taken to the emergency room, and this cut
10 off again, but when Mom found out how detailed the
11 examination would be I think it said Mom left with the
12 girls. Mom stated that Minor1 lied and that she Mom just
13 wouldn't leave the boyfriend alone with -- other kids alone
14 with the boyfriend. Again, that kid part of it is cut off.
15 It might be Minor1 or it might be the girls, I'm not sure,
16 it's cut off, but it says wouldn't TH, letter TH and it's
17 cut off, alone with her boyfriend.

18 THE COURT: What do you think about if, indeed, the DSS
19 records indicate that this victim has made a false
20 allegation before.

21 MS. AGNEW: Your Honor, the law requires that in order
22 for a prior allegation to be admissible, that certainly may
23 be, but for it to be admissible the defense has the burden
24 that the allegations were, indeed, false, and I don't know
25 that he can do that here.

Kim Sievers - Proffer

176

1 If they're true then it falls under Rape Shield for the
2 very purpose the Rape Shield statute was created.

3 THE COURT: Well, I think the Rape Shield -- I'm not
4 real certain. I'm not a real scholar on the Rape Shield. I
5 want you to educate me on it, but I think the basic person
6 behind the Rape Shield is that if a person has been raped
7 that you don't go into their sexual exploits that were
8 consensual and that if a consenting adult chooses to engage
9 in numerous sexual encounters, that doesn't mean that they
10 can't be raped in the future.

11 It's improper, unfair to give a person's sexual
12 endeavors before they were raped, but this is completely
13 different because a child is not engaging in -- it's not
14 disparaging her character. She's been -- very well could
15 have been the victim.

16 MS. AGNEW: Right. And --

17 THE COURT: Am I right in that's what Rape Shield is
18 about?

19 MS. AGNEW: I don't have the statute in front of me, but
20 I think the actual --

21 THE COURT: Maybe we ought to look at it.

22 MS. AGNEW: -- my understanding of the language of the
23 Rape Shield statute is the past sexual conduct of the
24 victim. I don't know that it says --

25 THE COURT: I am certain --

Kim Sievers - Proffer

177

1 MS. AGNEW: -- Consensual conduct.

2 THE COURT: Certainly that's not sexual conduct -- I
3 wouldn't consider that to be sexual conduct with the victim
4 because it's a crime being perpetration on them.

5 MS. AGNEW: Well --

6 THE COURT: I think there's a difference there.

7 MS. AGNEW: And it does offer several exemptions or
8 exceptions for when this type of thing -- or when this type
9 of testimony is admissible and it's to show a difference
10 source or semen or pregnancy or if, for example, the state
11 says well, the only way these kids could have known about
12 sex, to talk about this is because the defendant is the only
13 one that's done it to them, and that's not -- we have to
14 make that statement at all, so I don't think that statute
15 would apply. I think the only reason to bring it up would
16 be to inflame the jury.

17 THE COURT: All right. I think Mr. Routzong mentioned
18 at the side-bar, and I want you to address this issue. I
19 think it's very relevant in that at some point in time
20 there's going to be an adverse inference on how emotionally
21 disturbed these young children seem to be, and it very well
22 could be that it's not as a result of this defendant's
23 activity, but having been abused by some other lady and some
24 other man. And it could be that they -- it shows the power
25 of what happens when you make an allegation of sexual

Kim Sievers - Proffer

178

1 misconduct. It empowers the child and it happens quite
2 often, if you're ever involved in family court which I doubt
3 that you are. That happens, you know, quite often, where
4 children learn when you bring up bad touching they are the
5 ones who end up being empowered. And why should they not be
6 allowed to do that, I mean, to at least present that issue.
7 Do you think it's relevant? I don't think it disparages the
8 reputation of the children because they're victims of all of
9 it, clearly and they clearly have been adversely effected by
10 it and I think that's become eminently clear to the jury and
11 to not allow it would be to put their emotional damage all
12 on him.

13 MS. AGNEW: I think that's a fair argument, Judge.

14 THE COURT: You like it?

15 MS. AGNEW: I can't argue against it.

16 THE COURT: Okay. Well, I think what I'm going to do is
17 I'm going to allow him to question that because it is a
18 record of DSS and she is an agent of -- she can say that
19 that's what's in the record.

20 MS. AGNEW: But Your Honor, she's a law enforcement
21 officer with the Sheriff's Department.

22 THE COURT: Oh, that's right. She's not DSS. She's
23 dressed like DSS, she's not wearing a uniform. So I --

24 MS. AGNEW: I think a DSS agent might be a more proper
25 witness to do this.

Kim Sievers - Proffer

179

1 THE COURT: Okay.

2 MS. AGNEW: I don't know how much knowledge she's going
3 to have.

4 THE COURT: Do we have a DSS person here?

5 MS. AGNEW: No, we do not.

6 THE COURT: Well, that does pose a problem unless you're
7 in a position to stipulate. We've got time, we can allow
8 them to get it.

9 MS. AGNEW: Well, they're not subpoenaed on either side.
10 I guess he can ask her the questions. I guess if she
11 doesn't know she can say she don't know.

12 THE COURT: Well, unless we can get a stipulation that
13 that's what in the DSS records we need to have a custodian
14 of DSS records in order for it to be discussed. Business
15 records is an exception to hearsay.

16 MR. ROUTZONG: Your Honor, would it be possible to
17 recess for a while and let us consider it, maybe -- we may
18 be able to make an agreement.

19 THE COURT: Well, we don't need to be lollygagging
20 around. If you want to get the witness in here you need to
21 get on that right now. If I were you to get the
22 investigator to get them here, because I don't want to hold
23 up the trial forever. The safe and cautious thing to do is
24 ask her if she'll stipulate to that snippet out of the
25 record. If we can stipulate that that's what's in the

Kim Sievers - Proffer

180

1 record, then we don't have to wait around for DSS to come in
2 and say this is the record.

3 If they're not in a position -- there's only one thing
4 you can do is to subpoena that person and we have a deputy
5 here who can serve it.

6 MS. AGNEW: Judge, I don't think we have to have the
7 file to stipulate just so long as we know exactly what we're
8 stipulating to.

9 THE COURT: Okay. Well, I'm going to allow y'all to
10 work that out over -- I think he's read what you're
11 stipulating to. Tell them what you're stipulating to.

12 MR. ROUTZONG: I think that's -- I think that's all Your
13 Honor. If need be, I can call the Mom to get the other
14 thing I want to get in. I can call her and just ask her.
15 She's either say yes or no.

16 I'll discuss it with -- at the most there's two things.

17 THE COURT: All right. Are you intending to get into
18 this through the DSS record or are you going to ask the
19 mother? I mean, that's what we're here about. You're
20 trying to get in what's in the DSS record. We need to
21 resolve that here now.

22 MR. ROUTZONG: Yes, sir.

23 THE COURT: Are you going to make reference to the DSS
24 record and if you are -- I'm asking you that question.

25 MR. ROUTZONG: Yes, sir.

Kim Sievers - Proffer

181

1 THE COURT: If you are going to do that, then you need
2 to tell her --

3 MR. ROUTZONG: Yes, sir.

4 THE COURT: -- what you want to publish to the jury.

5 MR. ROUTZONG: Yes, sir.

6 THE COURT: And if you're not, then we can -- you can
7 get it through another witness.

8 MR. ROUTZONG: Yes, sir.

9 THE COURT: All right. Which is it?

10 MR. ROUTZONG: I think she's agreeing to stipulate to
11 the one I just read.

12 THE COURT: All right. Well, what you need to do is you
13 need to show her exactly -- why don't you take a yellow
14 highlighter and highlight it.

15 MS. AGNEW: Your Honor, are we stipulating to its
16 admission into evidence or his ability to ask about that
17 content?

18 THE COURT: Ask about the content.

19 MS. AGNEW: Okay.

20 THE COURT: It's not going to go back into evidence
21 because --

22 MS. AGNEW: Right.

23 THE COURT: If you want to ask about it you can
24 stipulate to that.

25 MS. AGNEW: That's fine.

1 MR. ROUTZONG: The other issue would be --

2 MS. AGNEW: How is that relevant to this case at all?

3 MR. ROUTZONG: Well, people -- I think it's pretty much
4 common knowledge that people that are sexually abused have
5 trouble with fire. In this case the house burned down.

6 MS. AGNEW: That's one --

7 THE COURT: Might counsel approach the bench for a
8 moment. Well, the jury's not here. It makes no difference
9 whatsoever.

10 (Off the record bench conference with counsel and the
11 Court.)

12 THE COURT: All right. I understand there's a
13 stipulation that they would be able to make reference to
14 what's been placed in the DSS records without the necessity
15 of getting the custodian of records here; is that correct?

16 From the state?

17 MS. AGNEW: That's correct, Your Honor.

18 THE COURT: Very good. We will do that, and -- since
19 we're here -- we aren't at the directed verdict stage, but
20 since we're in recess I think there's something that y'all
21 need to look at.

22 Have you actually looked at the solicitation -- the
23 rule -- the elements of solicitation?

24 MS. AGNEW: Yes.

25 THE COURT: All right. I might be completely ignorant

State v. Lafavor 6/25/13

183

1 in this regard, but solicitation normally, the only cases
2 I've ever dealt with as a lawyer is where people hired
3 someone to kill someone. Obviously --

4 MS. AGNEW: My understanding is that is a different
5 statute. This is criminal solicitation of a minor.

6 THE COURT: Oh, okay.

7 All right. Very good. I need for you to get for me,
8 too, that statute.

9 MS. AGNEW: Yes, sir. And, Your Honor, it's 16-15-342.

10 THE COURT: Very good. All right. Anything before we
11 take a recess for lunch.

12 MS. AGNEW: Not from the state, Your Honor.

13 THE COURT: We'll be back at 1:30, 1:30 sharp.

14 That's 2:00 o'clock. 2:00 o'clock.

15 (Court in recess for lunch at 12:17 p.m.)

16 (Court in session after lunch at 2:02 p.m.)

17 THE COURT: Anything from the state before we proceed?

18 MS. AGNEW: No, Your Honor.

19 THE COURT: Anything from defense?

20 MR. ROUTZONG: No, sir.

21 THE COURT: All right. We're ready for the jury.

22 MS. AGNEW: Judge, does the witness need to come back?

23 THE COURT: Yes. That would be good.

24 (Jury in at 2:02 p.m.)

25 THE COURT: Mr. Routzong, you're recognized. You may

1 resume cross-examination.

2 MR. ROUTZONG: If you'll bear with me I have a motion.

3 THE COURT: Mr. Foreman, ladies and gentlemen of the
4 jury, we have one legal matter. I notice jury duty almost
5 seems like an aerobic activity going back and forth.

6 I'm going to ask if you could excuse yourselves to the
7 jury room just for one moment. We'll be back momentarily.
8 (Jury out at 2:04 p.m.)

9 THE COURT: Defense, you're recognized.

10 MR. ROUTZONG: Your Honor, at this time I wanted to
11 renew -- the defense renews it's motion for a continuance or
12 a recess to allow us, Your Honor, to explore some of the
13 things we may be able do discovery by being able to fully
14 investigate DSS records. A good example, Your Honor, was
15 this issue of fire starting, the fact that she's playing
16 with fire and now she's, as the Court has pointed out, we
17 don't have an expert here nor would we have gotten one,
18 assuming I could have gotten -- I think it's not reasonable
19 to expect us to be able to fully investigate, find an
20 expert, get the expert here, find out what they say; any of
21 those things, Your Honor. Including the fact, Your Honor,
22 there's prior allegations here in the DSS records and I know
23 the Court's allowed me to go into that, but some of these
24 other issues, Your Honor, could have been more fully
25 explored. In one instance I know there's a presumption that

Kim Sievers - continued Cross-Examination

185

1 Mr. Gerald Carlyle, his name actually comes up in the
2 records early on in the incident reports, not just DSS
3 record, but some of this stuff, Your Honor, there is no way
4 I could have known but for having the DSS records.

5 In addition, Your Honor, we've heard testimony today
6 the Children's Place is associated with DSS or connected
7 with them or acts at their direction and I don't have any
8 records associated with Children's Place. There is a note
9 in the incident report where Marilyn -- her name escapes me
10 right now. Marilyn Harris. Marilyn Harris was going to
11 turn over some records to Investigator Sievers. My
12 understanding those records never turned over. Those things
13 could have discoverable potentially, Your Honor.

14 It's breathtaking that Mr. Lafavor's name doesn't show
15 up importantly in these records, if we have all of them. As
16 I said, Your Honor, some of them are missing, I believe,
17 according to my brief review.

18 THE COURT: Your motion is noted, but denied pursuant to
19 reasons stated previously.

20 MR. ROUTZONG: Thank you, Your Honor.

21 THE COURT: But you're protected on the record.

22 Are we ready for the jury.

23 (Jury in at 2:07 p.m.)

24 THE COURT: I notice that clearly we have some Baptist
25 on the jury because you like to sit in the same spot. I

1 reckon that's just human nature.

2 All right, Mr. Routzong, you're recognized for Cross-
3 examination.

4 MR. ROUTZONG: Thank you, Your Honor.

5 KIM SIEVERS - CONTINUED CROSS-EXAMINATION

6 BY MR. ROUTZONG:

7 Q Good afternoon, Investigator Sievers.

8 A Good afternoon.

9 Q If I can start back a little bit before we left off you
10 can continue your thought.

11 You were going to close the case on the 12, sometime in
12 June; correct?

13 A Correct.

14 Q That was because there wasn't any disclosure?

15 A Correct.

16 Q Minor 2 told you on May 1 that nothing happened?

17 A Yes.

18 Q And she told the Child Advocacy Center forensic
19 technician interviewer that nothing happened?

20 A Yes.

21 Q And the same thing July 30 of last year, Minor 2 said
22 the same thing; nothing happened?

23 A Correct.

24 Q And in May Minor 1 -- May 1, actually, Minor 1 told you
25 that she did disclose you that she had been touched?

Kim Sievers - continued Cross-Examination

187

1 A Yes, she did.

2 Q But then she recanted that on the 11 of May?

3 A Yes, she did.

4 Q On the 14 of June and the 30 of July, one of which was
5 with (inaudible), the other one was at the Advocacy Center?

6 A Okay. June 14. I'm not sure what you're referring to
7 June 14, but July 30, yes, that's correct.

8 Q And it's your understanding it was sometime in July,
9 just about two months later that you became aware that
10 Vickie Whittle became aware that Minor 1 had told a lie to
11 the CAC person; that was about two months after that?

12 A You lost me. Can you repeat that?

13 Q I'll try. About in July Vickie told you, Vickie
14 Whittle told you that in May, the first -- the May 11, the
15 CAC interview when she walked out she lied. That Minor 1
16 told her that she had lied to the CAC person.

17 A That came up later. Yes.

18 Q About two months later?

19 A I'm not sure, but that sounds about right.

20 Q You know that the CAC interview that she was talking
21 about was May 11?

22 A Yes.

23 Q And she disclosed to you, Vickie disclosed to you on
24 July 5?

25 A Yes.

1 Q That's about two months.

2 A Yeah.

3 Q Pretty close to two months. Momma Sue, I guess that's
4 Ms. Lukowiak told you that she found out that there weren't
5 any kids saying anything as far as Mr. Lafavor touching
6 them. That's what you learned from her, you got that
7 statement?

8 A At the beginning of this, yes.

9 Q And that Minor1 was just trying to get Barry out of the
10 house?

11 A Right. That was her initial statement.

12 Q And Allison told you basically the same thing?

13 A Yes.

14 Q The kids were out of the house in July; they went over
15 with their Aunt Vickie the first part of July?

16 A They were supposed to have at my request to not have
17 any contact with Barry Lafavor. As I later found out they
18 continued to have contact with him up until he was arrested.

19 Q It's your understanding that Mr. Lafavor first became
20 involved with this family because of his cousin Marie Scott?

21 A I believe there was a comment, yes, I think that is
22 correct.

23 Q Because their house had been burned?

24 A Right.

25 Q And Marie asked Mr. Lafavor to help them out?

Kim Sievers - continued Cross-Examination

189

1 A Yes.

2 Q And you were aware that Marie Scott, there was an
3 allegation that Marie Scott had molested Minor 1

4 A Yes. I don't have any details on that, but, yes that
5 statement was made.

6 Q Minor 1 made that statement, didn't she?

7 A I don't know.

8 Q And you're aware that the father of J.C. who was
9 living in the house, Gerald Carlyle, were you aware that
10 there was an allegation that Minor 1 made against him?

11 A No. I know there was an investigation involving Gerald
12 Carlyle and that he was arrested on a case in reference to
13 sexual, but I don't remember.

14 Q He was in the house at the time, was he married to --

15 A I have no idea.

16 Q But they were all living together, Gerald Carlyle,
17 Minor 1 --

18 A I don't know the answer to that.

19 Q You're aware that Gerald Carlyle is now still in prison
20 on a criminal sexual conduct?

21 A I don't know that. I did hear that mentioned earlier,
22 but I don't know.

23 Q Are you aware that Minor 1 said that her pee-pee hurt
24 and her Mom's boyfriend took Minor 1 to the bedroom with her
25 and her pants were down. Her two sisters were in the house

1 at the same time. Were you aware of any of those
2 allegations?

3 A I don't recall any of that.

4 Q Most of the statements that you got from the aunts, at
5 least -- let me rephrase that. The statements that you got
6 of the aunts were, they were taken by you at the end of July
7 after they had moved in with them?

8 A I believe that's correct.

9 Q And the statements, the new allegation from Allison
10 said that she called the cops and on September 26 she'd made
11 some comments or some statements to you?

12 A I did speak with her on the 26; yes.

13 Q And that was when she said the case got closed and she
14 let Minor2 stay -- let Mr. Lafavor stay one night in the
15 house and Minor2 they found the next day and they were
16 supposed to be entangled, that was made in September, that
17 statement by Allison?

18 A I believe that's correct.

19 Q You've been working on this case from May all the way
20 to October when they arrested him?

21 A Correct.

22 Q You became aware of that incident with the father, and
23 I know you testified previously in another hearing, that was
24 really the last straw for you?

25 A Yes, sir.

Kim Sievers - Redirect Examination

191

1 Q And that was the way you could keep him from contacting
2 the kids was making the arrest?

3 A That's not why I made the arrest, but that was -- after
4 repeated, you know, attempts to protect the children,
5 nothing else seemed to work because he was still having
6 contact. So I made the arrest based on the statements.

7 Q So all those statements from May and all those
8 disclosures from May and July and you had some statements
9 from the aunts, then you had some statements from the mother
10 and another aunt in September. All those statements, you had
11 the kids and all that stuff, but it was the flowers, that
12 was the last straw; that's what you just testified?

13 A Somewhat.

14 Q Investigator Sievers, there's been all this talk about
15 phone records and text messages and all that stuff. I know
16 that you actually went and got a search warrant?

17 A I did.

18 Q And you actually got Mr. Lafavor's phone in evidence
19 right now?

20 A Yes.

21 Q There was no results, you didn't get any records at all
22 from any of those things did you?

23 A I didn't request any cell phone records due to the fact
24 that I'd already corroborated through various people that
25 the phone calls had been made as well as Mr. Lafavor having

1 admitted to having contact with the phone and calling the
2 girls. There was no reason for me to pull the records and
3 Susan admitted to the phone calls, admitted to allowing the
4 phone calls to be made and Barry admitting to getting phones
5 and that Susan three-way phone called him and the contact
6 was made. There was no reason to pull records.

7 Q So the answer to my question is you didn't pull any
8 records?

9 A Correct.

10 Q There's nothing?

11 A Correct.

12 Q Nothing corroborates so if there's lying there's
13 nothing else to corroborate?

14 A Mr. Lafavor admitted to making the phone calls through
15 Susan Lukowiak.

16 MR. ROUTZONG: I don't have any further questions, Your
17 Honor.

18 THE COURT: Redirect?

19 MS. AGNEW: Thank you, Judge.

20 KIM SIEVERS - REDIRECT EXAMINATION

21 BY MS. AGNEW:

22 Q Investigator Sievers, defense was asking you about this
23 Gerald Carlyle fellow. Has he been apart of your
24 investigation of this case?

25 A Not at all.

Kim Sievers - Redirect Examination

193

1 Q Has he been in the picture?

2 A No, not to my knowledge.

3 Q Do you know where he's been for the last 2 years?

4 A No.

5 Q And you said that you had investigated him earlier?

6 A Many years earlier.

7 Q Do you have any idea how many years earlier?

8 A Six, seven years ago.

9 Q Okay. And your investigation now, does it have
10 anything to do with him?

11 A No, it does not.

12 Q The defense wants to talk a whole lot about Minor 1
13 lying back on May 11. Now, you had testified that that was
14 the first time she went to the Child Advocacy Center; is
15 that correct?

16 A Yes.

17 Q Okay. And you testified to Mr. Routzong's questions
18 that immediately after she came out of there she said she
19 had lied; is that right?

20 A Correct.

21 Q And when did you talk to Vickie who told you that?

22 A I believe it was July.

23 Q And as soon as you heard that did you send Minor 1 right
24 back to the Child Advocacy Center?

25 A I did.

1 Q Okay. Did she disclose when she went back?

2 A She did.

3 MS. AGNEW: No further questions.

4 THE COURT: You may step down.

5 Mr. Foreman, ladies and gentlemen of the jury, once
6 again, we have to take up a matter of law outside of your
7 presence. I'm going to ask the foreman to take you to the
8 jury room. Do not discuss the case.

9 (Jury out at 2:23 p.m.)

10 THE COURT: I understand we have the missing juror in
11 the courtroom. If you could come forward, please sir.

12 Mr. Timothy Murray. Yes, sir. You can stand right
13 there. What's your full name?

14 MR. MURRAY: Timothy Murray.

15 THE COURT: All right. How old are you?

16 MR. MURRAY: 20.

17 THE COURT: How far did you go in school?

18 MR. MURRAY: I graduated June 6.

19 THE COURT: Pardon?

20 MR. MURRAY: I graduated June 6.

21 THE COURT: All right. You were selected to serve on
22 this jury here today, the State verses Barry E. Lafavor.
23 You were here, present, yesterday I know. I happen to notice
24 that when you were here yesterday you appeared to have
25 difficulty staying awake. You showed up here in the

State v. Lafavor 6/25/13

199

1 right here?

2 THE COURT: Yes, that will be even better.

3 If you'll have a seat right there on the front row.

4 All right. Very good. We're ready for the jury.

5 (Jury in at 2:30 p.m.)

6 THE COURT: Mr. Foreman, ladies and gentlemen of the
7 jury, thank you. We're ready to proceed.

8 You're recognized.

9 MS. AGNEW: Thank you, Judge.

10 At this time the state rests.

11 THE COURT: Okay. Very good.

12 All right, Mr. Foreman, ladies and gentlemen of the
13 jury, once again I'm going to have to ask that you return to
14 the jury room. Do not discuss the case. Seems like during
15 the last legal matter it would have been appropriate for
16 them to make the determination that they had concluded their
17 case, but in every trial, in this juncture of the trial
18 there are certain things that we have to put on the record.
19 Once again, thank you very much, but do not discuss the
20 case.

21 (Jury out at 2:31 p.m.)

22 THE COURT: All right. I'll entertain motions at this
23 time.

24 MR. ROUTZONG: At this time, Your Honor, the defense
25 moves for a directed verdict on behalf of the defendant.

1 prison. Apparently you did, but that will not be referred
2 to.

3 What is your decision with regard to whether or not you
4 will testify?

5 MR. LAFAVOR: I want to testify, sir.

6 THE COURT: Very good. And you've discussed all of
7 these matters with your lawyer?

8 MR. LAFAVOR: Yes, sir.

9 THE COURT: Very good. Thank you. Thank you very much.
10 You may return to your seat.

11 All right. We're ready for the jury.
12 (Jury in at 2:44 p.m.)

13 THE COURT: Mr. Foreman, ladies and gentlemen of the
14 jury, thank you for your time and your patience.

15 The state has rested and the defense is given an
16 opportunity to present any evidence they might have if they
17 chose to do so.

18 Mr. Routzong, you're recognized.

19 MR. ROUTZONG: Thank you, Your Honor.

20 Defense calls Mr. Cleveland Forrest Scott.

21 THE COURT: Yes, sir. If you could come forward, place
22 your left hand on the Bible and raise your right hand as the
23 clerk administers the oath.

24 (WHEREUPON, Cleveland Forrest Scott
25 was sworn to tell the truth.)

Cleveland Forrest Scott - Direct Examination

210

1 THE COURT: Have ea seat in the witness box stating your
2 full name, spelling your last for the Court, please.

3 THE COURT: Watch your step. Have a seat in the witness
4 chair. Pull up real close to that microphone. We're going
5 to ask that you speak loudly, clearly and slowly, and let's
6 start with your full name.

7 MR. SCOTT: My name is Cleveland Forrest Scott. It's S-
8 c-o-t-t.

9 THE COURT: Very good.

10 MR. ROUTZONG.

11 CLEVELAND FORREST SCOTT - DIRECT EXAMINATION

12 BY MR. ROUTZONG:

13 Q Do you go by Cleveland or Forrest?

14 A I go by Forrest.

15 Q What's your relationship with Mr. Lafavor?

16 A He's my cousin.

17 Q How long have you known him?

18 A I've known him all his life.

19 Q What do you do for a living?

20 A I'm the owner of the lawn care service.

21 Q Now, Mr. Scott, I want to take you back a couple of
22 years to July 4, 2011; do you remember that day?

23 A Yes, sir, I sure do.

24 Q What day was that on?

25 A It was on a Monday.

1 Q Where were you on Monday evening, July 4, 2011?

2 A Well, Monday evening I always have my autistic brother
3 home with me and I take him back up there somewhere around
4 6:00 o'clock or a little after six when I get through. When
5 I left there Barry and I went to North Augusta. He wanted
6 to go shopping with me and I always do that. I went to
7 either Walmart or Kmart and I know Kroger. We shopped for a
8 while. On the way back he was telling me about the
9 fireworks display they were having at the Belvedere softball
10 field and we decided -- I decided not to go. I needed to
11 get on back because I knew I had to work the next day. So I
12 took my stuff on back. I took Barry back up to Aiken to his
13 shop.

14 Q About what time was it when you got to the shop?

15 A Oh, it had to have been pretty close to around 9:00
16 o'clock.

17 Q Was the sun still up?

18 A Fixing to be dark then.

19 Q What did you do then, what did you do then after you
20 dropped Barry off?

21 A After I dropped him off I went back home.

22 Q Please answer any questions the state has for you.

23 THE COURT: Cross-examination.

24 MS. AGNEW: Thank you, Judge.

25 CLEVELAND FORREST SCOTT - CROSS-EXAMINATION

Cleveland Forrest Scott - Cross-Examination

212

1 BY MS. AGNEW:

2 Q Mr. Scott, I know this may sound like a weird question,
3 but how old are you?

4 A How old am I?

5 Q Yes, sir?

6 A I'm 59. I'll be 60 in October.

7 Q You'll be 60 years old and you're still running a lawn
8 care business?

9 A Yes, I am.

10 Q In this heat? Well, let's talk about another summer.
11 Let's talk about the summer of 2011 you were just talking
12 about. You said you were with your cousin Barry from about
13 6:00 to 9:00 o'clock; is that right?

14 A Yeah. It had to have been that time... But that's the
15 only time.

16 Q Okay. You didn't go watch any fireworks with him that
17 night did you?

18 A No.

19 Q Okay.

20 A But I knew they was having them there because when we
21 was leaving to come back we could hear the fireworks going
22 off.

23 Q Okay. Did you go to see the fireworks over by the
24 river?

25 A No.

1 Q Okay.

2 A I really don't care about going to see fireworks,
3 anyway.

4 Q Yes, sir. Did you know that your cousin had been
5 arrested on these charges?

6 A Ma'am?

7 Q Did you know that your cousin got arrested on these
8 charges?

9 A Got arrested. I -- I -- it's hard for me to hear
10 exactly what you're saying.

11 Q I'm sorry. I'll come closer to you.

12 A Okay.

13 Q Did you know that your cousin Barry got arrested on
14 these charges?

15 A Got arrested?

16 Q Yes, sir.

17 A Yeah, I knew he got arrested.

18 Q Okay. And you said that you were with him on July 4;
19 right?

20 A Yeah, but he got arrested last year.

21 Q Sure. But that was pretty important --

22 A Yeah.

23 Q -- if you were with him. Okay. Well --

24 A I knew I wasn't with him last year.

25 Q Right. And that was so important how come you didn't

Cleveland Forrest Scott - Cross-Examination

214

1 tell the police about that?

2 A The police. Nobody came to me about anything.

3 Q Okay. Nobody came to you and -- but you didn't call
4 anybody either?

5 A No. Well, I talked to the attorney and all. That's
6 about it.

7 Q Okay.

8 A I didn't know if that would have anything to do with
9 anything or not.

10 Q Okay.

11 A Just that one little day incident, you know.

12 Q Okay.

13 A A few hours in one day.

14 Q So other than talking to your cousin's attorney this is
15 the first time you've told anybody about that, right?

16 A Well, I talked to him. I can't remember exactly what
17 day we talked about it. But when he got arrested and all it
18 kind of shocked me, because the day it happened I had taken
19 him up to the shop to go to work and then I went on to work
20 and then --

21 Q So to answer my question, you didn't talk to anybody
22 else about being with him on July 4?

23 A No, because it never come up about it.

24 Q Mr. Scott, did you ever live at ?

25 A Huh?

Cleveland Forrest Scott - Redirect Examination

215

1 Q Did you ever live at ?

2 A No.

3 Q Okay. So do you know anything about what happened at
4 ?

5 A No. Honestly, I sure don't.

6 Q Okay. I don't have any more questions. Thank you.

7 A Thank you.

8 THE COURT: Any redirect?

9 MR. ROUTZONG: Yes, sir.

10 CLEVELAND FORREST SCOTT - REDIRECT EXAMINATION

11 BY MR. ROUTZONG:

12 Q Mr. Scott, when did you read all the indictments that
13 have been charged against Mr. Lafavor?

14 A Read over indictments? I don't think I read over
15 anything myself. I can't recall ever reading any of it.

16 Q When did you read the incident reports involving Mr.
17 Lafavor?

18 A What's that?

19 Q When did you read the police reports involving Mr.
20 Lafavor?

21 A I ain't seen no police reports or nothing because
22 nobody showed me anything. All I know was he got arrested
23 and they told me what it was about and that and that was it.

24 Q I know Mr. Lafavor is your cousin, but would you lie
25 for him?

Barry Eugene Lafavor - Direct Examination

216

1 A No.

2 Q You're telling the truth?

3 A I'm telling the truth.

4 MR. ROUTZONG: I don't have any other questions, Your
5 Honor.

6 THE COURT: You may step down.

7 Any objection to this witness being excused?

8 MS. AGNEW: No, Your Honor.

9 THE COURT: Okay. You're free to leave.

10 You may call your next witness, Mr. Routzong.

11 MR. ROUTZONG: Your Honor, defense calls Barry Lafavor.

12 THE COURT: Mr. Lafavor, please come forward. I'm going
13 to ask you if you could to place your left hand on the Bible
14 and raise your right hand as the Clerk administers the oath.

15 (WHEREUPON, Barry Lafavor was sworn
16 to tell the truth.)

17 THE CLERK: Have a seat in the witness box, state your
18 full name, spelling your last for the Court, please.

19 MR. LAFAVOR: Yes, ma'am.

20 THE COURT: Watch your step.

21 MR. LAFAVOR: Yes, sir.

22 THE COURT: Have a seat in that witness chair. Pull up
23 real close to that microphone.

24 MR. LAFAVOR: Yes, sir.

25 THE COURT: Speak loudly clearly and slowly in order

Barry Eugene Lafavor - Direct Examination

217

1 that we can hear everything that you've got to say.

2 MR. LAFAVOR: Yes, sir.

3 THE COURT: And let's start with your full name and
4 spell that last one.

5 MR. LAFAVOR: My name's Barry Eugene Lafavor, L-a-F-a-v-
6 o-r.

7 BARRY EUGENE LAFAVOR - DIRECT EXAMINATION

8 BY MR. ROUTZONG:

9 Q Mr. Lafavor, how old are you?

10 A I'm 54, sir.

11 Q How long have you lived in Aiken?

12 A All my life.

13 Q How long have you been studying karate?

14 A I haven't.

15 Q Are you sure?

16 A I know I haven't.

17 Q Mr. Lafavor, when did you first become involved with
18 this family?

19 A When Marie -- I was working at the t-shirt shop, Marie
20 called me and said that she was staying with a family at
21 in and had a fire, and asked me
22 could I help them out. I told Marie, I said, look I don't
23 have anything to do with that family and I'm working and I
24 can't talk right now and I hung up on her. She kept calling
25 me, kept calling me and I guess about a month after she -- I

Barry Eugene Lafavor - Direct Examination

218

1 said look, you just show me where they are, where they live
2 at and I'll go and get some clothes and all for them and
3 some food and take it to them, and that will be it.

4 Q Did you do that?

5 A Yes, that's what I did.

6 Q Who is Marie?

7 A Marie is my cousin.

8 Q What kinds of things did you buy for them?

9 A I bought them shirts, pants, shoes, socks. I bought
10 them for everybody, the adults, too. All four kids and
11 three adults.

12 Q There has been some testimony about you just deciding
13 to move into the house and not even ask anybody. Why did
14 you move in?

15 A I did not move in myself, Ms. Whittle, Allison, she
16 asked me to move in. I asked her why did she want me to
17 move in and she said that way I could be there and help them
18 with the bills and her medication and that I would be able
19 to go back and forth to work. I waited a week or so and I
20 said, well, I said, I'll move in there temporarily and that
21 will be it.

22 Q Where were you working at that time?

23 A At the t-shirt shop, sir.

24 Q How far away is the t-shirt shop from there?

25 A About 30 minutes, sir.

1 Q What kind of tasks or what kind of chores did you do
2 around the house?

3 A I cleaned the house. I cleaned the outside. I swept
4 and mopped. I done laundry. I washed dishes. Just basic.

5 Q Who took the kids to school?

6 A The kids rode the bus. And when the kids did not want
7 to get up and was late, Allison needed somebody to stay with
8 her so Sue stayed there and asked me would I take the kids
9 to school.

10 Q Who took the kids to the doctor?

11 A Same thing. Allison needed somebody due to her medical
12 condition and Sue had a medical condition and it fell on me
13 again. I had to take them to the doctor.

14 Q Who did the laundry?

15 A We all pitched in on the laundry, but the majority of
16 times I done it.

17 Q Who played with the kids?

18 A Huh? When I wasn't umpiring softball in the evening
19 times I would be playing with the kids because Allison and
20 Sue would be asleep.

21 Q Mr. Lafavor, you're testifying that you did a lot of
22 things. These folks are not even related to you; why did
23 you do that?

24 A Because I'm a Christian and the good book says that I
25 help somebody out. That's what I was doing, I was helping

Barry Eugene Lafavor - Direct Examination

220

1 them out. I was paying the bills, I was buying their
2 medication. I was helping them take care of the kids. That
3 was it.

4 Q Mr. Lafavor, when did you find out about these
5 allegations?

6 A I found out about it last year. Allison and I and Sue
7 was eating at a Chinese place in Bath and Miss Kim called
8 Allison -- Miss Kim called Allison on the telephone and said
9 that she was at her house and for her to get there. And
10 when we got there that's when Kim told her about the
11 allegations.

12 Q Well, about how long had you been living there at that
13 time?

14 A Almost a year.

15 Q What was your relationship with child like?

16 A I treated each child the same way. They claimed that I
17 treated some different and all. I didn't. If I bought
18 something for one, I bought all four of them something. I
19 don't treat kids differently.

20 Q Well, there's some testimony that you treated J.C.
21 differently. Why didn't you take J.C. to some of the
22 places along with --

23 A Well, that fell on Allison and Sue and the girls.
24 Every time I went to the store and the kids wanted to go and
25 the kids said, don't -- we're not taking J.C. And I

1 asked them why and they said, well, we're not going to watch
2 him and he runs wild in a store. I go to the store to shop,
3 I can't -- I can't chase down a kid in a shop and watch
4 three other girls at the same time.

5 Q Did anybody ever ask you to buy anything for them and
6 if you didn't they would do something?

7 A Yes, sir. I bought all three girls a Verizon
8 telephone. A week later, Minor1 didn't like her telephone.
9 She said she wanted something -- what they call -- I don't
10 now what it is, but she said it's an open face. And I told
11 her, I said, Minor1 I'm not buying you another telephone
12 because I just bought you one, a Verizon and bought you \$50
13 worth of minutes for it. And I said, you don't need two
14 phones. If the other two girls aren't having two phones
15 you've not having two phones.

16 Q Well, how did she react to that?

17 A Well, she got mad. I mean, she really got mad.

18 Q What did you say to her?

19 A I just told her that the discussion was over, that she
20 wasn't going to get no open face phone. And she said but
21 they're only \$40 at the Dollar General store. I told her, I
22 didn't care how much they were she wasn't going to get two
23 phones.

24 Q When did that happen?

25 A Oh, it happened, I guess in March of last year, and

Barry Eugene Lafavor - Direct Examination

222

1 that's when I bought all three kids a telephone and then I
2 -- I -- yeah, about March.

3 Q When did Minor 1 first make an allegation? That was
4 before -- in other words, was it before or after this event?

5 A It was after it.

6 Q Did she threaten you in any way?

7 A Yes, sir. She told me and the other girls heard her.
8 She told me if I did not buy her an open face telephone that
9 she was going to tell somebody that I touched her. I told
10 her I was not going to be intimidated by that. Or I used
11 the word blackmailed.

12 Q Mr. Lafavor, as you know, one of the indictments
13 against you says that one or before July 4, 2011, you
14 touched Minor 1 in a way that they're alleging that you ought
15 not to have, and you heard the testimony of your cousin, Mr.
16 Scott.

17 So, let me go ahead and ask you, where were you on July
18 4, 2011?

19 A I was working at the t-shirt shop. I normally -- we
20 don't open up until 10:00 o'clock, but I get everything set
21 up for us to open up, that way when Betty and them comes in
22 they don't have to do nothing but get ready to go to work.
23 And so I was there from 8:00 o'clock that morning. I -- I
24 stay there some, and I stayed overnight and I got up and at
25 8:00 o'clock that morning I started to work, to get

1 everything set up. Get the ovens ready for the t-shirts and
2 I worked from 8:00 o'clock that morning until 6:00 o'clock
3 or a little after 6:00 until my cousin got there. And then
4 when he got there we went to North Augusta. We went to
5 Kroger, we went to Kmart and Walmart and on the way back we
6 was looking at the fireworks going everywhere down -- I
7 guess that's Buena Vista Avenue in North Augusta. So we was
8 going back home towards Belvedere and I told him I said
9 Forrest, I told him, I said, we can go over there to
10 Belvedere Recreation Department and eat free and watch the
11 fireworks because I umpire softball. And he said, no, he
12 said, I don't like fireworks. I said, okay, that's fine
13 with me. So we went to his house to drop off the meat that
14 he bought and other stuff and then when we left there he
15 took me back to the t-shirt shop. And that's where I was
16 the rest of the night.

17 Q Was the sun still up?

18 A No, sir, not when I got back to the t-shirt shop it
19 wasn't. It was close to 9:00, 9:30 when I got back to the
20 t-shirt shop.

21 Q You testified that Mr. Scott dropped you off at the t-
22 shirt shop. Where'd you go then?

23 A No. I had to -- sometimes -- the t-shirt shop was
24 broken into and Davis asked me if I would stay in the t-
25 shirt shop a couple of nights just to see if anybody comes

Barry Eugene Lafavor - Direct Examination

224

1 back. I said sure I will. So he give me a key to open the
2 door and so I stayed in there. I went in and got all the
3 stuff set up for the next morning. I didn't go nowhere
4 else.

5 Q Mr. Lafavor, the state says that on July 4, 2011, that
6 you touched Minor1 in a way that you ought not to
7 have touched her. What do you have to say about that?

8 A Well, it's very hard to touch somebody when you're not
9 around them, ain't it.

10 Q Mr. Lafavor, when you were doing all these chores and
11 everything what did you do in your spare time, if anything?

12 A Well, in the evening time I umpire softball at the City
13 of North Augusta and the City of Belvedere. And I've been
14 doing that for 20-something years.

15 Q Who was playing those games?

16 A What they have over there in the City of North Augusta
17 and the City of Belvedere is girls fast-pitch softball and
18 they are from 8 years old to 18. And every night I would
19 have three games with the girls fast-pitch softball and that
20 would be from 7:00 o'clock that night until about 9:30 or
21 10:00 o'clock. It all depends on how you go into overtime.

22 Q Mr. Lafavor, there's been a lot of talk about you
23 buying some flowers for Minor2 and another girl. Why did
24 you buy those flowers?

25 A Okay. I bought the flower -- I bought one flower for

1 my great niece. She's six years old and she goes to school
2 at at , and it was her birthday.
3 I bought her flowers and sent it to the school house for her
4 birthday. And I talked with Allison on the telephone and
5 Allison was upset because she couldn't buy Minor2 something
6 for, you know, for her birthday because she didn't have no
7 money. I said, well, I'm sending a flower to Abigail at
8 . She said, well, will you sent a flower to
9 Minor2 I said, sure I'll send a flower to Minor2 too. I
10 asked her what kind of flower she wanted. And she just said
11 just one stem. I guess that's just one rose or something.
12 So I called Ms. Hawthorne. I had been knowing her since the
13 VRA baseball, I mean softball and she was in flowers. So I
14 bought her one and since it was getting close to Halloween I
15 asked Allison could we give her a flower that would be the
16 Halloween color. And she said that would be fine. So I
17 told Kaye to send her a flower also.

18 Q Mr. Lafavor, there's been all kinds of testimony and
19 the dates are kind of confusing about who was living where
20 and all this, but let me just ask you point blank, you're
21 charged with criminal solicitation of a minor. Did you ever
22 ask anyone in that house to touch you or let you touch them?

23 A No, sir. My job as a softball official if you -- I've
24 been doing that for 27 years and have never had any
25 accusations on any of this and girls from eight to 18.

Barry Eugene Lafavor - Direct Examination

226

1 Never had an accusations, and the good book, it's wrong. A
2 girl, even if she's 18 or 19 it's still wrong. To me she
3 needs to be 21 years old before you ask her anything like
4 that.

5 Q Mr. Lafavor, the state says you committed a sexual
6 battery on these girls?

7 A No, sir. I've never touched these girls, I would never
8 touch these girls. When the accusation come that Marie done
9 accusation to Minor 1, I -- it made me mad because Marie is
10 my cousin. If I could have gotten my hands on her at that
11 time I would have been in jail for CDV or whatever they call
12 it.

13 Q Mr. Lafavor, there's been some talk about where you
14 sleeping in this house and who was with you and all that
15 stuff. Did you ever sleep right next to any of these kids?

16 A No, sir. Here's the arrangements that was at the
17 house. In the back bedroom Jeremiah Carlyle senior, he
18 owned the house. And that was his back bedroom. Right
19 beside him slept his grandson, J.C., which is 6
20 years old. Right beside him slept Minor 1 and right
21 beside Minor 1 slept Ms. Grainger. And in the front,
22 in the living room, there was Allison Whittle, the momma,
23 Sue, they call her Momma Sue. They slept right there in the
24 living room and the other bed, there was Minor 2 and
25 A.M. I slept on the top bunk. Before they got the bunk

1 bed I slept in a roll back chain. A chain that rolls back
2 and you can lay in it.

3 Q This business about the umpire bag, what can you tell
4 us about that?

5 A Okay. My umpire bag, the only place I could put it is
6 in the back bedroom in the closet. I didn't have no where
7 else to put my clothes. And softball season was over for
8 about a month or two months. See, they normally break before
9 July and then we start back in August. And my softball bag,
10 I hadn't touched it in almost a month. And that's where I
11 kept my clothes.

12 Q Who stayed back in that back bedroom?

13 A Like I said, it's Jeremiah Carlyle, Sr., his grandson,
14 the 6 year old J.C. , Minor 1 and then
15 right beside Minor 1 , Ms. Granger.

16 Q Did you peek in that bag every day to see what was in
17 it?

18 A No, sir, I didn't. The girls know not to touch my
19 stuff because I don't touch their stuff, they don't touch my
20 stuff.

21 Q Mr. Lafavor, there's been some testimony that one of
22 these folks walked in and there you were with your umpire
23 bag and there was a pair of panties. I'm going to guess you
24 were not wearing girl's panties were you?

25 A No, sir, I don't cross-dress.

Barry Eugene Lafavor - Cross-Examination

228

1 Q How did they get in there, do you know?

2 A I -- Minor2 got some money and she wanted to go spend
3 it, and Sue had to stay with Allison due to her medical
4 condition. I said, okay, I'll take you to go and get you
5 something from the store. And she told me she was going to
6 the store to buy some panties and a bra and these legging
7 things on both legs that go all the way up. I don't know
8 what they're called, but she wanted to buy one of them. I
9 said, no, no, no. I told Sue, I said, Sue, I can't take her
10 to the store and buy this girl's stuff because that's not my
11 place. And Sue started laughing and she said, there ain't
12 going to be nobody say nothing. You just go. She knows how
13 to pick it out. I said, okay. I'll tell you what. I told
14 Minor2 I said, when we go to -- when you get to Walmart,
15 you go to the place where they got the stuff and if you
16 don't know your size ask the woman that works there because
17 I don't know your size. So she went ahead, she bought her
18 some panties and some bra and that legging stuff and we went
19 on back to the house I told Minor2 I said, Minor2 I
20 said, you know your sisters like to wear your stuff. I
21 said, what you need to do is you need to hide it and only
22 you will know where it is. That way they don't know how to
23 find it and they can't get it. So you go hide it. All of
24 us was in the living room and she went to the back and hid
25 it. And she come back and she didn't tell nobody where she

1 hid it.

2 Q Mr. Lafavor, have you ever used the expression going
3 combat?

4 A Sir?

5 Q Did you ever use the expression going combat?

6 A No, sir.

7 Q Were you ever in the military?

8 A I was in the National Guard, sir.

9 Q Did you ever go to war?

10 A No, sir.

11 Q Once again, Mr. Lafavor, the state is saying you did a
12 lot of vile and horrible things to these children. What do
13 you have to say about that?

14 A Well, it -- it really broke my heart when -- when you
15 tell a girl that you can't buy her something and then she
16 uses it against you and -- and, you know, tells people that
17 they touched her and all. That's wrong. And I -- for me to
18 have anything to do with a girl she's got to show me a
19 driver's license and she's got to be 21. Anything under
20 that, no.

21 Q Thank you, Mr. Lafavor. Please answer any questions
22 the state has for you.

23 THE COURT: Yes, ma'am, you're recognized.

24 MS. AGNEW: Thank you, Judge.

25 BARRY EUGENE LAFAVOR - CROSS-EXAMINATION

Barry Eugene Lafavor - Cross-Examination

230

1 BY MS. AGNEW:

2 Q Mr. Lafavor --

3 A Yes, ma'am.

4 Q -- I just want to get a couple of things straight?

5 A Okay.

6 Q You said when you first heard about this family that
7 you didn't want anything to do with them, right?

8 A Well, I've got my own life. I work at the t-shirt
9 shop. I go umpire, and when I don't go umpire on the
10 weekends, I go with the people that works at the t-shirt
11 shop, the owner, I go to the auctions with them. So I have
12 my own life.

13 Q Okay. So you didn't really want to get involved with
14 them at first?

15 A I didn't want to get involved.

16 Q And your cousin just nags you and nags you until you
17 did; right?

18 A Well, she nagged me so much that I had to turn my phone
19 off at work.

20 Q Okay. So she asked you so many times about this family
21 that you didn't want nothing to do with and then finally you
22 just had to help them. You couldn't take it no more?

23 A Well, look, if you have somebody to nag you like she
24 nagged me, you'd have give up, too.

25 Q Okay. So you gave up. You said you were going to help

1 them a little bit, right?

2 A I told Marie that I'll go out there and for her to ride
3 with me and we'll get all the sizes of the girls and the
4 adults and all and I'll go to the store and I'll buy it.

5 Q Okay.

6 A Marie, she already had the sizes of Minor 1 and Minor 2
7 All we needed was the sizes of A.M. and J.C. and the
8 sizes of the adults. And so when we got them, I went to the
9 store. Marie still stayed there, I mean, she stayed there
10 while I went to the store and bought all this stuff and I
11 brought it back.

12 Q Okay. Now, Mr. Lafavor, after your cousin Marie nagged
13 you and nagged you until you finally gave up, because
14 anybody would have given up, right?

15 A Yes, ma'am.

16 Q To help, you helped this family that you really didn't
17 want to get involved with and so you decided to move in with
18 them?

19 A Well, that was later on down the road.

20 Q Okay.

21 A I was --

22 Q But it wasn't your idea to move in with them?

23 A No, ma'am, it was not.

24 Q So you were almost forced to move in with them, right?

25 A No, I was not forced to move in. I was asked to.

Barry Eugene Lafavor - Cross-Examination

232

1 Q Did Allison nag and nag you like Marie?

2 A No, ma'am, she didn't.

3 Q Okay. But you agreed to move in with them, right?

4 A I went ahead and agreed to move in because it was
5 helping me out and I was helping them out.

6 Q Uh-huh. (Affirmative response.)

7 A By helping me out I got out of living in the t-shirt
8 shop to living in a place.

9 Q Okay.

10 A And --

11 Q So Mr. Lafavor, just to be sure, you got out of living
12 in the t-shirt shop to living in a single-wide trailer where
13 at one point there were as many as eight different people?
14 Have I counted right as you were listing them?

15 A There was Granger, Jeremiah Carlyle, Sr., J.C. , the
16 four girls, plus two --

17 Q Okay. It was so cramped in that single wide they had
18 to put three beds in the living room, right?

19 A Yes, ma'am.

20 Q Okay. And you said you never slept with any of the
21 kids, that you had your own bed on the top bunk, right?

22 A Yes, ma'am.

23 Q Okay. You talked about what you had to do when you
24 were living there. You had a lot of responsibility when you
25 were living there didn't you.

1 A Well, helping them out -- you -- you don't consider
2 that as responsibility.

3 Q Well, you had a lot to do, right?

4 A Well, it had to be done.

5 Q Sue wasn't working was she?

6 A No, she wasn't.

7 Q Allison wasn't working was she?

8 A No, ma'am, she wasn't.

9 Q So you were the only breadwinner in that house weren't
10 you?

11 A No, ma'am, I wasn't because Jeremiah Carlyle, Sr.,
12 before he died he had an income coming in. He was retired.

13 Q Sure, but he passed, right?

14 A He passed on. That left Granger. Granger had an
15 income coming in per month, plus Allison had an income
16 coming in per month and then Granger, she died. And --

17 Q You were the only one in that single-wide with a job,
18 right?

19 A Yes, ma'am.

20 Q Okay. So -- and you said you did most of the chores,
21 right?

22 A Yes, ma'am.

23 Q You did a lot of the cooking?

24 A I done -- I done the majority of it.

25 Q Okay. You were really the one that played with the

1 kids weren't you?

2 A Well, Allison and Sue, they got a medical condition and
3 I would go outside and throw ball with them or play chase
4 with them whenever I had spare time.

5 Q Okay. And because of those medical conditions you also
6 had to be the one that took them a lot of places, right?

7 A Well, when -- when the bus would come and they would
8 miss the bus Sue would have to stay there with Allison and I
9 would have to take the kids to school

10 Q Okay. And you took them to the ballfield, right?

11 A I -- they wanted to play softball, they wanted to try
12 it out, but A.M. , she wanted to try and play baseball.
13 So I told her I'd love for them to play softball. And I got
14 them on a team and they played a couple of times and then
15 just quit. I don't know, I guess the reason why they quit
16 was due to a conflict of interest in umpiring. If anybody
17 knows anything about umpiring if you have --

18 Q Mr. Lafavor, I'm sorry, but I'm going to stop you.

19 A Okay.

20 Q I just asked you if they played baseball or softball.

21 A Okay.

22 Q And you took them, didn't you?

23 A I took them because I was umpiring.

24 Q Okay. So do you have any reason why people would think
25 their last name was Lafavor at the ballfield?

1 A No, nobody called them Lafavor because I told them they
2 was

3 Q Okay. So you didn't have them listed as the last name
4 Lafavor on their baseball rosters?

5 A That was -- that was the wrong thing by the guy that
6 works in the -- the guy that signs people up. I brought
7 them two girls over there, to his perception he thought they
8 was Lafavors. And I didn't know anything about this until
9 after they were signed up. So I couldn't do nothing.

10 Q All right. Mr. Lafavor, I just want to ask you a
11 couple more questions.

12 A Okay.

13 Q I know Mr. Routzong talked to you about your umpiring
14 bag and all that?

15 A Right.

16 Q And I'll ask you a couple questions about that, too.

17 A Yes, ma'am.

18 Q You said that after umpiring was over for the year that
19 you just kept that bag in the closet, right?

20 A Right.

21 Q Because you weren't using it, right?

22 A Right.

23 Q And in fact you didn't look in that bag much did you?

24 A No. Not until umpiring was over.

25 Q Okay. So once umpiring was over you didn't really

Barry Eugene Lafavor - Cross-Examination

236

1 touch that bag, did you?

2 A No.

3 Q Well, Mr. Lafavor, if you kept your clothes in that bag
4 that you hadn't look in --

5 A No.

6 Q -- in months, what did you wear?

7 A No. I had a backpack or a carrier thing and I kept my
8 softball umpire stuff in one large bag and then I had two
9 other -- I guess you'd call duffle bags or something you put
10 under your arm and all --

11 Q So you didn't really mean it a few minutes ago when you
12 kept your clothes in that bag?

13 A Well --

14 Q You meant something different?

15 A Well, if you thought I said -- if I said clothes, that
16 was my fault on that.

17 Q Okay.

18 A But I had three bags. I had my big umpire bag which
19 kept all my umpire stuff then I had the other two tote bags
20 where I kept my clothes and all.

21 Q Okay. And you kept those in the back bedroom of the
22 house, right?

23 A That was the only place I could keep them.

24 Q Okay, and you had that back there before you told
25 Minor 2 to hide her underwear.

1 A Look, whenever you tell a 12 year old girl to go hide
2 stuff you don't know where they're going to hide it.

3 Q Sure, but you told that 12 year old girl to go hide her
4 panties, right?

5 A So the other girls won't wear them.

6 Q Did she show you what her panties looked like when you
7 took her pantie shopping?

8 A No.

9 Q She didn't show you her panties?

10 A No. She bought them and the woman put them in the bag
11 and Minor2 carried them out. I didn't care what she
12 bought.

13 Q That's not -- Mr. Lafavor, I just want to make sure
14 that you didn't look at her panties --

15 A No, I did not. I didn't.

16 Q Okay. So if you didn't look at her panties how did you
17 know they were Minor2 in your bag?

18 A Well, whenever I opened the bag and I said, look,
19 what's this. I pulled out the panties and the only person
20 that was back there with me was Vickie. Tiffany was nowhere
21 near back there. She was at the front talking to Allison and
22 them. Vickie was the one that hollered to the front and
23 said, well, look what he's got in his bag. I called
24 Minor2 I said, Minor2 And Tiffany said, Tiffany told me
25 -- Vickie said, no, no. You ain't getting her involved in

Barry Eugene Lafavor - Redirect Examination

238

1 this. And Vickie said just get your stuff and go.

2 Q Okay.

3 A So I pulled the rest of her stuff out and put them on
4 the floor and I went.

5 Q Mr. Lafavor, you didn't answer my question. How did
6 you know those were Minor2 panties in your bag if you'd
7 never seen them?

8 A Well, who else's could they have been?

9 Q Well, you said there were --

10 A There are three girls.

11 Q -- three, four, five girls in the house?

12 A No, there were three girls.

13 Q And two women?

14 A And two women.

15 Q But you knew that those were Minor2 panties there,
16 though?

17 A She's the only one who could have put it there.

18 Q Mr. Lafavor, isn't it true that you've been convicted
19 of a felony in the last 10 years?

20 A Yes, I have.

21 MS. AGNEW: No further questions.

22 THE COURT: Any redirect?

23 BARRY EUGENE LAFAVOR - REDIRECT EXAMINATION

24 BY MR. ROUTZONG:

25 Q Mr. Lafavor, when you said those were Minor2 panties

1 that was kind of a guess or --

2 A That was a guess. That was why I hollered her name.
3 Then Vickie told me to shut up and to get my stuff and go.

4 Q Mr. Lafavor, let me ask you one more time, did you do
5 any of these vile and awful things to any of these children
6 that the state says you did?

7 A No, sir. I would not do that to them. I would not do
8 that to any kid because anybody that does that to a kid is
9 sick. I mean sick.

10 MR. ROUTZONG: I don't have any further questions.

11 THE COURT: All right. You may step down.

12 MR. LAFAVOR: Thank you, sir.

13 THE COURT: You may call your next witness.

14 MR. ROUTZONG: Defense rests, Your Honor.

15 THE COURT: Very good.

16 Mr. Foreman, ladies and gentlemen of the jury, we're
17 going to ask that you retire to the jury room. We have
18 legal matters to take up. Do not discuss the case in any
19 way, shape or form.

20 (Jury out at 3:28 p.m.)

21 THE COURT: I'll be happy to entertain motions at this
22 time.

23 MR. ROUTZONG: Your Honor, defense renews it's Motion
24 for Directed Verdict.

25 THE COURT: I'll be glad to hear from the state.

State v. Lafavor 6/25/13

240

1 MS. AGNEW: Your Honor, same argument. There's been
2 evidence presented at trial that covers all the elements of
3 the offenses indicted. Viewing the evidence in a light most
4 favorable to the state there's evidence for the jury to
5 consider. Anything else would be an issue of credibility
6 for that jury.

7 THE COURT: All right.

8 Now, would probably be the appropriate time to have a
9 jury charge conference. I want to charge --

10 Mr. Routzong, do you want to pay attention?

11 MR. ROUTZONG: Yes, sir.

12 THE COURT: All right. I'm going to charge the law
13 concerning the fact that an indictment is not evidence. I'm
14 going to charge the law with regard to multiple charges and
15 each need to be considered separately and distinctly. I'm
16 going to charge the fact that multiple charges of criminal
17 sexual conduct when they occur at or about the same time
18 each act is a separate crime rather than one continuing
19 crime. I'm going to charge presumption of innocence.
20 Reasonable doubt, explain the difference in the duties that
21 a jury and a trial judge have. Direct and circumstantial
22 evidence. Charge law with how they are to evaluate the
23 credibility of witnesses, charge the law about prior
24 inconsistent statements. I'm going to charge the law
25 concerning how a jury is to evaluate the testimony of a

State v. Lafavor 6/25/13

241

1 child, and I'm also going to explain that the testimony of
2 the victim does not need to be corroborated with regard to
3 16-3-652 or 16-3-658. I'm going to charge second degree
4 criminal sexual conduct with a minor. I'm only going to
5 charge the applicable section that says the victim was at
6 least 11 years old but not more than 14 years of age at the
7 time of the sexual battery. Also, explain that consent is
8 not a defense or ignorance. I'm going to charge criminal
9 sexual conduct with a minor third degree. A person is
10 guilty of criminal sexual conduct with a minor in the third
11 degree if the actor is over the age of 14 years of age and
12 the actor willfully and lewdly commits or attempts to commit
13 a lewd or lascivious act upon or with the body or its parts
14 with a child under 16 years of age with the intent of
15 arousing, appealing to or gratifying the lust, passion or
16 sexual desires of the actor or the child. I'm going to
17 charge the law with regard to criminal solicitation of a
18 minor and I have a verdict form that I will allow y'all to
19 look at.

20 Any additional requests and, of course, you're going to
21 have an opportunity to take exception to the charge after I
22 charge it, but is there any additional request from the
23 state?

24 MS. AGNEW: No, Your Honor, I don't believe so.

25 THE COURT: Any objection to anything that I've

State v. Lafavor 6/25/13

242

1 indicated that I'm going to charge?

2 MS. AGNEW: I'm sorry Judge?

3 THE COURT: Is there any objection to anything I'm
4 charging as it stands now?

5 MS. AGNEW: No, Your Honor.

6 THE COURT: All right.

7 Anything from the -- any additional request to charge
8 from the defense?

9 MR. ROUTZONG: No, sir.

10 THE COURT: Do you have any objections to what I intend
11 to charge?

12 MR. ROUTZONG: Possibly, Your Honor. Could you share
13 with us what the charge on children that you mentioned?

14 THE COURT: Yes, I will.

15 Evaluating the testimony of a child?

16 MR. ROUTZONG: Yes, sir.

17 THE COURT: All right. Are you familiar with that law,
18 I mean, the body of law that governs that?

19 MR. ROUTZONG: Some --

20 THE COURT: Is that why you're asking; is that why you
21 want me to tell you what I'm going to charge?

22 MR. ROUTZONG: Somewhat, Your Honor.

23 THE COURT: I'll tell you what I'm going to share with
24 both of you.

25 All right. During this trial you have heard testimony

1 from a child. Where a witness is a child you must
2 determine, as with any witness, whether that testimony is
3 believable. In deciding believability you may consider not
4 only matters that I have already discussed with you, which
5 is how to evaluate an adult, you may also consider the age
6 of the child, the child's ability to observe and remember
7 facts, the child's ability to understand and to answer
8 questions because young children may not fully understand
9 what is happening here it is up to you to decide whether the
10 child understood the seriousness of appearing as a witness
11 in a criminal trial, whether the child understood the
12 questions, whether the child has a good memory, whether the
13 child understands the difference between lying and telling
14 the truth.

15 In addition, young children may be influenced by the
16 way that questions are asked. It is up to you to decide if
17 the child understood the questions asked.

18 Any objections?

19 MR. ROUTZONG: Yes. Your Honor, it seems to me that
20 that charge actually gives more weight to children's
21 testimony in the sense that it's a you can't or if they're
22 not sure the Court is instructing them to overlook that fact
23 because they're a child. Your Honor, it's our position that
24 these are witnesses like any other witnesses, and should be
25 treated the same.

State v. Lafavor 6/25/13

244

1 THE COURT: I tell you that we can rectify that. I find
2 that to be a very favorable charge to the defense in that it
3 requires more scrutiny, requires the jury to apply more
4 scrutiny to a child's testimony, but if you feel as though,
5 and I find it to be very favorable to the defense, however,
6 if you feel it is not all you have to do is say the word and
7 I will not charge it. It's up to you to make the call.

8 MR. ROUTZONG: I would think, Your Honor, that I can not
9 -- I understand the Court's position --

10 THE COURT: You don't have to argue with me. I mean
11 you've heard what I'm going to charge. Do you want me to
12 charge it or not?

13 MR. ROUTZONG: I would say no, Your Honor.

14 THE COURT: What is the state's position?

15 MS. AGNEW: Your Honor, it sounds like the state would
16 have no position, but it's up to Your Honor.

17 THE COURT: Okay.

18 And you're specifically requesting that I not charge
19 that?

20 MR. ROUTZONG: Yes, sir.

21 THE COURT: All right. And the state has no objection?

22 MS. AGNEW: That's correct, Your Honor.

23 THE COURT: All right. Very good.

24 Any other objections from the defense?

25 MR. ROUTZONG: Your Honor, if you could share with us

1 the charge on prior inconsistent statements?

2 THE COURT: There's been evidence presented that
3 witnesses have made prior statements that are not consistent
4 with the witnesses present testimony. You may use this
5 evidence to decide whether to believe the witness. You may
6 also use the evidence of the earlier contradictory
7 statements to determine the truth of those statements. It is
8 up to you to decide whether to believe the earlier
9 statements or the testimony given at trial. If the witness
10 has shown to have knowingly testified untruthfully
11 concerning any material matter you may consider this in
12 determining whether to trust the witnesses testimony in
13 other matters. You may reject all of the testimony of that
14 witness or give all or part of the testimony the weight you
15 think it deserves.

16 MR. ROUTZONG: I don't have any objection, Your Honor.

17 THE COURT: All right. I think that's the same way it's
18 been charged since the beginning of time, since the
19 beginning of South Carolina jurisprudence. You've never
20 heard that before?

21 MR. ROUTZONG: Only occasionally, Your Honor, but I try
22 to keep Ms. Alves happy, too.

23 THE COURT: Pardon?

24 MR. ROUTZONG: I try to keep Ms. Alves happy.

25 THE COURT: Oh. Very good. All right.

State v. Lafavor 6/25/13

246

1 Anything from the state?

2 MS. AGNEW: Now at this time, Your Honor.

3 THE COURT: All right. Given the way the trial has
4 transpired Mr. Routzong you will go first. You need any
5 additional time to gather your thoughts?

6 MR. ROUTZONG: May we approach, Your Honor?

7 THE COURT: Sure.

8 (Off the record bench conference with counsel and the
9 Court.)

10 THE COURT: The parties have agreed to close in the
11 morning and charge in the morning, which is probably a
12 better course of action for us. So let's have the jury back
13 into the jury room -- I mean, back here in the courtroom.
14 (Jury in at 3:42 p.m.)

15 THE COURT: Mr. Foreman, ladies and gentlemen of the
16 jury, we have concluded all the testimony that's going to be
17 received in this case and the gathering of all the evidence.
18 In the morning we're going to start back at 9:30. As I
19 mentioned to you at the beginning of the case, this will be
20 the time when lawyers will have an opportunity to give you
21 closing arguments. Very similar in form to opening
22 statements, but these will be truly argumentative in nature
23 because all the evidence has been presented in this case.
24 They will have the opportunity to points to the evidence
25 that supports their position. What they have to say is not

1 evidence, but I'm absolutely positive that what they have to
2 say will aid you immensely in your deliberation process. So
3 I'm going to ask you to get a good night's rest. Come in
4 ready to hear closing arguments. Once again, these are
5 important matters. It's important to the state and it's
6 important to the defendant. We need to proceed forward with
7 serious and deliberative minds. I know there's a temptation
8 -- none of you are going to have to go to work tomorrow,
9 there's a temptation to stay up and watch David Letterman or
10 whatever you watch late at night, but don't do that because
11 this is as important as anything you do in your life's
12 endeavors and it's an important case.

13 I'm going to ask that you get a good night's rest. Be
14 back at 9:30, 9:30 sharp. Do not discuss the case with
15 anyone else. Do not engage in social media with regard to
16 this and do not put anything on the Google. Don't do
17 anything. Don't do any kind of research, don't go out and
18 look at any landmark that might have been referred to with
19 regard to this case and do not do any independent
20 investigation. Do not discuss amongst yourselves or with
21 anyone else. We'll see you back at 9:30, 9:30 sharp.

22 (Jury out for the day at 3:45 p.m.)

23 THE COURT: Yes, sir, if you could come forward, Mr.
24 Murray.

25 Mr. Murray, you've had time to think about what I ought

Barry Eugene Lafavor 6/26/13

251

1 (Jury in at 9:44 a.m.)

2 THE COURT: Mr. Foreman, ladies and gentlemen of the
3 jury. I want to apologize for being a little bit late.
4 There were some legal matters we wanted to tend to. I want
5 to assure you that we were in here working. Thank you for
6 being here on time, like I asked you to do.

7 Once again, we've completed all of the receiving of
8 evidence and at this point in time lawyers can have an
9 opportunity to give closing arguments. What they say is not
10 evidence. However, it will aid you immensely in the
11 deliberation process.

12 We -- you and I have only been with this case for a
13 short period of time; but these lawyers have been working on
14 this case for an extended period of time, so their
15 observations are important. So pay very close attention as
16 they give their closing arguments.

17 At this time, the state is recognized -- no, the
18 defense is recognized. Under these procedures and the
19 waiver, Mr. Routzong, you're recognized.

20 DEFENSE CLOSING - MR ROUTZONG

21 Please the Court, Your Honor; Ms. Agnew, Your Honor.
22 Morning everyone.

23 Do you remember when I spoke to you in my opening
24 argument I mentioned the presumption innocense and what that
25 means and I also mentioned that all of you, each and every

Barry Eugene Lafavor 6/26/13

252

1 one of you took an oath to find the verdict that speaks the
2 truth. So let's talk about that a little bit.

3 Remember what I said about the presumption of
4 innocence. If you are presuming Mr. Lafavor to be innocent
5 that means the state has got their case wrong and the
6 witnesses in this case are either mistaken or they're not
7 being truthful. The whole time that you go back in there
8 and deliberate that's how you have to view the evidence.
9 That's what the judge is going to tell you. You have to
10 presume all of those things. Either they're wrong or
11 mistaken or lying when you get back there until collectively
12 you come up with a verdict that speaks the truth.

13 If you go back there and just rubber-stamp this just
14 assume that the state made an arrest and they're correct, if
15 you do that you've broken your oath. If you go back there
16 and say to yourselves, wow, these are little kids. We just
17 need to give them some closure. If you do that you've
18 broken your oath. The oath requires you to look at only the
19 evidence, coldly and rationally. That's the only way you
20 can maintain your oath, and you have to listen to the
21 evidence and discuss it among yourselves. If you don't do
22 that you have broken your oath.

23 And what is the evidence going to tell you?

24 Here's what we know. We know that this may have
25 started a long time ago. We know that in the past, in this

Barry Eugene Lafavor 6/26/13

253

1 household, there lived a man, J.C. 's father, who was
2 convicted of criminal sexual conduct and is now in prison.
3 There was testimony on that.

4 We know that Minor1 -- there's some evidence, at least,
5 that Minor1 may have made another allegation against Mr.
6 Lafavor's cousin, Marie Scott, too.

7 That's two allegations. That's two allegations, all
8 right.

9 We know that there was an argument at a family get-
10 together and Minor1 explained that he touched me.

11 You've got to take all those things into consideration.
12 Who she's talking about. We don't really know who she was
13 talking about. What the argument was.

14 Only thing we know is what you've heard from some of
15 these witnesses and ladies and gentlemen, you've heard them
16 as well as I did. You've got to ask yourself if they're
17 really credible. So let's talk about some of the witnesses.

18 Let's talk about Minor1 Minor1 is a case of somebody
19 who is some-what mentally ill, because she testified to you
20 that she has visions and that in these visions the ghost of
21 a former friend comes to her and explains her visions to
22 her. She said she had visions of Barry and Shelby would
23 come to her and say, well, your visions are not true.

24 Ladies and gentlemen, if somebody comes in here and
25 testifies to that you've got to start -- you're presuming

Barry Eugene Lafavor 6/26/13

254

1 that they're either mistaken or lying. If you start there
2 you've got to ask yourself, are they credible.

3 She said that on July 4, 2011, she was in a car with
4 Mr. Lafavor along with two other kids and they were going to
5 a fireworks and I asked her very specifically about what
6 time it was. Was the sun up or was the sun going down. She
7 said the sun was almost down. That twilight period of time.
8 Twilight doesn't last a long, long time. I'm not sure how
9 long. That evidence isn't before us, but as the solicitor
10 says, bring your common experience and your common sense.
11 You know it doesn't last very long.

12 So on July 4, 2011, Minor1 says that she's in a car
13 with Mr. Lafavor, but you've heard from Mr. Cleveland
14 Forrest Scott, Mr. Lafavor's cousin and Mr. Lafavor, both of
15 them testified that they went shopping from 6:00 to
16 sometime, they're not exact, sometime around 9:00, maybe as
17 late as 9:30, but they were together. Nobody else with
18 them, and he dropped Mr. Lafavor off at the t-shirt shop.
19 And I asked both of them, I know I asked Mr. Scott, Mr.
20 Forrest Scott, was it dark. It was about that time, a
21 little bit light, but the people were starting to shoot
22 fireworks. There was testimony on that. Not on display, it
23 was probably people in the neighborhood who were shooting.
24 It was getting to be that time, you could see the fireworks.

25 Ladies and gentlemen, if you believe Mr. Scott, and I'm

Barry Eugene Lafavor 6/26/13

255

1 arguing to you that you have no reason not to believe him.
2 He's his cousin. He testified. He's not here to lie.
3 Think about the credibility. If you believe Mr. Scott,
4 Minor1 is either mistaken or lying about that. Either way,
5 you cannot convict Mr. Lafavor of that indictment. It will
6 say right on the indictment on or about July 4. He's not
7 guilty of that. You know that. You believe Mr. Scott and
8 you can get that one out of the way, because he's not
9 guilty. He couldn't have been two places at one time.
10 Impossible.

11 Minor1 said she saw Mr. Lafavor on top of Minor2 I
12 asked Minor2 Minor2 was he ever on top of you doing
13 anything and you heard her answer. She said no.

14 Again, an inconsistency in something Minor1 said. If
15 you take the presumption of innocence, you've got to take
16 that into consideration and really call into the credibility
17 of Minor1 There's just no other way to look at it.

18 I talked to Minor2 up here and I -- I started out by
19 saying you don't have to be afraid of me. The judge is not
20 going to let anything happen to you. There's no reason --
21 Mr. Lafavor's over there, you've got a deputy, we've got all
22 these people. There's no reason to be afraid, and when I
23 asked her, Minor2 isn't it true that other people can get
24 into trouble if you lie, and this is after the solicitor had
25 talked to her. The solicitor asked her what happens if you

Barry Eugene Lafavor 6/26/13

256

1 tell a lie, she said I can get in trouble. Well I asked
2 her, isn't it true that other people can get in trouble and
3 you know it changed with my next question, because I asked
4 Minor2 Minor2 when you went into that CAC, the first
5 three times, but you told them no. Three times she told
6 them no. Once to Investigator Sievers and twice to the
7 folks at the Child Advocacy Center, three time she told them
8 no. I said, when you went in there and told them no, you
9 told them that because it was the truth, wasn't it. You
10 heard her. She sat right there and said yes.

11 Ladies and gentlemen, that's called a recantation. She
12 recanted her allegations. All those indictments that have
13 Minor2 on there -- he's not guilty of those, because she
14 said he never touched me. I told the truth the first three
15 times. That's what she said right up there.

16 Let's talk about everybody, some of the other folks
17 that we've gotten to know.

18 Ladies and gentlemen, sometimes around the first of
19 July, maybe the end of June, maybe the first of July, DSS
20 put these kids with their aunt. Once again, use your common
21 sense. If DSS thinks something's happened and they take
22 your children away because maybe they said, well, we don't
23 think you protected them very well because -- what did they
24 say, they said Minor1 lies a lot, she steals. You had two
25 of close, you know, her step-mom and her aunt, both of them

Barry Eugene Lafavor 6/26/13

257

1 testified that they told police that she lies and steals.

2 That's how they know Minor 1.

3 If you've got DSS taking your kids away, how do you get
4 them back. Ask yourself, do you go against what your kids
5 say, are they going to give them back to you if you've got
6 13 people in the house with you and you've got nine kids.
7 You've got to deal with that, and the only way they're going
8 to get back to their mom and their step-mom, the only way
9 you're going to get your kids back is to go along with what
10 they said, even though they told law enforcement multiple
11 times they lied. Minor 1 will. Minor 2 had denied
12 everything up to that point.

13 What are you going to do, and isn't it passing strange
14 that they said all these things -- perfect example, we let
15 Barry come in one more time and shazam we woke up and there
16 he is laying in bed. Now, that's passing strange for two
17 reasons. One, if you've got that kind of allegation, you're
18 not going to let him back in. If that were true. If that
19 were true they need to bring charges against the parents,
20 which I'm not aware of any charges of unlawful conduct
21 against the parents. If that were true, I would be amazed.
22 I would be amazed on the other hand. He's got -- he's being
23 looked at by law enforcement and what is he going to do,
24 he's going to go right back into the middle of it and jump
25 in bed with that little child. Our common sense says that's

Barry Eugene Lafavor 6/26/13

258

1 ridiculous.

2 Other things they said, well, he moved in the house,
3 there was not a thing we could do about it. She said she
4 knew how to dial 911, and I bet Aunt Vickie knows how to get
5 folks out of the house if she wants to, even her sister's
6 house.

7 They needed help. Mr. Lafavor, living in the back of
8 the t-shirt shop by himself was willing to give that help.
9 There was testimony that he played with the kids, he did
10 their laundry, he cooked, sometimes he took them to school,
11 he took them to the doctor.

12 Going back to the -- you heard testimony that on May
13 11, right after Minor 1 had gone into the Child Advocacy
14 Center and said no it didn't happen. As she's walking out
15 the door, mind you, she tells her aunt -- it's May 11, she
16 tells her aunt, well, I just lied to that lady and God will
17 take care of it.

18 If you were her aunt and you heard that are you going
19 to go back inside and talk to the Child Advocacy Center
20 person, are you going to go back inside, if Investigator
21 Sievers is there, are you going to say, hey, she just told
22 me this or are you going to wait almost two months before
23 you write the statement to law enforcement around the 5th of
24 July, I think it is and then right after DSS has taken the
25 kids and put them -- DSS has taken the kids and put them --

Barry Eugene Lafavor 6/26/13

259

1 are you going to wait almost two months or are you going to
2 start stomping somebody's guts out trying to figure out how
3 am I going to get her back -- and tell somebody this just
4 happened.

5 That's not believable, that's not credible, and all
6 these statements that were made about all these things that
7 were supposed to have happened, they're not being made until
8 September. They say, well, she -- Investigator Sievers was
9 already involved in the investigation and you've just seen
10 something happen, they say, you've just seen something
11 happen in the house, he's laying in there with Minor2 and
12 Investigator Sievers already knows about this and you don't
13 pick up the phone and say, oh, my God, what I just saw. At
14 least most mothers, most parents would be stomping the
15 person's guts out right there on the floor, if they can.
16 But other than that, you'd at least be on the phone saying,
17 I just saw this. And yet you don't hear anything about this
18 until September. That's not believable.

19 Investigator Sievers, bless her heart, she gets this
20 case around May, the first of May, maybe in April, but
21 anyway -- I think it was the first of May. She starts
22 looking around. She starts interviewing people. Minor1
23 says yes, Minor1 says no. Minor1 says, yes, yes. Minor2
24 says no, Minor2 says no, all the way to November then
25 Minor2 finally says yeah something happened. But you know

Barry Eugene Lafavor 6/26/13

260

1 the interesting thing about Investigator Sievers, tough cop.
2 From May until October she didn't find probable cause to
3 arrest him. She wasn't sure, because you know why I know
4 that, because if Investigator Sievers had probable cause she
5 not going to wait. The flowers for her was the last straw
6 and she told you why.

7 Ladies and gentlemen, taking all these things into
8 consideration if their case is wrong, if that's your
9 presumption, if the witnesses are mistaken or lying how
10 could you come back, based on this evidence, how can you
11 come back with anything other than not guilty on all of
12 these indictments?

13 Thank you.

14 THE COURT: State is recognized.

15 STATE CLOSING - MS. AGNEW

16 MS. AGNEW: Thank you, Judge.

17 THE COURT: Yes, ma'am.

18 MS. AGNEW: Members of the jury, these girls are either
19 mistaken or they're liars. That's what the defense wants
20 you to believe. Everyone is mistaken or they're liars.

21 People make mistakes on their income taxes. People make
22 mistakes when they're tired. You don't make a mistake about
23 whether a 51 year old man is molesting you when you're in
24 the fourth or the sixth grade. That's not a mistake. So if
25 they're not mistaken these two girls, they must be liars.

Barry Eugene Lafavor 6/26/13

261

1 But here's the problem, if you're going to believe the
2 defense you've got to figure out which story about lying
3 you're going to believe, because they told you about five of
4 them.

5 First they said, Minor1 is lying because she's crazy.
6 As the defense told you, that little girl is mentally ill
7 and she's lying because she sees a ghost, and this ghost
8 told her what to say.

9 Members of the jury, that little girl sat right there
10 and she didn't talk very loud, but she told you and she told
11 him, she told the Child Advocacy Center. I made that up. I
12 was scared. He promised me a phone. So if she's not lying
13 about that, she must be lying about something they talked
14 about in cross about an aunt and going into foster care, but
15 if she's not lying about that then she's lying because she
16 wants to get him out of the house. But if you don't believe
17 that one then she must be lying because according to the
18 defendant, he wouldn't buy her an open-face phone.

19 Now, the problem is the defense couldn't really think
20 of a reason why Minor2 would be lying. They said, well,
21 she's probably lying because she wants to go back home to
22 her momma, that's why -- well, she told Investigator Sievers
23 what happened November, 2012. And you heard that she didn't
24 go back home to her momma until May of the next year. So if
25 they're not mistaken and if they're not lying -- oh, wait,

Barry Eugene Lafavor 6/26/13

262

1 wait, we go it. He wasn't there. He was off with his
2 cousin shopping with his cousin in North Augusta instead of
3 abusing this girl in the car.

4 Well, that's a great story. It was awful nice of his
5 cousin to come up here and tell y'all that. Cousin said he
6 wouldn't lie for him but he also didn't think it was
7 important enough to tell anybody until today when the
8 defendant is on trial. So the problem with the defense's
9 case is all y'all have to figure out which part of the
10 defense's case you're going to believe because they gave you
11 about eight different stories.

12 Members of the jury, all the different stories about
13 lying, the mistakes, an alibi. That's not reasonable doubt.
14 That's not reasonable anything. It's not doubt. It's not a
15 defense. It's distraction. They are trying to distract you
16 from what that man did to Minor1 and Minor2

17 Let's talk about what he did. We talked about this a
18 little bit on Monday. I told you we'd go back through it.
19 There's a lot of legal stuff to it.

20 Let's talk about what the defendant did from July 4,
21 2011 to May 1, 2012. The almost year time period that he
22 was living in the house with Minor1 and Minor2 The family
23 he really didn't want to get involved with, that he got
24 nagged to death until he gave up. The house he really
25 didn't want to live in until they convinced him he just had

Barry Eugene Lafavor 6/26/13

263

1 to live there with these people he didn't know. The house
2 that he didn't want to stay in, as he said, temporarily
3 except he stayed until he got kicked out. So while he was
4 living there we've got these charges of CSC, criminal sexual
5 conduct with a minor in the third degree. Like I told you
6 on Monday, that's the defendant touching those girls for his
7 pleasure. Certainly wasn't for their pleasure.

8 We've got multiple victims on that. There's three
9 charges and you'll see the pieces of paper back there. Got
10 more with Minor2 during that time period when she told
11 you, as she sat right here, he bad touched her. She told
12 you that he bad touched her on her private area with his
13 hand when she was in fourth grade, that it happened at night
14 when everybody else was asleep. He would touch her over her
15 shorts. She wore shorts to sleep. And that it happened
16 more than once. You've got the same thing for Minor1 She
17 didn't say anything, ladies and gentlemen of the jury, she
18 sat in that chair fidgeting with her bracelet. She told you
19 that the first time something happened was on July 4, 2011.
20 For a little girl that's a pretty good memory. An exact
21 date like that, but she told you the reason she remembered
22 was because it was a special day. She got to see her
23 boyfriend and she got to see the fireworks. That was the
24 first time that that man did something to her. She told you
25 they were riding in the car, it was getting car. Her sister

Barry Eugene Lafavor 6/26/13

264

1 was in the backseat. She was in the front passenger seat.
2 He had one hand on the wheel and one hand on her. She told
3 you after that for the rest of that year that he was there
4 more than once that he came into where she was sleeping. It
5 was dark, it was late. Everyone else was asleep. She was
6 wearing what she called her sleep clothes and that his hand
7 went under her sleep clothes, under her panties and rubbed
8 her body.

9 Now, we've got another charge, criminal sexual conduct
10 with a minor in the second degree. Like I told y'all on
11 Monday it's also touching, but it's a little bit more. The
12 language that you're going to hear from the Judge and on
13 those pieces of paper says sexual battery. And what that
14 means is touching with penetration. Doesn't mean that they
15 had full-blown sex. It's penetration of her vagina with a
16 part of his body or a foreign object and in this case she
17 told you that sometimes when he would come in that room at
18 night when everybody was asleep and touched her under her
19 sleep clothes that sometimes his hand would go inside her
20 body. Y'all will hear that any penetration, however slight,
21 doesn't have to be all the way, is enough.

22 The last charge that you're going to look at is
23 solicitation of a minor. Like I told you before that's the
24 defendant communicating with a child to persuade sexual
25 activity. Minor 1 sat right here and I asked her, did he

Barry Eugene Lafavor 6/26/13

265

1 ever ask you to do anything else? Make love to him. He
2 asked me to make love to him. That's solicitation of a
3 minor.

4 Now, the Judge is going to talk to you about a lot of
5 law and one of the things he's going to tell you is that
6 victim testimony need not be corroborated. That's a whole
7 lot of words. Basically, what that means is that the word
8 of a child alone is enough. That means as a state we can
9 put Minor1 and Minor2 in that chair and have them testify
10 and then we can sit down and be done. And if you believe
11 those girls that is enough to convict him, because the thing
12 is, guys, these types of cases they don't happen in broad
13 daylight, they happen at night in the dark when everyone
14 else is asleep and the only witnesses are the defendant and
15 Minor1 and Minor2 But we didn't just give you Minor1 and
16 Minor2 We put up a whole lot of people and you heard three
17 different people tell you that after he had been told by law
18 enforcement to stay away from those girls during the
19 investigation they found him in the bed with a 10 year old
20 girl. He's 51, or he was then, in the bed with a 10 year
21 old girl. Three different people told you they saw it. And
22 three different people told that after he was supposed to
23 stay away from those girls, that he had been told twice to
24 stay away from them, three different people saw him get that
25 bag of his out of the closet and pull 10 year old Minor2

Barry Eugene Lafavor 6/26/13

266

1 panties out of his bag. Now he gave a great explanation for
2 why they were there. He took them shopping, he was so
3 embarrassed, bless it, that he wouldn't look at them. So
4 when they got home he said, Minor2 go hide your panties.
5 Go hide them. And of all the places in that house unlucky
6 for him, she hid them in his bag, the bag he doesn't touch
7 at all when he's not umpiring except for the fact that he
8 keep his clothes in it. But when he found them in his bag
9 he knew they were Minor2 He hadn't seen them before, he
10 didn't know that's where she hid them, but he knew they were
11 her's because in his own words, who else's could they have
12 been?

13 You also have multiple people that after he was not
14 supposed to have any contact with those girls. He was
15 supposed to stay way from them. He did what any good
16 boyfriend would do. He sent his girlfriend flowers, except
17 his girlfriend was in fourth grade in elementary school. He
18 knew he wasn't supposed to have contact with her. So after
19 he called and ordered those flowers with his name on it, he
20 thought better of it and he called back and he said, hey,
21 can I change the name on that. Instead of saying these
22 flowers are from Barry, let's say Happy Halloween, Love,
23 Mom.

24 Now, members of the jury, the Judge is also going to
25 talk to you about reasonable doubt. You've heard Mr.

Barry Eugene Lafavor 6/26/13

267

1 Routzong talk about reasonable doubt. Let's address it,
2 just quickly. It's not proof beyond all doubt. It's not
3 proof beyond any doubt. It's exactly what it sounds like.
4 What's reasonable.

5 Now, the defense wants you to think that because Minor 1
6 and Minor 2 didn't tell what the defendant was doing to them
7 the first time they went to the Child Advocacy Center, but
8 that's reasonable doubt. What's reasonable is why they
9 didn't tell the first time they went to the Child Advocacy
10 Center, because as you've heard for two days he didn't care
11 what law enforcement told him: He completely ignored police
12 instructions and he kept having contact with these girls.
13 When they went to the Child Advocacy Center that first day
14 he was still around.

15 Now, Minor 1 told you, she wasn't scared. She told you
16 the other day that the first time she went to the Child
17 Advocacy Center she didn't tell them. She didn't tell them
18 what happened because she was scared of the man, she was
19 scared he was going to go combat on her. And he promised
20 her a phone. If you don't tell on me and get me in trouble
21 I'll buy you a touch screen. She told the Child Advocacy
22 Center that. She told Investigator Sievers that and she
23 told y'all that.

24 Now, Minor 2 the reason she didn't tell the first time
25 was because he was still around. He was still having secret

Barry Eugene Lafavor 6/26/13

268

1 phone calls with her, secret sleep-overs with her. And he
2 was sending her flowers. You heard that both times she went
3 to the Child Advocacy Center and didn't tell what was
4 happening he was still there, he was still having contact
5 with her, but as soon as she was safe, as soon as he was
6 finally somewhere where he couldn't get to her she told
7 Investigator Sievers.

8 Now, members of the jury, what's reasonable is that
9 these girls were scared. These girls were under the thumb
10 of this man and as soon as they finally got away from him
11 they told what was going on. What's not reasonable is five
12 different stories about why they might have been lying or if
13 they weren't lying they might have been mistaken or that
14 they weren't lying they were mistaken, that he wasn't there
15 or that these panties magically ended up in his bag. That's
16 not reasonable.

17 Now, I told you on Monday morning, this case was about
18 two sisters, Minor1 and Minor2 and the one thing that they
19 have in common. For that man, now that you can see him,
20 good. He's come in this courtroom and he has made personal
21 attacks on the character of elementary school girl and a
22 middle school girl because they were brave enough to come in
23 front of a room full of strangers and talk about what no
24 grown-up should ever have to talk about in public. He came
25 in here and he called them liars. He called them crazy. A

Barry Eugene Lafavor 6/26/13

269

1 grown man making those accusations against children because
2 he has no excuse for what he did. He's been manipulating
3 those girls since day one. He manipulated his way into
4 their lives, into their house and into their beds. He
5 manipulated them with fear and promises of cell phones,
6 promises of flowers.

7 Ladies and gentlemen of the jury, why would these kids
8 lie. If all of this wasn't true why would they lie about
9 the man who was doing everything for them. He cooked. He
10 took them to school. He took them to the doctor. He took
11 them to softball. He took them to fireworks. He took them
12 panty shopping. Why would they lie about him? If they're
13 going to lie about him, if they're going to lie and get him
14 in trouble why not make it a whopper, get your monies worth.
15 But they didn't get up here and say that he raped them every
16 night, because they told you exactly what happened. If
17 they're going to lie, if the whole point of the lie is to
18 get him out of the house or get him in trouble then actually
19 tell somebody. The lie don't work if you keep it to
20 yourself. So if they're going to lie why was it so hard for
21 them to have the courage to tell somebody. They had
22 multiple opportunities to get this man in trouble and get
23 him out of the house, and it took multiple interviews for
24 them to have the courage to tell what was going on. They
25 have no reason to lie.

Barry Eugene Lafavor 6/26/13

270

1 I told you they had one thing in common. They have
2 something else in common, as it's been made crystal clear
3 throughout this whole trial, as Mr. Routzong, himself, made
4 it crystal clear, these girls had zero. You heard how for a
5 year when he was living in this house he was the
6 breadwinner. Momma didn't work. Momma Sue didn't work. He
7 was the one bringing in the money. And as long as he was
8 paying the bills he got full access to Minor1 and Minor2

9 Mr. Routzong is right. When the investigation first
10 started, Momma and Momma Sue got up, they didn't protect
11 their children. They protected their cash cow. That's what
12 was important to them. And that's why they said those girls
13 were lying because they couldn't have him get in trouble
14 because the money flow would stop.

15 You heard when Minor1 got up here, you heard about the
16 fight. Mr. Routzong brought it up himself. She said, Momma,
17 I told you I had been messed with and you didn't believe me.

18 Y'all watched Minor2 up there. I asked her, I said,
19 Minor2 did you ever tell anybody about Barry bad touching
20 you? She said, I told my mom. Okay. What happened when
21 you told your mom. She got quiet. I had to ask her two
22 times, and finally her answer about what happened when she
23 told her momma, nothing. Nothing happened. She did nothing.

24 Members of the jury, they let this man have full
25 control over their kids and -- they had a stranger living in

Barry Eugene Lafavor 6/26/13

271

1 the house, taking these kids places in the car, being alone
2 with them and they didn't care so long as he was paying the
3 bills. If that makes you mad, it should. No parent does
4 that, but the reason it makes you mad that those parents did
5 nothing when their little girl said that he was touching
6 them is because you know those little girls were telling the
7 truth. If it doesn't make you mad that that's what happened
8 to Minor 1 and Minor 2 if that doesn't make you mad, then
9 you should have no problem sending that man home today to
10 move right back into that house with Minor 1 and Minor 2
11 That shouldn't bother you one bit, but if it makes you mad
12 that those girls were abandoned, that those girls --

13 MR. ROUTZONG: Objection, Your Honor.

14 THE COURT: Yes.

15 MR. ROUTZONG: Your Honor, if you could make that ruling
16 on the record?

17 THE COURT: Sustained.

18 CONTINUED STATE'S CLOSE - MS. AGNEW

19 Members of the jury, you've heard the evidence, you've
20 heard the testimony. Now it's your chance to make the
21 decision for Minor 1 and Minor 2 Find him guilty.

22 THE COURT: Madam Forelady, ladies and gentlemen of the
23 jury, we've been in here for almost an hour. We're going to
24 take a short break. I want to take up some legal matters
25 outside of your hearing. Once again, do not discuss the

Barry Eugene Lafavor 6/26/13

272

1 case. We're getting in the short rows now. We have
2 concluded the closing arguments and now I'll charge you the
3 law when you come back. Do not discuss the case.

4 Mr. Foreman, I'm going to ask that you enforce that
5 rule. Very good.

6 (Jury out at 10:28 a.m.)

7 THE COURT: Defense, you're recognized.

8 MR. ROUTZONG: At this time, Your Honor, defense moves
9 for a mistrial. We believe, Your Honor, that closing
10 argument to the jury was inflammatory, inflammatory
11 personalized in an effort to inflame the jury's passions
12 with anger towards the mother to convict the defendant.
13 Your Honor, we believe it's improper and at this time we
14 would ask for the Court to rule and grant a mistrial.

15 THE COURT: Okay. I'll be glad to hear from the state.

16 MS. AGNEW: Thank you, Judge. There's was no attempt to
17 inflame the jury. I wasn't even talking about the defendant
18 at that point. So there's no prejudice to him. The main
19 thing is that the state would appeal to jurors common sense,
20 which the defense also brought up, and the other thing was
21 about credibility, which is one of the biggest issues in
22 this case, is whether or not they believe those girls.

23 THE COURT: Okay. Well, I sustain the objection. I do
24 think it was an improper argument. I'm not going to grant a
25 mistrial.

Barry Eugene Lafavor 6/26/13

273

1 I'm going to ask if you could to come forward and take
2 a look at the verdict form.

3 (Counsel and the Court review the verdict form.)

4 MS. AGNEW: Your Honor, I believe the only thing that
5 we've noticed is on the criminal sexual conduct with a
6 minor, third degree, the two counts regarding Minor 1 Since
7 they don't reference the indictment number. I don't know if
8 it matters to have it referenced by the July 4 incident date
9 verses the other dates.

10 THE COURT: If y'all want to make reference to the dates
11 and put that on there, that's fine.

12 MS. AGNEW: That's the only thing that I see.

13 THE COURT: Then I'll ask that y'all amend it
14 accordingly. Just put the dates on.

15 (Verdict form amended to reflect dates.)

16 THE COURT: All right. Do we agree with the amendment?

17 Mr. Routzong?

18 MR. ROUTZONG: Yes, sir.

19 THE COURT: Okay. Let me take a look at it.

20 (Verdict form passed to the Court.)

21 THE COURT: Are we in agreement with regards to the
22 verdict form?

23 MS. AGNEW: Yes, Your Honor.

24 THE COURT: How about from the defense?

25 MR. ROUTZONG: Yes, sir.

Barry Eugene Lafavor 6/26/13

274

1 THE COURT: Very good. All right. We're ready for the
2 jury to come back in.

3 MR. ROUTZONG: Your Honor, I just have one other issue.
4 As you charge the jury I would ask for a curative
5 instruction.

6 THE COURT: Okay.

7 MR. ROUTZONG: Based on the sustained objection.

8 THE COURT: All right.

9 MR. ROUTZONG: We would ask the Court to consider
10 instructing the jury that they cannot make -- decide the
11 verdict of this case based on any opinion or prejudice or
12 any kind of inflammatory emotion that they might have
13 regarding any alleged action in the past by the parents. In
14 other words, just instruct them that they have to go by the
15 evidence, not based on whether or not they should be angry
16 at the parents or Mr. Lafavor. Just based on the evidence,
17 Your Honor.

18 THE COURT: All right. The proposed curative charge is
19 that your deliberations should focus on the evidence or the
20 lack of evidence and your decision should not be affected by
21 prejudice or appeals to your passion.

22 Any objection from the defense?

23 MR. ROUTZONG: I'm concerned, Your Honor, because she
24 specifically said anger at the -- the two references, the
25 parents -- if you could say something about that, Your

Barry Eugene Lafavor 6/26/13

275

1 Honor, that would get to the heart of what we're worried
2 about.

3 THE COURT: Okay. Passion or anger. Any objection from
4 the state?

5 MS. AGNEW: No, Judge.

6 THE COURT: Very good. All right.

7 Anything before we bring the jury back out, from the
8 state?

9 MS. AGNEW: Not from the state, Your Honor.

10 THE COURT: From the defense?

11 MR. ROUTZONG: No, sir.

12 THE COURT: Very good.

13 We're ready for the jury.

14 (Jury in at 10:38 a.m.)

15 COURT'S CHARGE

16 THE COURT: Mr. Foreman, ladies and gentlemen of the
17 jury, we have concluded the evidence and the closing
18 arguments and now it's time for me to charge you the law.

19 Ladies and gentlemen of the jury, when you took your
20 oath in the very beginning you took an oath that you would
21 listen to the facts and apply it to the law and that's my
22 job, is to explain the substantive law that governs this
23 trial. And you are the triers of fact and I am the arbiter
24 of the law. I'm going to explain what the law is. My job
25 is to determine what evidence you get to hear and y'all are

Barry Eugene Lafavor 6/26/13

276

1 the ones that decide what the facts are, what the truth is.
2 That's the difficult thing in this case and y'all are going
3 to be required to do that. In order to do that you have to
4 know what the law is. So I'm going to charge you the law.
5 I wish there was an easy way to do it, but there isn't.
6 It's sort of like taking medicine. So we're about mid-
7 morning here. I'm going to ask you to perk up. Sit a
8 little bit on the edge of your chair, because these are
9 important matters.

10 First of all, the defense made an objection in the
11 closing argument and I sustained that objection and I want
12 to give a curative charge in that regard.

13 Ladies and gentlemen of the jury, your deliberation
14 should focus on the evidence or the lack of evidence. Your
15 decision should not be affected by prejudice or appeals to
16 passion or anger. It's about the evidence or the lack
17 thereof.

18 Mr. Foreman, ladies and gentlemen of the jury, the
19 indictment charges the defendant with three separate and
20 distinct counts of criminal sexual conduct, third. One
21 count of criminal sexual conduct with a minor, second degree
22 and one count of solicitation. I remind you of the fact
23 that the defendant was arrested, charged and indicted in
24 this case. It's not evidence in this case and cannot be
25 considered by you as evidence of guilty, nor does it create

Barry Eugene Lafavor 6/26/13

277

1 any presumption or inference of guilt. This document is
2 simply the formal written instrument which contains charges
3 made against the defendant. It is the formal document by
4 which this case is brought into this court.

5 Each indictment charges a separate and distinct
6 offense. You must decide each indictment separately and on
7 the evidence and law applicable to it uninfluenced by your
8 decision as to any other indictment. The defendant may be
9 convicted or acquitted on any or all of the offenses
10 charged. You'll be asked to write a separate verdict of
11 guilty or not guilty for each indictment.

12 The defendant is charged with four counts of criminal
13 sexual conduct. When two or more acts of criminal sexual
14 conduct occur at or about the same time each act is a
15 separate crime rather than one continuing crime.

16 Mr. Foreman, ladies and gentlemen of the jury, the
17 defendant has pled not guilty to this indictment and that
18 plea puts the burden on the state to prove the defendant
19 guilty.

20 A person charged with committing a criminal offense in
21 South Carolina is never required to prove himself innocent.
22 I charge you that it's an important rule of law that a
23 defendant in a criminal trial, no matter what the
24 seriousness of the charge may be will always be presumed to
25 be innocent of the crime for which the indictment was issued

1 unless guilt has been proven by evidence satisfying you of
2 that guilt beyond a reasonable doubt. This presumption of
3 innocence does not end when you begin your deliberations,
4 but accompanies the defendant throughout the trial until you
5 reach a verdict of guilt, based on evidence satisfying you
6 of that guilt beyond a reasonable doubt. Presumption of
7 innocence is like a robe of righteousness placed about the
8 shoulders of the defendant which remains with the defendant
9 until it has been stripped from the defendant by evidence
10 satisfying you of the defendant's guilt beyond a reasonable
11 doubt. The presumption of innocence is not a mere legal
12 theory. It's not just a legal phrase. It's a substantial
13 right to which every defendant is entitled to unless you,
14 the jury, are satisfied from the evidence of the defendant's
15 guilt beyond a reasonable doubt. All doubt should be
16 resolved in the favor of the defendant.

17 What is reasonable doubt in the law? A reasonable
18 doubt is the kind of doubt that would cause a reasonable
19 person to hesitate to act. The state has the burden of
20 proving the defendant's guilt beyond a reasonable doubt.
21 Some of you may have served as jurors in civil cases where
22 you were told it is only necessary to prove that a fact is
23 more likely true than not, such as by a greater weight or
24 the preponderance of the evidence. In criminal cases the
25 state must be -- must present more evidence than that. The

Barry Eugene Lafavor 6/26/13

279

1 burden of proof is more stringent. It is proof beyond a
2 reasonable doubt. Proof beyond a reasonable doubt is proof
3 that leaves you firmly convinced of the defendant's guilt.
4 There are very few things in the world that we know with
5 absolute certainty and in criminal cases the law does not
6 require proof that overcomes every possible doubt. If based
7 on your consideration of the evidence you are firmly
8 convinced the defendant is guilty of the crime charged you
9 must find the defendant guilty. If, on the other hand, you
10 think there's a real possibility the defendant is not
11 guilty, you must give the defendant the benefit of the doubt
12 and find him not guilty.

13 I remind you that during this trial you and I have
14 certain duties to perform. As a trial judge it is my
15 responsibility to preside over the trial. I also have the
16 duty to rule on admissibility of evidence. You are only to
17 consider the competent evidence before you. You are to
18 consider only the testimony which has been presented from
19 this witness stand, any exhibits which have been made a part
20 of the record in this case and any stipulations of counsel.

21 I have the additional duty to charge you the law
22 applicable to this case. As the presiding judge I am the
23 sole judge of the law and it is your duty as jurors to
24 accept and apply the law as I now state it to you. If you
25 already have an idea as to what the law is or what the law

1 ought to be and it does not agree with what I now tell you
2 the law is, you must abandon this idea because you are sworn
3 to accept and apply the law exactly as I state it to you.

4 In every case tried before a jury the jury becomes the
5 sole and exclusive judge of the facts in the case. A trial
6 judge cannot intimate, state, comment on, or make any
7 statement to a trial jury about the facts in a case. Since
8 you the jury are the sole judge of the facts, you are not to
9 infer from what I've said during the progress of this trial
10 in ruling upon the admissibility of evidence or otherwise or
11 anything that I say now during the course of this
12 instruction to you that I have any opinion about the facts.
13 The law simply does not allow me to have an opinion about
14 the facts. This is a matter solely for you, the jury, to
15 determine. As jurors it is your duty to determine the
16 effect, value, weight, and the truth of the evidence that's
17 presented during this trial.

18 There are two types of evidence which are generally
19 presented during a trial, direct evidence and circumstantial
20 evidence.

21 Direct evidence is the testimony of a person who claims
22 to have actual knowledge of a fact, such as an eye-witness.
23 It is evidence which immediately establishes the main fact
24 to be proven. Circumstantial evidence is proof of a chain
25 of facts and circumstances indicating the existence of a

Barry Eugene Lafavor 6/26/13

281

1 fact that is evidence which immediately establishes
2 collateral facts from which the main fact may be inferred.
3 Circumstantial evidence is based on inference and not on
4 personal knowledge or observation.

5 The law makes absolutely no distinction between the
6 weight or value to be given to either direct or
7 circumstantial evidence, nor is a greater degree of
8 certainty required of circumstantial evidence than of direct
9 evidence. You should weigh all of the evidence in the case.
10 If after weighing all of the evidence, if you are not
11 convinced of the guilt of the defendant beyond a reasonable
12 doubt you must find the defendant not guilty.

13 Necessarily, you must determine the credibility of
14 witnesses who have testified in this case. Credibility
15 simply means believability. It becomes your duty as jurors
16 to analyze and evaluate the evidence in determining which
17 evidence convinces you of its truth. In determining the
18 believability of the witnesses who have testified in this
19 case you may believe one witness over several witnesses or
20 several witnesses over one witness. You may believe a part
21 of the testimony of a witness and reject the remaining part
22 of the testimony of that same witness. You may believe the
23 testimony of a witness in its entirety or reject the
24 testimony of a witness in its entirety. You may consider
25 whether any witness has exhibited to you any interest, bias,

1 prejudice or other motive in this case. You may also
2 consider the appearance, the manner of the witness while on
3 the witness stand, their demeanor. All of these things are
4 completely within your provinces of the jury to make these
5 determinations.

6 There's been evidence presented that witnesses have
7 made prior statements which are not consistent with the
8 witnesses present testimony. You may use this evidence to
9 decide whether to believe the witness. You may also use the
10 evidence of an earlier contradictory statement to determine
11 the truth of those statements. It is up to you to decide
12 whether to believe the earlier statements or the testimony
13 given at trial. If a witness has shown to have knowingly
14 testified untruthfully concerning a material matter, you may
15 consider this in determining whether to trust the witnesses
16 testimony as to other matters. You may reject all testimony
17 of that witness, give all or part of the testimony -- give
18 weight to all or part of the testimony that you think it
19 deserves.

20 The testimony of a victim need not be corroborated in
21 the prosecution of Section 16-3-652 through 16-3-658 which
22 is what we're dealing with here today.

23 I'm going to define the substantive crime of second
24 degree criminal sexual conduct with a minor.

25 The defendant is charged with second degree criminal

Barry Eugene Lafavor 6/26/13

283

1 sexual conduct with a minor. The state must prove beyond a
2 reasonable doubt that the defendant engaged in a sexual
3 battery with the victim. Sexual battery is sexual
4 intercourse, cunnilingus, fellatio, anal intercourse or any
5 intrusion however slight to any part of a person's body, of
6 any object into the genital or anal openings of another
7 person's body except when the intrusion is accomplished for
8 medically recognized treatment or diagnostic purposes.
9 State must then prove beyond a reasonable doubt that the
10 victim was at least 11 years old, but not more than 14 years
11 of age at the time of the sexual battery.

12 Ladies and gentlemen of the jury, consent, willingness,
13 indifference or ignorance on the part of the minor, if any,
14 as to what was taking place does not in any way affect the
15 charge of criminal sexual conduct with a minor because an
16 unmarried girl under the age of 14 cannot legally consent to
17 sexual intercourse or sexual battery.

18 Ladies and gentlemen of the jury, I'm going to define
19 to you the substantive law with regard to criminal sexual
20 conduct with a minor in the third degree.

21 A person is guilty of criminal sexual conduct with a
22 minor in the third degree if the actor is over 14 years of
23 age and the actor willfully and lewdly commits or attempts
24 to commit a lewd or lascivious act upon or with the body or
25 its parts of a child under 16 years of age with the intent

Barry Eugene Lafavor 6/26/13.

284

1 of arousing, appealing to or gratifying the lust, passion,
2 sexual desires of the actor or the child.

3 I charge you the substantive law with regard to
4 criminal solicitation of a minor.

5 A person 18 years of age or older commits the offense
6 of criminal solicitation of a minor if he knowingly contacts
7 or communicates with or attempts to contact or communicate
8 with a person who is under the age of 18 or a person
9 reasonably believed to be under the age of 18 for the
10 purposes of or with the intent of persuading, inducing,
11 enticing or coercing the person to engage in sexual activity
12 or a violent crime or with the intent to perform a sexual
13 activity in the presence of the person under the age of 18
14 or a person reasonably believed to be under the age of 18.
15 Consent is not a defense. The prosecution pursuant to this
16 section, if the person under the age of 18 is under the age
17 of 16. In order to prove criminal sexual -- I mean, in
18 order to prove criminal solicitation of a minor it is not
19 necessary that the state prove an overt act in furtherance
20 of the solicitation.

21 Mr. Foreman, ladies and gentlemen of the jury, I'm
22 going to come forward and share with you the verdict form.

23 Mr. Foreman, if you can stand up. This is the verdict
24 form. It's three different sheets and it's got the State of
25 South Carolina, County of Aiken, State of South Carolina

Barry Eugene Lafavor 6/26/13

285

1 verses Barry Lafavor and it's got the indictments on the
2 numbers there and it's got each one of the separate and
3 distinct offenses that you've heard us talking about in the
4 last several. It's delineated, criminal sexual conduct with
5 a minor, third degree as to Minor2 and it goes
6 through each separate offense, and the parties have agreed
7 to add the dates to it to give particular clarity to it. It
8 requires that the verdict be unanimous. It can't be 11 to
9 one, it can't be six to six, eight to four. Everyone has to
10 agree. I'm going to ask you to have a seat. I'm going to
11 talk to you in just a moment.

12 Of course, there might be an occasion during your
13 deliberations that you have a question. I'll tell you from
14 the outset the difficult questions in this case you're going
15 to have to answer. The questions of fact. And you probably
16 have discerned throughout this trial and through my charge
17 what the difference between my job as the trier of law and
18 you're the trier of fact. And if there's a question that
19 comes up about the law that's something that I can help you
20 with. If it's a question about the difficult determination
21 that y'all will have to make, I can't answer those
22 questions. If you have a question and you can't determine
23 whether it's a question of law or a question of fact, write
24 it down and I'll be happy to answer it if I can.

25 Mr. Foreman, you're going to be charged with the

Barry Eugene Lafavor 6/26/13

286

1 responsibility of presiding over the deliberations. That
2 essentially means that everybody's voice needs to be heard.

3 I'm going to ask you to return to the jury room, but do
4 not begin deliberations because I'm going to have to talk to
5 these very fine lawyers to determine whether they have an
6 objection with regards to the manner with which I've charged
7 the law. I'm also going to have to gather up the documentary
8 evidence. If there's not a necessity to bring you back into
9 the courtroom, then I will give the documentary evidence to
10 the bailiff with the instruction to tell you to begin your
11 deliberations.

12 I'm going to ask the alternate if you will remain with
13 us here. Don't go back into the jury room. You may follow
14 the bailiff back to the jury room.

15 Do not begin deliberation until you're given the
16 instruction to do so.

17 (Jury out 10:58 a.m.)

18 (Alternate juror waits in courtroom.)

19 THE COURT: Yes, sir. I want to thank you so much for
20 being here. I know you sort of feel like you've been
21 invited to a dance and didn't get to dance, but your
22 services have been needed. You obviously know we had a
23 problem with one juror and we had to activate one of the
24 other alternates and if we didn't have y'all here to
25 participate we'd have to go through all of this once again.

Barry Eugene Lafavor 6/26/13

287

1 It would probably scare you to know the amount of resources
2 and the amount of time and money that's been expended on
3 this investigation and the trial itself. So you have
4 provided a very valuable service.

5 I told you from the very beginning if you had any
6 questions I'd be happy to answer them. Do you have any
7 questions about what's transpired?

8 ALTERNATE JUROR: No, sir, not at all.

9 THE COURT: You know, I ask all jurors that and I've
10 never had anyone to ask me any questions, but I always feel
11 like I ought to, but at any rate -- I do have some good news
12 for you. You are going to be released.

13 You are welcome to stay. This is a public forum. If
14 you are interested enough in the matter and don't have other
15 things to do you are welcome to stay here and see what the
16 verdict is.

17 I told you from the beginning that you are not to
18 discuss the case amongst yourselves or anyone else. I'm
19 releasing you from that order now. You can talk to your
20 spouse, your significant others or your co-workers until
21 they don't want to hear about it any more. If someone would
22 try to talk with you about it you could indeed talk with
23 them if you wanted to, but if you don't want to talk with
24 them about it, tell them that. And if they insist on
25 talking to you, get their name, identify them as best you

Barry Eugene Lafavor 6/26/13

288

1 can and report it to me and I'll deal with that accordingly.
2 I don't anticipate that that's going to be the case, but the
3 good news is you've earned a three year exemption if you are
4 subpoenaed in this court. But the next three years you can
5 tell them you participated this week and you can exercise an
6 exemption. However, it doesn't apply to Municipal Court,
7 Magistrate's Court or Federal Court. You're good to go if
8 they subpoena you here.

9 Thank you so much for your time and your consideration.
10 We're going to pay you handsomely for your services here as
11 a small token of our appreciation.

12 Madam Clerk, how much do we give the jurors here in
13 Aiken County?

14 THE CLERK: \$20 a day.

15 THE COURT: \$20 a day. Do we give mileage?

16 THE CLERK: No, sir.

17 THE COURT: I'm sorry. \$20 a day. That's a small token
18 of our appreciation and you're free to leave.

19 Thank you so much.

20 ALTERNATE JUROR: Thank you.

21 THE COURT: I'll be happy to hear from the state with
22 regard to any objections or additions to the jury charge?

23 MS. AGNEW: The state has none, Your Honor.

24 THE COURT: All right.

25 Any objections or additions from the defense?

Barry Eugene Lafavor 6/26/13

289

1 MR. ROUTZONG: No, sir.

2 THE COURT: All right. I'm going to ask if y'all come
3 forward -- there's very few documents -- items of
4 documentary evidence. I'm going to ask that the court
5 reporter place them in a pile in front of here and let's
6 make sure all the evidence is there.

7 (Court reporter complies.)

8 THE COURT: All right. I'm going to ask the state
9 first. Is everything in that pile in evidence?

10 MS. AGNEW: Yes, Your Honor.

11 THE COURT: Is there anything in that pile that's not in
12 evidence?

13 MS. AGNEW: No, Your Honor.

14 THE COURT: All right.

15 Mr. Routzong, is everything in that pile in evidence?

16 MR. ROUTZONG: Yes, sir.

17 THE COURT: Is anything in that pile that's not in
18 evidence?

19 MR. ROUTZONG: No, sir.

20 THE COURT: I'm going to ask if you could give them the
21 documentary evidence and give them some scratch paper and
22 some pens and tell them to begin deliberations.

23 THE BAILIFF: They have the verdict form?

24 THE COURT: They have the verdict form.

25 Thank you so much.

Barry Eugene Lafavor 6/26/13.

290

1 THE BAILIFF: Yes, sir.

2 (Evidence and verdict form to jury at 11:00 a.m.)

3 THE COURT: Anything from the defense before we recess?

4 MR. ROUTZONG: No, sir.

5 THE COURT: Anything from the state?

6 MS. AGNEW: No, Your Honor.

7 (Court in recess for deliberations at 11:01 a.m.)

8 (Court in session for verdict at 1:57 p.m.)

9 THE COURT: Please be seated. Good afternoon,
10 everybody.

11 Can we get the defendant in.

12 I understand they have a verdict.

13 Anything from the state before we bring the jury out?

14 MS. AGNEW: No, Your Honor.

15 THE COURT: Anything from defense?

16 MR. ROUTZONG: No, sir.

17 THE COURT: We're ready for the jury. .

18 While the jury is coming out, I want to remind
19 everybody that regardless of what the verdict is there will
20 be no outburst from anybody on either side. If there is,
21 I'm going to ask the deputies to go ahead and take them into
22 custody.

23 (Jury in with verdict at 1:58 p.m.)

24 THE COURT: Mr. Foreman, have you reached a verdict?

25 THE FOREMAN: Yes, sir.

Barry Eugene Lafavor 6/26/13

291

1 THE COURT: Is it unanimous?

2 THE FOREMAN: Yes, sir.

3 THE COURT: I'm going to ask if you can give the verdict
4 form to the bailiff.

5 (Verdict form passed to the Court.)

6 THE COURT: Madam Clerk, you may publish the verdict.

7 THE CLERK: Your Honor, we have the State of South
8 Carolina verses Barry E. Lafavor, Indictment 2013-GS-02-
9 00593, 2013-GS-02-00590, 2013-GS-02-00589, 2013-GS-02-00586
10 and 2013-GS-02-00587.

11 For the charge of criminal sexual conduct with a minor,
12 third degree as to Minor2 , we the jury by unanimous
13 consent find the defendant, Barry E. Lafavor, guilty.

14 As to the charge of criminal sexual conduct with a
15 minor, third degree, July 4, 2011, as to Minor1 , we
16 the jury by unanimous consent find the defendant, Barry E.
17 Lafavor, not guilty.

18 To the charge of criminal sexual conduct with a minor,
19 third degree, July 5, 2011 through May 1, 2012, as to Minor1
20 Minor1 , we the jury by unanimous consent find the defendant,
21 Barry E. Lafavor, guilty.

22 As to the charge of criminal sexual conduct with a
23 minor, second degree as to Minor1 , we the jury by
24 unanimous consent find the defendant, Barry E. Lafavor, not
25 guilty.

Barry Eugene Lafavor 6/26/13

292

1 As to the charge of criminal solicitation of a minor,
2 as to Minor 1 , we the jury by unanimous consent find
3 the defendant Barry E. Lafavor, not guilty.

4 Signed June 26, 2013 by Foreman Carl Everett.

5 Ladies and gentlemen of the petit jury if this is your
6 verdict please indicate by the raising of your right hands.

7 Your Honor, all hands are raised.

8 THE COURT: Any additional request for polling?

9 MR. ROUTZONG: No, sir.

10 THE COURT: Any from the state?

11 MS. AGNEW: None from the state, Your Honor.

12 THE COURT: Very good.

13 Ladies and gentlemen of the jury, once again, I want to
14 thank you for your time and attention that you've put
15 towards this. It's clear that you've taken your oath very
16 seriously and I'm very grateful for that. You've been able
17 to do what nobody else in this courtroom has been able to
18 do. You've brought resolution to this matter. Thank you
19 very much.

20 I told you from the beginning that you're under an
21 order not to discuss the case amongst yourselves or with
22 anyone else. You're released from that order now. You can
23 talk to anybody about it for as long as you want to talk to
24 them about it. If someone were to come up and ask you about
25 the case and you don't want to talk about it, if they

Barry Eugene Lafavor 6/26/13

293

1 persist in their efforts, identify them, report it to me,
2 and I'll deal with them accordingly, but you are released to
3 talk to anyone you want to about it.

4 There's other good news. The first of which is you're
5 released for the week. This is the last jury trial that
6 we're going to have for the week. We've taken care of a
7 number of guilty pleas and that process for the rest of the
8 week so you won't be required to come back.

9 In addition to that you've earned a three year
10 exemption. If you're petitioned to participate in this
11 court within the next three years you can exercise an
12 exemption. Tell them you served as a juror on this
13 particular case, tell them who presided and what it was
14 about and you would be able to exercise an exemption in that
15 regard. It does not apply to Federal Court, Magistrate's
16 Court or Municipal Court. But as far as this court you've
17 earned an exemption.

18 I don't know whether y'all have any questions about the
19 process or any questions in general. If you do I'll be
20 happy to answer them.

21 Does anybody have any questions?

22 I do want to let you know that you're going to be paid
23 handsomely for your services. I think in Aiken County they
24 pay \$20 a day. They do not pay mileage. That's a small
25 token of our appreciation on behalf of the State of South

Barry Eugene Lafavor 6/26/13

294

1 Carolina. It's truly a service and thank you for that.

2 Your job as the trier of fact was to resolve the
3 factual disputes and y'all have done that. I've explained
4 that my job was to preside over the case, rule on the
5 evidentiary matters and to charge you the law. In addition
6 to that the State of South Carolina I'm responsible for
7 sentencing the defendant. There are some states that allow
8 the jury to impose the sentence, but South Carolina is not
9 one of those. That's one of the jobs they put on the
10 arbiter of the law. You are welcome to participate in -- or
11 to observe that. It's a public forum. I'm going to excuse
12 you momentarily. Those of you who have other things that
13 you need to tend to, it's certainly not necessary that you
14 do that, but if you are interested to find out about the
15 sentence you can watch the process. You can -- rather than
16 going out this door you can go and have a seat in the
17 audience if you'd like to do so.

18 Your duty has been discharged. Thank you very much.

19 When will they receive their check, Ma'am Clerk?

20 THE CLERK: She will probably mail them out --

21 THE COURT: The check's in the mail.

22 Thank you so much. And y'all have a good evening.

23 (Jury out at 2:05 p.m.)

24 THE COURT: Y'all may come forward. Mr. Routzong, if
25 you'll bring the defendant forward, and glad to hear from

Barry Eugene Lafavor 6/26/13

295

1 the state with regard to sentencing.

2 MS. AGNEW: Your Honor, the facts of this case, the only
3 additional information the state would provide is the
4 defendant's criminal history.

5 He's got a conviction from 1982 for burning a building
6 other than a dwelling. A conviction from 1982 for obtaining
7 good by false pretenses. A conviction from 1986 for
8 enticing an enrolled child from attending school. Nine
9 convictions for fraudulent check in 1987. Three convictions
10 for obtaining goods by false pretenses in 1987. Five
11 convictions for fraudulent check in 1989. Three convictions
12 for forgery in 1993, and a conviction for solicitation to
13 commit murder in 2003.

14 THE COURT: Mr. Routzong, be glad to hear from you and
15 Mr. Lafavor and anybody who would like to speak on his
16 behalf.

17 MR. ROUTZONG: Please the Court, Your Honor, I think the
18 Court's already heard a lot about Mr. Lafavor's background.
19 His age is 52 years old. Of course, we disagree with the
20 verdict, Your Honor. We'd ask the Court to be as lenient as
21 possible. I know the Court's heard the facts of this case
22 and obviously he's been found guilty.

23 THE COURT: Mr. Lafavor, anything that you'd like to
24 say? It's not necessary that you speak, but if you'd like
25 to I'd be glad to hear from you?

Barry Eugene Lafavor 6/26/13

296

1 MR. LAFAVOR: Sir, the jury done what they done, but I'm
2 still not guilty. I'll throw myself on the mercy of your
3 Court.

4 MR. ROUTZONG: We would ask the Court to consider
5 concurrent sentence.

6 He's been in our detention center for 253 days, Your
7 Honor.

8 THE COURT: How much?

9 MR. ROUTZONG: 253 days, Your Honor..

10 THE COURT: Mr. Lafavor, on Indictment 2013-GS-02-00590,
11 criminal sexual conduct with a minor, third degree. The
12 sentence of the Court is you be committed to the State
13 Department of Corrections for a period of 15 years, provided
14 upon the service of 10 years, balance suspended with five
15 years probation. Sentence to run concurrent. Credit for
16 253 days. No contact with the victim or the family. That
17 means on personal contact, no telephone contact, no email,
18 no text, no social media. If you do that that is going to
19 be a violation of this order. Sex offender registry. Sex
20 offender counseling upon your release. No umpiring in
21 softball or baseball league. Mandatory GPS, lifetime GPS.

22 With regard to Indictment 2013-GS-02-00593, criminal
23 sexual conduct with a minor, third degree. The sentence of
24 the Court is that you be committed to the State Department
25 of Correction for a period of 15 years, provided upon the

Barry Eugene Lafavor 6/26/13

297

1 service of 10 years, five years probation. Sentences run
2 concurrent. Credit for 253 days. Same terms and conditions
3 of probation.

4 Good luck to you.

5 MR. ROUTZONG: Thank you, Your Honor.

6 Your Honor, I did have a motion, if the Court would
7 hear it?

8 THE COURT: I'll be glad to hear any motions by either
9 side.

10 MR. ROUTZONG: Your Honor, at this time the defendant
11 moves for a new trial for the following reasons, Your Honor.
12 Your Honor, we believe the inflammatory remarks by the state
13 said in front of the jury, there is no curative instruction
14 sufficient. I know the Court did give a curative
15 instruction, but the remarks made by the state inflamed the
16 prejudices and the passions of the jury by specifically
17 telling the jury that they should be mad at the accusers mom
18 and step-mom in a case involving very young children. And
19 by doing that that could only excite the passions of the
20 jury and extinguish any kind of rational view of the
21 evidence and replacing reason with prejudice and
22 indignation, Your Honor. In addition there are prior
23 motions that objections that --

24 THE COURT: Well, let's deal with them one at a time.
25 I'll be glad to hear from the state with regard to the

1 allegations of improper argument.

2 MS. AGNEW: Your Honor heard the state's argument at the
3 time of the original objection motion for mistrial. The
4 state will go on the record -- the issue of credibility in
5 this case and the believability of the girls who testified.
6 Your Honor, gave a curative instruction which we believe was
7 proper to instruct the jury to disregard that and consider
8 the evidence and only the evidence.

9 THE COURT: All right. The only thing I would have to
10 add to that is that I do, indeed, find it was an improper
11 argument, but I don't think it tainted the proceedings in
12 any way, shape or form. I think that the jury took a
13 considerable amount of time. The record will reflect how
14 long it was that they deliberated. They took a tremendous
15 amount of time and it was apparent from their deliberations
16 they just didn't go in and act in a very passionate and
17 prejudice way. They found your client not guilty on a
18 number of offenses, some of the more serious of the
19 offenses, which would be an indication -- of course, we
20 don't now what transpired in the jury room, but it would be
21 an indication that they were motivated by the evidence or
22 the lack thereof. They rendered a verdict that speaks the
23 truth. So your motion with regard to improper argument
24 motion for the renewal of a mistrial, request for a new
25 trial is denied.

Barry Eugene Lafavor 6/26/13

299

1 MR. ROUTZONG: Your Honor, in addition we'd ask that a
2 new trial be granted based on prior motions and objections.
3 We believe, Your Honor, the defendant ought to be entitled
4 to a new trial because the Court did not grant a continuance
5 on the basis that the defendant did not have an opportunity
6 to fully examine DSS records. I know Your Honor has heard
7 some of the arguments on this, but some things came out at
8 trial as well and I think it should be place on the record.
9 I know that the Court heard from the solicitor as to her
10 opinion as to whether or not there was relevant material and
11 additionally, I think, Judge Early's review of it was
12 mentioned as well.

13 Your Honor, I don't think that's sufficient enough
14 information for the Court to rely on to determine whether
15 what is relevant and how much relevant material -- I that's
16 in the purview of the defense and then defense gets to
17 investigate the case and present evidence if they can and
18 Your Honor has the, of course, has the right or
19 responsibility to admit it or not admit it, and just to be
20 more specific, Your Honor, I believe -- I discovered that
21 there were missing pages. I'm not sure if the solicitor or
22 Judge Early in his review makes any notes of that. That's
23 not definitive, they could have been misplaced, as Your
24 Honor knows. I didn't have the opportunity -- I didn't feel
25 like I had the opportunity to fully go through all that.

Barry Eugene Lafavor 6/26/13

300

1 THE COURT: When did you discover there were -- when did
2 you come about this revelation there were pages missing?

3 MR. ROUTZONG: I began --

4 THE COURT: Was it Thursday?

5 MR. ROUTZONG: No, sir. I began to actually look at the
6 DSS records on Sunday night.

7 THE COURT: But you had the papers on Thursday, correct?

8 MR. ROUTZONG: That's correct, Your Honor, but I wanted
9 to ask the Court to consider the fact that I had two trials
10 to prepare for. As the Court knows there's always thing to
11 be done, there's always last minute things to be done and I
12 had the first two trials on the docket for this term, and
13 even in spite of that, Your Honor, if I did find relevant
14 information -- information that could have required expert
15 testimony or even just a DSS person. To require defense
16 counsel in one and a-half days, that would be the remainder
17 of Thursday, Thursday afternoon and Friday to make that
18 determination, get a subpoena, get it filed and then served.
19 An expert -- an expert would have been out of the question
20 because an expert, as the Court knows, can't be gotten in
21 that amount of time. And in this particular case, Your
22 Honor, in the DSS records there's some evidence of Minor 1
23 burned her sister with a lighter. Our experience in
24 juvenile court, as the Court probably already knows sexual
25 abuse and playing with fire, those things often go hand in

Barry Eugene Lafavor 6/26/13

301

1 hand.

2 THE COURT: Is that exculpatory in inculpatory?

3 MR. ROUTZONG: Well, Your Honor, it would be exculpatory
4 in this case because those events happened before Mr.
5 Lafavor had made any contact with them. In addition, Your
6 Honor, as the Court knows, allegations there was prior
7 sexual abuse.

8 THE COURT: Do you think an expert can look at the
9 behavior of a child and say by preponderance of the evidence
10 that sexual abuse caused them to play with fire?

11 MR. ROUTZONG: Your Honor, that would be precisely why
12 the defense would rely on an expert because I'm not
13 qualified to make that determination.

14 THE COURT: Okay. All right.

15 You know, you mentioned the logistics of getting the
16 DSS person here. Didn't -- were you here when I -- I'm sure
17 you were because the comment was directed to you. That is
18 you wanted DSS here I would send one of these deputies with
19 a subpoena when the subject came up. I told you I would get
20 them here.

21 MR. ROUTZONG: That's correct, Your Honor.

22 THE COURT: That is correct?

23 MR. ROUTZONG: Yes, sir.

24 THE COURT: We do know that according to the state she
25 said that she saw these documents although they're

Barry Eugene Lafavor 6/26/13

302

1 voluminous, most of it has absolutely nothing to do with
2 this case or the allegation, and you can look at the
3 groupings of papers and tell what's relevant as to this case
4 and after you take out all of the obviously irrelevant
5 documents the states indicates it only took a couple of
6 hours to go through it and you had it on Thursday didn't
7 you?

8 MR. ROUTZONG: Yes, sir.

9 THE COURT: All right. Very good.

10 Anything further?

11 MR. ROUTZONG: In that context, Your Honor, some
12 evidence came out in trial, for example, Children's Place,
13 an agent or a branch of DSS now. What we've heard from the
14 state is there was no mention of Mr. Lafavor in any of these
15 records. That's somewhat breathtaking Your Honor because
16 DSS took these children, at least the latter part of June,
17 the first part of July and these allegations had already
18 been made. And that calls into question, Your Honor,
19 whether or not we've actually gotten all the records. And
20 there is mention in the police incident report that Marilyn
21 Harris had -- who had been working with these children had
22 information and was going to turn it over to Investigator
23 Sievers and it's my understanding that she never did that.

24 THE COURT: All right. What do you have to say about
25 that?

Barry Eugene Lafavor 6/26/13

303

1 MS. AGNEW: Your Honor, with regard to that, Mr.
2 Routzong did subpoena Children's Place, if he's wanting
3 those records. These DSS records were taken in their
4 entirety, brought over from DSS by DSS's attorney, given
5 directly to the judge who then gave them directly to the
6 clerk's office to be sealed and copies. So he's got all the
7 records that exist in this case.

8 With regards to whether or not Mr. Lafavor's name was
9 mentioned in these records, the children weren't taken
10 because of Mr. Lafavor, they were taken because of the
11 health situation of the mother. That's why he wasn't listed
12 in those records.

13 With regard to the missing pages, that's an issue that
14 I guess he would have to take up with DSS. Intentionally
15 not giving all the records, would the judge -- I'm not sure,
16 but he's had these records since Thursday. The only thing
17 that became relevant at all during this case, the state
18 stipulated to and he was allowed to read it in evidence
19 directly from the DSS record.

20 THE COURT: All right.

21 Anything further, Mr. Routzong?

22 MR. ROUTZONG: In addition, Your Honor, in that context,
23 I would like to point out I actually had these things --
24 actually asked DSS by subpoena in early March -- I did that
25 precisely because I know it takes a long time and this delay

Barry Eugene Lafavor 6/26/13

304

1 was not the fault of the defendant. I believe the first
2 week of March I subpoenaed these records. The following
3 week DSS moved to quash the subpoena in family court. A
4 hearing was not held until May 21. Via email I received an
5 email from Adam Ness, Judge Early's clerk, saying that he
6 would not be finished with his review until June 17. We
7 didn't have the status conference until June 18, and then
8 copies were made by the clerk of court. This -- I'm going
9 through all this particularly, Your Honor, to demonstrate
10 that this is not my fault. This is prior -- this is a week
11 prior to this term of court. In addition, Your Honor,
12 there as some talk about this was a date certain. Your
13 Honor, June 10 was the date we had talked about doing this
14 trial and that arose out of a bond court hearing. I'm sorry
15 -- out of a hearing to reduce bond for Mr. Lafavor. Mr.
16 Lafavor would gladly have waived that right, waived that
17 particular day if that were a date certain. My argument,
18 Your Honor, is that it wasn't a date certain. And the state
19 also told the Court that I got a continuance on June 17,
20 which was the next term of court. Obviously, Your Honor,
21 June 17 was the day that Judge Early's clerk told us we were
22 going to actually review the records and that's a non-jury
23 term of court. I didn't receive them until the 18. That
24 can't be in any way construed as me or the defendant asking
25 and getting a continuance.

Barry Eugene Lafavor 6/26/13

305

1 THE COURT: Anything further?

2 MR. ROUTZONG: In addition, Your Honor, I did make a
3 motion to have Minor 1 evaluated by the Court. I know the
4 Court did find her to be competent. However, Your Honor, I
5 believe that out of this court and out of this testimony
6 there were other potential issues that the defendant could
7 have discovered pursuant to the evaluation that would be
8 evidence of prior abuse problems with veracity and the
9 indication that there were prior abuse and remember the
10 house belonging to these children and the mother --

11 THE COURT: Don't you think that it was brought out in
12 evidence that there was prior abuse? I think everybody
13 conceded to that. I think there were allegations of prior
14 abuse.

15 MR. ROUTZONG: Yes, Your Honor, but without expert
16 testimony that may have --

17 THE COURT: I think everybody including the relatives of
18 the children said they lie and stole.

19 MR. ROUTZONG: Your Honor, the issue would have been
20 what an expert could have told us that the effect the prior
21 abuse, clearly that happened before Mr. Lafavor had any
22 contact with these children, the effects on Minor 1 that
23 might have motivated her to, frankly, tell untruths in
24 court.

25 And lastly, Your Honor, I believe the failure to grant

Barry Eugene Lafavor 6/26/13

306

1 a continuance hampered our ability to fully build the
2 defense and to fully be prepared.

3 THE COURT: And you're protected on the record in all
4 respects.

5 Anything further from the state?

6 MS. AGNEW: No, Your Honor.

7 THE COURT: Anything further from defense?

8 MR. ROUTZONG: No, Your Honor.

9 THE COURT: All right. Your motions are noted. You're
10 protected on the record, however, they are denied. Good
11 luck to you.

12 (This proceeding was concluded.)
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESSES

Aiken County Sheriff

Kim Sievers

Law Enforcement Case #: 12-024433

ALA

ARREST WARRANT NUMBER

2012A0210900067

FILED April 4, 2013Richard
CCCP & G.S. 83
Richard M. Bell**ACTION OF GRAND JURY**True BillRonnie M. Hall

Foreperson of Grand Jury

Date: April 4, 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013GS0200586**The State of South Carolina****County of Aiken****COURT OF GENERAL SESSIONS****APRIL TERM 2013****THE STATE****vs.****BARRY E. LAFAVOR****CDR #: 0396****Indictment for****CRIMINAL SEXUAL CONDUCT WITH A
MINOR SECOND DEGREE****§ 16-03-0655(2)****J. STROM THURMOND, SOLICITOR**

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR SECOND DEGREE

§ 16-03-0655(2)

At a Court of General Sessions, convened on April 15, 2013, the Grand Jurors of Aiken County present upon their oath:

That BARRY E. LAFAVOR did in Aiken County at divers times on or between July 4, 2011 and May 1, 2012, commit the crime of Criminal Sexual Conduct With A Minor In The Second Degree, in that the Defendant did commit a sexual battery upon
Minor 1 a minor who was at least eleven years of age but less than fourteen years of age at the time of the incident. All in violation of §16-3-655 of the Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

27
WITNESSES

Aiken County Sheriff

Kim Sievers

Law Enforcement Case #: 12-024433

DOCKET NO. 2013GS0200587

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

APRIL TERM 2013

ARREST WARRANT NUMBER

2012A0210900068

FILED April 4, 2013
[Signature]
CLERK OF COURT
[Signature]
Deputy Clerk

THE STATE
vs.

BARRY E. LAFAVOR

ACTION OF GRAND JURY

True Bill
Ronnie M. Hall

Foreperson of Grand Jury
Date: April 4, 2013

VERDICT

Foreperson of Petit Jury
Date:

CDR #: 2999

Indictment for

CRIMINAL SOLICITATION OF A MINOR

§ 16-15-0342

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)

INDICTMENT FOR
 CRIMINAL SOLICITATION OF A MINOR
 § 16-15-0342

At a Court of General Sessions, convened on April 15, 2013, the Grand Jurors of Aiken County present upon their oath:

That BARRY E. LAFAVOR did in Aiken County on or between July 4, 2011 and May 1, 2012, commit the crime of Criminal Solicitation Of A Minor in that the Defendant, who was eighteen (18) years of age or older at the time of the incident, did knowingly contact or communicate with, or attempt to contact or communicate with Minor 1, a person who is under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing Minor 1 to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of Minor 1. All in violation of Section 16-15-342, Code of Laws of South Carolina (1976), as amended.

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


 J. STROM THURMOND, SOLICITOR

WITNESSES

Alken County Sheriff

Kim Slevers

Law Enforcement Case #: 12-024433

DOCKET NO. 2013GS0200589**The State of South Carolina****County of Alken**

ALA

COURT OF GENERAL SESSIONS**ARREST WARRANT NUMBER****APRIL TERM 2013**

2012A0210900069

FILED

April 4, 2013L. J. Anderson
CLERK P.A.C.S.L. J. Anderson
CLERK P.A.C.S.**THE STATE**

vs.

BARRY E. LAFAVOR**ACTION OF GRAND JURY**True BillRennie M. Hall

Foreperson of Grand Jury

Date: April 4, 2013

VERDICT**CDR #: 3661****Indictment for****CRIMINAL SEXUAL CONDUCT WITH A
MINOR THIRD DEGREE****§ 16-03-0655(C)**

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

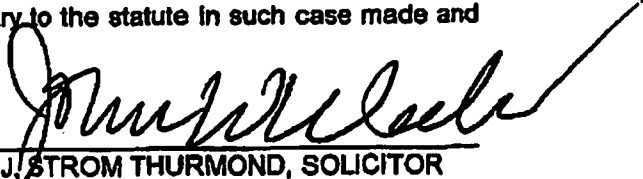
INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR THIRD DEGREE

§ 16-03-0655(C)

At a Court of General Sessions, convened on April 15, 2013, the Grand Jurors of Aiken County present upon their oath:

That BARRY E. LAFAVOR, being over the age of fourteen (14) years, did in Aiken County on or about July 4, 2011, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of ^{Minor 1} , a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-03-655 of the Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Kim Sievers

Law Enforcement Case #: 12-024433

DOCKET NO. 2013GS0200590**The State of South Carolina**

County of Aiken

ALA

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

APRIL TERM 2013

2012A0210900070

FILED

April 4, 2013

J. St. Leonard
JCCP & GS

J. St. Leonard

THE STATE
VS.

BARRY E. LAFAVOR

ACTION OF GRAND JURY

True Bill

Ronnie M. Hall

Foreperson of Grand Jury
Date: April 4, 2013

VERDICT

CDR #: 3661

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR THIRD DEGREE

§ 16-03-0655(C)

Foreperson of Petit Jury
Date:J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR THIRD DEGREE

§ 16-03-0655(C)

At a Court of General Sessions, convened on April 15, 2013, the Grand Jurors of Aiken County present upon their oath:

That BARRY E. LAFAVOR, being over the age of fourteen (14) years, did in Aiken County at divers times on or between July 5, 2011 and May 1, 2012, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of Minor 1, a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-03-655 of the Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Kim Sievers

Law Enforcement Case #: 12-024433

DOCKET NO. 2013GS0200593**The State of South Carolina**

County of Aiken

ALA

ARREST WARRANT NUMBER

2012A0210200607

FILED April 4, 2013

[Signature]
 DEPUTY CLERK
[Signature]
 DEPUTY CLERK

COURT OF GENERAL SESSIONS

APRIL TERM 2013

THE STATE

vs.

BARRY E. LAFAVOR**ACTION OF GRAND JURY***True Bill**Ronnie M. Hall*

Foreperson of Grand Jury

Date: April 4, 2013

VERDICT

Foreperson of Petit Jury

Date:

CDR #: 3661

Indictment for**CRIMINAL SEXUAL CONDUCT WITH A
MINOR THIRD DEGREE**

§ 16-03-0655(C)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

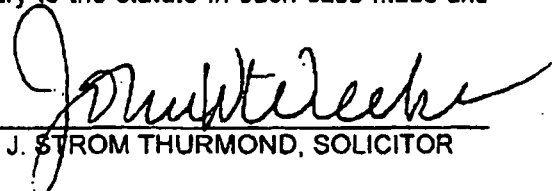
INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR THIRD DEGREE

§ 16-03-0655(C)

At a Court of General Sessions, convened on April 15, 2013, the Grand Jurors of Aiken County present upon their oath:

That BARRY E. LAFAVOR, being over the age of fourteen (14) years, did in Aiken County at divers times on or between July 4, 2011 and May 1, 2012, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of Minor 2, a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-03-655 of the Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken
STATE VS.
Barry E LaffavorINDICTMENT/CASE#: 2013GS0200590A/W#: 2012A0210900070Date of Offense: 7/4/2011 - 5/1/2012S.C. Code §: 16-03-0655(C)CDR Code #: 3661

AKA: _____

Race: _____ Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____, SC

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted. ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Agnew, Ashley Lane 80176
SC Bar#

Defendant

71861
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 ~~days/months~~ years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ _____; provided that upon the service of 10 ~~days/months~~ years and/or paymentof \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 25 30 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ 500.00§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(I) (Vehicle Assessment) \$40/ca \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 18.90TOTAL \$ 648.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: - no contact w/ victim or family- sex offender registry- no alcohol consumption- no swimming in softball or football league☒ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
 STATE VS.
Barry E Lafavor

AKA: _____
 Race: _____ Sex: M Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC) ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's Initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sherry Langley 80176 Defendant Michael Miller 71861
 Agnew, Ashley Lane SC Bar# Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012A0210900070
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 25 3 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0200593

A/WH#: 2012A0210200607

Date of Offense: 7/4/2011 - 5/1/2012

S.C. Code § : 16-03-0655(C)

CDR Code #: 3661

SENTENCE SHEET 0-15 years

☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs)

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC) ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's Initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sherry Langley 80176 Defendant Michael Miller 71861
 Agnew, Ashley Lane SC Bar# Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012A0210900070
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 25 3 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

PTUP _____ days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

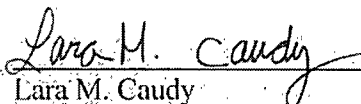
Judge Code: 2190

Sentence Date: 6-22-13

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."

May 18th, 2016


Lara M. Caudy
Appellate Defender

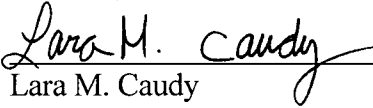
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

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."

May 18th, 2016


Lara M. Caudy
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