

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

MAY 01 2017

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Doyet A. Early, III, Trial Judge
The Honorable Robert E. Hood, Post-Conviction Judge

Appellate Case No. 2015-CP-001459

Eric VanCleave.....Applicant,

v.

State of South Carolina.....Respondent.

APPENDIX VOLUME I

ALAN WILSON
Attorney General

C. RAUCH WISE
305 Main Street
Greenwood, SC 29646
(864) 229-5010

JULIE COLEMAN
SC Deputy Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEY FOR APPLICANT

INDEX

Index	i
Sentencing Sheets	1
Warrants and Indictments	5
Pre-Trial Motions	29
Transcript of Trial Testimony	55
Trial Exhibits	395
Final Brief of Appellant	423
Final Brief of Respondent	447
The Affirmed Opinion of the SC Court of Appeals	476
Petition for Rehearing	480
Order Denying Petition for Rehearing	487
Application for Post-Conviction Relief	488
Return	495
PCR Hearing	500
Order of Dismissal	615
Motion to Alter or Amend Judgment	633
Order Denying Applicant's Motion to Alter or Amend Judgment	638
Notice of Intent to Appeal	639

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0600076
 A/W#: K338463
 Date of Offense: 4/1/2005 - 5/17/2006
 S.C. Code § : 16-03-0655
 CDR Code #: 0397

SENTENCE SHEET

0 to 20 yrs

STATE OF SOUTH CAROLINA

COUNTY OF Barnwell
 STATE VS.
 Eric Vancleave

AKA:

Race: Sex: M Age: 35

DOB: SS#:

Address:

City, State, Zip: WEST COLUMBIA, SC 29170

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Criminal sexual conduct with minor - victim under 16 yrs of age - Second degree

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655 of the S.C. Code of Laws, bearing CDR Code # 0397
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45

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: 74983 Defendant RRL Attorney for Defendant 6145 SC Bar#

Ringler, Susanna Marie

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____ Obtain GED ☐

Payment Terms: _____ Attend Voc. Rehab. or Job Corp. _____

☐ Set by SCDPPPS _____ May serve W/E beginning _____

Recipient: _____ Substance Abuse Counseling ☐

*Fine: \$ _____ Random Drug/Alcohol testing ☐

§ 14-1-206 (Assessments 107.5 %) \$ _____ Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 pmts. of \$ _____ beginning

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ STATE OF SOUTH CAROLINA

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ paid to _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ I, Rhonda D. McElveen, Clerk of Court for Barnwell County,

Proviso 47.9 (Public Def/Prob) \$500 \$ _____ South Carolina do hereby certify that the foregoing

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00 constitutes a true and correct copy of the original

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____ documents which have been filed in my office.

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____ Clerk of Court, Barnwell County, SC

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____ By: SR Date: 4-2-13

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00 ☐ Appointed PD or appointed other counsel,

3% to County (if paid in installments) \$ 3.90 § 47.12 requires \$500 be paid to Clerk

TOTAL \$ 133.90 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code: 0136

Sentence Date: 4-2-13

STATE OF SOUTH CAROLINA

COUNTY OF Barnwell
STATE VS.Eric N Vancleave

AKA: _____

Race: _____ Sex: M Age: 35

DOB: _____ SS#: _____

Address: _____

City, State, Zip: WEST COLUMBIA, SC 29170

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Lewd Act, committing or attempting lewd act upon child under 16in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Ringler, Susanna Marie 74983 SC Bar# Defendant Attorney for Defendant 6145 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 _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013 GS-06-76
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk: Rhonda McShane
Court Reporter: Lisa Darcourt

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0600077A/W#: K338467Date of Offense: 4/1/2005 - 5/17/2006S.C. Code §: 16-15-0140CDR Code #: 2468SENTENCE SHEET 0 to 15 yrs☒ CONVICTED OF or ☐ PLEADS

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 \$ _____Other: I, Rhonda D. McShane, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.By: Rhonda D. McShane Date: 4-5-13

XL2PS13679 RED

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge: 7002 Earls
Judge Code: 0136
Sentence Date: 4-2-13

STATE OF SOUTH CAROLINA

COUNTY OF Barnwell
STATE VS.Eric Vancleave

AKA: _____

Race: _____ Sex: M Age: 35

DOB: _____ SS#: _____

Address: _____

City, State, Zip: WEST COLUMBIA, SC 29170

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault and battery of a high and aggravated nature (ABHAN)in violation of § Common Law of the S.C. Code of Laws, bearing CDR Code # 0013
☒ 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: Ringler, Susanna Marie 74983 SC Bar# Defendant R.T.M. Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013 GS-06-76
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)		\$3.90
TOTAL		\$133.90

Clerk of Court/ Deputy Clerk: Rhonda D. McElveenCourt Reporter: Lisa Dawson

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0600078A/W#: K338465Date of Offense: 5/27/2006 - 5/29/2006S.C. Code §: Common LawCDR Code #: 0013

SENTENCE SHEET

☒ CONVICTED-OF or ☐ PLEADS

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 _____

Other: Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.By: Rhonda D. McElveen Clerk of Court, Barnwell County, SCDate: 4-5-13☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 0136Sentence Date: 4-2-13

STATE OF SOUTH CAROLINA

COUNTY OF Barnwell
STATE VS.Eric Vancleave

AKA: _____

Race: _____ Sex: M Age: 35

DOB: _____ SS#: _____

Address: _____ RT _____

City, State, Zip: WEST COLUMBIA, SC 29170

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Criminal sexual conduct - Third degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0600079A/W#: K338461Date of Offense: 5/27/2006 - 5/29/2006S.C. Code §: 16-03-0654CDR Code #: 0162

SENTENCE SHEET

0 to 10 yrs☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0654 of the S.C. Code of Laws, bearing CDR Code # 0162
☒ 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: _____

Ringer, Susanna MarieSC Bar# 74983

Defendant

Attorney for Defendant

SC Bar# 6155WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years.
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013 GS-06-76
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

Clerk of Court/Deputy Clerk

Rhonda McElveen

Court Reporter:

Lisa Davenport

Presiding Judge

Judge Code: 0136Sentence Date: 4-2-13☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.I, Rhonda McElveen, Public Defender for the State of South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

Clerk of Court, Barnwell County, SC

By: Rhonda McElveen Date: 4-2-13

XL2-PS13675 RED

WITNESSES

State Law Enforcement Division

Off Croft

Law Enforcement Case #: 32-10-0104

SMR

ARREST WARRANT NUMBER

338463

ACTION OF GRAND JURY

True Bill

Ryan A. [Signature]

2-25-13

Representative of Grand Jury
Date: February 25, 2013

VERDICT

Guilty
[Signature]
4-2-13

Representative of Petit Jury
e:

DOCKET NO. 2013GS0600076

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

THE STATE
vs.

ERIC VANCLEAVE

CDR #: 0397

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH MINOR

§ 16-03-0655

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

I, Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

[Signature]
Clerk of Court, Barnwell County, SC
By: [Signature] Date: 4-5-13

XL2-PS10679 RED

STATE OF SOUTH CAROLINA)

COUNTY OF BARNWELL)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH MINOR

§ 16-03-0655

At a Court of General Sessions, convened on February 25, 2013, the Grand Jurors of Barnwell County present upon their oath:

That **ERIC VANCLEAVE**, being over the age of eighteen (18) years, did in Barnwell County, South Carolina, on or between April 1, 2005 and May 17, 2006, engage in sexual battery with the victim, **Victim 1**, who was at least fourteen (14) years of age but who was less than sixteen (16) years of age and the defendant was in a position of familial, custodial, or official authority to coerce the victim to submit and/or the defendant was older than the victim. All in violation of §16-3-655, *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

ITNESSES

ate Law Enforcement Division

ff Croft

iw Enforcement Case #: 32-10-0104

SMR

ARREST WARRANT NUMBER

338467

CTION OF GRAND JURY

True Bill

Ryan A. [Signature]

2-25-13
oreperson of Grand Jury
ate: February 25, 2013

VERDICT

Guilty
[Signature]
4-2-13

oreperson of Petit Jury.
ate:

DOCKET NO. 2013GS0600077

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

THE STATE
vs.

ERIC VANCLEAVE

CDR #: 2468

Indictment for

LEWD ACT UPON A CHILD

§ 16-15-0140

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

[Signature]
Clerk of Court, Barnwell County, SC.
By: [Signature] Date: 4-5-13

XL2-PSI3675 RED

STATE OF SOUTH CAROLINA)

COUNTY OF BARNWELL)

INDICTMENT FOR
LEWD ACT UPON A CHILD

§ 16-15-0140

At a Court of General Sessions, convened on February 25, 2013, the Grand Jurors of Barnwell County present upon their oath:

That **ERIC VANCLEAVE**, being over the age of fourteen (14) years, did in Barnwell County on or between April 1, 2005 and May 17, 2006, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of Victim 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 he or such child. All in violation of §16-15-140 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

State Law Enforcement Division

Jeff Croft

Law Enforcement Case #: 32-10-0104

SMR

ARREST WARRANT NUMBER

338465

ACTION OF GRAND JURY

10

True Bill

Ryan A. [Signature]

2-25-13

Foreperson of Grand Jury
Date: February 25, 2013

VERDICT

Guilty
[Signature]
4-2-13

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS0600078

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

THE STATE
vs.

ERIC VANCLEAVE

CDR #: 0013

Indictment for

ASSAULT AND BATTERY OF A HIGH
AND AGGRAVATED NATURE

Common Law

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

I, Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

[Signature]
Clerk of Court, Barnwell County, SC

By: [Signature] Date: 4-5-13

XL2-FS13679 RED

STATE OF SOUTH CAROLINA)

COUNTY OF BARNWELL)

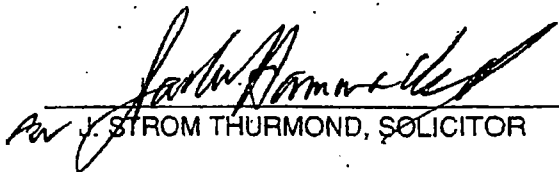
INDICTMENT FOR
ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE

Common Law

At a Court of General Sessions, convened on February 25, 2013, the Grand Jurors of Barnwell County present upon their oath:

That **ERIC VANCLEAVE** did in Barnwell County, South Carolina on or between May 27, 2006 and May 29, 2006, commit an unlawful act of violent injury to the person of **Victim 1**, accompanied by the following circumstance(s) of aggravation: great disparity in the physical conditions of the parties and/or great disparity in the ages of the parties, and/or great disparity in the sizes of the parties and/or the act was committed for the purposeful infliction of shame and disgrace, in violation of the Common Laws of the State of South Carolina.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

State Law Enforcement Division

Jeff Croft

Law Enforcement Case #: 32-10-0104

SMR

ARREST WARRANT NUMBER

338461

ACTION OF GRAND JURY

True Bill

Ryan A. [Signature]

2-25-13

Coreperson of Grand Jury
Date: February 25, 2013

VERDICT

Guilty
James B. [Signature]
4-2-13

Coreperson of Petit Jury
Date:

DOCKET NO. 2013GS0600079

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

**THE STATE
vs.**

ERIC VANCLEAVE

CDR #: 0162

Indictment for

CRIMINAL SEXUAL CONDUCT

§ 16-03-0654

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

Rhonda D. McElveen
Clerk of Court, Barnwell County, SC
By: *JR* Date: *4-5-13*

XL2-FS13675 RFD

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)

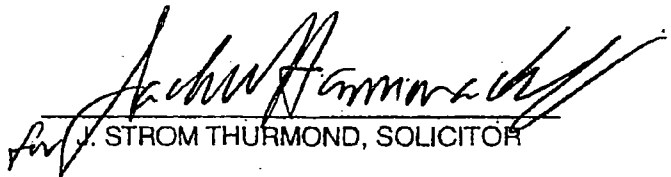
INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT

§ 16-03-0654 .

At a Court of General Sessions, convened on February 25, 2013, the Grand Jurors of Barnwell County present upon their oath:

That **ERIC VANCLEAVE** did in Barnwell County, on or between May 27, 2006 and May 29, 2006, willfully and unlawfully commit the offense of criminal sexual conduct in the third degree by engaging in sexual battery with the victim, **Victim 1**, under any one or more of the following circumstances: the actor used force or coercion to accomplish the sexual battery in the absence of aggravating circumstances; and/or the actor knew or had reason to know that the victim was mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery. All in violation of §16-3-654 of the Code of Laws of South Carolina (1976), as amended.

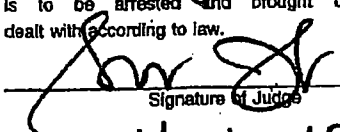
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

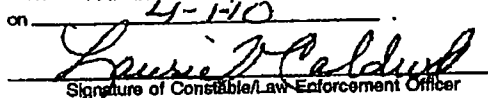

J. STROM THURMOND, SOLICITOR

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

ARREST WARRANT
K- 338461
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
BARNWELL COUNTY
THE STATE
against

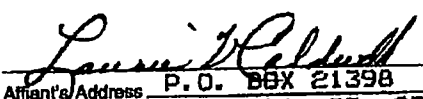
VANCLEAVE, ERIC
Address: _____
WEST COLUMBIA, SC 29170
Phone: _____ SSN: _____
Sex: _____ Race: _____ Height: **5'05** Weight: **250**
DL State: _____ DL#: **7253832**
DOB: _____ Z _____ Agency ORI#: _____
Prosecuting Agency: _____
Prosecuting Officer: _____
Offense: **SEX/CRIM SEX COND W/MINOR**
11-14 YOA 2ND DEGREE Offense Code: **0396**
Code/Ordinance Sec: **16-03-0655(2)**

This Warrant is CERTIFIED FOR SERVICE in the
☒ County/ ☐ Municipality of _____
The accused
is to be arrested and brought before me to be
dealt with according to law.
 (L.S.)
Signature of Judge
Date: **4-1-10**

RETURN
A copy of this arrest warrant was delivered to
defendant **VANCLEAVE, ERIC**
on **4-1-10**

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
L. J. HOLLAND
P O BOX 1205
BARNWELL, SC 29812

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
BARNWELL COUNTY)
AFFIDAVIT
Personally appeared before me the affiant **S. A. CALDWELL** who
being duly sworn deposes and says that defendant **VANCLEAVE, ERIC**
did within this county and state on **03/30/02** violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **BARNWELL**)
in the following particulars:
DESCRIPTION OF OFFENSE: **SEX/CRIM SEX COND W/MINOR 11-14 YOA 2ND DEGREE**
16-03-0655(2)
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
ON OR ABOUT 3/30/2002 DEF. ERIC N. VANCLEAVE; DID ENGAGE IN SEXUAL BATTERY
WITH A MALE CHILD WHO WAS 12 YRS OF AGE WHILE CAMPING IN THE DEFENDANT'S
CAMPER. THE SEXUAL BATTERY CONSISTED OF THE DEF. PENETRATING THE CHILD'S
ANAL OPENING WITH HIS PENIS AND THE DEF. PERFORMING ORAL SEX ON THE CHILD.
THE INCIDENT OCCURED AT THE BARNWELL STATE PARK, 223 STATE PARK RD,
BLACKVILLE SC 29817 (BARNWELL COUNTY). THE VICTIM CAN ARTICULATE THAT THIS
HAPPENED ON AN OVERNIGHT CAMPING TRIP THE FRIDAY AND SAT. BEFORE EASTER
SUNDAY 2002. OTHER WITNESSES CAN ATTEST TO THE FACTS OF THE DATE AND TRIP.

Signature of Affiant 
Affiant's Address **P.O. BOX 21398**
COLUMBIA, SC 29221
Affiant's Telephone **803 896-7250 803 609-3283**

ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on **03/30/02** defendant **VANCLEAVE, ERIC**
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of **BARNWELL**) as set forth below:
DESCRIPTION OF OFFENSE: **SEX/CRIM SEX COND W/MINOR 11-14 YOA 2ND DEGREE**
16-03-0655(2)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me)
on **MARCH 30, 2010**)
(L.S.))
Judge's Address **P O BOX 1205**
BARNWELL, SC 29812
Signature of Issuing Judge)
Judge Code: **957**)
Judge's Telephone **803 641-1035**
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit
L. J. HOLLAND
ORIGINAL

ARREST WARRANT

K- 338463

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY

THE STATE

against

VANCLEAVE, ERIC

Address:

WEST COLUMBIA, SC 29170

Phone:

SSN:

Sex M Race W Height: 5'05 Weight: 250DL State: DL#7253832DOB 06/11/1977 Agency ORI#:

Prosecuting Agency:

Prosecuting Officer:

Offense: SEX/CRIM SEX COND W/MINOR11-14 YOA 2ND DEGREE Offense Code: 0396Code/Ordinance Sec: 16-03-0655(2)

This Warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

4-1-10

RETURN

A copy of this arrest warrant was delivered to

defendant VANCLEAVE, ERIC

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

L. J. HOLLAND

P O BOX 1205

BARNWELL, SC 29812

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY

AFFIDAVIT

Personally appeared before me the affiant S. A. CALDWELL who
being duly sworn deposes and says that defendant VANCLEAVE, ERIC
did within this county and state on 04/11/04 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of BARNWELL)
in the following particulars:

DESCRIPTION OF OFFENSE: SEX/CRIM SEX COND W/MINOR 11-14 YOA 2ND DEGREE
16-03-0655(2)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

ON OR ABOUT 4/11/2004 DEF. ERIC N. VANCLEAVE, DID ENGAGE IN SEXUAL BATTERY
WITH A MALE CHILD WHO WAS 14 YRS OF AGE WHILE CAMPING IN THE DEFENDANT'S
CAMPER. THE SEXUAL BATTERY CONSISTED OF THE DEF. PENETRATING THE CHILD'S
ANAL OPENING WITH HIS PENIS AND THE DEF. PERFORMING ORAL SEX ON THE CHILD.
THE INCIDENT OCCURED AT THE BARNWELL STATE PARK, 223 STATE PARK RD,
BLACKVILLE SC 29817 (BARNWELL COUNTY). THE VICTIM CAN ARTICULATE THAT THIS
HAPPENED ON AN OVERNIGHT CAMPING TRIP.

OTHER WITNESSES CAN ATTEST TO THE FACTS OF THE DATE AND TRIP.

Signature of Affiant

S. A. Caldwell
P.O. BOX 21398

Affiant's Address

COLUMBIA, SC 29221

Affiant's Telephone

803 896-7250 803 609-3283

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 04/11/04 defendant VANCLEAVE, ERIC
did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of BARNWELL) as set forth below:

DESCRIPTION OF OFFENSE: SEX/CRIM SEX COND W/MINOR 11-14 YOA 2ND DEGREE
16-03-0655(2)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on MARCH 30, 2004

Judge's Address

P O BOX 1205

BARNWELL, SC 29812

Judge's Telephone

803 541-1035

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Signature of Issuing Judge

Judge Code: 057

L. J. HOLLAND

ORIGINAL

ARREST WARRANT

K- 338465

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY

 THE STATE
against

VANCLEAVE, ERIC N.

Address: _____

WEST COLUMBIA, SC 29170

Phone: _____ SSN: _____

Sex: _____ Race: _____ Height: 5'05 Weight: 250

DL State: _____ DL#: _____

DOB: _____ Agency ORI#: _____

Prosecuting Agency: _____

Prosecuting Officer: _____

 Offense: SEX/LEWD ACT, COMMIT/ATTEMPT
LEWD ACT ON MINOR

Offense Code: 246B

Code/Ordinance Sec: 16-15-0140

 This Warrant is CERTIFIED FOR SERVICE in the
☒ County/ ☐ Municipality of

 The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date: 4-1-10

RETURN

 A copy of this arrest warrant was delivered to
defendant VANCLEAVE, ERIC N.
on 4-1-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 L. J. HOLLAND
P O BOX 1205
BARNWELL, SC 29812

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY

AFFIDAVIT

 Personally appeared before me the affiant SP. AGENT L. CALDWELL who
being duly sworn deposes and says that defendant VANCLEAVE, ERIC N.
did within this county and state on 03/30/02 violate the criminal laws of the

 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of BARNWELL)
in the following particulars:

 DESCRIPTION OF OFFENSE: SEX/LEWD ACT, COMMIT/ATTEMPT LEWD ACT ON MINOR
16-15-0140

 I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

 ON OR ABOUT 3/30/02, THE DEF. ERIC N. VANCLEAVE, DID FOR THE PURPOSE OF HIS
OWN SEXUAL GRATIFICATION, DID COMMIT A LEWD AND LASCIVIOUS ACT UPON A MINOR
MALE CHILD (AGE 12) UNDER THE AGE OF 16, WHILE CAMPING IN THE DEF'S CAMPER.
THE DEF. FONDLED THE CHILD'S PENIS BUTTOCKS, AND LEGS WITH THE INTENTION OF
AROUSING HIS OWN SEXUAL DESIRES. THE INCIDENT OCCURRED AT THE BARNWELL STATE
PARK, IN BARNWELL COUNTY. THE VICTIM CAN ARTICULATE THAT THIS HAPPENED ON AN
OVERNIGHT CAMPING TRIP THE FRI. AND SAT. BEFORE EASTER SUN 2002. OTHER
WITNESSES CAN ATTEST TO THE FACTS OF THE DATE AND TRIP.

Signature of Affiant

 Signature of Affiant
Affiant's Address PO BOX 21398

COLUMBIA, SC 29221

Affiant's Telephone 803 896-7250 803 609-3283

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
on 03/30/02 defendant VANCLEAVE, ERIC N.
did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of BARNWELL) as set forth below:

 DESCRIPTION OF OFFENSE: SEX/LEWD ACT, COMMIT/ATTEMPT LEWD ACT ON MINOR
16-15-0140

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on MARCH 30, 2010

Signature of Issuing Judge

Judge Code: 957

L. J. HOLLAND

ORIGINAL

Judge's Address P O BOX 1205

BARNWELL, SC 29812

Judge's Telephone 803 541-1035

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ARREST WARRANT

K- 338467

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY
THE STATE
against

VANCELEAVE, ERIC N.

Address: WEST COLUMBIA, SC 29170

 Phone: _____ SSN: _____
 Sex: M Race: W Height: 5'05" Weight: 250
 DL State: SC DOB: 7 Agency ORI#: _____
 Prosecuting Agency: _____
 Prosecuting Officer: _____
 Offense: SEX/LEWD ACT, COMMIT/ATTEMPT
LEWD ACT ON MINOR Offense Code: 246B
 Code/Ordinance Sec: 16-15-0140

 This Warrant is CERTIFIED FOR SERVICE in the
☒ County/ ☐ Municipality of _____ The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

Date: 4-1-10

RETURN

A copy of this arrest warrant was delivered to
defendant VANCELEAVE, ERIC N.on 4-1-10

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
 L. J. HOLLAND
 P O BOX 1205
 BARNWELL, SC 29812

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY

AFFIDAVIT

 Personally appeared before me the affiant SP. AGENT L. CALDWELL who
 being duly sworn deposes and says that defendant VANCELEAVE, ERIC N.
 did within this county and state on 04/11/04 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of BARNWELL)
 in the following particulars: SEX/LEWD ACT, COMMIT/ATTEMPT LEWD ACT ON MINOR
 DESCRIPTION OF OFFENSE: 16-15-0140

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:
 ON OR ABOUT 4/11/04 THE DEF. ERIC N. VANCELEAVE, DID FOR THE PURPOSE OF HIS
 OWN SEXUAL GRATIFICATION, DID COMMIT A LEWD AND LASCIVIOUS ACT UPON A MINOR
 MALE CHILD (AGE 14) UNDER THE AGE OF 16, WHILE CAMPING IN THE DEF'S CAMPER.
 THE DEF. FONDLED THE CHILD'S PENIS BUTTOCKS, AND LEGS WITH THE INTENTION OF
 AROUSING HIS OWN SEXUAL DESIRES. THE INCIDENT OCCURRED AT THE BARNWELL STATE
 PARK, IN BARNWELL COUNTY. THE VICTIM CAN ARTICULATE THAT THIS HAPPENED ON AN
 OVERNIGHT CAMPING TRIP.
 WITNESSES CAN ATTEST TO THE FACTS OF THE DATE AND TRIP.

Signature of Affiant

 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
BARNWELL

 Affiant's Address PO BOX 21398
COLUMBIA, SC 29221
 Affiant's Telephone 803 896-7250 803 609-3283

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 04/11/04 defendant VANCELEAVE, ERIC N.
 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of BARNWELL) as set forth below:
 DESCRIPTION OF OFFENSE: SEX/LEWD ACT, COMMIT/ATTEMPT LEWD ACT ON MINOR
16-15-0140

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

 Sworn to and subscribed before me
 on MARCH 30, 2010

Signature of Issuing Judge

 Judge Code: 957
 L. J. HOLLAND

ORIGINAL

WITNESSES

State Law Enforcement Division

L Caldwell

Law Enforcement Case #: 32-10-0104

ARREST WARRANT NUMBER

K338462

ACTION OF GRAND JURY

True Bill

Lesley Cleech

Foreperson of Grand Jury

Date: 9/30/10

VERDICT

12:56PM

Foreperson of Petit Jury

Date:

DOCKET NO. 2010GS0600272

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

OCTOBER TERM 2010

THE STATE

vs.

ERIC VANCLEAVE

Not Pros.
Convicted of other
charges

4-2-13

Susanna Ringler

CDR #: 0396

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR SECOND DEGREE

§ 16-03-0655(C)(3)

J. STROM THURMOND, SOLICITOR

17

020

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR SECOND DEGREE

§ 16-03-0655(C)(3)

At a Court of General Sessions, convened on October 2010, the Grand Jurors of Barnwell County present upon their oath:

That **ERIC VANCLEAVE** did in Barnwell County, South Carolina, on or about April 20, 2002, commit a non-consensual sexual battery upon Victim 1, a minor who was 13 years of age at the time of the incident and that the defendant, date of birth June 11, 1977, was older than the victim. All in violation of §16-3-655, *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

State Law Enforcement Division

L Caldwell

Law Enforcement Case #: 32-10-0104

LM

ARREST WARRANT NUMBER

K338464

ACTION OF GRAND JURY

True Bill

Kesley Creech

Foreperson of Grand Jury
Date: 9/25/10

VERDICT

12:56PM

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS0600273

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

OCTOBER TERM 2010

THE STATE

vs.

ERIC VANCLEAVE

Na. Pros.
Convicted of
other charges 4-2-13
Suzanne Ringer

CDR #: 0397

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR SECOND DEGREE

§ 16-03-0655(3)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR SECOND DEGREE

§ 16-03-0655(3)

At a Court of General Sessions, convened on October 2010, the Grand Jurors of Barnwell County present upon their oath:

That **ERIC VANCLEAVE** did in Barnwell County, South Carolina on or about March 27, 2005, commit a non-consensual sexual battery upon Victim 1 . . . a minor who was 15 years of age at the time of the incident and that the defendant, date of birth June 11, 1977, was older than the victim. All in violation of §16-3-655, *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

State Law Enforcement Division

L Caldwell

Law Enforcement Case #: 32-10-0104

LM

ARREST WARRANT NUMBER

K338466

ACTION OF GRAND JURY

True Bill

Husley Creech

Foreperson of Grand Jury

Date: 9/30/10

VERDICT

12:55 PM

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS0600274

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

AUGUST TERM 2010

THE STATE
vs.

ERIC VANCLEAVE

Nol. Pros.
Convicted of other
charges

4-2-13

CDR #: 2468

Susanna Ringler

Indictment for

LEWD ACT UPON A MINOR

§ 16-15-0140

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR
LEWD ACT UPON A MINOR

COUNTY OF BARNWELL)

§ 16-15-0140

At a Court of General Sessions, convened on August 2010, the Grand Jurors of Barnwell County present upon their oath:

That **ERIC VANCLEAVE** did in Barnwell County, South Carolina on or about April 20, 2003, being a twenty-five year old male, willfully and lewdly commit a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit:

Victim 1 with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child, in violation of § 16-15-140 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

State Law Enforcement Division

L Caldwell

Law Enforcement Case #: 32-10-0104

ARREST WARRANT NUMBER

K338468

ACTION OF GRAND JURY

True Bill

Russell Creech

Person of Grand Jury

Date: 9/30/10

VERDICT

12:55PM

Person of Petit Jury

8:

DOCKET NO. 2010GS0600275

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

OCTOBER TERM 2010

THE STATE
vs.

ERIC VANCELEAVE

Nol. Pros.
Convicted of
Other charges

4-2-13

CDR #: 2468

Susanna Rhyer

Indictment for

LEWD ACT UPON A MINOR

§ 16-15-0140

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

INDICTMENT FOR
LEWD ACT UPON A MINOR

§ 16-15-0140

At a Court of General Sessions, convened on October 2010, the Grand Jurors of Barnwell County present upon their oath:

That **ERIC VANCLEAVE** did in Barnwell County, South Carolina on or about March 27, 2005, being a twenty-seven year old male, willfully and lewdly commit a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit: Victim 1, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child, in violation of § 16-15-140 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

ARREST WARRANT

K- 338462

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY

THE STATE
against

VANCLEAVE, ERIC

Address: WEST COLUMBIA, SC 29170

Phone: SSN:
 Sex: M Race: W Height: 5'05" Weight: 250
 DL State: RI # 7253832
 DOB: Agency ORI#:

Prosecuting Agency:
 Prosecuting Officer:
 Offense: SEX/CRIM SEX COND W/MINOR
 11-14 YOA 2ND DEGREE Offense Code: 0396
 Code/Ordinance Sec: 16-03-0655 (2)

This Warrant is CERTIFIED FOR SERVICE in the
 ☒ County/ ☐ Municipality of
 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

Date: 4-1-10

RETURN

A copy of this arrest warrant was delivered to
 defendant VANCLEAVE, ERIC
 on 4-1-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
 L. J. HOLLAND
 P O BOX 1205
 BARNWELL, SC 29812

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 BARNWELL COUNTY

AFFIDAVIT

Personally appeared before me the affiant S.A. CALDWELL who
 being duly sworn deposes and says that defendant VANCLEAVE, ERIC
 did within this county and state on 04/20/03 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of BARNWELL)

In the following particulars: SEX/CRIM SEX COND W/MINOR 11-14 YOA 2ND DEGREE
 DESCRIPTION OF OFFENSE: 16-03-0655 (2)

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:
 ON OR ABOUT 4/20/2003 DEF. ERIC N. VANCLEAVE, DID ENGAGE IN SEXUAL BATTERY
 WITH A MALE CHILD WHO WAS 13 YRS OF AGE WHILE CAMPING IN THE DEFENDANT'S
 CAMPER. THE SEXUAL BATTERY CONSISTED OF THE DEF. PENETRATING THE CHILD'S
 ANAL OPENING WITH HIS PENIS AND THE DEF. PERFORMING ORAL SEX ON THE CHILD.
 THE INCIDENT OCCURED AT THE BARNWELL STATE PARK, 223 STATE PARK RD,
 BLACKVILLE SC 29817 (BARNWELL COUNTY). THE VICTIM CAN ARTICULATE THAT THIS
 HAPPENED ON AN OVERNIGHT CAMPING TRIP.
 OTHER WITNESSES CAN ATTEST TO THE FACTS OF THE DATE AND TRIP.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 BARNWELL

Affiant's address: P.O. BOX 21398
 COLUMBIA, SC 29221
 Affiant's Telephone: 803 896-7250 803 609-3283

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 04/20/03 defendant VANCLEAVE, ERIC
 did violate the criminal laws of the State of South Carolina (or ordinance of
 ☒ County/ ☐ Municipality of BARNWELL) as set forth below:

DESCRIPTION OF OFFENSE: SEX/CRIM SEX COND W/MINOR 11-14 YOA 2ND DEGREE
 16-03-0655 (2)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on MARCH 30, 2010

Signature of Issuing Judge

Judge Code: 957

L. J. HOLLAND

ORIGINAL

Judge's Address: P O BOX 1205

BARNWELL, SC 29812

Judge's Telephone: 803 541-1035

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ARREST WARRANT

K- 338464

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY

 THE STATE
against

VANCLEAVE, ERIC

Address: WEST COLUMBIA, SC 29170

 Phone: _____ SSN: _____
 Sex: M Race: W Height: 5'05" Weight: 250
 DL State: SC # 7253832
 DOB: _____ Agency ORI#: _____
 Prosecuting Agency: _____
 Prosecuting Officer: _____
 Offense: CSC W/ MINOR UNDER 16 YOA -
2ND DEGREE Offense Code: 0397
 Code/Ordinance Sec: 16-03-0655 (3)

 This Warrant is CERTIFIED FOR SERVICE in the
☒ County/ ☐ Municipality of _____ The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

4-1-10

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant VANCLEAVE, ERIC
 on 4-1-10

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
 L. J. HOLLAND
 P O BOX 1205
 BARNWELL, SC 29812

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY

 Personally appeared before me the affiant S.A. CALDWELL who
 being duly sworn deposes and says that defendant VANCLEAVE, ERIC
 did within this county and state on 03/27/05 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of BARNWELL)
 in the following particulars:
 DESCRIPTION OF OFFENSE: CSC W/ MINOR UNDER 16 YOA - 2ND DEGREE
16-03-0655 (3)

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:
 ON OR ABOUT 03/27/2005 DEF. ERIC N. VANCLEAVE, DID ENGAGE IN SEXUAL BATTERY
 WITH A MALE CHILD WHO WAS 15 YRS OF AGE WHILE CAMPING IN THE DEFENDANT'S
 CAMPER. THE SEXUAL BATTERY CONSISTED OF THE DEF. PENETRATING THE CHILD'S
 ANAL OPENING WITH HIS PENIS AND THE DEF. PERFORMING ORAL SEX ON THE CHILD.
 THE INCIDENT OCCURED AT THE BARNWELL STATE PARK, 223 STATE PARK RD,
 BLACKVILLE SC 29817 (BARNWELL COUNTY). THE VICTIM CAN ARTICULATE THAT THIS
 HAPPENED ON AN OVERNIGHT CAMPING TRIP.
 OTHER WITNESSES CAN ATTEST TO THE FACTS OF THE DATE AND TRIP.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL

 Affiant's Address P.O. BOX 21398
COLUMBIA, SC 29221
 Affiant's Telephone 803 896-7250 803 609-3283

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 03/27/05 defendant VANCLEAVE, ERIC
 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of BARNWELL) as set forth below:
 DESCRIPTION OF OFFENSE: CSC W/ MINOR UNDER 16 YOA - 2ND DEGREE
16-03-0655 (3)

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

 Sworn to and subscribed before me
 on MARCH 30, 2010

 Signature of Issuing Judge
 Judge Code: 957

L. J. HOLLAND

ORIGINAL

 Judge's Address P O BOX 1205
BARNWELL, SC 29812
Judge's Telephone 803 541-1035
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ARREST WARRANT

K- 338466

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY
THE STATE
against

VANCLEAVE, ERIC N.

Address: WEST COLUMBIA, SC 29170

 Phone: _____ SSN: _____
 Sex: ☒ M ☐ F Race: ☒ W Height: 5' 05" Weight: 250
 DL State: _____ DL#: _____
 DOB: _____ Agency ORI#: _____

Prosecuting Agency: _____

Prosecuting Officer: SEX/LEWD ACT, COMMIT/ATTEMPT

Offense: LEWD ACT ON MINOR Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

 This Warrant is CERTIFIED FOR SERVICE in the
☒ County/ ☐ Municipality of _____ The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

Date: 4-1-10

RETURN

 A copy of this arrest warrant was delivered to
 defendant VANCLEAVE, ERIC N.
 on 4-1-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
L. J. HOLLANDP O BOX 1205
BARNWELL, SC 29812

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY

AFFIDAVIT

 Personally appeared before me the affiant SP. AGENT L. CALDWELL who
 being duly sworn deposes and says that defendant VANCLEAVE, ERIC N.
 did within this county and state on 04/20/03 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of BARNWELL)

In the following particulars: SEX/LEWD ACT, COMMIT/ATTEMPT LEWD ACT ON MINOR

DESCRIPTION OF OFFENSE:
16-15-0140
 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

 ON OR ABOUT 4/20/03 THE DEF. ERIC N. VANCLEAVE, DID FOR THE PURPOSE OF HIS
 OWN SEXUAL GRATIFICATION, DID COMMIT A LEWD AND LASCIVIOUS ACT UPON A MINOR
 MALE CHILD (AGE 13) UNDER THE AGE OF 16, WHILE CAMPING IN THE DEF'S CAMPER.
 THE DEF. FONDLED THE CHILD'S PENIS BUTTOCKS, AND LEGS WITH THE INTENTION OF
 AROUSING HIS OWN SEXUAL DESIRES. THE INCIDENT OCCURRED AT THE BARNWELL STATE
 PARK, IN BARNWELL COUNTY. THE VICTIM CAN ARTICULATE THAT THIS HAPPENED ON AN
 OVERNIGHT CAMPING TRIP.

WITNESSES CAN ATTEST TO THE FACTS OF THE DATE AND TRIP.

Signature of Affiant

 Affiant's Address: PO BOX 21398
 COLUMBIA, SC 29221
 Affiant's Telephone: 803 896-7250 803 603-3283

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 04/20/03 defendant VANCLEAVE, ERIC N.
 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of BARNWELL) as set forth below:

DESCRIPTION OF OFFENSE: SEX/LEWD ACT, COMMIT/ATTEMPT LEWD ACT ON MINOR

16-15-0140

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on MARCH 30, 2010

Signature of Issuing Judge

Judge Code: 957

L. J. HOLLAND

ORIGINAL

 Judge's Address: P O BOX 1205
 BARNWELL, SC 29812

Judge's Telephone: 803 541-1035

 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ARREST WARRANT

K- 338468

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY
THE STATE
against

VANCLEAVE, ERIC N.

Address: WEST COLUMBIA, SC 29170

 Phone: _____ SSN: _____
 Sex: ☒ M ☐ F Race: _____ Height: 5'05" Weight: 250
 DL State: RI & _____
 DOB: _____ Agency ORI#: _____
 Prosecuting Agency: _____
 Prosecuting Officer: _____
 Offense: SEX/LEWD ACT, COMMIT/ATTEMPT
 LEWD ACT ON MINOR Offense Code: 246B
 Code/Ordinance Sec: 16-15-0140

 This Warrant is CERTIFIED FOR SERVICE in the
☒ County/ ☐ Municipality of _____ The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

Date: 4-1-10

RETURN

 A copy of this arrest warrant was delivered to
 defendant VANCLEAVE, ERIC N.
 on 4-1-10

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
 L. J. HOLLAND
 P O BOX 1205
 BARNWELL, SC 29812

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL COUNTY

AFFIDAVIT

 Personally appeared before me the affiant SP. AGENT L. CALDWELL who
 being duly sworn deposes and says that defendant VANCLEAVE, ERIC N.
 did within this county and state on 03/27/05 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of BARNWELL)

 in the following particulars: SEX/LEWD ACT, COMMIT/ATTEMPT LEWD ACT ON MINOR
 DESCRIPTION OF OFFENSE: 16-15-0140

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:
 ON OR ABOUT 03/27/05 THE DEF. ERIC N. VANCLEAVE, DID FOR THE PURPOSE OF HIS
 OWN SEXUAL GRATIFICATION, DID COMMIT A LEWD AND LASCIVIOUS ACT UPON A MINOR
 MALE CHILD (AGE 15) UNDER THE AGE OF 16, WHILE CAMPING IN THE DEF'S CAMPER.
 THE DEF. FONDLED THE CHILD'S PENIS BUTTOCKS, AND LEGS WITH THE INTENTION OF
 AROUSING HIS OWN SEXUAL DESIRES. THE INCIDENT OCCURRED AT THE BARNWELL STATE
 PARK, IN BARNWELL COUNTY. THE VICTIM CAN ARTICULATE THAT THIS HAPPENED ON AN
 OVERNIGHT CAMPING TRIP.
 WITNESSES CAN ATTEST TO THE FACTS OF THE DATE AND TRIP.

Signature of Affiant

 Affiant's Address: P O BOX 1205
 COLUMBIA, SC 29221
 Affiant's Telephone: 803 896-7200 803 609-3283

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
BARNWELL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 03/27/05 defendant VANCLEAVE, ERIC N.
 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of BARNWELL) as set forth below:
 DESCRIPTION OF OFFENSE: SEX/LEWD ACT, COMMIT/ATTEMPT LEWD ACT ON MINOR
 16-15-0140

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

 Sworn to and subscribed before me
 on MARCH 30, 2010

 Signature of Issuing Judge
 Judge Code: 957
 L. J. HOLLAND

ORIGINAL

 Judge's Address: P O BOX 1205
 BARNWELL, SC 29812
 Judge's Telephone: 803 541-1035
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

COPY

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

ERIC NELSON VANCLEAVE,

Defendant.

Warrant No(s). K-338461, K-338462,
K-338463, K-338464, K-338465,
K-338466, K-338467, K-338468

MOTION FOR DISCOVERY AND
DISCLOSURE OF EVIDENCE

PLEASE TAKE NOTICE that the Defendant by and through his undersigned attorneys, hereby requests and moves that the Solicitor produce and make available to the Defendant any and all documents, evidence, and other information which is subject to disclosure pursuant to Rule 5 of the Criminal Practice Rules of the Circuit Courts of South Carolina. The Defendant further requests the Solicitor to make available any and all evidence favorable to and/or which might possibly be exculpatory to the Defendant which is subject to disclosure pursuant to the case of Brady v. Maryland, 373 U.S. 83 (1963), and any and all subsequent interpreting cases, to include any and all information or evidence which is discoverable pursuant to Rule 5 or Brady v. Maryland, and which is in the hands of agents for the Prosecution, including police agencies. By way of illustration and in no way limiting the above general request for discovery, the Defendant specifically requests information and evidence of the following nature:

1. Any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney

for the Government;

2. The substance or any oral statement which the Government intends to offer evidence at the trial made by the Defendant;

3. The prior criminal record of the Defendant;

4. All books, papers, documents, photographs or tangible objects which are in the possession, custody or control of the Government, and are material and relevant to this case, including any handwritten notes taken by any investigating agents;

5. The results or report of physical or mental examinations, of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the Government;

6. All statements of witnesses producible under Rule 103(b) of the Criminal Practice Rules in the Circuit Courts, at least two weeks prior to trial;

7. All evidence favorable to the Defendant, or which would be helpful in the preparation of a defense or in mitigation of punishment. This includes, but is not limited to, the following:

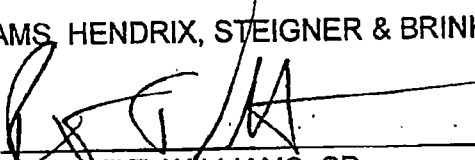
- a. All information relevant to the credibility of any Government witnesses;
- b. All information concerning the conduct, character and reputation of any such witness which is relevant to his or her truthfulness or untruthfulness;
- c. The criminal record of such witness, including specifically, any prior conviction of a crime punishable by death or imprisonment in excess of one year or which involved dishonesty or false statements;
- d. The substance of any agreement, or proposed agreement, either oral or written, made in the name of

the Government to any Government witness, the subject of which deals either directly or indirectly with promise of favored treatment or leniency in return for either pleas of guilty, nolo contendere, or favorable testimony in this case or any other criminal or civil litigation or sentencing procedure;

- e. All evidence tending to show that any acts or conduct by the Defendant were done without criminal intent;
- f. This request specifically includes any information which could show that at the time of any alleged act, that the Defendant was neither present, mentioned or involved directly or indirectly;
- g. All names and present addresses of persons who have any knowledge of the existence of any evidence which might be relevant to acts charged as a crime in the Indictment against the Defendant, including all persons who (a) will be witnesses for the Government upon the trial of this case, or (b) will not be called as witnesses by the Government; and,

This request is a continuing request that the State supplement the disclosure of the materials set forth herein as such additional evidence becomes available.

WILLIAMS, HENDRIX, STEIGNER & BRINK, P. A.

By: 

ROBERT T. WILLIAMS, SR.
P. O. Box 849
200 East Main Street
Lexington, SC 29071
(803) 359-1550

ATTORNEYS FOR DEFENDANT

Lexington, South Carolina

JUNE 25, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

ERIC NELSON VANCLEAVE,

Defendant.

Warrant No(s). K-338461, K-338462,
K-338463, K-338464, K-338465,
K-338466, K-338467, K-338468

**MOTION TO REVEAL GRANT OF
IMMUNITY OR OTHER CONCESSION BY
STATE TO ANY PERSONS WHO MIGHT
BE CALLED TO TESTIFY AGAINST THE
DEFENDANT**

The Defendant, by and through his undersigned attorney, moves for an Order of the Court requiring the State of South Carolina to disclose:

1. Any plan to grant immunity to any State's witnesses in this case.
2. Any granting of immunity to the State's witnesses in this case.
3. Any agreements for charge reduction of the State's witnesses in this case.
4. Any grant, plant to grant or agreement for charge reduction for any of the State's witnesses in any other cases.
5. Any sentence concession in consideration of testimony of the State's witnesses in this case.
6. Any discussions held between State officials, including, but by no means limited to, law enforcement officers or prosecutors in any of the State's witnesses or her representatives concerning things the State "might" be willing to do in return for testimony in favor of the State.
7. Any "trust me" agreements, wherein the prosecutor avoids offering a specific plea agreement to the State's witnesses, but expresses or implies to offer to help the witnesses after he testifies for the State.

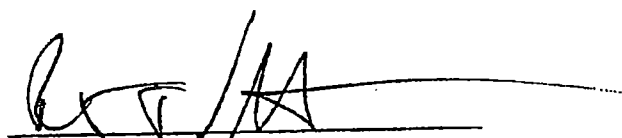
8. Any "trust me" agreements wherein the prosecutor expressly or implies offers to not to prosecute the State's witness for uncharged crimes or misconduct for which the State is or should be aware in return for the witnesses testimony.

9. Any offer of monetary or other reward or promise of protection of a witness or otherwise made to any State's witness in this case of any description made to any State's witness in this case.

The Defendant shall rely upon the State and Federal Constitutions in this matter in support of this motion, as well as, but by no means limited to, The State vs. Kain, ___ SC ___, 377 SE 2d 566; United States vs. Bagley, 473 US 667, 105 S.Ct. 3375 (1985); Giglio vs. United States, 405 US 150, 92 S.Ct. 763 (1972); Brady vs. Maryland, 373 US 83, 83 S.Ct. 1194; State vs. Hinson, 293 SC 406, 361 SE 2d 120 (1987).

WILLIAMS, HENDRIX, STEIGNER & BRINK, P. A.

By:



ROBERT T. WILLIAMS, SR.
P. O. Box 849
200 East Main Street
Lexington, SC 29071
(803) 359-1550

ATTORNEYS FOR DEFENDANT

Lexington, South Carolina

JUNE 25, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

ERIC NELSON VANCLEAVE,

Defendant.

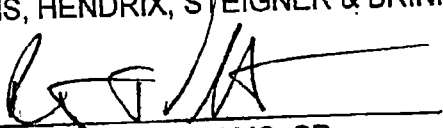
Warrant No(s). K-338461, K-338462,
K-338463, K-338464, K-338465,
K-338466, K-338467, K-338468

NOTICE OF MOTION FOR PRODUCTION
OF TAPED STATEMENTS AND
POLYGRAPH
TESTING

NOW COMES THE DEFENDANT, by and through his undersigned attorneys who moves this court for an order compelling the Solicitor, the South Carolina Law Enforcement Division, and any County or municipal law enforcement agency to disclose and produce for inspection and copying by the Defendant, the taped statements of any witnesses intended to be used at trial taken by the Solicitor, agents of the South Carolina Law Enforcement Division and any County or Municipal Law Enforcement Agency. Furthermore, the Defendant moves for the results of any polygraph testing conducted on such witnesses. This Motion is made under the authority of Brady vs. Maryland, 273 U.S. 83 (1963), and Giglio vs. United States, 405 U.S. 150 (1972).

WILLIAMS, HENDRIX, STEIGNER & BRINK, P. A.

By:


ROBERT T. WILLIAMS, SR.
P. O. Box 849
200 East Main Street
Lexington, SC 29071
(803) 359-1550

ATTORNEYS FOR DEFENDANT

Lexington, South Carolina
JUNE 25, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

Plaintiff,

Warrant No(s). K-338461, K-338462,
K-338463, K-338464, K-338465,
K-338466, K-338467, K-338468

vs.

MOTION FOR STATEMENTS

ERIC NELSON VANCELEAVE,

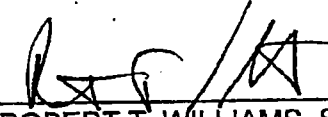
Defendant.

The Defendant, by and through his undersigned attorneys, hereby moves for an Order requiring the State to produce any statements of the witnesses in the possession of the prosecution which relate to the subject matter as to which the witness will testify and that said statements should be produced prior to the commencement of the trial.

This motion is based upon Rule 5 of the Criminal Practice Rules.

WILLIAMS, HENDRIX, STEIGNER & BRINK, P. A.

By:


ROBERT T. WILLIAMS, SR.
P. O. Box 849
200 East Main Street
Lexington, SC 29071
(803) 359-1550

RHONDA D. HELLER
CLERK OF COURT
BARNWELL COUNTY, S.C.

2012 JUN 26 AM 11:31

ATTORNEYS FOR DEFENDANT

Lexington, South Carolina

JUNE 25, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

ERIC NELSON VANCELEAVE,

Defendant.

Warrant No(s). K-338461, K-338462,
K-338463, K-338464, K-338465,
K-338466, K-338467, K-338468

MOTION FOR RECIPROCAL DISCOVERY
AND DISCLOSURE OF EVIDENCE WITH
CERTIFICATION

2012 JUN 26 AM 11:31
RHONDA
CLERK
CLERK OF COURT
BARNWELL COUNTY
S.C.

COMES NOW THE DEFENDANT, by and through his undersigned attorney, moves this Honorable Court for an order requiring the State in this case to provide the following to the Defendant, pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure:

1. Any and all books, papers, photographs, diagrams, plats, maps, audio or video tape recordings, computer generated information, tangible objects or any copies or portions thereof, which are or may be within the possession, custody, or control of the State, its agents or attorneys, or to which the State, its agents or attorneys may have access and which the State may intend to introduce as evidence or which may have been prepared by any witness whom the State may intend to call, or which may be used for the presentation of the State's case in chief or in rebuttal or reply during the trial of this case.

2. Any and all reports, summaries, compilations or documents relative to any physical examination made of any evidence, including all results and conclusions from any such examination or copies thereof within the possession, custody or control of the State, its agents or attorneys or to which the State, its agents or attorneys may have access and which the State may intend to introduce as evidence or which may have been prepared by any witness whom the Defense may intend to call or which may be used for the

presentation of the State's case in chief or in rebuttal or reply during the trial of this case.

3. Any and all reports, summaries, compilations or documentation relative to any physical or mental examination or test, including all results and conclusions from any such examination made of or upon the Defendant or copies thereof, within the possession, custody or control of the State, its agents or attorneys, or to which the State, its agents or attorneys may have access and which the State may intend to introduce as evidence or which may have been prepared by any witness whom the defense may intend to call or which may be used for the presentation of the State's case in chief or in rebuttal or reply during the trial of this case.

4. Any and all reports, summaries, compilations or documentation relative to any type or form of scientific test or experiment made in connection with this case, or copies thereof, within the possession, custody or control of the State, its agents or attorneys, or to which the State, its agents or attorneys may have access and which may have been prepared by any witness whom the State may intend to call or which may be used for the presentation of the State's case in chief or in rebuttal or reply during the trial of this case.

5. A list of all witnesses which the State intends to call during the course of the trial of this case.

WILLIAMS, HENDRIX, STEIGNER & BRINK, P. A.

By: 

ROBERT T. WILLIAMS, SR.
P. O. BOX 849
200 East Main Street
Lexington, SC 29071
(803) 359-1550

ATTORNEYS FOR DEFENDANT

Lexington, South Carolina

JUNE 25, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,
Plaintiff,
vs.

ERIC NELSON VANCLEAVE,
Defendant.

Warrant No(s). K-338461, K-338462,
K-338463, K-338464, K-338465,
K-338466, K-338467, K-338468

REQUEST PURSUANT TO SC RULES
OF CRIMINAL PROCEDURE - 5 & 6
EDWARDS NOTICE

2012 JUN 26 AM 11:31
RHONDA
GLENN
BARNWELL
S.C.

The Defendant by and through his undersigned attorneys, respectfully requests that the Solicitor produce or otherwise make available to the Defense all documents, tangible objects, reports of examinations and tests, witness statements, physical evidence and any other information subject to disclosure pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure.

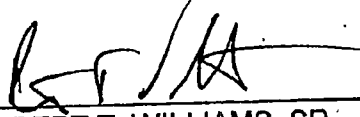
The Defendant further requests the Solicitor to produce all evidence favorable to the Defendant, subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

This request is a continuing request for all such discoverable information as it becomes known to the Solicitor or any prosecution agents.

The Defendant hereby asserts his Fifth Amendment right to remain silent and does not wish to be questioned in the absence of counsel, pursuant to McNeil v. Wisconsin, 111 S.Ct. 220 (1991) and Edwards v. Arizona, 451 U.S. 477 (1981).

Furthermore, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the introduction of a chemist's or analyst's report without such person being personally present at trial. Defendant also requests the appearance in Court of persons within the chain of custody of all physical evidence.

WILLIAMS, HENDRIX, STEIGNER & BRINK, P. A.

By: 

ROBERT T. WILLIAMS, SR.
P. O. Box 849
200 East Main Street
Lexington, SC 29071
(803) 359-1550

ATTORNEYS FOR DEFENDANT

Lexington, South Carolina

JUNE 25, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

ERIC NELSON VANCLEAVE,

Defendant.

Warrant No(s). K-338461, K-338462,
K-338463, K-338464, K-338465,
K-338466, K-338467, K-338468

CERTIFICATE OF SERVICE

2012 JUN 26 AM 11:31
BARNWELL COUNTY, S.C.

I, GLENDA M. AMICK, a Legal Secretary with the Law Firm of Williams, Hendrix, Steigner & Brink, P.A., do hereby certify that I have this date served a copy of the **MOTION FOR DISCOVERY AND DISCLOSURE OF EVIDENCE, MOTION TO REVEAL GRANT OF IMMUNITY OR OTHER CONCESSION BY STATE TO ANY PERSONS WHO MIGHT BE CALLED TO TESTIFY AGAINST THE DEFENDANT, NOTICE OF MOTION FOR PRODUCTION OF TAPED STATEMENTS AND POLYGRAPH TESTING, MOTION FOR STATEMENTS, MOTION FOR RECIPROCAL DISCOVERY, DISCLOSURE OF EVIDENCE WITH CERTIFICATION AND REQUEST PURSUANT TO SC RULES OF CRIMINAL PROCEDURE - 5 & 6, EDWARDS NOTICE** upon the individual(s) named below by placing a copy of same in the United States Mail, postage prepaid and return address clearly indicated to the address(es) below:

BRENDA BRISBON, ASST. SOLICITOR
SECOND JUDICIAL CIRCUIT
141 MAIN STREET
BARNWELL, SC 29812

Glenda M. Amick
GLENDA M. AMICK

Lexington, South Carolina

JUNE 25, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

ERIC NELSON VANCLEAVE,

Defendant.

Warrant No(s). K-338461, K-338462,
K-338463, K-338464, K-338465,
K-338466, K-338467, K-338468

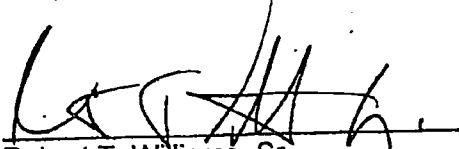
NOTICE OF MOTION AND
MOTION FOR SPEEDY TRIAL

TO: Susie Ringler, Asst. Solicitor, Second Judicial Circuit

The Defendant, Eric Nelson VanCleave, by and through the undersigned attorney, will move before this Honorable Court within five (5) days after the service of this Motion, or as soon thereafter as it may be heard for an order of this Court requiring the State to give the Defendant a speedy trial in the above-captioned matter. The Defendant would allege that his case would be immensely impeded if he were not allowed to proceed in Court with the utmost speed.

WILLIAMS, HENDRIX, STEIGNER & BRINK, P.A.

By:


Robert T. Williams, Sr.
200 East Main Street
P.O. Box 849
Lexington, SC 29072
(803) 359-1550

Attorney for Defendant

Lexington, South Carolina

July 24, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,
Plaintiff,

vs.

ERIC NELSON VANCLEAVE,
Defendant.

Warrant No(s). K-338461, K-338462,
K-338463, K-338464, K-338465,
K-338466, K-338467, K-338468

CERTIFICATE OF SERVICE

I, Glenda M. Amick, an employee of the law offices of Williams, Hendrix, Steigner,
& Brink, P.A., attorney for the Defendant, do hereby certify that I have on this 24th day
of July, 2012, served a copy of the foregoing Notice of Motion and Motion to for Speedy
Trial, in connection with the above-referenced matter by mailing a copy of the same by
United States Mail, postage prepaid, to the following party of record:

Susie Ringler, Asst. Solicitor
Second Judicial Circuit
141 Main Street
Barnwell, SC 29812

Glenda M. Amick
Glenda M. Amick

COPY

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,
Plaintiff,

vs.

ERIC NELSON VANCLEAVE,
Defendant.

Warrant No(s). K-338461, K-338462,
K-338463, K-338464, K-338465,
K-338466, K-338467, K-338468

NOTICE OF MOTION AND
MOTION FOR SPEEDY TRIAL, ETC.

TO: Susie Ringler, Asst. Solicitor, Second Judicial Circuit

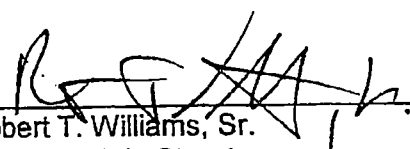
The Defendant, Eric Nelson VanCleave, by and through the undersigned attorney,
will move before this Honorable Court within five (5) days after the service of this Motion,
or as soon thereafter as it may be heard for an order requiring the State to dismiss the
charges against the Defendant in that the charges are approximately three (3) years old
and no trial has been set to hear same while Defendant has been unable to have a decent
job because of the pending charges as well as the bond restrictions; or in the alternative
set a trial date as soon as possible to resolve these problems.

The Defendant, would additionally move in the event of the failure to have either of
the two (2) requests referenced above, to remove any bond restrictions on his bond in
order that he may at least improve his employment opportunities.

FILED FOR REC'D
2013 JAN 16 AM 11:50
RHONDA D. McELREATH
CLERK OF COURT
BARNWELL COUNTY, S.C.

WILLIAMS, HENDRIX, STEIGNER & BRINK, P.A.

By:


Robert T. Williams, Sr.
206 East Main Street
P.O. Box 849
Lexington, SC 29072
(803) 359-1550

Attorney for Defendant

Lexington, South Carolina

January 14, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,
Plaintiff,

vs.

ERIC NELSON VANCLEAVE,
Defendant.

Warrant No(s). K-338461, K-338462,
K-338463, K-338464, K-338465,
K-338466, K-338467, K-338468

CERTIFICATE OF SERVICE

I, Glenda M. Amick, an employee of the law offices of Williams, Hendrix, Steigner, & Brink, P.A., attorney for the Defendant, do hereby certify that I have on this 14th day of January, 2013, served a copy of the foregoing Notice of Motion and Motion to for Speedy Trial, Etc., in connection with the above-referenced matter by mailing a copy of the same by United States Mail, postage prepaid, to the following party of record:

Susie Ringler, Asst. Solicitor
Second Judicial Circuit
141 Main Street
Barnwell, SC 29812

FILED FOR RECORD
2013 JAN 16 AM 11:59
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Glenda M. Amick
Glenda M. Amick

FILED FOR RECORD

STATE OF SOUTH CAROLINA,)
2013 FEB 11 PM 1:55 IN THE COURT OF GENERAL SESSIONS

COUNTY OF BARNWELL RHONDA D. McELVEEN SECOND JUDICIAL CIRCUIT
CLERK OF COURT

BARNWELL COUNTY, S.C.

STATE OF SOUTH CAROLINA,

vs.

ERIC VANCELEAVE,

Defendant

**NOTICE OF MOTION AND
MOTION FOR DISCLOSURE OF
EVIDENCE BY DEFENDANT
PURSUANT TO RULE 5 OF THE SOUTH
CAROLINA RULES OF CRIMINAL
PROCEDURE**

2010-GS-06-00272, 2010-GS-06-00273,
2010-GS-06-00274, 2010-GS-06-00275

TO: ROBERT T. WILLIAMS, ATTORNEY FOR THE DEFENDANT

PLEASE TAKE NOTICE that the State of South Carolina, through its undersigned attorney, pursuant to Circuit Court Criminal Practice Rule 5, requests the disclosure of the following items:

1) The State requests the inspection and copying of books, papers, documents, photographs, tangible objects, or copies of thereof, which are within the possession, custody, or control of the Defendant and which the Defendant intends to introduce as Evidence in Chief at trial.

2) The State requests the inspection and copying of any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the above referenced case, or copies thereof within the possession or control of the Defendant, which the Defendant intends to introduce as evidence in chief at trial or which were prepared by a witness whom the Defendant intends to call at trial when the results or reports relate to his testimony.

3) The State requests a written summary of the facts or data upon which any witness has based his opinion, whom the defendant intends to call at trial or who has prepared a report or examination that the defendant intends to introduce as Evidence in Chief at trial.

4) The State further requests, if prior to trial, the Defendant or his Counsel, discovers additional evidence or material previously requested or ordered by the Court to be produced, the State, through its undersigned attorney, requests that he be promptly notified of such evidence.

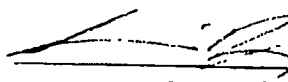
5) The State of South Carolina, through its undersigned attorney, hereby formally requests that the Defendant serve, within 10 days of service of the Motion for Discovery, or at such time as directed by the Court, upon the prosecution a written notice of his intention to offer an alibi defense. The Defendant has been charged with two counts of Criminal Sexual Conduct with a Minor, Second Degree and two counts of Lewd Act upon a Minor. The dates of the offenses are April 18, 2003 to April 19, 2003 and March 25, 2005 to March 26, 2005. The offenses occurred at the Barnwell State Park in Barnwell County, South Carolina.

6) The State, through its undersigned attorney, further requests that the said notice of the defense of alibi state the specific place or places at which the Defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

7) The State, through its undersigned attorney, hereby formally requests that the Defendant, within ten (10) days of service of this Discovery notice or such alternative time as the Court may direct, notify the prosecution in writing of the Defendant's intention to rely upon the defense of insanity at the time of the crime or the Defendant's intention to enter a plea of guilty but mentally ill.

The State of South Carolina, in so moving, certifies that the Defendant has previously requested disclosure pursuant to Subdivisions (a)(1)(C) or (D) of South Carolina Rules of Criminal Procedure, Rule 5, and that the State has fully complied therewith.

Respectfully submitted,



Susanna Ringler
Assistant Solicitor
Second Judicial Circuit

February 11, 2013
Barnwell, South Carolina

STATE OF SOUTH CAROLINA }
COUNTY OF BARNWELL }

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,
vs.
ERIC VANCLEAVE,
Defendant

**MEMORANDUM IN SUPPORT OF PRIOR
BAD ACT EVIDENCE PURSUANT TO
S.C.R.E. RULE 404(b)**

2013-GS-06-76, 2013-GS-06-77,
2013-GS-06-78, 2013-GS-06-79

The Defendant in this case is charged with Lewd Act upon a Minor; Criminal Sexual Conduct with a Minor, Second Degree; Assault and Battery of a High and Aggravated Nature; and Criminal Sexual Conduct, Third Degree for the sexual assault of Victim 1

The Defendant is also accused of sexually assaulting two of this victim's brothers:

Victim 2

and

Victim 3

Those assaults

occurred outside Barnwell County, South Carolina. The Defendant also took Victim 1 to a University of South Carolina versus Auburn University football game and to a University of South Carolina versus Florida game. Additionally, the Defendant sexually assaulted the victim during these trips and at the Defendant's residence. The State seeks admission of testimony from two of the Defendant's other victims and testimony from the victim concerning other sexual assaults pursuant to the South Carolina Rules of Evidence, Rule 404(b), as prior bad acts on the part of the Defendant.

I. FACTS

The Defendant is charged with sexually assaulting the Victim 1, at the Barnwell State Park. The Defendant took the boy there on camping trips. The Defendant would arrange it so that he and victim would sleep in the same bed. The victim would wake up to the Defendant

touching him on his penis and anus. The Defendant also committed digitally and penile penetration of the victim's anus.

The victim's brother, Victim 2, was also taken on a camping trip by the Defendant to Maggie Valley, North Carolina. There, he fell asleep watching a movie with the Defendant. Victim 2 awoke to the Defendant touching his penis. Victim 2's pants were unbuttoned, unzipped and pulled down. When Victim 2 awoke, the Defendant pretended to be asleep.

The victim's brother, Victim 3, was also taken on camping trips by the Defendant. He was taken on a camping trip to Cherokee, North Carolina. There he slept in the same bed with the Defendant. The Defendant told Victim 3 that there was not enough room in the smaller bed that his brother was sleeping in, and so Victim 3 needed to sleep with the Defendant, as the bed was big enough for the two of them. During the night, Victim 3 awoke to the Defendant touching his genital area.

Victim 1 would spend the night at the Defendant's residence in Lexington County, South Carolina. The victim would sleep in the Defendant's bed with him. In one instance, the victim woke up to the Defendant rubbing the victim's hand on the Defendant's penis. The Defendant would touch the victim on the victim's penis and anus. The Defendant placed the victim's penis in the Defendant's mouth. The Defendant also penetrated the victim digitally and with his penis. The Defendant would tell the victim to smile as though he were enjoying it. The victim would often pretend he was asleep when these assaults occurred. Afterward he would try to cuddle and rub the victim's back and grab the victim's behind.

Victim 1 was also sexually assaulted by the Defendant on a trip to the University of South Carolina versus Florida game in Florida and on a trip to the University of South Carolina versus Auburn game in Alabama. They camped while in Florida and Alabama.

II. ARGUMENT

Evidence of other bad acts is admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Rule 404(b), SCRE; State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000); State v. Dickerson, 341 S.C. 391, 535 S.E.2d 119 (2000); State v. Brooks, 341 S.C. 57, 533 S.E.2d 325 (2000); State v. Smith, 337 S.C. 27, 522 S.E.2d 598 (1999); State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999); State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998); State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

The State contends that the sexual abuse of Victims 2,3 by the Defendant is directly related to the sexual abuse committed against Victim 1 as proof of 1) intent, 2) motive, 3) absence of mistake or accident, and 4) a "common scheme or plan" on the part of the Defendant to obtain sexual gratification by engaging in sexual acts with minor children.

In conducting its analysis, the Court has looked at whether the other incidents were sufficiently similar to the charged offense. State v. Adams, 332 S.C. 139, 141, 504 S.E.2d 124, 125 (Ct. App. 1998), citing State v. Blanton, 316 S.C. 31, 33, 446 S.E.2d 438, 439 (Ct. App. 1994).

Rule 404(b) allows the admission of evidence of a common scheme or plan. Such evidence is relevant because proof of one is strong proof of the other. When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity. **When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b).** Although not a complete list, in this type of case, the trial court should consider the following factors when determining whether there is a close degree of similarity between the bad act and the crime charged: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery.

State v. Atieh, 397 S.C. 641, 647-648, 725 S.E.2d 730, 734 (Ct. App. 2012), rehearing denied (May 24, 2012), *citing* State v. Wallace, 384 S.C. 428, 433-34, 683 S.E.2d 275, 277-78 (2009) (emphasis added).

Factual Similarities Involving the Other Victims

1. All three victims are brothers.
2. The Defendant attended church with their family and became a family friend, taking the boys on out-of-town trips and asking them to sleep over at the Defendant's residence.
3. All of the victim's were sexually assaulted during the same time frame from 2002 to 2006.
4. The boys were assaulted on camping trips.
5. The Defendant would manipulate the sleeping arrangements, so that he could sleep alone with one of the boys.
6. The boys would fall asleep and awake to the Defendant with his hand in their pants, touching their genitals.

The State also seeks to offer testimony about other sexual assaults committed by this Defendant on this victim. "The common scheme or plan exception 'is generally applied in cases involving sexual crimes, where evidence of acts prior and subsequent to the act charged in the indictment is held admissible as tending to show continued illicit intercourse between the same parties.'" State v. Weaverling, 337 S.C. 460, 469, 523 S.E.2d 787, 791 (Ct. App. 1999), *quoting* State v. Whitener, 228 S.C. 244, 265, 89 S.E.2d 701, 711 (1955). "Such evidence is admissible when the 'close similarity of the charged offense and the previous act[s] enhances the probative value of the evidence so as to overrule the prejudicial effect.'" *Id.*, *quoting* State v. McClellan, 283 S.C. 389, 392, 323 S.E.2d 772, 774 (1984). In the Weaverling case, the court allowed in the victim's testimony regarding prior attacks, because it was admissible under the

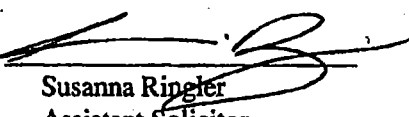
common scheme exception to show the continued illicit intercourse forced upon her by the Defendant. Id., citing State v. McClellan, 283 S.C. at 392, 323 S.E.2d at 774. Additionally, the court allowed in testimony from the victim's sisters concerning their assaults, because [t]he experiences of each of the three daughters paralleled that of her sisters. Id.

In this case, there was ongoing sexual abuse committed on the victim by the defendant that was similar and consistent in nature. In addition, the Defendant also sexually abused the victim's brothers on camping trips in a manner similar to the abuse he inflicted on the victim.

III. Conclusion

The sexual abuse of the three brothers is similar and shows a pattern of behavior on the part of the Defendant. Therefore, the State contends that evidence concerning the Defendant's prior bad acts against Victims 1,2,3 are extremely probative and relevant to the issue of the Defendant's motive, intent, and absence of mistake while assaulting the victim. Most significantly, this evidence is probative as to the existence of a "common scheme or plan" in connection with the sexual abuse of all three victims.

Respectfully submitted,

By: 

Susanna Ringler
Assistant Solicitor

Barnwell, South Carolina
February 19, 2013

1 (Whereupon, on February 25, 2013 the following
2 proceedings were held:)

3 MS. RINGLER: We have the State versus Eric
4 VanCleave.

5 THE COURT: Hold on. Everyone have a seat. Close
6 that door.

7 Yes, ma'am?

8 MS. RINGLER: Yes, Your Honor. There were some
9 additional indictments that were presented this morning to
10 the grand jury. Based on my prep for trial and discussion
11 with the victim we did -- we ended up submitting these two
12 indictments. The victim -- when I spoke to him -- the
13 abuse -- the basis for the case, Your Honor, are trips to
14 the Barnwell State Park where the victim was abused. On
15 speaking to him the time period that he gave for when the
16 abuse occurred was in 2005 and continued into 2006; one of
17 the incidents being after his 16th birthday. The original
18 charges were all for CSC with a minor, multiple counts.

19 In light of my discussions with the victim we
20 presented this morning one indictment for criminal sexual
21 conduct of a minor that covers 2005 up until when the
22 victim turned 16 and also lewd act with a minor that
23 covers up until the point that the victim turned 16. We
24 also submitted that was true-billed criminal sexual
25 conduct in the third degree for one when the victim was 16

1 and also for ABHAN under the common law for when the
2 victim was 16.

3 I have e-mailed those indictments to the defense
4 attorney last week; stated that in light of the fact that
5 I am presenting these --

6 THE COURT: Hold on one second. Come on in. All
7 right. Go ahead.

8 MS. RINGLER: -- the morning -- well, the Monday
9 morning of the term of court -- this was the term of court
10 that the defense requested. Just a little bit of history.
11 This is this defendant's second attorney. His first
12 attorney was Richard Briebart. Once Mr. Theo Williams
13 became involved he did state that he wanted to get this
14 tried as soon as possible; so we set it for this first
15 term of this year.

16 Last week when I informed the defense I was going to
17 submit these indictments I stated that I would be willing
18 to consent to a continuance if the defense so wished, but
19 I do not believe he is requesting one here today. So,
20 those are the four indictments we're prepared to go
21 forward on, Your Honor. I just wanted to give you a
22 little bit of history on that.

23 The state is requesting -- is asking that testimony
24 involving some of the defendant's other victims outside
25 the county be admitted under Lyle and I have submitted a

1 memo of law in support of admitting that other testimony.

2 THE COURT: Well, how do you want to handle your
3 motions? Do you want to do a proffer?

4 MS. RINGLER: Yes, Your Honor. We can go ahead and
5 proffer that at this time.

6 THE COURT: Theo Williams, anything you want to tell
7 me before we start?

8 MR. WILLIAMS: Yes, Your Honor. In that the
9 solicitor has kind of given her history of what has
10 happened in this case, Your Honor, I would ask the court
11 to note that there were eight warrants which were done --

12 THE COURT: Eight warrants.

13 MR. WILLIAMS: -- in the year of 2010 -- April of
14 2010 -- and my client was indicted on four of the warrants
15 and it's important, Your Honor, for the purposes of the
16 argument. He was indicted on four of the warrants which
17 indicated that he allegedly had sex on Easter weekend in
18 the Barnwell State Park.

19 THE COURT: What Easter?

20 MR. WILLIAMS: Well, that's the key, Your Honor.
21 They picked the year, each and every year.

22 THE COURT: The indictment says Easter weekend of
23 2000-whatever.

24 MR. WILLIAMS: It gives the dates of 2000-whatever.
25 That's right, Your Honor.

1 THE COURT: It's not just a plain Easter weekend.

2 MR. WILLIAMS: No, Your Honor, and that's the key,
3 Your Honor.

4 THE COURT: At the state park?

5 MR. WILLIAMS: At the state park; so there were
6 specific allegations in the warrant -- something to put
7 the defendant on notice as to what he was going to be
8 defending. Once I became his attorney I filed a motion
9 for a speedy trial on July 24 of 2012. I, again, filed
10 another motion for a speedy trial on January 14 of 2013.

11 We sent over evidence proving that it could not have
12 occurred on the dates and times of those warrants and that
13 was sent to the solicitor on February 11 of 2013.

14 THE COURT: Well, you're saying it didn't happen and
15 they're saying it did happen.

16 MR. WILLIAMS: Well, I'm---

17 THE COURT: Isn't the jury supposed to decide?

18 MR. WILLIAMS: Well, I am getting to a point, Your
19 Honor. After I do that which is February 11, 2013, then
20 we receive notification from the solicitor's office that
21 she is now going to do the indictments on the four
22 remaining warrants which were prepared which had not been
23 indicted.

24 THE COURT: Okay.

25 MR. WILLIAMS: Two to three days later we receive

1 copies which were sent to us -- not of those four
2 indictments, but additional indictments which are of the
3 nature of between the dates of 2005 and 2006 after we have
4 already sent her evidence of alibi because we thought, you
5 know, we were going to let her know where we were during
6 those dates.

7 Your Honor, it's a three-year-old case. We object to
8 them being allowed at this point in time to simply coming
9 up with indictments -- four indictments with no specific
10 time periods for which we have to somehow come up with an
11 alibi for 13 or 14 months -- indicted on the day before
12 trial, Your Honor, on this.

13 THE COURT: So you're prepared to go on the Easter
14 weekend dates but not the dates between 2005 and 2006?

15 MR. WILLIAMS: That is correct, Your Honor.

16 THE COURT: So you need a continuance?

17 MR. WILLIAMS: We would like for the court to direct
18 the state that they couldn't do that because it would be a
19 violation of due process for my client to have to defend
20 those dates after he's been out for three years; after
21 he's lost two of the witnesses who were potential
22 witnesses on his case.

23 THE COURT: How did he lose them?

24 MR. WILLIAMS: They died.

25 THE COURT: He didn't lose them. They died. They're

1 no longer available.

2 MR. WILLIAMS: They're no longer available.

3 THE COURT: Ms. Ringler?

4 MS. RINGLER: Your Honor, I would cite the case of
5 State versus Baker, Your Honor.

6 THE COURT: State v Baker?

7 MS. RINGLER: Yes, Your Honor. I'll pass it up now
8 and in that case law it does -- it kind of lays out a lot
9 of the prior indictment history and does talk about kind
10 of these open-ended time periods and it does acknowledge
11 that in cases of sexual assault with children often
12 they're not able to remember specific dates. In his
13 initial disclosure he did talk about Easter weekend coming
14 to Barnwell State Park, but upon prep and meeting with the
15 victim, Your Honor, he acknowledged that he was not able
16 to specifically articulate the individual attacks. This
17 was ongoing course of conduct which we would cover during
18 our Lyle motion and so the state in light of that has set
19 up this little-over-a-year time period.

20 There is case law. There is a case where there was a
21 two-year time period and the court has said that that was
22 proper. We would acknowledge that the appropriate remedy
23 would be a continuance which is why we offered to consent
24 to that last week.

25 Your Honor, as far as due process I can only think of

1 one case and that was when there was a seven-year lapse
2 and this one I admit that it has been three years, but a
3 lot has occurred with that as far as attorney situations.
4 There were also other pending charges for this defendant
5 in Lexington and I believe that all of that contributed to
6 the delay in this case, but upon the motion of the speedy
7 trial I discussed with the defense our schedule. We only
8 have court here four times a year. I told him that we
9 already had other matters scheduled and would it be all
10 right if we scheduled this for the first term of the year.

11 I began prepping for this once we finished up with
12 our Bamberg term of court and that is when I realized that
13 our dates were not -- were too specific and did not
14 accurately cover the criminal conduct that the victim
15 described and so at that point I realized I was going to
16 have to do some different indictments. I e-mailed copies
17 of the indictments we intended to present this morning.

18 Your Honor, I would say that the appropriate remedy
19 here would be a continuance which we offered up last week
20 and would not be a dismissal or quashing of the
21 indictments.

22 MR. WILLIAMS: Your Honor, there is one issue I don't
23 know. I don't know what happened to the other four
24 indictments that had the specific dates in them as to
25 whether or not she is going to attempt to try those along

1 with these new indictments which she just got, what, an
2 hour ago?

3 THE COURT: What do you intend to try him on?

4 MS. RINGLER: Your Honor, as I said last week to the
5 defense counsel I'll be calling the new indictments that
6 we presented this morning.

7 MR. WILLIAMS: Well, that's not exactly what her
8 e-mail said, Your Honor. She said she would be calling
9 those new indictments along with the other.

10 MS. RINGLER: No, Your Honor. I disagree with that
11 statement, Your Honor.

12 THE COURT: Very well. Tell me what you intend to
13 move on tomorrow.

14 MS. RINGLER: I intend to call the four indictments
15 that were presented this morning which would be the
16 criminal sexual conduct with a minor second degree and
17 lewd act; so that would be indictments 2013-GS-076, 77,
18 78, and 79.

19 THE COURT: And the dates are what?

20 MS. RINGLER: For the criminal sexual conduct second,
21 Your Honor, they cover -- second degree -- I'm sorry, Your
22 Honor -- cover from April 1, 2005 to May 17, 2006. The
23 victim's birthday is May 18; so just before he turned 16
24 years of age. Then also it covers the CSC -- excuse me,
25 the lewd act and CSC second covered that time period for

1 when he is 16. That covers May 27, 2006 and May 29, 2006.

2 THE COURT: Just a two-day period?

3 MS. RINGLER: That weekend, Your Honor. Yes, Your
4 Honor.

5 THE COURT: So three indictments cover a period from
6 4/1/05 to 5/06.

7 MS. RINGLER: Two, Your Honor.

8 THE COURT: Two.

9 MS. RINGLER: I'm sorry. Lewd act and CSC with a
10 minor second and then ABHAN and criminal sexual conduct
11 third degree cover --

12 THE COURT: A two-day period.

13 MS. RINGLER: -- that Memorial Day weekend when he is
14 16.

15 THE COURT: That's what you intend to move forward
16 on?

17 MS. RINGLER: Yes, Your Honor.

18 THE COURT: Well, Mr. Williams, I can continue the
19 case so you can become more familiar with what they've now
20 done or we can move forward on the four indictments she's
21 called.

22 MR. WILLIAMS: Well, Your Honor, if the court is
23 stating that it is not going to simply dismiss those
24 indictments for the failure of the state to move forward
25 at an earlier date, then if that is the position of the

1 court, Your Honor, we would in that light move for a
2 continuance.

3 THE COURT: Well, I am not going to dismiss them.

4 MR. WILLIAMS: All right, sir.

5 THE COURT: I will continue them for one more term of
6 court, though. Nothing further.

7 MR. WILLIAMS: And, Your Honor, if that's the
8 situation, Your Honor, can there be some sort of language
9 or something that it would be dismissed at that point in
10 time if she changes it or something else?

11 THE COURT: No. I am not going to do that ahead of
12 time. There is no telling what may come up between now
13 and then when she's preparing for the case. If she learns
14 of more alleged activity, I am going to ask her to do
15 indictments immediately on those, but I assume as far as
16 the investigation as it is up to now that's what we have
17 in Barnwell County.

18 MS. RINGLER: Yes, Your Honor.

19 THE COURT: As I understand from both talking to you
20 there are indictments still outstanding in Lexington
21 County --

22 MR. WILLIAMS: There are.

23 THE COURT: -- that might cover additional times,
24 but, no, I am not going to dismiss them. I will continue
25 them until the very next term of GS in Barnwell which is

1 May 27 -- is that right -- May 27 before me so you don't
2 get to, you know, side-step me.

3 MR. WILLIAMS: Well, Your Honor.

4 THE COURT: Sir?

5 MR. WILLIAMS: Here is -- I didn't anticipate that
6 there would be that long before there is another -- I
7 guess another term of court.

8 THE COURT: Well, do you want me to try to get you a
9 term?

10 MR. WILLIAMS: No. That's not fair to ask, Your
11 Honor.

12 THE COURT: I'll be glad to accommodate you.

13 MR. WILLIAMS: The only reason I say that is my son
14 is graduating from college. It's his senior year at
15 Wesley.

16 THE COURT: What day is he graduating?

17 MR. WILLIAMS: I believe it is that week in May.

18 THE COURT: He doesn't graduate for five days now.
19 He may think he is graduating for five days. You don't
20 have to celebrate for five days.

21 MR. WILLIAMS: Well, I think that May 27, Your Honor,
22 I believe is Memorial Day.

23 THE COURT: It is.

24 MR. WILLIAMS: Well, let me be a little more specific
25 then, Your Honor, if the court will indulge me.

1 THE COURT: Mr. Williams, you know I always indulge
2 you.

3 MR. WILLIAMS: I hate not having the answer right on
4 the tip of my tongue.

5 THE COURT: I have never seen you in that position.
6 Memorial Day is the 27th; so that would be a holiday.
7 We'd actually start on the 28th.

8 MS. RINGLER: Is the jury coming in that Tuesday
9 afternoon?

10 THE COURT: No. If we're going to try this case
11 they'll come in on Tuesday morning. That's not problem,
12 is it?

13 MS. RINGLER: We do have the pretrial, Your Honor.
14 That was the only reason I was thinking the afternoon.

15 THE COURT: We could come in and do it on Monday on
16 Memorial Day. We'll work out the logistics of it.

17 Check that date, Mr. Williams.

18 MR. WILLIAMS: Actually, Your Honor, his graduation
19 is -- I think I sent letters to Your Honor on it's May 28
20 and May -- I want to say it's the Sunday before that, Your
21 Honor.

22 THE COURT: The Sunday before the 28th?

23 MR. WILLIAMS: Yes, sir.

24 THE COURT: That's the 26th.

25 MR. WILLIAMS: And I believe that we're allowed two

1 days to help bring all of his junk back to Connecticut.
2 Now, if we could try it Wednesday, Thursday, and Friday I
3 am good with it.

4 THE COURT: Well, we can.

5 It is a short trial, isn't it?

6 MS. RINGLER: Yes, Your Honor. I would anticipate a
7 day and a half; two days at most.

8 THE COURT: All right. We'll start it on Wednesday
9 the 29th.

10 MR. WILLIAMS: Thank you, Your Honor.

11 THE COURT: Now, the only downside to that is -- I
12 know you got a law partner. The jury is coming in on that
13 Tuesday. They'll tell us where they worked, who they're
14 married to, and so forth and so on.

15 MR. WILLIAMS: All right, sir. I'll have somebody
16 down here to look at the jury.

17 THE COURT: Or do you want me to get a special term
18 and let's try it starting April 1? What you're going to
19 say is is that an April Fool's joke. It's not. I'll try
20 to get you a special term April 1.

21 MR. WILLIAMS: Judge, I am good with that. That's
22 fine. If you have that power, we're good with that. I
23 mean, I didn't know how you had to get that, Your Honor,
24 if you had to get it like Court Administration. That
25 wasn't meant to be sarcastic.

1 THE COURT: You know, I do him one favor in life and
2 he thinks -- he does me one favor and he thinks he's got
3 me---

4 MR. WILLIAMS: No, no. I just didn't know how you---

5 THE COURT: I am not sure I have that power, but I
6 will try to exercise it.

7 MR. WILLIAMS: Maybe I misspoke, but I am good to do
8 it then, Your Honor.

9 THE COURT: Susie, talk to the victims.

10 MS. RINGLER: Yes, Your Honor. He's enrolled right
11 now in college. We are just checking on his schedule with
12 exams. Your Honor, we can do the April 1 week, Your
13 Honor.

14 THE COURT: All right. Let's do this. In all due
15 respect to Mr. Williams, I will make a phonecall; not
16 assume that I can do it. I'll let y'all know something
17 this week -- middle of this week and if we do, Madam
18 Clerk, then we'll talk. Go ahead and get the jury
19 subpoenaed in here for Monday.

20 What we plan to do is just get rid of all pretrial
21 matters Monday morning and have the jury coming in
22 1 o'clock or 12 o'clock, get the jury selected, opening
23 statements, and see how far we can get down the road.

24 Fair enough?

25 MR. WILLIAMS: Thank you, Your Honor. My only

1 concern was I spent all of this money on my son in school
2 and I would like to be there when he finally goes through.

3 THE COURT: That's why I suggested moving it.

4 MR. WILLIAMS: Thank you. Thank you.

5 THE COURT: You're pretty presumptive. You were
6 presuming I had the power to get this new term. Now
7 you're presuming your son is going to graduate.

8 MR. WILLIAMS: Your Honor, he's actually got some
9 offers for grad school; so I am proud of him.

10 THE COURT: All right. Let's make that plan.

11 MS. RINGLER: We'll discuss this with them, Your
12 Honor, and, yes, Your Honor, that week should work.

13 THE COURT: I assume his bond is still---

14 MR. WILLIAMS: Your Honor, there is one other matter.
15 I have a letter today which the bondsman had indicated he
16 had no problem staying on his bond even during the trial.
17 There is an element of curfew, Your Honor, which is no
18 change on that until April 1?

19 THE COURT: (nods head.)

20 MR. WILLIAMS: All right, sir. Thank you, Your
21 Honor.

22 MS. RINGLER: Thank you.

23 (End of Transcript of Record.)
24
25

State of South Carolina)
County of Barnwell) Court of General Sessions
2013-GS-06-76 THROUGH 79

State of South Carolina)
Plaintiff)
vs.) Volume I of II
Eric VanCleave) Transcript of Record
Defendant)

April 1 -2, 2013
Barnwell, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge; and a jury.

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

Susanna M. Ringler, Assistant Solicitor
Jack W. Hammack, Jr., Assistant Solicitor
Attorneys for the Plaintiff

Robert T. Williams, Sr., Esquire
Attorney for the Defendant

Lisa H. Davenport, RPR
Official Court Reporter

INDEX OF WITNESSES

1		
2	Victim [REDACTED]	
3	Direct By Miss Ringler	.5
4	Cross By Mr. Williams	10
5	Victim 2 [REDACTED]	
6	Direct By Miss Ringler	17
7	Cross By Mr. Williams	18
8	Victim 3 [REDACTED]	
9	Direct By Miss Ringler	21
10	Cross By Mr. Williams	24
11	Victim [REDACTED]	
12	Direct By Miss Ringler	86
13	Cross By Mr. Williams	.113
14	Redirect By Miss Ringler	.136
15	MARSHALL E. RICHBURG, JR.	
16	Direct By Miss Ringler	.139
17	Cross By Mr. Williams	.142
18	MICHAEL SANDERS	
19	Direct By Miss Ringler	.146
20	Cross By Mr. Williams	.150
21	Victim 3 [REDACTED]	
22	Direct By Miss Ringler	.156
23	Cross By Mr. Williams	.162
24		
25		

1	Victim 2	
2	Direct By Miss Ringler	.170
3	Cross By Mr. Williams	.177
4	DENNEAUH R. WICK	
5	Direct By Mr. Williams	.197
6	Cross By Miss Ringler	.203
7	Redirect By Mr. Williams	.204
8	DONALD D. VANCLEAVE	
9	Direct By Mr. Williams	.205
10	Cross By Miss Ringler	.218
11	Redirect By Mr. Williams	.219
12	JENNIFER J. VANCLEAVE	
13	Direct By Mr. Williams	.220
14	Cross By Miss Ringler	.227
15	ERIC N. VANCLEAVE	
16	Direct By Mr. Williams	.232
17	Cross By Miss Ringler	.249
18	TIM SHEALY	
19	Direct By Miss Ringler	.257
20	Cross By Mr. Williams	.258
21	Victim 2	
22	Direct By Miss Ringler	.259
23	Cross By Mr. Williams	.259
24	Redirect By Miss Ringler	.260
25		

» > o < «

1	Opening Statement by Miss Ringler	79
2	Opening Statement by Mr. Williams	83
3	Closing Statement by Mr. Williams	267
4	Closing Statement by Miss Ringler	281
5	Jury Charge	292

STATE EXHIBITS

9	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
10	1 - 14	Photos		94
11	15 - 18	Facebook Info.		109
12	19 - 21	Camp site Info.		140
13	22 - 23	Chart Pages	106	

DEFENDANT EXHIBITS

15	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
16	1	Photo	200	200
17	2	Wedding Program	222	222
18	3	Sale of Vehicle Info.	237	237
19	4	DMV Info.	238	238

1 (Whereupon, on April 1, 2013 the following
2 proceedings were held:)

3 MISS RINGLER: Your Honor, we have the State versus
4 Eric Vancleave. This morning the State is making a motion
5 to admit some evidence under State versus Lyle. Your
6 Honor, the State would seek to admit testimony of prior
7 assaults committed on our victim Victim [REDACTED] by the
8 Defendant and also evidence of two camping trips where the
9 Defendant sexually assaulted two of his brothers. So the
10 State would call Victim [REDACTED] at this time.

11 [REDACTED] after being duly sworn,
12 testified as follows:

13 THE COURT: Give us your full name for the record,
14 please.

15 THE WITNESS: Victim [REDACTED]

16 IN-CAMERA DIRECT EXAMINATION

17 BY MISS RINGLER:

18 Q You go by Victim [REDACTED] is that correct?

19 A Yes, ma'am.

20 THE COURT: Have you sworn him in?

21 THE CLERK: Yes, sir, I did.

22 Q [REDACTED] what is your date of birth?

23 A [REDACTED] 1990.

24 Q And how do you know the defendant in this case Eric
25 Vancleave?

1 A He began going to my father's church in about 2001, I
2 believe, or 2000.

3 Q And at some point in time did he start spending some
4 time with your family?

5 A Yes, he did.

6 Q Can you please describe the nature of his
7 relationship with your family?

8 A He would come to our house and hang out. Sometimes
9 he would bring myself and my brothers to Carolina football
10 games periodically and he also worked in my dad's
11 restaurant for a time.

12 Q At any point in time did you -- at some point in time
13 did the defendant sexually assault you?

14 A Yes, ma'am.

15 Q Can you please describe to the court the first time
16 that that happened?

17 A Yes, ma'am. It was probably 2000 or 2001. I went
18 over to the Defendant's house and I don't remember what it
19 was for, but I stayed the night that night and he insisted
20 that I stay in his room with him and during the course of
21 the night while I was supposed to be sleeping he sexually
22 assaulted me.

23 Q Can you please describe what he did?

24 A Yes, ma'am. I was awakened initially to his hand
25 fondling me and then using his hand to ejaculate me as

1 well. Then he also used my hand to do the same to him and
2 he was also all over me kind of really close and kind of
3 smothered me and -- I don't know. He was just feeling all
4 over me.

5 Q And were there any other instances of where he did --
6 Did that happen again to you?

7 A Yes, ma'am.

8 Q Can you describe when that would occur?

9 A At his house. Is that the question you're asking me?

10 Q Were there any other times that it happened at his
11 house?

12 A Yes, ma'am; numerous times.

13 Q And how did it happen in those instances?

14 A You mean what went on?

15 Q Exactly. I'm sorry. Yeah. If you can kind of give
16 us the -- if you can describe how it would occur in the
17 other instances at his house.

18 A It began with as I said, but it progressed the more I
19 went over there. The more I would stay with him it
20 progressed to him using his mouth on me and also using his
21 finger in my butt and then eventually his penis in my butt
22 and kissing me and a lot of other...

23 Q And where would this occur? Within his apartment or
24 house?

25 A In his bedroom.

1 Q And what -- about what time would this occur?

2 A It would be in the middle of the night. I would be
3 sleeping and awakened to this happening so around 3 a.m.
4 or so.

5 Q And why -- why would you be sleeping in the same bed
6 as the defendant?

7 A He would usually make sure that I would stay with
8 him. Sometimes it would be to watch a movie in there with
9 him or he would just be very insistent that I stay in the
10 same bed with him.

11 Q Did it ever happen in places other than the
12 defendant's house?

13 A Yes, ma'am, it did.

14 Q Where were some of the other places that it happened?

15 A It happened on camping trips to Barnwell -- Barnwell
16 County and Barnyard Flea Market and camping ground in
17 Lexington and also other sites that we traveled to
18 football games such as Florida and Auburn.

19 Q And how would the assaults occur on those trips?

20 A There would be the same as in his house. It would be
21 in the -- in his pop-up camper in a bed. I would wake up
22 to the same things happening to me as I described before.

23 Q Can you talk about the trips to Barnwell
24 specifically? If you could, talk about what would occur
25 on those trips.

1 A The trips to Barnwell -- initially, we stayed in a
2 tent our first trip there and nothing happened on that
3 trip, but then Mr. Vancleave acquired a pop-up camper that
4 myself and my brothers and Mr. Sanders went on a couple of
5 those trips as well and he would make sure the sleeping
6 arrangements were where I would be staying with him in the
7 bed. There was a curtain in his pop-up camper; so he
8 could close that while it was happening, but it would
9 begin just like I said before.

10 I would be sleeping and I would wake up to him
11 fondling me or sometimes kissing me or rubbing me and at
12 Barnyard specifically I remember waking up to my penis
13 being in his mouth and him ejaculating me that way and
14 also using my hand to do the same to him and then using
15 his penis to put in my butt as well and just rubbing my
16 butt and different things like that.

17 Q And what were your ages while this was occurring?

18 A My age---

19 Q How long did this go on for?

20 A At Barnyard?

21 Q The abuse in general. How long did it go on for?

22 A From ages from around 11 to 16.

23 Q And how frequently was this occurring during that
24 time period?

25 A I'd say very frequently, maybe monthly. It is a

1 rough estimate. I don't know.

2 MISS RINGLER: Thank you. Please answer any
3 questions that defense counsel might have.

4 IN-CAMERA CROSS-EXAMINATION

5 BY MR. WILLIAMS:

6 Q Mr. [REDACTED] insofar as the allegations that we're
7 concerned about here in Barnwell County, when is it that
8 you say that Eric Vancleave assaulted you in Barnwell
9 County?

10 A Specifically 2005 and 2006. There are also
11 incidences before that I cannot remember specific time.

12 Q All right. When you say in 2005 and in 2006, when
13 did these incidences occur in 2005 and 2006?

14 A I'm not absolutely positive. I remember them being
15 around a holiday weekend. I believe one of them was
16 Memorial weekend. The other could possibly have been
17 Easter weekend.

18 Q And the holiday -- the Memorial weekend was what
19 year?

20 A I'm not sure, sir.

21 Q Well, it had to be 2005 or 2006; right?

22 A Yes, sir.

23 Q So are you saying it would be one of those two?

24 A Yes, sir. I believe it was 2006 we cleared up with
25 the Barnyard record people.

1 Q You cleared up with the Barnyard record people?

2 A Barnwell.

3 Q Barnwell record people?

4 A Nevermind sir.

5 THE COURT: Ask the question again.

6 Q When was this allegation in Barnwell County that you
7 alleged. You said there are two instances that we're
8 trying today. One would be in 2005 and one would be in
9 2006; is that correct?

10 A Yes, sir.

11 Q And the one that's in 2005, is it your testimony that
12 would be Memorial Day weekend?

13 A I'm not sure about that one.

14 Q What about 2006? When would it be?

15 A I believe that one was Memorial weekend.

16 Q So the one in 2006 would be the Memorial Day weekend?

17 A I believe so.

18 Q And that's when you said you clarified once you
19 talked to somebody at the park; is that right?

20 A Yes, sir.

21 Q Well, did you talk to them or did the prosecutor give
22 you that information?

23 A The solicitor talked to them.

24 Q Now in 2005 are you saying that would have been
25 Easter of 2005?

1 A I believe so.

2 Q All right. Okay. Now, do you recall when you first
3 met with Laurie Caldwell in reference to these allegations
4 of camping trips?

5 A Yes, sir, I do.

6 Q Did you tell her that these camping trips in Barnwell
7 were the Easter weekend -- each and every Easter weekend
8 on 2001, 2002, 2003, 2004?

9 A I may have.

10 Q And you alleged when you talked to the SLED officer
11 that you did this in a camper which Eric -- the Defendant
12 Eric -- had purchased; is that correct?

13 A That's correct.

14 Q And you've since learned that he didn't own that
15 camper until 2005. Haven't you learned that?

16 A No, sir, I haven't.

17 Q You haven't been informed of that?

18 A No, sir.

19 Q Now, you said that the camping trips that we're
20 talking about today that present with you would have been
21 Mike Sanders and your brothers on those two camping trips?

22 A Yes, sir.

23 Q On both of those camping trips?

24 A Specifically in the 2005 one.

25 Q 2005 one was Mike Sanders?

1 A Yes, sir.

2 Q And which brothers?

3 A I believe Jacob, Victim 2 and Victim 3

4 Q Jacob and who else?

5 A Victim 2 and Victim 3

6 Q And on that particular episode of 2005 what are your
7 allegations in regards to a sexual assault by Eric
8 Vancleave?

9 A I don't understand the question.

10 Q What are you saying Eric Vancleave did in 2005 in
11 Barnwell State Park in the pop-up -- was it a pop-up
12 camper?

13 A Yes, sir.

14 Q In the pop-up camper with those individuals along.

15 A You want me to describe what I just described?

16 Q Yes. Yes, I do.

17 A Okay. I would wake up at I don't know the time
18 because I didn't have a watch or anything on me, but I
19 would wake up in the middle of the night to Mr. Vancleave
20 with my penis in his mouth ejaculating me and then he
21 would go on further to use my hands to ejaculate him and
22 he would also that night kiss me and rub all over my butt
23 and body and just be really close to me and then as the
24 night progressed he would use -- he would put his penis in
25 my butt.

1 Q Who was present in the camper at that time?

2 A I believe Mr. Sanders, Jacob, Victim 2 and Victim 3

3 Q So all of them were in the camper on that particular
4 episode; is that right?

5 A I am not certain of Jacob, but I do know for certain
6 Mr. Sanders, Victim 2 and Victim 3 were there.

7 Q Drew and Victim 3

8 A Victim 2 --

9 Q Victim 2

10 A -- and Victim 3

11 Q And in 2006 which you're referencing as being
12 Memorial Day weekend --

13 A I believe so.

14 Q -- who was present then?

15 A I believe myself, Victim 2 Victim 3 and Josiah.

16 Q Again, were you in the camper?

17 A Yes, sir.

18 Q But Mr. Sanders was not present on that occasion; is
19 that right?

20 A I don't believe so.

21 Q And what were the sleeping arrangements on this trip?

22 A I know I was in the bed with Mr. Vancleave. I assume
23 -- I believe my brother Victim 2 was on the pull-out table.
24 The table turned into a bed and then my brothers Josiah
25 and Victim 3 would have been in the other bed.

1 Q All of y'all were in this pop-up camper; is that
2 correct?

3 A That is correct.

4 Q How old would you have been in Memorial Day week of
5 2006?

6 A Sixteen years old.

7 Q How old was your brother Victim 2

8 A He would have been 17.

9 Q And Victim 3

10 A He would have been 14.

11 Q And Josiah?

12 A Ten or eleven.

13 Q And is it your testimony that on Memorial Day weekend
14 the identical things happened that you referred to on
15 Easter weekend of 2005?

16 A That's correct.

17 Q Is it your testimony that these identical things
18 occurred in Lexington County at the Barnyard Flea Market,
19 also?

20 A Yes, sir.

21 Q Is it your testimony that these identical things
22 occurred at Eric Vancleave's house?

23 A Not every time, but yes, sir.

24 Q And it is your testimony that you told Laurie
25 Caldwell that these occurred every Easter weekend from

1 2001 to 2005?

2 A It is, sir. Do I have a chance to defend myself in
3 that statement?

4 THE COURT: You can explain.

5 THE WITNESS: When this happens to you for a span of
6 so many years it's not the easiest thing to get all the
7 dates correct and I remembered it being around holiday
8 weekends and I remembered it happening from 2001 to 2006
9 or so. So, it's easy to get dates mixed up when it's
10 happened so many times, sir.

11 Q Are your dates mixed up about 2005 and 2006?

12 A No, sir.

13 Q How old are you now?

14 A I am 22 years old.

15 Q And what is your college level now?

16 A I'm a senior in college.

17 Q At Erskine?

18 A Yes, sir.

19 MR. WILLIAMS: That's all the questions I have, your
20 Honor.

21 THE COURT: Redirect, if any.

22 MISS RINGLER: None from the State, Your Honor.

23 THE COURT: You may step down, sir.

24 MISS RINGLER: The State calls Victim 2 [REDACTED]

25 [REDACTED] after being duly sworn,

1 testified as follows:

2 THE CLERK: Please have a seat in the witness chair
3 and state your full name for the record.

4 THE WITNESS: Victim 2

5 IN-CAMERA DIRECT EXAMINATION

6 BY MISS RINGLER:

7 Q Do you go by Victim 2

8 A Victim 2 or Victim 2 yes, ma'am.

9 Q And how are you related to Victim

10 A He is my older brother.

11 Q What is your date of birth?

12 A , 1988.

13 Q How do you know the defendant in this case Eric
14 Vancleave?

15 A He went to my Dad's church and worked at my Dad's
16 restaurant; so we worked together.

17 Q How would you describe his relationship initially
18 with your family?

19 A He spent a lot of time with my family. We spent a
20 lot of time in the restaurant and at church and went on a
21 lot of trips with him.

22 Q Did you go on any camping trips with him?

23 A Yes, ma'am.

24 Q Did you go on a camping trip to Maggie Valley?

25 A Yes, ma'am, I did.

1 Q Can you please describe what happened on that trip?

2 A Yes, ma'am. We had his camper. Myself and my little
3 brother Josiah went on the trip. We were in the back room
4 laying on the floor -- there was a bed area there --
5 watching a movie and we fell asleep while we were watching
6 the movie.

7 Q And who is in this part of the camper at this time?

8 A Myself, Mr. Vancleave were on the floor. Josiah was
9 laying on the bed which was raised up a little bit.

10 Q I'm sorry. Please continue.

11 A Yes, ma'am. I woke up some time in the middle of the
12 night. I don't know what time. The movie was off and my
13 pants had been pulled down. Mr. Vancleave was grasping my
14 penis and I believe attempting to ejaculate me. I woke up
15 and looked over and he had his eyes closed and I moved his
16 hand and pulled my pants back up and went back to sleep.

17 Q Do you remember approximately how old you were when
18 this happened?

19 A I believe I was 17.

20 MISS RINGLER: Thank you. Please answer any
21 questions that Defense Counsel might have.

22 IN-CAMERA CROSS-EXAMINATION

23 BY MR. WILLIAMS:

24 Q Mr. T. when was this trip to Maggie Valley?

25 A Again, I believe I was 17, sir.

1 THE COURT: How old are you now?

2 THE WITNESS: I am 24, sir.

3 THE COURT: So when would that have been?

4 THE WITNESS: 2006, I believe, sir. 2005.

5 Q What month was it in?

6 A I believe it was turning summer. We went to Mile
7 High Theme Park in Maggie Valley.

8 Q Turning summer?

9 A Sir?

10 Q What does turning summer mean? I mean, does that
11 mean it is June, July?

12 A No, I don't remember, sir.

13 Q So you believe it is 2006 -- turning summer of 2006?

14 A 2005 or 2006.

15 Q What kind of camper were you in?

16 A It was the camper -- it had a rear bedroom with bunk
17 beds and a table bed, bathroom in the middle, and a master
18 bedroom up front.

19 Q What color was it?

20 A I don't remember, sir.

21 Q And you say Josiah was with you; is that correct?

22 A That is correct.

23 Q And on this isolated incident you remember that your
24 pants were pulled down; is that correct?

25 A It was not an isolated incident, sir. It had

1 happened before, but, yes, that's correct.

2 Q When did it happen before?

3 A I don't recall, sir. It happened at his house
4 before.

5 Q When did you first report it?

6 A Around the same time my brother did.

7 Q After you talked to your brother?

8 A I don't believe we had spoken. We may have.

9 Q You don't remember if you talked to your brother
10 about it before you reported it?

11 A No, sir, I do not.

12 MR. WILLIAMS: That's all I have, your Honor.

13 THE COURT: Redirect?

14 MISS RINGLER: None from the State, Your Honor.

15 THE COURT: Well, is it your position on your motion
16 that you're attempting the Maggie Valley alleged incident
17 as well as the time before in Lexington?

18 MISS RINGLER: No, Your Honor. We just would seek to
19 admit the camping trip sexual assault that was similar in
20 nature to the Barnwell camping trip that the victim
21 experienced.

22 THE COURT: Thank you, ma'am. You may step down.
23 Next witness.

24 MISS RINGLER: Your Honor, the State calls Victim 3
25 [REDACTED]

1 (Victim 3) after being duly sworn,
2 testified as follows:

3 THE CLERK: You may sit down and state your full name
4 for the record, okay?

5 THE WITNESS: Okay. (Victim 3)

6 THE COURT: Speak up for me, Mr. T.

7 THE WITNESS: Yes, sir.

8 IN-CAMERA DIRECT EXAMINATION

9 BY MISS RINGLER:

10 Q Thank you. Do you go by (Victim 3)

11 A I do.

12 Q (Victim 3) how old are you?

13 A Twenty-one.

14 Q What is your date of birth?

15 A , 1992.

16 Q How are you related to (Victim 2) and (Victim)

17 A I am their younger brother.

18 Q And how do you know the defendant?

19 A He was a member of our church that my Dad pastored
20 and a friend of the family and worked in my Dad's
21 restaurant.

22 Q And did you ever go on -- did you ever spend any time
23 with the defendant?

24 A Yes, he would take us to football games. Sometimes
25 we would stay over his at house and he would take us on

1 camping trips.

2 Q Do you remember a camping trip to Cherokee, North
3 Carolina?

4 A Yes, I do.

5 Q Can you please tell me about that trip?

6 A I was about 12 -- 12 or 13. This would have been, I
7 guess, '04, '05. I went on a trip with him and another
8 family and the first night he made the sleeping
9 arrangements to where I would be sleeping in the bed with
10 him and my little brother would be sleeping on the middle
11 bed which was a table and I woke to him ---

12 Q So this was in a camper of some kind?

13 A Yes.

14 Q Sorry.

15 A There were two different campers. I don't believe
16 this was the pop-up camper. I think this was a different
17 one. It had a back room and stuff like that. So, but, I
18 woke the first night in the middle of the night to him
19 grasping me and attempting to ejaculate me and I looked
20 over at him and it looked like he was asleep; so I thought
21 it may be -- I may just be mistaken. It was just an
22 accident or something like that.

23 So the following night ---

24 Q When he was grabbing you. Where was he grabbing you?

25 A My penis.

1 Q What was he doing?

2 A He was attempting to ejaculate me.

3 Q So his hand was moving?

4 A Yes.

5 Q I'm sorry. Please continue.

6 A So I thought it may have been a mistake; that maybe
7 it was just an accident or something that happened because
8 it looked like he was asleep. So the following night he
9 arranged places for us to sleep again and I was to sleep
10 with him again. So, the same thing happened the next
11 night and the rest of that night I slept on the floor and
12 I realized what had happened.

13 Q So the second time that it happened -- I'm sorry. If
14 you could kind of describe that a little bit.

15 A It was the exact same as the first time; grabbing on
16 the outside of the pants and attempting to ejaculate my
17 penis.

18 Q And this was during the night you were in the same
19 bed together?

20 A Yes.

21 Q Thank you. Please answer any questions that the
22 Defense Counsel might have.

23 THE COURT: Mr. Williams?

24 IN-CAMERA CROSS-EXAMINATION

25

1 BY MR. WILLIAMS:

2 Q Mr. [REDACTED] it is your testimony that this occurred
3 in Cherokee, North Carolina and not Maggie Valley; is that
4 correct?

5 A Yes, sir.

6 Q So those are two distinct different places?

7 A Yes, sir.

8 Q And who was present with you?

9 A It was my little brother Josiah.

10 Q Uh-huh.

11 A And a family called the Wick family and they had a
12 separate camper.

13 Q Would that be DeeDee Wick and Richard?

14 A And Blair, yes.

15 Q And Blair and all that?

16 A And the two kids. Two other kids. Sorry. Smaller.

17 Q And when -- when again was it? 2004, 2050? Do you
18 remember what year?

19 A I don't remember the exact year, no.

20 Q And your testimony is that there was no anal or
21 penile penetration; correct?

22 A That's correct.

23 Q And is it your testimony that it stopped; that you
24 prevented him from doing something when this was going on
25 when you say he attempted to ejaculate you? Did you -- or

1 did it continue through -- how did it stop each night?

2 Did you just ---

3 A I woke up to being ejaculated. The process was
4 finished; so I didn't prevent anything from happening.

5 No.

6 Q When did you report this to anyone?

7 A When my brother did. We all came forward. I was
8 kind of ashamed of the whole situation and when he came
9 forward I guess it kind of gave me the strength to do the
10 same.

11 Q This was after you talked to your brother Tim -- I
12 mean to your brother Victim

13 A Yes, we had spoken.

14 Q And how long after y'all had spoken was it that you
15 went to the police?

16 A A day maybe; a day or two.

17 Q One or two days?

18 A Yeah, it was very soon after.

19 MR. WILLIAMS: That's all I have, Your Honor.

20 MISS RINGLER: Nothing from the State, Your Honor.

21 THE COURT: You may step down. Next witness.

22 MISS RINGLER: That's all, Your Honor. Your Honor,
23 the State would seek to admit evidence of prior sexual
24 assaults committed on the victim. I think this shows a
25 pattern of abuse that went on for several years involving

1 this victim. This would give the jury a complete picture
2 of the pattern of abuse and what **Victim** was going through
3 that led up to the Barnwell trips where he was also
4 sexually abused and so to take those trips out of context
5 would be misleading to the jury.

6 The assault occurred in a similar manner. The
7 defendant and victim would be sleeping in the same bed
8 together and the victim would wake up to the defendant
9 sexually assaulting him and this occurred from his early
10 teen, pre-teen years up until the age of 16 years old for
11 him. The majority of the assaults took place at the
12 defendant's home, but also on out-of-town trips where they
13 would stay in either tents or later on in the camper and
14 that was where the assaults occurred on these camping
15 trips -- these out-of-town trips and also at the
16 Defendant's residence and so the State would seek to admit
17 that testimony, Your Honor, to provide the jury with a
18 clear picture of what was going on and what the victim
19 went through and showing the pattern of abuse.

20 The state would also seek to admit the two instances
21 involving his two brothers -- the camping trips -- in that
22 those were also similar in nature to what the victim
23 experienced. These were all brothers. This all occurred
24 during the teen years for the victims for the camping
25 trips. They were instances where the victims would awake

1 to the Defendant sexually assaulting them. I understand
2 that it progressed farther with our victim Victim [REDACTED]
3 but in the other testimony -- excuse me -- the other
4 assaults were similar in nature, although they progressed
5 farther so there wouldn't be the prejudice if it were
6 reversed in that if he went farther with other victims
7 than our victim; so there would be that prejudice
8 associated with that.

9 That's not the case here. He actually went farther
10 with our victim than with these other victims and the
11 assaults were similar in nature occurring on camping
12 trips, similar ages. The victims are all related and also
13 have a similar relationship with the Defendant in that he
14 was a family friend known through the church and took
15 these boys on these trips.

16 THE COURT: Thank you. Mr. Williams?

17 MR. WILLIAMS: Your Honor --

18 THE COURT: Sir?

19 MR. WILLIAMS: -- it is almost like I have to go
20 backwards forwards because the standard, as I understand
21 it, would be clear and convincing in terms of the
22 evidence -- whether or not that evidence is clear and
23 convincing. Now, if you focus on Victim [REDACTED] -- the prior
24 evidence, I guess, on Victim [REDACTED] testimony -- it is
25 interesting to note that those allegations she's

1 attempting to introduce involve a home, involve Barnyard
2 Flea Market. These are all allegations which are subject
3 to criminal warrants which are pending in Lexington County
4 which are subject to be tried, I assume, after we get
5 through with this trial right here.

6 The Court has to realize that the trials that we're
7 trying here involve the years 2005, 2006, a camper, and
8 the Court is cognizant of the fact that, obviously, those
9 other indictments which the solicitor's office attempted
10 to bring forward involving the Easter weekends of 2001,
11 2002, 2003, 2004, for whatever reason they have deemed
12 that they did not want to try those cases and I would
13 suggest to the Court that's because that there was an
14 alibi for those types of cases and they now have some
15 window of opportunity they're using as a foundation for
16 these cases.

17 Then you look at these two other alleged victims that
18 they're attempting to use to buttress the case that they
19 have here in Barnwell and it involves a Cherokee visit and
20 it involves a visit which is in Maggie Valley. Neither
21 one of these two alleged events was the subject of any
22 type of criminal warrant and as an Officer of the Court I
23 can tell the Court that both of these episodes were
24 investigated by the Federal Bureau of Investigation.

25 THE COURT: Yeah, but that's not the standard here.

1 The standard here is whether or not there was a close
2 degree of similarity to allow the admissibility. We're
3 not talking about criminal prosecution in other cases.

4 MR. WILLIAMS: If you look at the testimony prevented
5 by these two individuals, they can't remember --

6 THE COURT: Well, that goes to --

7 MR. WILLIAMS: -- the dates.

8 THE COURT: -- the weight as opposed to
9 admissibility, doesn't it, Mr. Williams?

10 MR. WILLIAMS: It does go to that, but if you look
11 at, I guess, the case which I attached to the memorandum
12 which I handed to the Court, Your Honor --

13 THE COURT: State versus Wallace?

14 MR. WILLIAMS: Yes -- which I assume would be the
15 standard --

16 THE COURT: It is.

17 MR. WILLIAMS: -- and it talks about those five
18 elements that have to be presented. You'll note that
19 there is no coercion involved in any of these items. If
20 the story is that it involves brothers, there are several
21 other brothers who, obviously, have not testified because
22 nothing ever occurred with them or has been alleged to
23 have occurred with them. The only similarity that we have
24 here in any of it is that my client happened to be a
25 friend of the family and that he went on a camping trip.

1 THE COURT: And on trips to his house and on trips to
2 Auburn and on trips to Gainesville and everywhere else
3 where he arranged for the young men to sleep with him --
4 an adult male -- in the same bed. The same type of
5 alleged abuse occurred.

6 MR. WILLIAMS: The testimony presented to the Court
7 this morning, Your Honor, was not about that. The
8 testimony presented to the Court this morning dealt with
9 North Carolina trips.

10 THE COURT: Well, that's as to the other two boys.
11 I'm talking about the other two as well as the other
12 incidents.

13 MR. WILLIAMS: I understand. Well, Your Honor, I
14 didn't hear **Victim** testify in regards to any abuse which
15 occurred while he was in a camper at Auburn or a camper
16 at ---

17 THE COURT: That's true. His happened at Maggie
18 Valley, allegedly. Strike that. **Victim 2** happened at
19 Maggie Valley.

20 MR. WILLIAMS: I don't know that -- even though there
21 was the statement made about football games at Auburn and
22 football games at Florida, I don't know that there was any
23 more made other than those two statements and there were
24 no connection with any sexual assaults to those -- what's
25 been presented in testimony today. The -- and I don't

1 know that Victim -- I think one of them testified that in
2 terms of sleeping arrangements one testified that he was
3 laying on the floor and it occurred where he was not in
4 regards to a sleeping arrangement.

5 THE COURT: Well, he got on the floor after it
6 happened is what I understood. So...

7 MR. WILLIAMS: Your Honor, we think that, obviously,
8 the prejudicial value of this outweighs the probative
9 value substantially.

10 THE COURT: That's the 403 argument.

11 MR. WILLIAMS: Yes, sir. I know it's a second part
12 of the decision.

13 THE COURT: I understand.

14 MR. WILLIAMS: I thought I would go ahead and argue
15 that, too, because this is clearly a buttressing attempt
16 on behalf of the State because if you take that testimony
17 of these other two individuals it's very scanty at the
18 least and surely that we're here to try those allegations
19 involving 2005, 2006 in Barnwell.

20 THE COURT: I understand that, but you also
21 understand under Lyle and 404 and all the cases that the
22 Supreme Court and Court of Appeals have given us as
23 guidance, particularly the State versus Wallace, in so
24 many of these sexual-abuse, sexual-act cases they involve
25 analysis under 404, under Lyle, and under Wallace and I

1 have to make that determination as to whether or not these
2 events are similar in nature so it would be allowed.

3 Here's what we'll do. I am going to take it under
4 advisement. We got the jury waiting outside. I am going
5 to step back in the chambers.

6 Ms. McElveen, if you would bring the jury in, get
7 them seated, bring me back out for roll call and
8 qualification. I want you to bring them in and go

9 straight to roll call and go straight to qualification.
10 Now, the victim's family, my jury sits on this side.
11 I assume these are members here on behalf of the
12 defendant.

13 MR. WILLIAMS: They are, Your Honor.

14 THE COURT: So I am going to ask them if they would
15 move back about five rows, please, right now. Put them on
16 this front row, please. They're bringing in jury in. As
17 soon as they come in they're going to come get me. We'll
18 call the roll and move forward.

19 (Whereupon, a break was taken.)

20 MISS RINGLER: The State calls the case of the State
21 versus Eric Vancleave; Indictment 2013-GS-06-76 for
22 criminal sexual conduct with a minor, Indictment
23 2013-GS-06-77 for lewd act upon a minor, Indictment
24 2013-GS-06-78 for assault and battery of a high and
25 aggravated nature, and Indictment 2013-GS-06-79 for

1 criminal sexual conduct.

2 THE COURT: Mr. Williams, are y'all ready to proceed?
3 I know you may have a couple of motions. We'll do that
4 after that.

5 MR. WILLIAMS: We're ready other than that, Your
6 Honor.

7 THE COURT: All right. Ladies and gentlemen, the
8 State has called to trial a case involving four
9 indictments. The indictments in this case concern
10 allegations that the Defendant Eric Vancleave has violated
11 our laws dealing with a lewd act upon a child, criminal
12 sexual conduct with a minor, assault and battery of a high
13 and aggravated nature, and criminal sexual conduct.

14 Mr. VanCleave has plead not guilty to each of these
15 four indictments. By pleading not guilty he obviously has
16 the constitutional right of the presumption of innocence
17 on all four indictments and the burden of proof is on the
18 State of South Carolina through the Solicitor's Office to
19 prove to you as a juror or jury -- 12 jurors -- beyond a
20 reasonable doubt the elements of each and every of these
21 allegations contained in the Indictment.

22 The Indictment is not evidence in the case. It is
23 simply the charging document by way this case comes into
24 the courtroom; so I need to ask you a few questions in
25 regards to this particular case and once we have completed

1 that, then we'll be in a process to draw the jury.

2 Mr. VanCleave, would you please stand and face the
3 jury panel?

4 (Defendant complies)

5 THE COURT: Thank you. You may be seated. Do I have
6 any member of the jury panel who is related by blood or
7 marriage to the Defendant Eric VanCleave or do any of you
8 now or have you in the past had a close personal or social
9 relationship with the Defendant Eric VanCleave? If so,
10 please stand.

11 I am told that the potential witnesses in the trial
12 of the case are as follows: Mr. Marshall Richburg, Jr.,
13 who's employed at the Barnwell State Park.

14 Is he in the courtroom?

15 MISS RINGLER: No, Your Honor.

16 THE COURT: The alleged victim of the matter is

17 Victim [REDACTED]

18 Mr. Victim [REDACTED], would you stand and face the jury panel?

19 (Complies)

20 THE COURT: Thank you. Witnesses in the trial of the
21 case will be Victim 3 [REDACTED]

22 Mr. Victim 3 [REDACTED] would you stand, please?

23 (Complies)

24 THE COURT: Thank you. Victim 2 [REDACTED] please
25 stand.

1 (Complies)

2 THE COURT: Thank you. Mr. Michael Sanders.

3 (Complies)

4 THE COURT: Thank you. And Laurie Caldwell who was
5 at one time with SLED. Is she in the courtroom?

6 MISS RINGLER: No, Your Honor.

7 THE COURT: Mr. Donald Duanne VanCleave. Is he in
8 the courtroom? Mr. VanCleave is back this way. Jennifer
9 Jennings VanCleave; she's back there also. And Dennaugh
10 Russ Wick, W-I-C-K.

11 MR. WILLIAMS: She's not the courtroom at this time.

12 THE COURT: Question: Any member of the jury panel
13 related by blood or marriage or have you now or in the
14 past had a close personal or social relationship with any
15 of the potential witnesses? If so, please stand.

16 In the trial of the case the State of South Carolina
17 will be represented by members of the Solicitor's Office
18 for the Second Judicial Circuit which is Bamberg,
19 Barnwell, and Aiken. Ms. Susie Ringler, Mr. Jack Hammack.

20 (Ms. Ringler and Mr. Hammack stand.)

21 THE COURT: Thank you. The Defendant will be
22 represented by Mr. Theo Williams of the Lexington County
23 Bar in Lexington and Mr. Williams practices with the law
24 firm of?

25 (Mr. Williams Stands.)

1 MR. WILLIAMS: It is Williams, Hendrix, Steigner, and
2 Brink.

3 THE COURT: First question: Any member of the jury
4 panel now or in the past have ever had legal services
5 provided to you by any of the lawyers involved in the
6 trial of this case or either Mr. Williams' firm? If so,
7 please stand. Do I have any member of the jury panel who
8 is now or in the past related by blood or marriage to the
9 any of the lawyers or do you now or have you in the past
10 had a personal relationship or social relationship with
11 the lawyers? If so, please stand.

12 Ladies and gentlemen, this trial involves allegations
13 contained in these indictments. As I told you these are
14 simply allegations. The State has the burden of proving
15 these allegations to you beyond a reasonable doubt, but it
16 is alleged that here in Barnwell County between May 27 of
17 2006 and May 29 of 2006 that the Defendant Mr. Eric
18 VanCleave committed the offense of criminal sexual conduct
19 in the third degree by engaging in sexual battery with
20 Victim [REDACTED] that on the same dates it is alleged
21 that Mr. VanCleave committed the offense of assault and
22 battery of a high and aggravated nature by causing certain
23 injury to the person and it is also alleged that between
24 April 1 of 2005 and May 17 of 2006 that he engaged in
25 sexual battery of the victim -- that is, Mr. Eric

1 VanCleave with one Victim [REDACTED] who was between
2 the ages of 14 and 16 at that time.

3 It is further alleged that between April 1 of 2005
4 and May 17 of 2006 that Mr. Eric VanCleave attempted to or
5 committed lewd or lascivious acts upon the body of Victim [REDACTED]
6 [REDACTED] who was under the age of 16 at the time with
7 the intent of arousing or appealing to lust, passions, and
8 sexual desires. Those are simply allegations of the four
9 indictments. It is alleged conduct that is prohibited by
10 our criminal laws dealing with sexual -- alleged sexual
11 acts that occurred here in Barnwell County during the
12 dates that I've told you about.

13 The reason I say that, that's simply allegations.
14 He's plead not guilty those allegations. I have to tell
15 you what the allegations are because I want to ask you
16 this question. Does any member of the jury panel know
17 anything about these allegations? I think from pretrial
18 these allegations in Barnwell County allegedly occurred at
19 the Barnwell State Park.

20 Now, does anybody -- have you heard anything about
21 it? You've read anything about it in the newspaper?
22 Television? Internet? General street discussion? Do you
23 know anything at all about this? Have you formed any
24 opinions about this? In other words, do you have any
25 knowledge about these facts as alleged in the Indictment?

1 I need to know that. If you would, please stand and
2 identify yourself.

3 Do I have any member of the jury panel who was on the
4 grand jury that returned true bills of Indictment back in
5 2013 on these cases? If so, please stand.

6 Do I have any member of the jury panel who you or
7 your immediate family is employed with law enforcement?
8 In other words, maybe the county sheriff's department or
9 SLED or any law enforcement agency, South Carolina Highway
10 Department Patrol? If so, please stand.

11 Ms. Hutto?

12 THE JUROR: Yes.

13 THE COURT: Your name for me, please?

14 THE JUROR: Stephanie Hutto. My brother is Billy
15 Reynolds and he's on the Sheriff's Department, volunteer.

16 THE COURT: He is a volunteer for the Barnwell County
17 Sheriff's Department?

18 THE JUROR: Yes, sir.

19 THE COURT: Ms. Ringler, the Sheriff's Department is
20 not involved in this, is it?

21 MISS RINGLER: No, Your Honor.

22 THE COURT: Ms. Hutto, the fact that you have a
23 brother-in-law that's involved with law enforcement as a
24 volunteer, would that in any way keep or preclude you from
25 being fair and impartial in the trial of this case?

1 THE JUROR: No, sir.

2 THE COURT: Thank you. You may be seated.

3 Yes, sir, my banker with Enterprise Bank, your name?

4 THE JUROR: David Berry. My mother is Beverly

5 Martin. She's a 9-1-1 dispatcher for Barnwell County.

6 THE COURT: And 9-1-1 is not involved, is it?

7 MISS RINGLER: No, Your Honor.

8 THE COURT: Mr. Berry, All State football kicker?

9 THE JUROR: That was my brother.

10 THE COURT: You could have fooled me. The fact that
11 your mom is involved in dispatching for 9-1-1, would that
12 in any way preclude or keep you from being able to listen
13 to the facts in this case and make a decision based solely
14 on what you hear in the courtroom?

15 THE JUROR: It will not.

16 THE COURT: Thank you. Ladies and gentlemen, I have
17 been doing this almost nine years now. Next month May 1
18 will be nine years. I practiced law for 30 years. I
19 guess the biggest responsibility I have as a trial judge
20 is to make sure that when someone is accused of a criminal
21 act such as we have in all General Sessions cases is to
22 make sure that both the Defendant and the State of South
23 Carolina receive a fair trial and the way the system works
24 is that we actually have two judges in every case that we
25 try.

1 My position as a Circuit Court Judge makes me the
2 judge of the law. In other words, I instruct you what the
3 law is in the case. I'm the Judge of the law and you have
4 to accept the law as I give it to you. That's my role; so
5 I am the judge of the law.

6 The more important judge in the trial of a case is
7 the judge of the facts or the Judges of the facts and that
8 is 12 jurors who are selected collectively acting as one
9 to determine what the true facts are in the case and
10 that's what your duty is and it's an awesome
11 responsibility because that's why we have such a civilized
12 society. If we have a dispute, we resolve it in the
13 courtroom. We don't go outside and have a dictator or
14 army coming through the street and telling us what to do
15 and what not to do.

16 If we have a dispute we get 12 citizens from the
17 community who come in and listen to the testimony and a
18 lot of times -- more times than not, most of the time,
19 almost all the time, when you sit on that jury panel
20 you'll hear different sides of the story. One person
21 might say it's one and one person might say it's five and
22 one person might say it's 10 and one may say it's red.
23 One may say it's green. One may say it's daytime. One
24 may say it's night time.

25 You're going to hear a lot of discrepancies in the

1 facts. Your job is this. Your job is to listen carefully
2 and determine what facts you deem to be the truth. You
3 determine the credibility or the believability of the
4 witnesses who testify in the case. You listen to the
5 testimony as presented on the witness stand and you
6 determine who is telling the truth; what the truth in this
7 case.

8 You're seeking the truth and you deal with your
9 wives, you deal with your husbands, you deal with your
10 children, employees, employers, family friends on a daily
11 basis. You know how to judge when somebody is telling the
12 truth. And you take that responsibility and you judge
13 them and you determine what the true facts are and when
14 y'all decide as the judges of the facts what are the true
15 facts, then you take those facts and apply it to the law
16 as I give it to you at the conclusion of the case dealing
17 with all of these indictments and that's how you make your
18 decision. It's an awesome civic responsibility, but it's
19 what makes our country stand aside from many others
20 because we have the right to trial by jury when we're
21 accused of something.

22 Now, my question with that background is this: Do I
23 have anybody on this jury panel who cannot perform that
24 civic duty because of personal beliefs, political beliefs,
25 religious beliefs, any kind of beliefs, that you can't sit

1 and perform this task? I need to know now because once we
2 choose you, then, obviously, the 12 of you will be
3 collectively acting as one to decide what the true facts
4 are and apply it to the law as I give it to you. So do I
5 have anybody that cannot perform that civic duty?

6 Yes, ma'am. You want to come up here for me, please?

7 (The juror comes forward and speaks privately with
8 the Court as follows:)

9 THE COURT: Your name, please?

10 THE JUROR: Debra Hutto.

11 THE COURT: Ms. Hutto, how are you? Yes, ma'am? Why
12 don't you do this. Take a deep breath. You're okay.

13 THE JUROR: I do not want to hear facts or I don't --
14 I don't want to hear trash like that.

15 THE COURT: Well, ma'am ---

16 THE JUROR: It is -- I have children. I have
17 grandchildren and I just think that I would tune part of
18 it out if it gets ugly. This is just something that I do
19 not -- I'm prejudiced, I guess.

20 THE COURT: Against people who are accused of
21 sexually abusing people or against anyone who is accused
22 of anything?

23 THE JUROR: Sexual abuse of children.

24 THE COURT: Okay, Ms. Debra.

25 THE CLERK: Number 85.

1 THE COURT: Thank you. Have a seat back for me,
2 please.

3 (The juror returns to the jury pool.)

4 THE COURT: Anyone else that needs to talk to me
5 other than number 85?

6 Yes, ma'am?

7 (The juror comes forward and speaks privately with
8 the Court as follows:)

9 THE COURT: Good morning. How are you?

10 THE JUROR: Rebecca Willis.

11 THE CLERK: Number 173.

12 THE COURT: Yes, ma'am. What is your situation?

13 THE JUROR: We just found out last week my daughter
14 was sexually assaulted and we're in the process of
15 potentially pressing charges and I don't know that I can
16 bear this.

17 THE COURT: Thank you. I understand. Thank you.
18 You have a seat back there.

19 (The juror returns to the jury pool.)

20 THE COURT: I'll put it on the record what is being
21 relayed to me up here.

22 (The juror comes forward and speaks privately with
23 the Court as follows:)

24 THE COURT: Good morning.

25 THE JUROR: My name is Belinda Carpenter and I don't

1 think I could be objective about it because the minute I
2 heard child molestation and I just got sick and when he
3 stood up I thought he's got four counts already and he's
4 guilty, you know, and the reason I feel like this is
5 because my daughter was molested from age 10 to age 18 by
6 her stepfather.

7 THE COURT: Your name, please?

8 THE CLERK: Twenty-six.

9 THE JUROR: It's not on records in any courts --

10 THE COURT: I understand.

11 THE JUROR: -- because my daughter didn't want anyone
12 to know.

13 THE COURT: I understand. Thank you.

14 THE JUROR: But I did divorce him the minute I found
15 out.

16 THE COURT: Thank you.

17 (The juror returns to the jury pool.)

18 THE COURT: Other than the three individuals who have
19 been up to see me -- number 85, number 173 and number
20 26 -- my question to the jury panel is this: Do I have
21 any member of the jury panel who has been a victim of a
22 sexual assault or has had a close family friend who was a
23 victim of a sexual assault? All I need to know is yes or
24 no.

25 Yes, ma'am, your name?

1 THE JUROR: Teresa Carter.

2 THE COURT: Number?

3 THE JUROR: Twenty-nine.

4 THE COURT: And you had a member of the family that
5 was accused ---

6 THE JUROR: (Points to herself.)

7 THE COURT: And the fact that you experienced that,
8 ma'am, or your family experienced that, would that
9 preclude or keep you from being a fair and impartial juror
10 in the trial of this case? Could you be a juror in the
11 trial of this case?

12 THE JUROR: No, sir.

13 THE COURT: Your number, please?

14 THE JUROR: Twenty-nine.

15 THE COURT: Thank you, ma'am. You may have a seat.

16 Ms. Hutto?

17 THE JUROR: I have also been involved.

18 THE COURT: And the fact that you've been involved in
19 that, ma'am, would that preclude you from being a fair and
20 impartial juror in the trial of this case?

21 THE JUROR: (Nods head)

22 THE COURT: What number are you, please?

23 THE CLERK: 87.

24 THE COURT: Thank you. You may have a seat.

25 Yes, ma'am, your name?

1 THE JUROR: Tanya Brown.

2 THE COURT: And you've had some experience in your
3 family with allegations of that?

4 THE JUROR: Yes, sir.

5 THE COURT: Would that keep or preclude you from
6 being able to listen to the facts in this case and try the
7 case based solely on what you hear in the courtroom,
8 ma'am?

9 THE JUROR: No, sir.

10 THE COURT: You cannot do that or can do that?

11 THE JUROR: I can do that.

12 THE COURT: You can do that?

13 THE JUROR: Uh-huh.

14 THE COURT: Thank you. You may be seated.

15 Yes, ma'am, in the blue -- powder blue?

16 THE JUROR: Family member sexual assault.

17 THE COURT: And your name, please?

18 THE JUROR: Linda Pickering.

19 THE COURT: Ma'am, the fact that you've had a family
20 member involved, would that in any way keep you from being
21 able to be fair and impartial?

22 THE JUROR: I don't think so.

23 THE COURT: You don't think you could be or you think
24 you could be?

25 THE JUROR: I think it could be.

1 THE COURT: I need to know if you could be.

2 THE JUROR: Yes, I could be.

3 THE COURT: Thank you, ma'am. You may be seated.

4 Your name?

5 THE JUROR: Krystal Glover.

6 THE COURT: Ms. Glover? And you had someone in your
7 family that's involved in this?

8 THE JUROR: Yes.

9 THE COURT: Would that keep you from being fair and
10 impartial or could you serve and be a fair juror?

11 THE JUROR: I can't serve.

12 THE COURT: Could not? Your number, please?

13 THE CLERK: Fifty-six.

14 THE COURT: Yes, sir?

15 THE JUROR: I had family members, but it wouldn't
16 affect --

17 THE COURT: You're my preacher?

18 THE JUROR: Yes, sir.

19 THE COURT: Your name, please?

20 THE JUROR: Gerald Williams.

21 THE COURT: What number, Mr. Williams?

22 THE JUROR: 169.

23 THE COURT: And the fact that you had some
24 involvement or experience in your family, that would not
25 keep you from being fair and impartial? You could serve;

1 is that correct?

2 THE JUROR: I can still serve, yes, sir.

3 THE COURT: Thank you very much. You may be seated.

4 Yes, ma'am, is it Gunnells?

5 THE JUROR: Yes.

6 THE COURT: Married to Michael?

7 THE JUROR: Right.

8 THE COURT: Tell him I said hello. What is your
9 situation, Mrs. Gunnells?

10 THE JUROR: I had a family member.

11 THE COURT: And the fact that you had that in your
12 family at one time, could you be able -- would you be able
13 to serve on this jury and be able to listen to the
14 testimony and make a decision based on what you heard in
15 the courtroom and not be influenced by anything on the
16 outside?

17 THE JUROR: I don't think I would.

18 THE COURT: You would be able to serve. Is that what
19 you're telling me?

20 THE JUROR: Yeah.

21 THE COURT: Thank you. You may be seated.

22 Mr. Williams, I am not sure about -- who is that
23 witness in number one?

24 MR. WILLIAMS: If we may approach a second, Your
25 Honor.

1 (Whereupon, a bench conference was held.)

2 THE COURT: Any member of the jury panel related by
3 blood or marriage to a potential witness Mrs. Kelly Cahoon
4 [REDACTED] Please stand for me.

5 (Complies)

6 THE COURT: That's C-O-H-O-O-N. Any member of the
7 jury panel related by blood or marriage, close family or
8 personal relationship?

9 Thank you, ma'am. You may be seated.

10 May I see juror number 53, Jeremy Fields, 165; Agneta
11 Washington, please?

12 (The juror comes forward and speaks privately with
13 the Court as follows:)

14 THE COURT: Mr. Williams, look here.

15 Right here, sir.

16 THE CLERK: Jeremy Fields.

17 MISS RINGLER: He has a pending ABHAN charge.

18 THE COURT: You got current criminal charges pending
19 against you in the Solicitor's Office?

20 THE JUROR: Yes, sir.

21 THE COURT: How long have they been pending?

22 THE JUROR: Going on a year and a half.

23 THE COURT: The fact that you currently have criminal
24 charges pending against you, would that keep you from
25 being fair and impartial in the trial of the case? Or

1 would you have a bias against the Solicitor's Office or
2 anyone else? You're pretty hesitant.

3 THE JUROR: Yes, sir, maybe.

4 THE COURT: All right. I am going to excuse him.
5 Thank you. Just have a seat back there.

6 (The juror returns to the jury pool.)

7 THE COURT: 165, Ms. Washington. That may be a
8 no-show.

9 (The juror comes forward and speaks privately with
10 the judge as follows:)

11 THE COURT: Good morning. How are you doing?

12 THE JUROR: Fine.

13 THE COURT: I am told that there are currently
14 pending charges for unlawful neglect of a child against
15 you in the Solicitor's Office; is that correct?

16 THE JUROR: Uh-huh.

17 THE COURT: The fact that you have current pending
18 charges, would that keep you from being fair and impartial
19 in the trial of the case?

20 THE JUROR: No.

21 THE COURT: Would not?

22 THE JUROR: No, sir.

23 THE COURT: Don't lose your money.

24 THE JUROR: Oh.

25 (The juror had money hanging out of a pocket.)

1 THE COURT: Mr. Williams?

2 MR. WILLIAMS: Yes, sir?

3 (Whereupon, a bench conference was held.)

4 THE COURT: Ladies and gentlemen, the last question
5 or maybe the last question -- we've been over a good bit
6 of stuff and this is sort of a catch-all question I ask at
7 the end. Does any member of the jury panel know of any
8 reason whatsoever why he or she should not be a juror in
9 the trial of the case other than the ones I've already
10 spoken to with particular emphasis being placed on your
11 ability to be fair and impartial both to the Defendant
12 Mr. VanCleave and to the State of South Carolina in
13 connection with this case? I need to know now. Thank
14 you.

15 Any additional questions by the State?

16 MISS RINGLER: None from the State, Your Honor.

17 THE COURT: Mr. Williams?

18 MR. WILLIAMS: None from the Defendant, Your Honor.

19 THE COURT: Thank you. All right. I am ready,
20 ladies.

21 Ladies and gentlemen of the jury panel, the way we'll
22 select the jury is those who were not disqualified or not
23 relieved -- released -- your names are now being put into
24 the program and the Clerk will randomly select the order
25 in which the numbers are called. I have no idea what the

1 order is because it's a computer program that just
2 shuffles you up. When your name is called, if you would
3 please come down to right here by Ms. McElveen. She'll be
4 right here, and the State has five strikes. The Defendant
5 has 10 strikes and they can strike you for most any reason
6 at all or no reason at all within certain bounds that the,
7 obviously, the lawyers know about.

8 They can't just strike you for race reasons or gender
9 reasons or things of that nature. They have to have some
10 basis for it, but on the other side of the coin they can
11 exercise those strikes with a lot of latitude. We'll go
12 through that process until I have 12 jurors and two
13 alternates. It doesn't take as long as it sounds. We're
14 getting ready to get started right now. She's getting
15 ready to print out the list.

16 If we were trying a car wreck case or a legal
17 malpractice or medical malpractice or civil case where
18 someone is suing for monetary damages, what we would do
19 now would be get a list of 20 names and the lawyers would
20 each have four strikes or the sides would each have four
21 strikes and it would leave us with 12, but in a criminal
22 case you come down and it's done a little different.

23 Bear with us just a second. We're printing now. As
24 your name is called, please come down. The bailiff will
25 open the little gate. Come right here in front of

1 Ms. McElveen and turn around and face the lawyers, please.

2 THE CLERK: Juror number 60 Patricia, Graham. (Black
3 female)

4 What says the State?

5 MISS RINGLER: Please present this juror.

6 THE CLERK: What says the Defense?

7 MR. WILLIAMS: Please swear the juror.

8 THE CLERK: Juror number 44, Mary Davis. (Black
9 female)

10 What says the State?

11 MISS RINGLER: Please present this juror.

12 THE CLERK: What says the Defense?

13 MR. WILLIAMS: Please excuse the juror from the trial
14 in this case.

15 THE CLERK: Juror number 68, Jerry Hair. (White
16 male)

17 What says the State?

18 MISS RINGLER: Please present this juror.

19 THE CLERK: What says the Defense?

20 MR. WILLIAMS: Please excuse the juror from the trial
21 in this case.

22 THE CLERK: Juror number 126, Charlene
23 Owens-Darlington. (Black female)

24 What says the State?

25 MISS RINGLER: Please present this juror.

1 THE CLERK: What says the Defense?
2 MR. WILLIAMS: Please swear the juror.
3 THE CLERK: Juror number 94, Jennifer Johnson.
4 (White female)
5 What says the State?
6 MISS RINGLER: Please present this juror.
7 THE CLERK: What says the Defense?
8 MR. WILLIAMS: Please swear the juror.
9 THE CLERK: Juror number 96, Barry Jones. (White
10 male)
11 What says the State?
12 MISS RINGLER: Please present this juror.
13 THE CLERK: What says the Defense?
14 MR. WILLIAMS: Please swear the juror.
15 THE CLERK: Juror number three, Robert Anderson.
16 (Black male)
17 What says the State?
18 MISS RINGLER: Please present this juror.
19 THE CLERK: What says the Defense?
20 MR. WILLIAMS: Please swear the juror.
21 THE CLERK: Juror number 172, Viola Williams. (Black
22 female)
23 What says the State?
24 MISS RINGLER: Please present this juror.
25 THE CLERK: What says the Defense?

1 MR. WILLIAMS: Please swear the juror.

2 THE CLERK: Juror number 48, Tony Dunbar. (Black
3 male)

4 What says the State?

5 MISS RINGLER: Please present this juror.

6 THE CLERK: What says the Defense?

7 MR. WILLIAMS: Please swear the juror.

8 THE CLERK: Juror number 115, Connie Moody. (Black
9 female)

10 What says the State?

11 MISS RINGLER: Please present this juror.

12 THE CLERK: What says the Defense?

13 MR. WILLIAMS: Please excuse the juror from the trial
14 in this case.

15 THE CLERK: Juror number 54, Donald Frazier. (White
16 male)

17 What says the State?

18 MISS RINGLER: Please present this juror.

19 THE CLERK: What says the Defense?

20 MR. WILLIAMS: Please swear the juror.

21 THE CLERK: Juror number 165, Agneta Washington.
22 (Black female)

23 What says the State?

24 MISS RINGLER: Your Honor, at this time we would ask
25 for a strike for cause.

1 THE COURT: The record reflected that Ms. Agneta
2 Washington currently has charges pending against her by
3 the Solicitor's Office.

4 What is the Defense's position?

5 MR. WILLIAMS: We have no argument on that, Your
6 Honor.

7 THE COURT: All right. She's excused by the Court.

8 THE CLERK: Juror number 175, Jessica Zissette.

9 (White female)

10 What says the State?

11 MISS RINGLER: Please excuse this juror.

12 THE CLERK: Juror number 76, Monique Harrison.

13 (Black female)

14 What says the State?

15 MISS RINGLER: Please present this juror.

16 THE CLERK: What says the Defense?

17 MR. WILLIAMS: Please swear the juror.

18 THE CLERK: Juror number 101, Bertha Kirby. (Black
19 female)

20 What says the State?

21 MISS RINGLER: Please present this juror.

22 THE CLERK: What says the Defense?

23 MR. WILLIAMS: Please swear the juror.

24 THE CLERK: Juror number 118, Donnell O'Berry.

25 (Black male)

1 What says the State?

2 MISS RINGLER: Please present this juror.

3 THE CLERK: What says the Defense?

4 MR. WILLIAMS: Please swear the juror.

5 THE CLERK: Juror number 21, Bernice Blocker. (Black
6 female)

7 What says the State?

8 MISS RINGLER: Please present this juror.

9 THE CLERK: What says the Defense?

10 MR. WILLIAMS: Please excuse the juror from the trial
11 of this case.

12 THE CLERK: Juror number 18, Henry Boyd. (Black
13 male)

14 What says the State?

15 MISS RINGLER: Please excuse this juror.

16 THE CLERK: Juror number 124, Jason Owens. (White
17 male)

18 What says the State?

19 MISS RINGLER: Please present this juror.

20 THE CLERK: What says the Defense?

21 MR. WILLIAMS: Please swear the juror.

22 THE COURT: All right. Let's go with two alternates:
23 Two for the Defendant and one for the State.

24 THE CLERK: Juror 141, Donald Sanders. (White male)

25 What says the State?

1 MISS RINGLER: Please excuse this juror.

2 THE CLERK: Juror 154, Gloria Staley. (Black female)

3 What says the State?

4 MISS RINGLER: Please present this juror.

5 THE CLERK: What says the Defense?

6 MR. WILLIAMS: Please swear the juror.

7 THE COURT: Two and one again.

8 THE CLERK: Juror number 66, Joyce Gunnells. (White
9 female)

10 What says the State?

11 MISS RINGLER: Please present this juror.

12 THE CLERK: What says the Defense?

13 MR. WILLIAMS: Please excuse the juror from the trial
14 of this case.

15 THE CLERK: Juror number 163, William Vojtech.
16 (White male)

17 What says the State?

18 MISS RINGLER: Please present this juror.

19 THE CLERK: What says the Defense?

20 MR. WILLIAMS: Please swear the juror.

21 THE COURT: Any motions by the State in connection
22 with the selection of the jury?

23 MISS RINGLER: None by the State, Your honor.

24 THE COURT: Mr. Williams, on behalf of the Defendant?

25 MR. WILLIAMS: None from the Defendant, Your Honor.

1 THE COURT: Ladies and gentlemen, those of you who
2 were not drawn as promised and represented you'll now be
3 excused for the balance of the week and you'll be exempt
4 from serving for the next three calendar years. The Clerk
5 will be mailing you a check. It's not a large check, but
6 it's a check of some amount. You'll be getting that
7 hopefully by the end of the week.

8 I thank you for your willingness to be here this
9 morning. Obviously, we cannot run our court system
10 without having jurors ready, willing, and able to serve,
11 and I thank you on behalf of the judiciary as well as the
12 citizens of Barnwell for you taking time out this morning.
13 So, without having to say a whole lot more, I am going to
14 let you now be excused. I am going to ask the people on
15 my left, your right, remain seated. My jurors are free to
16 go. If anyone needs a work excuse, you can go downstairs
17 to the Clerk's office and they will provide one for you.

18 (The Clerk speaks with the Court.)

19 THE COURT: If you need one for today, you can get
20 it. If not, we'll mail it to you. Thank you. Those that
21 did not fill out the forms, take them back by the Clerk's
22 office.

23 (Whereupon, the remaining jurors are excused and a
24 bench conference was held.)

25 MISS RINGLER: Your Honor, I believe one of the

1 jurors has a question.

2 THE JUROR: Yes.

3 (The juror speaks with the Court off the record.)

4 THE COURT: Mr. Anderson, juror number what?

5 THE JUROR: I think two.

6 THE COURT: Two? You're right up there at the top.

7 THE CLERK: Three.

8 THE COURT: Close. That's Dale Earnhardt's number.

9 Mr. Anderson just informed me that Officer Trottie -- Is
10 he with y'all?

11 THE POLICE OFFICER: Yes, sir.

12 THE COURT: Officer Trottie -- I guess he is up here
13 doing some kind of work.

14 You are how related to him?

15 THE JUROR: We are first cousins and he is my
16 landlord.

17 THE COURT: Well, the Sheriff's Department is not
18 involved in the investigation at all?

19 MISS RINGLER: No, Your Honor, and he is here for
20 court security.

21 THE COURT: He is just up here assigned sometimes for
22 court security. The fact that you have that particular
23 officer, would that in any way preclude or keep you from
24 being fair and impartial in the trial of the case?

25 THE JUROR: No.

1 THE COURT: He's not going to testify. Thank you.

2 Mr. Williams? That's up to you. I got two
3 alternates.

4 MR. WILLIAMS: I'd rather have an alternate, Your
5 Honor, if I got a choice.

6 THE COURT: You got a choice. All right. I am going
7 to excuse you.

8 THE JUROR: Okay. Thank you.

9 THE COURT: Thank you. Madam Clerk, I've got two
10 alternates. A1 is Ms. Gloria Staley. A2 is Mr. Vojtech.
11 Randomly select one of those for me. You know how to do
12 that?

13 THE CLERK: I am just going to put one on one hand
14 and one on the other one and you pick one.

15 THE COURT: Fair enough by the Defendant?

16 MR. WILLIAMS: Yes, sir.

17 THE CLERK: The first alternate. The name is Gloria
18 Staley.

19 THE COURT: Ms. Staley, I am going to elevate you.
20 We do things sometimes very scientific.

21 THE CLERK: I can't go into the computer for that.

22 THE COURT: All right. In all seriousness, Mr.
23 Williams, we can put it in there and shake it up. Are you
24 satisfied with that random selection?

25 MR. WILLIAMS: I am, Your Honor. It is actually in

1 accordance with how the alternates were chosen.

2 THE COURT: I know that, but the statute says ---

3 MR. WILLIAMS: I have no objection, Your Honor.

4 THE COURT: Thank you. Now, Ms. Gloria, you're now
5 part of the jury.

6 You probably may get elevated, too. We never know
7 what may happen.

8 THE JUROR: No problem.

9 THE COURT: Somebody might get tired of listening to
10 me and they'll raise their hand.

11 Okay. Here is what I think the best efficient way to
12 use your time is this. I've got about 30 more minutes of
13 pretrial matters with the lawyers. We've got a motion
14 that was made this morning and I've got to make some
15 rulings to decide whether or not certain testimony under
16 the law is allowed into the trial of the case and we've
17 done most of that, but I still got to hear argument and
18 things of that nature. There are a few other little
19 housekeeping matters that we got to do.

20 That's going to probably take me until about close to
21 12:30 and then we would probably break for lunch. So,
22 here is what I am going to do. Is being back at 1:30 --
23 is that an imposition for anybody? If we go through lunch
24 tomorrow I promise you I'll buy your lunch tomorrow and if
25 we're here for breakfast in the morning or when we start

1 early I'll have you some breakfast food. How about that?

2 THE CLERK: I got Hardee's coupons; so we're good.

3 THE COURT: I ain't using coupons. I am going to get
4 the expensive stuff. Just kidding.

5 So, let's start -- if 1:30 is okay, we'll start right
6 at 1:30. When we come back at 1:30, I'll give you some
7 opening instructions and then we'll have the opening
8 statements by the lawyers and we'll start taking
9 testimony. I'll probably go until about five. Is that
10 okay with everybody? Does anybody need to make
11 arrangements to do anything?

12 We'll try to stop around five just depending on where
13 we are and then probably we'll see where we are and decide
14 whether to start at 9:30 or 10 in the morning and I
15 suspect we'll be through tomorrow, but, you know,
16 sometimes my guess is not quite accurate. So, what I am
17 going to do now is let you go for lunch. If you'll follow
18 the bailiff, he'll show you where to return. We'll start
19 right at 1:30.

20 If anybody tries to discuss the case with you or talk
21 to you about the case, just tell them that you're on the
22 jury. You cannot discuss it. Don't do any research on
23 the internet or anything else on this case. We're going
24 to try it based on what we hear in the courtroom and I'll
25 see you back at 1:30 with a promise that I'll buy you

1 lunch tomorrow and breakfast tomorrow morning.

2 Everybody else please remain seated.

3 (Whereupon, the jury exited the courtroom at 12:07.)

4 THE COURT: Mr. Williams, you advised me that you
5 need to renew a motion. I'll be glad to hear from you on
6 that.

7 MR. WILLIAMS: Yes, Your Honor. My client was
8 arrested on April 1 of 2010. He was previously
9 represented by Attorney Richard Breibart and in that
10 capacity Attorney Breibart filed discovery motions in
11 reference to the charges that he has in Barnwell County
12 and when I became -- when I started representing him about
13 a year ago I started filing discovery motions and the
14 motion actually goes to the four Indictments that were in
15 place up until he was indicted on these charges which
16 would have been February 11 of 2013.

17 When we appeared for those particular charges that he
18 was indicted on that morning I had argued that the prior
19 four Indictments that were pending for the last two and a
20 half years that the State should not be allowed to seek
21 four new Indictments. Those Indictments -- we had sent
22 alibi as to those four Indictments in February of 2013
23 which, in essence, proved that as written that those
24 Indictments -- those four prior Indictments could not be
25 proven because there were allegations about a pop-up

1 trailer. We sent documentation to prove when he purchased
2 the pop-up trailer as being May of 2005 as well as other
3 discovery which indicated that he was in a different
4 location other than Barnwell County during those dates.

5 Your Honor, I have found no South Carolina law that
6 says that we have that right -- because Your Honor
7 graciously gave us a continuance for these four
8 Indictments. I know of no South Carolina law. I told
9 Your Honor candidly I had found some North Carolina law,
10 but, obviously, that's not applicable in South Carolina,
11 but we would like to renew our objection to those four new
12 Indictments being presented three years after my client's
13 arrest and only after presentation of alibi evidence in
14 regards to the prior four Indictments.

15 THE COURT: Miss Ringler, anything additionally other
16 than what you argued the last time this case was called to
17 trial?

18 MISS RINGLER: Nothing additional, Your Honor.

19 THE COURT: Okay. We had a term of court here in
20 Barnwell back on --

21 MISS RINGLER: February 25.

22 THE COURT: -- February 25 at which time the
23 Indictments were amended or the new Indictments were
24 issued. Is that the time?

25 MISS RINGLER: I had submitted Indictments to that

1 particular grand jury; so they had been true-billed that
2 Thursday before and I e-mailed the copies I intended to
3 present to Mr. Williams prior to that grand jury.

4 THE COURT: That's correct.

5 MISS RINGLER: Also, I gave him true-bill copies of
6 the Indictments when we were here.

7 THE COURT: That's what led to on that particular
8 morning this case was called for trial and he made the
9 motion and instead of granting the motion I gave him
10 additional time to prepare for today and we discussed it,
11 if I recall, several dates we had a personal conflict with
12 a child graduating and some other things; so I think we
13 worked around all those and were able to accommodate your
14 -- not accommodate your schedule, but to allow you to be
15 able to do your family stuff and so that's why we did it
16 and we give you additional time. So, for the same reasons
17 as expressed earlier I am going to respectfully deny your
18 request on your motion.

19 Now, Miss Ringler, you also advised me that you had
20 to do something else.

21 MISS RINGLER: Yes, Your Honor. The original
22 warrants were all for criminal sexual conduct with a minor
23 and also for lewd act. Some of the alleged conduct that
24 we're going forward on today, Your Honor, occurred when
25 the victim was 16 years old; therefore, we would proceed

1 under the criminal sexual conduct and ABHAN statutes
2 rather than the lewd act and CSC with a minor.

3 Those were Indictments that I gave to Mr. Williams
4 when we were last here. I believe since they are new
5 charges we would need to do a arraignment; although, I
6 think the Defense is waiving formal arraignment. I did
7 reference the other warrants because it was the same
8 conduct, but because of the victim's age it did alter --
9 at the time of the abuse it did alter the statutes that we
10 would proceed under.

11 So, there are lewd act and CSC with a minor
12 Indictments we're proceeding on for when he's 15 and
13 under. For when he's 16 we're proceeding under those two
14 criminal sexual conduct and ABHAN Indictments.

15 THE COURT: All right. Mr. Williams, are you going
16 to require formal arraignment or...

17 MR. WILLIAMS: I do not, Your Honor.

18 THE COURT: And your client is well aware of the
19 charges that's outlined in the new Indictments. You've
20 had an opportunity as able defense lawyer to discuss its
21 with him and the elements and he knowingly and
22 intelligently waives the arraignment; is that correct?

23 MR. WILLIAMS: Yes, Your Honor.

24 THE COURT: Mr. VanCleave, do you understand what an
25 Indictment is? Strike that. What an arraignment is.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: It is simply where I advise you of the
3 charges and ask you whether or not you plead guilty or not
4 guilty and have any questions. Of course, Mr. Williams
5 has gone over all of that with you. Do you have any
6 questions you want to ask me about it?

7 THE DEFENDANT: No, sir.

8 THE COURT: And you will waive a formal arraignment;
9 is that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. What else do we need to do?

12 MISS RINGLER: That's all from the State, Your Honor.

13 THE COURT: All right. As to the admission of the
14 testimony there is two aspects of that. One is allowing
15 the alleged victim in these four Indictments -- Victim
16 [REDACTED] -- to testify about events other than those
17 that occurred here in Barnwell at the state park.
18 Obviously, to make an analysis of that I have -- will be
19 following the rationale and reasoning of our State Supreme
20 Court in the March 2008 case of Karl Wallace. The State
21 versus Karl, K-A-R-L, Wallace, 683 SE 2d 275 which
22 instructs the trial bench when analyzing bad act evidence
23 that I have to begin with Rule 401 and determine whether
24 or not the evidence is relevant and if I determine it to
25 be relevant, then I have to determine whether the bad act

1 evidence fits within the exception of Rule 404(b) as we're
2 all familiar with.

3 So, in reading the cases I've just cited, I do find
4 it would be relevant. Then the question is whether or not
5 404(b) allows it under common scheme or plan and the
6 Supreme Court in that case went through a rather detailed
7 analysis of what I should consider. They say these
8 factors are for us for guidance, and, obviously, other
9 factors may be relevant in weighing the similarities or
10 dissimilarities between the crime charged and the bad act
11 evidence and they suggest that we look at the age of the
12 victims when the alleged abuse occurred, the relationship,
13 location, and the manner of occurrence, and, obviously, in
14 this case the Court says that a close degree of similarity
15 establishes the required connection between the two acts
16 and no further connection must be shown for admissibility.

17 So I find as far as the alleged victim in this case
18 that his description of the Defendant making arrangements
19 for them to sleep together, how he went about -- allegedly
20 went about fondling, masturbating, attempting to engage in
21 masturbation and other sexual activities are similar to
22 all of the other places where it occurred. The victim and
23 the Defendant, obviously, are close by way of association
24 with a church and his Dad's restaurant. I just find from
25 the totality of all the events that it comes within the

1 404(b) exception, and having decided that, obviously, I
2 have to then decide whether or not under a 403 analysis
3 whether or not it's more probative than prejudicial and I
4 find that it is, and I, therefore, will allow the
5 testimony of the other alleged similar incidents as
6 described earlier today in the in-camera testimony.

7 As far as the testimony of Victim 2 [REDACTED] and
8 Victim 3 [REDACTED] I likewise find it is relevant; that
9 there is substantial similarities and under a 403(b)
10 analysis that it's more probative than prejudiced and I
11 will allow for that as well. I will make a part of the
12 record the memorandum in support of the prior bad act
13 evidence as submitted by the Solicitor as well as the
14 memorandum in opposition by Mr. Williams and the
15 attachments to each one of those. I think you're both
16 fully protected on the record, but if there is anything
17 else that needs to be put on the record -- not in
18 disagreeing with my ruling, but anything just for record
19 protection by the State?

20 MISS RINGLER: Nothing from the State, Your Honor.

21 THE COURT: By Mr. Williams?

22 MR. WILLIAMS: No, Your Honor.

23 THE COURT: All right. Thank you. We'll stand at
24 ease. We'll start the trial of the case at 1:30. What's
25 the State's position on the Defendant being out on bond?

1 MISS RINGLER: We would ask that he come into custody
2 at this time, Your Honor.

3 THE COURT: Mr. Williams?

4 MR. WILLIAMS: Your Honor, I have -- as I did last
5 time, I have the bonding company who has agreed to remain
6 on his bond and I have a statement from the bonding
7 company which would be Brad's Bonding Company agreeing the
8 same.

9 THE COURT: I am going to allow him to stay out
10 through lunch and we'll assess the situation this
11 afternoon late. Now, let me make this observation. We
12 have members here from, obviously, the alleged victim's
13 family on the front row. We have members from the
14 Defendant's family. I saw some staring this morning which
15 concerned me by some members of the Defendant's family
16 towards members of the victim's family. We're going to
17 break for lunch here in a few minutes, ladies and
18 gentlemen. Please stay separated outside of this
19 courtroom. Please act like you've acted all morning long.
20 Be responsible citizens. I am ordering that there be no
21 exchange of conversations or anything else between the
22 victim's family and the Defendant's family. If I hear of
23 any violation of that rule, I'll deal with it.

24 So, at this time -- Mr. Williams, do y'all want to go
25 out first?

1 MR. WILLIAMS: We can.

2 THE COURT: Mr. Williams and the Defendant, I am
3 going to let y'all go on out the front door. The victim's
4 family sit tight for a few minutes. We'll let y'all go
5 out the back door. We'll start back at 1:30. Be back
6 about 20 after.

7 (Whereupon, a lunch break was taken.)

8 THE COURT: Anything for the record before we start
9 back?

10 MISS RINGLER: Nothing from the State, Your Honor.

11 THE COURT: Mr. Williams?

12 MR. WILLIAMS: Nothing from the Defendant, Your
13 Honor.

14 THE COURT: Bring the jury in, please.

15 (Whereupon, the jury came into open court at
16 approximately 1:31.)

17 THE COURT: I hope you had a pleasant lunch, get
18 enough to eat, not too much. Please stay awake for me.
19 The first thing we have to do is to have you sworn in for
20 this particular trial; so if you would stand and raise
21 your right hand the Clerk will administer the oath for
22 this trial.

23 (Whereupon, the jury was sworn at 1:33.)

24 THE COURT: All right. Ladies and gentlemen, let me
25 give you just some opening remarks about sort of where

1 we're going, how we're going to get there, and what you
2 can expect and then when I finish that we'll get right
3 into the trial of the case.

4 We have two types of courts in our state. We try
5 civil cases where people who are in car wrecks and have
6 grievances against each other for damages, medical
7 malpractice, legal malpractice, and then on the other side
8 of the coin we have what we call criminal court or General
9 Sessions Court which is this and when a person is accused
10 of committing a crime normally he is arrested and then an
11 Indictment is issued by the grand jury and he comes into
12 this courtroom to face these charges and that's what we're
13 here about today because the State of South Carolina has
14 accused Mr. Eric VanCleave in four Indictments.

15 These Indictments are for criminal sexual conduct,
16 assault and battery of a high and aggravated nature,
17 criminal sexual conduct with a minor, and lewd act upon a
18 minor. Now, the Indictments by way this case comes in the
19 courtroom, that's just mere allegations. He has plead not
20 guilty to all four Indictments and under our Constitution
21 and the United States Constitution he is presumed to be
22 innocent unless the State is able to prove his guilt to
23 you beyond a reasonable doubt.

24 Now, if we were trying a car wreck case or somebody
25 was accusing their lawyer of not being a good lawyer and

1 legal malpractice or medical malpractice or something
2 where they're asking for monetary damages, the parties
3 would come into the courtroom on equal footing. So, if
4 these were the scales of justice for that person suing the
5 other person they have to prove their case by what we call
6 the preponderance or greater weight of the evidence. They
7 have to tip the scales ever so slightly by their proof.
8 In a criminal case because the Defendant enjoys the
9 constitutional presumption of innocence he comes into the
10 courtroom with the scales tipped way in his favor and for
11 the State to prove him guilty they must prove his guilt to
12 you beyond a reasonable doubt and tip the scales in that
13 manner.

14 Now, at the conclusion of the case I will define to
15 you what reasonable doubt means and burden of proof and
16 those sorts of things. I'll instruct you on the elements
17 of each of these four Indictments and what the case --
18 what the State must prove. Now the way we go about doing
19 that or the way the system works in doing that -- because
20 the State of South Carolina who has brought the criminal
21 action, they have the burden of proof. They go first.
22 They present their case first. At the conclusion of their
23 case the Defendant has the right to present his defense if
24 he chooses to do so and then when all the evidence is
25 completed and at the end of the trial of the case then you

1 start your responsibilities and your responsibility is the
2 biggest responsibility that we have in the courtroom
3 because you're to listen to all the evidence that comes
4 into the trial of the case.

5 The lawyers have to ask their questions based on the
6 rules of evidence and only those questions that are
7 allowed under our rules are admitted into the trial of the
8 case. Most everything that you hear will be admitted into
9 the trial of the case. As I told you when we were
10 selecting the jury one witness may say it's green and one
11 may say it's purple and one may say it's black and gray
12 and no telling, you know, all kinds of ways of describing
13 something, but it's your duty to analyze what they're
14 telling us in determining who is telling the truth, what
15 the true facts are in the case.

16 You judge the believability or the credibility of the
17 witnesses who testify in the case and once the 12 of you
18 acting collectively as one decide this is what we believe
19 as the judges of the facts to be the true facts -- this is
20 what the truth is, this is what we determine the truth to
21 be -- you take those true facts and you apply it to the
22 law on each of these types of Indictments -- the lewd act,
23 the criminal sexual conduct, the assault and battery --
24 and determine whether those true facts fit within those
25 statutes and whether or not the State has proven their

1 case to you beyond a reasonable doubt.

2 So, that's what your responsibility is. You're the
3 judges of the facts and the law -- the facts in the case.
4 I am the Judge of the law in the case; so I tell you what
5 the law is. You tell me what the facts are and you apply
6 those facts to the law and you'll be in a position to
7 render a verdict.

8 Now, as soon as I complete my opening remarks the
9 case will start by opening statements from each side -- by
10 the State through the Solicitor's Office and by the
11 Defendant through Mr. Williams. The opening statements
12 that the lawyers make is not evidence in the case. It is
13 simply what they contend the important issues are. It's
14 sort of like a road map as to what they're going to prove
15 to you during the trial of the case, what you're to look
16 for during the trial of the case, what the important
17 factors are, what they deem to be important. What they
18 tell you in opening statements is not evidence in the
19 case.

20 The only evidence that you can consider comes from
21 sworn witnesses who have sworn to tell the truth on the
22 witness stand and or through relevant exhibits that may be
23 introduced during the trial of the case. Because the
24 State has the burden of proof, they present their case
25 first, as I said, followed by the Defendant. Once all the

1 testimony is in, then they will present their final or
2 closing arguments to you and then once that is done I will
3 instruct you or charge you on the law in the case dealing
4 with the four Indictments and some general propositions of
5 law.

6 So, that's sort of how the case will flow. I try to
7 be efficient with your time. I try not to waste time. I
8 try to start when we say we're going to start and I try to
9 stop when we say we're going to stop. I try to keep the
10 lawyers moving. I try to be efficient and not waste any
11 of your time, but, by the same token, I am not trying to
12 run a race up here.

13 So, if at any time during the trial of the case you
14 become uncomfortable, you need a bathroom break, you want
15 something to drink, or you need to stand up and stretch,
16 or you need to take a break for a little bit, do not get
17 uncomfortable. Raise your hand and I'll make sure that
18 any needs you have are met and we'll take a break. I'll
19 tell you each time that we take a break or break for
20 overnight tonight I will tell you please do not discuss
21 the case amongst yourselves. Do not start any type of
22 deliberating on the case until we have completely
23 presented all the evidence and the lawyers have made their
24 final arguments and I have charged you on the law.

25 So, when you go back into the jury room during the

1 breaks you can talk about most anything you want to, but
2 don't start deliberating and don't start talking about the
3 case until it's over. I will ask you at the first break
4 this afternoon to please select a foreperson from the 12
5 of you. The foreperson is simply the spokesperson for the
6 jury. They head up the deliberations. They bring to my
7 attention any concerns that you may have or any personal
8 needs you may have. So if y'all can just select a
9 foreperson among the 12 of you, I would appreciate it. If
10 you can't, I am going to randomly select one of you.

11 So, I ask that you pay close attention. It is,
12 obviously, a very important case and the State has
13 prepared it, the Defense has prepared their side of it,
14 and they're going to put it into your hands here shortly
15 and that's what the whole system is about. When someone
16 is accused of a crime and they plead not guilty to it,
17 they get 12 citizens from their community, from their
18 county to listen to what everybody has to say and it's up
19 to the 12 of y'all to determine what the truth is and
20 decide when you decide what the truth is apply that to the
21 law and you'll be in a position to render a verdict.

22 I look forward to working with you. As I said, it'll
23 probably be -- we'll go through until about 5 o'clock
24 today. I suspect we'll finish it up tomorrow, but, if
25 not, no later than Wednesday morning. So keep that in

1 mind as we go along.

2 Any objections to my opening remarks by the State?

3 MISS RINGLER: None from the State, Your Honor.

4 THE COURT: By the Defendant?

5 MR. WILLIAMS: None from the Defendant, Your Honor.

6 THE COURT: All right. I am going to ask the State,
7 Ms. Ringler, if you would make your opening comments
8 followed by Mr. Williams.

9 OPENING STATEMENT

10 MISS RINGLER: Good morning.

11 THE COURT: Good afternoon now.

12 MISS RINGLER: Good afternoon. In early 2010 Victim
13 ██████ attended a faith-based conference. It was a couple
14 of days long and the sermon for the last night's -- for
15 the last night's sermon the message was about holding
16 things in and the need to let them go and to forgive. Now
17 this was a pivotal moment for Victim He had been holding
18 something in for years and he was finally ready to
19 disclose and to tell about the years of sexual abuse that
20 he suffered at the hands of that man Eric VanCleave.

21 Now, Victim -- his father at the time was a
22 pastor at a church in Lexington County. He is one of nine
23 brothers and sisters. He's here today in the front row
24 and in a blue blazer. Also here today are his brothers
25 Victim 2 sitting next to him in the green polo and Victim 3 in

1 the long-sleeved blue shirt and **Victim 2** is about two years
2 older than **Victim** and **Victim 3** -- he is about two years
3 younger than **Victim**

4 So, he comes from a big family and they met the
5 Defendant because he became a member of his father's
6 church and started spending a good bit of time with the
7 **T. [REDACTED]** family and this included taking **Victim** on trips out
8 of town and it included **Victim** spending the night at the
9 Defendant's house.

10 Now, the first time that the Defendant sexually
11 assaulted **Victim** was at the Defendant's house. **Victim** was
12 spending the night with the Defendant. The two of them
13 slept in the Defendant's bed. The victim wakes up at
14 night and finds the Defendant with his hand down **Victim**
15 pants rubbing his private. When the Defendant is done
16 **Victim** gets up and he goes to the bathroom trying a make
17 sense out of what's going on, trying to figure out what to
18 do. He wants to run, but he's afraid. He's worried that
19 he'll get in trouble with his parents if they find out.
20 He feels that maybe he did something to cause this to
21 happen to him. He blames himself; so instead he goes back
22 into the bedroom and he goes back into the bed and he
23 tries to position himself so that the Defendant can't
24 touch him again and he remains silent. He doesn't tell
25 anyone and the abuse continues and it eventually escalates

1 and this goes on for years at the Defendant's home and
2 also out-of-town trips each time in this similar manner.

3 Now the majority of the abuse took place in Lexington
4 County, but the Defendant did take the victim Victim on
5 camping trips to Barnwell State Park and at this point the
6 abuse had become a regular occurrence. Victim would be
7 asleep. The Defendant would somehow manipulate or somehow
8 arrange it so that he and the victim Victim would be
9 sleeping in the same bed and Victim would wake up to the
10 Defendant abusing him, and, again, he was scared and just
11 the way that children think, he didn't disclose at that
12 time. He would just close his eyes, pretend he was
13 asleep, and wait for it to be over.

14 Now the assaults took place before and after Victim
15 16th birthday. The age of consent in South Carolina is 16
16 years old; so the offenses that apply when he's 15 years
17 and younger is criminal sexual conduct with a minor and
18 lewd act upon a minor and the criminal sexual conduct with
19 a minor covers the sexual battery and the lewd act covers
20 the sexual touching. For the offenses that occurred when
21 he's 16 years and older, the offenses are criminal sexual
22 conduct and assault and battery of a high and aggravated
23 nature or aggravated assault law. So, those two sets of
24 statutes apply -- different laws applying depending upon
25 the victim's age at the time of the assault, and Judge

1 Early is going to explain all of that to you. He is going
2 to explain the law in detail, but I wanted to touch on
3 that in at the beginning as to why you're looking at four
4 different charges; basically, two sets of charges -- two
5 applying to when he's 15 years and under and two applying
6 when he's 16 years old.

7 So, the assaults that happened when he's 16 years
8 old, yes, technically those don't fall under the minor
9 statutes, but you're going to hear from Victim You're
10 going to hear him talk about how this was against his
11 will, how scared he was, but at 16 years old he is still a
12 scared kid trying to make sense out of what's being done
13 to him.

14 Now, in addition to abusing Victim the Defendant also
15 abused his two brothers -- or two of his brothers Victim 3
16 and Victim 2 and you're going to hear from them as well.
17 They're going to talk about the abuse they suffered on
18 camping trips. These camping trips took place outside of
19 Barnwell County; so you're not going to consider charges
20 for these victims, but it is being offered to you so that
21 you can see a pattern of behavior, so that you can see
22 that this is what the Defendant does. This is how he
23 abuses boys.

24 You're also going to hear about the abuse that Victim
25 suffered outside of Barnwell County, and, again, that's

1 also to show a pattern of behavior, but this was the abuse
2 that the victim was going through. This is what Victim
3 life was for several -- for years; the abuse that he
4 suffered and I know that this is going to be difficult
5 testimony to hear. It is going to be tough for everyone
6 in here, but I know that you'll be able to listen to this
7 and at the end of the trial you'll convict this man Eric
8 VanCleave on all the charges.

9 MR. WILLIAMS: May it please the court.

10 OPENING STATEMENT

11 MR. WILLIAMS: Ladies and gentlemen, I am Theo
12 Williams. It is actually Robert Theodore Williams. I go
13 by Theo and I know I haven't run into any of you from
14 Barnwell because I am from the big town of Lexington. I
15 actually -- I live in Batesburg. I practice law in
16 Lexington, South Carolina. What's interesting is that my
17 client is actually from the West Columbia area. The
18 alleged victims, depend on what you call a victim, are
19 from Lexington County, also, and the only reason why we're
20 in Barnwell County trying these cases is because under the
21 law when there is an allegation of the violation of the
22 crime then you go to the county where these alleged
23 violations occurred, but the good thing about being down
24 here is that and I found -- I probably don't look young
25 anymore -- is everywhere I go, whether it's Barnwell

1 County or if I go to Lexington County or if I go to
2 Richland County in Columbia, you meet the same type of
3 juror and that's an individual from whatever background
4 you come from, whether you're a haircutter or whether or
5 not you work at a filling station or whatever you do, but,
6 basically, all jurors are the same. They're honest,
7 hard-working people and they're looking to search for the
8 truth.

9 Now, we've heard what the Solicitor has said that she
10 wants to prove here today and I heard her make the
11 allegations about these other events and I want to remind
12 you that you not get caught up in all of these allegations
13 where they say something happened in North Carolina or
14 something happened in Lexington County. We're not trying
15 any allegations from any other county except four charges,
16 four Indictments which allege that between the dates of
17 May 27, 2006 and May 29 of 2006 there were two criminal
18 violations of the law which occurred in Barnwell County or
19 that between April 1 of 2005 and May 17 of 2006 there were
20 two violations of the law. That's what we're trying here
21 today.

22 Now, you've met my client Eric VanCleave. That's his
23 father on the first row -- Don. That's his mother.
24 That's his wife. All the rest are family members and
25 relatives just like there are individuals on the other

1 side of the courtroom. The law recognizes the use of the
2 term victim to being someone who is making an accusation.

3 In this case there is more than one victim. My
4 client was charged three years ago today with the
5 violation of the law. Three years. And he has fought his
6 way into the courtroom to try this case, to have his case
7 disposed of. He doesn't have to prove his innocence, but
8 when you're charged with the violation of the law -- and I
9 hope you never are -- then you know that this hangs with
10 you until somebody clears you.

11 What I want you to do is to do what you're sworn to
12 do and that is to be fact-finders. Every time a witness
13 testifies to something today or tomorrow I want you to
14 ask, when? When? When? You know, when we grew up in
15 school and we learned about the important things -- who
16 what, when, where, why -- when it comes to a criminal
17 charge, when is important because you have to prove when
18 some violation of law occurred. When a date is testified
19 to you, then I want you to analyze that for whichever
20 witness it came from and determine where it happened, when
21 it happened, and what backs that up or what doesn't back
22 that up.

23 You know, when you talk about cases like this, it's
24 hard to stomach. It's hard to try a case like this
25 because of the allegations, but you don't convict people

1 based on allegations even if it was something worse than
2 this and there are some crimes worse than this. You
3 render a true verdict. That's what we're looking for is a
4 true verdict. If you issue a true verdict, we have no
5 qualms from you.

6 If I ask questions in the trial of the case of
7 somebody who is alleging something against my client and I
8 appear to be a little harsh, just remember we're all in
9 search of the truth and if you search for the truth and if
10 you come back with the truth, that's all we ask for.

11 Thank you.

12 THE COURT: Ms. Ringler, you may call your first
13 witness.

14 MISS RINGLER: The State calls Victim [REDACTED]
15 [REDACTED] after being duly sworn,
16 testified as follows:

17 THE CLERK: State your name for the record.

18 THE WITNESS: Victim [REDACTED]

19 DIRECT EXAMINATION

20 BY MISS RINGLER:

21 Q Do you go by your middle name Victim [REDACTED]

22 A Yes, ma'am, I do.

23 Q Victim [REDACTED] tell me a little bit about your family.

24 A I have a large family. I'm one of nine. My father
25 has been a minister since I can remember. He started his

1 own church when I was about five, I believe, and my mom is
2 a stay-at-home mom.

3 Q Are you in school right now?

4 A I am. I am a senior at Erskine College.

5 Q When will you graduate?

6 A I'll graduate on May 18.

7 Q Do you have any plans yet for the big graduation or
8 after the graduation?

9 A Nope. It's on my birthday, too; so...

10 Q And do you play any sports at school?

11 A I do. I'm on the tennis team at Erskine College.

12 Q And is now your season?

13 A Yes, ma'am. Right now is right in the middle of my
14 season.

15 Q How have you been playing this year?

16 A Could be better, but not too bad.

17 Q Where did you grow up?

18 A I grew up in Cayce, South Carolina, and towards the
19 end of my high school we moved to West Columbia.

20 Q The Defendant here in this case, Eric VanCleave, how
21 do you know him?

22 A I originally met him -- my father, like I said, is a
23 pastor of a church and I believe we were meeting for a
24 Bible study or meeting at our house at the time and Eric
25 came. I don't remember with a friend or somehow came to

1 our church and that's when I originally met him I'd say
2 2000 or 2001 and he afterwards became a member of my
3 father's church.

4 Q How would you describe the relationship between the
5 Defendant and your family?

6 A I would describe it as close. He took a lot of us to
7 Carolina football games and he worked for my dad at my
8 dad's restaurant that he also owned and he also had a
9 catering business run out of my father's restaurant and
10 some of us worked for him sometimes for his catering
11 business. So we were around each other a lot.

12 Q Can you describe how the defendant acted around you?

13 A He -- it was obvious he wanted to get close to me.
14 He was always very touchy like as far as back rubs and
15 just -- I don't know, hugs and always wanting to be close
16 and I don't know. That's how he acted around me.

17 Q When you talked about going on trips, did you ever go
18 over to his house?

19 A I did. Yes, ma'am.

20 Q Did you ever spend the night at his house?

21 A Multiple times, yes, ma'am.

22 Q Did something happen one night when you were at his
23 house?

24 A It did.

25 Q Do you remember about how old you were or when that

1 might have been?

2 A I would say I was 11 or 12; so, 2001 or two.

3 Q Can you tell me a little bit about that night?

4 A I don't remember why exactly I stayed over there, but
5 I did stay over there and he made sure that I did stay in
6 the room with him in the same bed with him.

7 Q Do you remember what reason he gave?

8 A I don't exactly. It could have been to watch a movie
9 or something of that sort. I'm not sure, though, and so I
10 went to sleep. I remember waking up in the middle of the
11 night to his hand being down my pants messing with my
12 penis and then he eventually got to where -- well, he was
13 just very touchy and trying to pull down my pants and
14 touch on my butt and just kind of really close to me and
15 all over me and...

16 Q Do you remember -- you might have said this and I may
17 have missed it. Do you remember if his hand was over your
18 pants or in your pants?

19 A It was in my pants.

20 Q I'm sorry. What was his hand doing?

21 A It was on my penis moving in a motion to towards
22 ejaculation.

23 Q Okay. Please continue.

24 A And then there was a lot of touching and feeling and
25 eventually he did ejaculate me and then he used my hand to

1 do -- to put my hand on his penis to ejaculate him as well
2 and after that ---

3 Q Do you remember what were you doing -- do you
4 remember what was going through your head at that time?

5 MR. WILLIAMS: Your Honor, if you would note my
6 continuing objection. We've already argued the motion.

7 THE COURT: You're protected. Your objections are
8 noted.

9 MR. WILLIAMS: Thank you, Your Honor.

10 Q Please continue. What was going through your mind
11 when this was happening?

12 A I was really scared. I was really young; so I didn't
13 really understand what sex was or what even was going on
14 at the time; so I was really scared. So after I felt like
15 he had finished I got up and went to the bathroom and I
16 didn't really know what to think of it. I really wanted
17 to go home, but I knew I was too young to drive. I
18 remember not being sure if I told my parents what they
19 would think. I contemplated stealing his car for a while,
20 but then I thought they'd get mad at me about that and --
21 I don't know. I was just really scared.

22 Q What did you do at that point?

23 A I went back to bed and I laid down on my stomach to
24 try and keep him from messing with me any more and I went
25 back to sleep.

1 Q At any point did you tell anybody what happened?

2 A No, ma'am, I didn't.

3 Q Why was that?

4 A Just as I said before, I was scared. Some of it was
5 shame. I wasn't sure if it was my fault or why everything
6 was happening or what people would think of me if I told
7 them that and so I was just -- I was scared, afraid to say
8 anything.

9 Q And did it happen again?

10 A Yes, ma'am, it did.

11 Q Can you talk about generally when it happened again
12 and how often?

13 A It happened very frequently at his house. I started
14 catering with him sometimes and so he'd use that as an
15 excuse for me to stay over at his house or other reasons
16 like going to football games. So it happened very
17 frequently -- maybe once a month at his house.

18 Q Did it happen in a way similar to the first one, if
19 you can talk about that a little bit?

20 A It did, but the more it happened, the more it
21 progressed and started becoming more than just what he
22 initially had done. He began to use his mouth to
23 ejaculate me and also using his fingers and his penis and
24 putting them into my butt as well and kissing me on the
25 mouth and just escalated from there.

1 Q And you talked before about some trips. Would it
2 sometimes happen on these trips?

3 A Yes, ma'am, it would.

4 Q Did you ever take trips to Barnwell County?

5 A I did. Yes, ma'am.

6 Q And where would you go? Where in Barnwell County did
7 you go?

8 A We went to the Barnwell campground. I am not sure of
9 the exact name of it, but Barnwell State Park. Yeah,
10 that's the name of it.

11 MR. WILLIAMS: Your Honor, we would object to these
12 photos.

13 THE COURT: Let me see them.

14 MR. WILLIAMS: The Solicitor said I have an e-mail
15 from the investigator that said these photographs are from
16 2004.

17 THE COURT: What is the purpose of them?

18 MISS RINGLER: For purposes just to establish the --
19 to establish the trips.

20 THE COURT: You can make an objection.

21 MR. WILLIAMS: Your Honor, we would object to
22 relevance in that these photographs are from the time
23 period unrelated to any charge pending and being tried in
24 this case.

25 THE COURT: Ms. Ringler, what is the purpose of them?

1 MISS RINGLER: And, Your Honor, I think we would --
2 we have a witness who took the photos and he'll testify
3 that they were from 2005. If our investigator had said
4 2004, that was incorrect information. We will have a
5 witness that will testify to that who took the photos.

6 MR. WILLIAMS: If they have a witness to say these
7 are pictures of the events of the date that he allegedly
8 committed the crime in the Indictment, then we have no
9 objection at this point in time, Your Honor, if that's
10 what she's saying.

11 MISS RINGLER: Your Honor, we would allege that
12 nothing happened on this particular trip, but it is to
13 establish that this was during the time period they would
14 take trips. This is them camping. These are just camping
15 photos.

16 THE COURT: All right. I'll allow it.

17 Q I am handing you what's been previously marked as
18 State's Exhibit 1 through 14, if you can look at those.

19 A Okay.

20 Q And so what are those photos of?

21 A Those are photos of the first camping trip we made to
22 Barnwell State Park.

23 Q Do they truly and accurately depict that trip to
24 Barnwell State Park?

25 A They do, yes, ma'am.

1 Q And if you can kind of look through them and show
2 them to the jury and just -- if you could come on down and
3 just kind of talk a little bit and show the jury what's in
4 that. It's State's Exhibit No. 1.

5 I'm sorry. Excuse me, Your Honor. At this time the
6 State would move to admit State's Exhibits 1 through 14.

7 THE COURT: Subject to your objection. Any other
8 objection you need to make?

9 MR. WILLIAMS: Only as to relevance, Your Honor.

10 THE COURT: Thank you. Overruled.

11 (Whereupon, State's Exhibit Nos. 1 - 14 were admitted
12 into evidence.)

13 Q If you can talk a little bit about State's Exhibit 1.

14 A This is myself sitting in one of the fold-out chairs
15 we had at the campground just drinking something.

16 THE COURT: Speak up for me, please, sir.

17 THE WITNESS: The first picture here -- the first
18 picture is myself sitting in a fold-out chair that we
19 would have had at one of the camp sites and I guess I am
20 sitting around a fire or something drinking -- drinking
21 hot chocolate or something.

22 Q And State's Exhibit 2.

23 A This picture has Eric and myself and my brother
24 Victim 2 setting up the tents at the Barnwell State Park.

25 Q And State's Exhibit 3.

1 A This is myself, Victim 2 and Eric starting a fire at the
2 Barnwell State Park.

3 Q And State's Exhibit 4.

4 A This is just my brother Victim 2 standing in front of the
5 fire at Barnwell State Park.

6 Q And State's Exhibit 5?

7 A From your left to right is Eric sitting in a chair.
8 This is downtown Barnwell, I believe. Myself, my brother
9 Jacob, and my brother Victim 2 on the very end. I believe we
10 had gone to eat at Miller's Bread Basket afterwards.

11 Q And State's Exhibit 6.

12 A This is myself and my brother Victim 2 setting up a tent
13 at Barnwell State Park.

14 Q State's Exhibit 7.

15 A This is Miller's Bread Basket; the picture when we
16 went there after the camp -- after the night at the camp
17 site.

18 Q And State's Exhibit 8.

19 A This is Eric standing around the folding chairs at
20 the campground stirring the fire or something like that.

21 Q State's Exhibit 9.

22 A This is myself and Eric. I'm coming out of the
23 campground restroom down there in Barnwell State Park.

24 Q And State's Exhibit 10.

25 A This is Mike Sanders sitting in front of one of the

1 tents on one of the pull-out chairs at Barnwell State
2 Park.

3 Q And State's Exhibit 11.

4 A This is my brother Victim 2 again sitting in one of the
5 chairs at Barnwell State Park.

6 Q And State's Exhibit 12.

7 A This is my brother Jacob sitting in one of the chairs
8 at Barnwell State Park.

9 Q And State's Exhibit 13.

10 A My brother Jacob again carrying his bag somewhere.

11 Q State's Exhibit 14.

12 A This is myself again raking up sticks or something
13 for the fire.

14 Q Thank you. I'll grab those back from you, if you'll
15 have a seat. Let's talk about this trip. Who all went on
16 this trip to the Barnwell State Park?

17 A The first trip that went on to Barnwell State Park it
18 was Eric, myself, my brothers Victim 2 and Jacob and also
19 Mike Sanders.

20 Q Who is Mike Sanders?

21 A Mike Sanders is a family friend. He joined -- he
22 joined my father's church shortly after Eric within a
23 couple of years, I believe, and he was also good friends
24 with Eric.

25 Q And where did y'all sleep -- where did y'all sleep on

1 this camping trip?

2 A This camping trip we had two tents.

3 MR. WILLIAMS: Again, objection to relevance.

4 THE COURT: This is not the one where the abuse
5 allegedly occurred?

6 MISS RINGLER: Correct, Your Honor.

7 THE COURT: All right. I'll sustain that.

8 Q So Mike Sanders was on this trip. Did he go on
9 another trip?

10 A Yes, ma'am. He did.

11 Q Was that later in time?

12 A It was, yes, ma'am.

13 Q Did something happen on that trip?

14 A It did.

15 Q Who went on that trip?

16 A That trip consisted of Mr. Sanders, Eric, myself,
17 Victim 2 and Jacob, I believe.

18 Q And where did y'all sleep that time?

19 A That time we had -- he had purchased a pop-up camper
20 and we stayed in the camper. Actually, can I take that
21 back? It was actually Victim 3 Josiah, Victim 2 Mike
22 Sanders, Eric, and myself. We had a pop-up camper that
23 Eric had purchased.

24 MR. WILLIAMS: Objection to relevance, unless it's
25 within the time span we're dealing with, Your Honor.

1 THE COURT: Overruled.

2 THE WITNESS: The camper was white and green, I
3 believe -- the pop-up camper. You go in the door and
4 there were beds on either side of the pop-up camper that
5 pulled out and also a bed -- the table turn into a bed
6 directly in front of you. So to the right was Eric's bed.
7 That is where he and I stayed at night. It had a curtain
8 that pulled out in front of it for privacy and the bed on
9 the far left is where Mike Sanders, Victim 3 and Josiah
10 stayed and the table -- the table that pulled into a bed
11 is where Victim 2 stayed that night.

12 Q Okay. And were you younger than 16 when this
13 occurred?

14 A Yes, ma'am, I was.

15 Q Do you know approximately what year or how old you
16 were when this happened?

17 A I would say I was 14 or 15.

18 Q Do you remember the exact date?

19 A I cannot recall the exact date, no, ma'am. I know
20 around 2005, I believe.

21 Q So that night when you were sleeping in the camper,
22 can you tell us a little bit about what happened?

23 A Yes, ma'am. Like I described before what had
24 happened at his house, that was a reoccurring thing even
25 to when we went on camping trips. He made sure that I was

1 sleeping in the same bed with him and we would go to bed
2 and I would be sleeping and wake up to this specific time
3 my penis was in his mouth when I woke up and he was trying
4 to ejaculate me by moving back and forth and then after
5 that he would use my hand to try to do the same to him and
6 to ejaculate his penis and he would escalate just like I
7 said before using his finger in my butt and then
8 eventually moving to his penis.

9 Q And I'm sorry that I have to ask you to be specific.
10 What was he doing with his finger?

11 A He was putting it in my butt in my butt hole and then
12 he would put it in and pull it out and then he eventually
13 moved on to his penis in my butt hole.

14 Q How are you positioned and how is he positioned?

15 A I was laid down facing the curtain; so closest to the
16 curtain which was closed and just laying on my side and he
17 would be laying on his side right behind me.

18 Q So could you see what he was doing exactly?

19 A No, I could not.

20 Q Could you feel what he was doing?

21 A Yes, I could.

22 Q And what is going through your head at this point?

23 A Honestly, the same kind of things -- still just not
24 sure of why this is happening to me, what's going on. At
25 this point it was kind of painful what he was doing near

1 the end and uncomfortable and -- I don't know. Just
2 scared, I guess.

3 Q Did the Defendant touch you in any way other than
4 what you've already described?

5 A He did. He kissed me on the lips with his lips and
6 he massaged my back and my butt and I remember the
7 specific night him whispering in my ear as to whether I
8 liked it or not to smile and I remember trying to fight
9 back everything within me from showing that I was awake
10 because I tried to pretend like I was sleeping during the
11 whole thing and I remember like trying to hard not to
12 smile so he wouldn't know that I was awake, but he would
13 whisper that in my ear and things like he was sorry for
14 what he was doing after he had finished and stuff.

15 Q When he was saying those things to you, do you
16 remember your reaction?

17 A My reaction was honestly no reaction. I was trying
18 not to make a sound or make any indication that I was
19 awake during the whole thing.

20 Q Now, Victim I am just going to make a little chart
21 here with the pad and paper. I just want to make sure I
22 am noting these things correctly.

23 Can everybody see?

24 And I'll just kind of make some notes so that you
25 don't have to keep hopping off the stand, but just to make

1 sure that I've got everything right, you remember a trip
2 with Mike Sanders?

3 A Yes, ma'am.

4 Q And this was at Barnwell State Park; is that correct?

5 A That's correct.

6 Q And it probably would help if I am not standing right
7 in front of it. And you remember the pop-up camper?

8 A Yes, ma'am.

9 Q And you remember a curtain?

10 A I do.

11 Q We'll come back to this a little bit. Do you
12 remember a second trip to Barn -- or another trip after
13 that to Barnwell State Park?

14 A Yes, ma'am.

15 Q Do you remember how many trips y'all took?

16 A I don't exactly.

17 Q But more than two?

18 A It was more than two. If I had to estimate, roughly
19 four or five.

20 Q Do you remember taking a trip after your 16th
21 birthday?

22 A Yes, ma'am, I do.

23 Q About how long after your birthday, if you remember?

24 A Couldn't have been more than a couple of weeks; a
25 week or two.

1 Q Can you tell me a little bit about this trip?

2 A Honestly, a lot of the trips seem to blend together,
3 but this trip -- this trip to Barnwell County, Barnwell
4 State Park, he still had the pop-up camper and I believe
5 it was myself, Victim 2, Victim 3 and Josiah. Mike Sanders was
6 not on this trip.

7 Q And I think I haven't asked you this yet, but when is
8 your birthday?

9 A My birthday is [REDACTED] [REDACTED] 1990.

10 Q So this trip that you took just after your 16th
11 birthday, you said Mike Sanders wasn't on there. Where
12 did y'all stay on this trip?

13 A We stayed at Barnwell State Park in a pop-up camper.

14 Q And where did you sleep that night?

15 A I slept with Eric in the exact same bed that I
16 described before on the previous trip.

17 Q Do you remember if this trip was a one-day trip or a
18 couple of days or do you remember?

19 A I do not remember whether it was one or two. It
20 could have been one. I am not sure.

21 Q So some of the trips were one day and some of them
22 were a couple of days?

23 A Yes, ma'am. I believe some of them were one night
24 and then some of them were like weekend things, I believe,
25 on holiday weekends.

1 Q Okay. So this one trip, like you said, occurred in
2 May after your 16th birthday?

3 MR. WILLIAMS: Objection to that, Your Honor. It's
4 leading.

5 THE COURT: Sustained. Don't lead him to that. Just
6 ask him.

7 Q Can you continue to tell us a little bit about that
8 trip?

9 A As I said, we had the pop-up camper and I stated who
10 was there and the nighttime came around and I went to
11 sleep and the same things that happened on the previous
12 trip happened on that night as well.

13 Q And I am going to have to ask you if you can describe
14 what happened.

15 A Okay. Once it escalated to what I described on the
16 previous trip, it just kind of stayed there like those are
17 the same things he did, but he would -- he would use his
18 hands to fondle me and rub all over me and use his mouth
19 on my penis to ejaculate me and use my hand to ejaculate
20 his penis and kiss me and use his penis to put in my butt
21 hole as well and just be all over me like that.

22 Q And when did this occur?

23 A When was this trip?

24 Q I'm sorry. What time of day did this occur?

25 A This would be after we had gone to bed. He presumed

1 that I was asleep and so that's when he started doing it.
2 So, I am not sure of the morning hours; 3 a.m. possibly.
3 I don't know.

4 Q Were you asleep when it started or were you awake
5 when it started?

6 A I was asleep when it started.

7 Q And when you woke up what was happening?

8 A When I woke up usually he would be doing something to
9 me like either in the form of my penis in his mouth or
10 fondling me or pulling my pants off or something of that
11 nature.

12 Q And was this with your consent what he was doing when
13 you were 16?

14 A No, ma'am, it was not.

15 Q Did you feel as though you could get up and leave?

16 A No, ma'am. Ever since it started I was like -- I
17 don't know how to describe it. It was like this trap that
18 I couldn't get out of. I was scared to get out of. I
19 didn't know -- I didn't really know where the run to if I
20 did get out of it or who to tell or what really happened.
21 Like, I didn't know what to do, honestly. I was just
22 scared.

23 MISS RINGLER: Court's indulgence.

24 And, so, (Victim) I am going to go back to this chart
25 again to talk about this one. You said your date of

1 birth ---

2 THE WITNESS: ██████████/1990.

3 Q 1990. And you remember a trip to -- again, I am
4 standing right in front of it; sorry -- to Barnwell State
5 Park?

6 A Yes, ma'am.

7 Q And you said you were 16 at this time?

8 A Yes, ma'am.

9 Q And how long after your birthday if you can remember
10 approximately do you remember this trip?

11 A A week or two. I am not sure exactly.

12 Q So, what year would it have been if you were 16?

13 A It would have been 2006.

14 MISS RINGLER: Your Honor, at this time the State
15 would mark -- if I can steal two stickers from you -- mark
16 these as State's Exhibit 22 and 23.

17 MR. WILLIAMS: If it's going to be used as evidence,
18 we would object to it. If she's going to use it in
19 closing, we would have no objection to it.

20 MISS RINGLER: Your Honor, we would move to admit it
21 as a summary exhibit and that it would be admissible as
22 such and we would move to admit it.

23 THE COURT: I'll allow you to use it as demonstrative
24 evidence. You can use it in your closing, but that's not
25 substantive evidence. It's a chart of recapitulation of

1 his testimony. You can use it in closing. It just won't
2 go to the jury. Sustained.

3 (Whereupon, State's Exhibit Nos. 22 & 23 were marked
4 for identification only.)

5 Q Now, Victim ██████████ about when did this abuse stop?

6 THE COURT: Can you hold on one second? Can you move
7 that chart so I can see?

8 MISS RINGLER: I'm sorry.

9 THE COURT: Thank you. You may answer the question.

10 THE WITNESS: The abuse stopped around the time that
11 I entered high school which was my junior year; so it
12 would have been August 2006.

13 Q And when you mean entered high school, what do you
14 mean by that?

15 A I was homeschooled until my junior year of high
16 school and then I entered into public school to play
17 sports.

18 Q Victim ██████████ do you have or did you have a Facebook account
19 at some point?

20 A Yes, ma'am. I had a Facebook probably since my
21 freshman year of high school.

22 Q Do you know if the Defendant had a Facebook account
23 at some point in time?

24 A He did.

25 Q And were you friends with him? Were you -- was your

1 account associated with his?

2 A We were friends on Facebook, yes, ma'am.

3 Q I think most folks know what Facebook is at this
4 point in time.

5 MR. WILLIAMS: Objection to ---

6 THE COURT: What's the objection?

7 MR. WILLIAMS: It's not a question. It is a
8 statement.

9 THE COURT: That is not a question. Sustained.

10 Q Can you tell us a little bit about what Facebook is
11 just for the folks that might not be familiar with it?

12 A Facebook is a social interaction site. It is a
13 website pretty much where you can put up information about
14 yourself, pictures about yourself, and you can be friends
15 with other people by adding their page and you can see
16 stuff that they've written. You can also write on
17 people's walls or you can send them private messages and
18 stuff like that.

19 Q And on Eric's VanCleave's Facebook page would he post
20 photos of himself and put personal information up?

21 A He would, yes, ma'am.

22 Q At some point did you ever message each other on
23 Facebook?

24 A We did numerous times.

25 Q Thank you. I am handing you State's Exhibit 15

1 through 18. What are they?

2 A These are messages from Eric to me on Facebook.

3 Q Was this from the account that you would communicate
4 with him before?

5 A It is.

6 Q And was that also the account that he would post
7 photos and personal information on?

8 A That's correct.

9 Q How did he sign the messages that were sent to you?

10 A Eric, Eric, and he used his nickname Stumpy in here
11 as well.

12 Q How many other -- there are four sheets, but how many
13 messages are there?

14 A How many has he sent me?

15 Q How many did I hand up?

16 A Two.

17 Q And in those two message does he sign Eric on both of
18 them?

19 A He does.

20 Q Did they come from the same account?

21 A Yes, they did.

22 Q What do they reference in the chats?

23 MR. WILLIAMS: Objection, Your Honor. Number one,
24 they're not in evidence.

25 THE COURT: That's correct. Number two?

1 MR. WILLIAMS: Number two is relevance meaning she
2 can ---

3 THE COURT: You got to get them into evidence before
4 we can publish them to the jury.

5 MISS RINGLER: Yes, Your Honor. The State would
6 contend that these are self-authenticating messages from
7 the Defendant to the victim and we're just trying to ---

8 THE COURT: Well, you need to move them into
9 evidence.

10 MISS RINGLER: Yes, Your Honor.

11 THE COURT: Move to enter Exhibits 15 through 18.

12 MISS RINGLER: At this time the State would move to
13 admit State's Exhibit 15 through 18.

14 THE COURT: Any objection?

15 MR. WILLIAMS: As to relevance, Your Honor.

16 THE COURT: Let me see them. I don't know if they're
17 relevant or not. All right. I have reviewed them. I
18 deem them to be relevant. They were admitted.

19 (Whereupon, State's Exhibit Nos. 15 - 19 were
20 admitted into evidence.)

21 You want to publish them? How do you want to do it?

22 MISS RINGLER: Yes, Your Honor. We will just ask the
23 victim to please read the two chats or the two messages to
24 the jury.

25 THE COURT: Just by reading them, tell us who they

1 are from and what date if it has a date on it and read it
2 to us, please, and this the exhibit number.

3 THE WITNESS: This is State's Exhibit 15.

4 THE COURT: Very well.

5 THE WITNESS: This was sent on January 4, 2009. This
6 one is from Eric to myself. Correction. This was
7 actually 11/29/2008. "Hey, call me some time Monday. Let
8 me know what your schedule is like next weekend. Jennifer
9 may go out of town. If she does I was thinking you can
10 help me Friday night when -- then we can hang out
11 afterwards. We can hang out like old times in the camper
12 even. That would be fun. Just let me know. I would love
13 to have you help me Friday night and Saturday night, but I
14 would need you all day Saturday, but it would be fun to
15 have you hang out with me Friday night if Jennifer goes
16 out of town. Well, I will talk at you Monday sometime.
17 See you later, bud. Eric."

18 Q The second message.

19 A The second message is from ---

20 THE COURT: Exhibit number, please.

21 THE WITNESS: Exhibit No. 17 and 18. It overlaps.
22 It is from 11/04/2009. "Hey, bud, just wanted to send you
23 a little note letting you know that I was thinking about
24 you. You were in my dreams last night and so was Becca so
25 I sent her a message, too. I just wanted you to know that

1 even though life has sent me into a busy schedule and I
2 don't see you very much, I still love you, man. You will
3 always be one of my little brothers and my favorite.
4 Shhhh. Don't say anything. I love you, man, and I pray
5 for you many times. I hope we can get together some time
6 soon. I miss you, but I know that God is using us where
7 we are at. Just let this be a little reminder that I care
8 about you and let this encourage you to know that your
9 biggest brother Stumpy is always here. Have a great day.
10 Love you, man. Eric."

11 Q Now you said that you didn't tell anyone when it was
12 going on. At some point did you tell somebody what was
13 happening?

14 A Yes, I did.

15 Q Can you tell me about the events that led up to that?

16 A I can. In the beginning of 2010 my brother and I
17 attended a conference-type thing at SCSL, the South
18 Carolina School of Leadership. They were recruiting us to
19 go there to attend school. It's like a ministry school,
20 like a two-year program, and at this event they had --
21 they had at the end a worship night where they had music
22 and they had their head pastor that runs a school speak
23 and that night he spoke and he spoke on forgiveness and
24 how if we hold on to something that somebody has done to
25 us, then it can keep us from getting to God; so holding on

1 to something is keeping us down here and we're getting
2 further and further away from God, and something about
3 what he said just struck a chord in me -- struck a chord
4 in me and I was sitting there just trying to think what I
5 was holding on to and God revealed to me that it was I was
6 holding on to not forgiving Eric for what he had done to
7 me and so that night I knew that I needed to forgive Eric
8 for everything that he done and so I did, and I was broken
9 that night and I cried and I didn't know what to do, but I
10 realized that I needed to tell someone, not just to let it
11 be known what had happened to me, but because I knew that
12 he was working teaching in an elementary school and he was
13 a leader of Vacation Bible School for like first graders
14 at a church and I knew that my story could possibly not be
15 the only one and that he could still be out there and
16 still be harming other kids and so I felt like what I
17 needed to do was to come forward and explain what had
18 happened and tell my parents about it. So the next day
19 that's what I did. I went home and I told my parents
20 about it.

21 Q And we've talked a lot about Eric this afternoon. Do
22 you see him in the courtroom today?

23 A I do.

24 Q Could you please describe what he's wearing to the
25 jury?

1 A Red tie, sports coat, and a white shirt.

2 Q Thank you. Please answer any questions that the
3 Defense Counsel might have.

4 THE COURT: Hold on one second. Everybody okay?
5 Anybody need a break?

6 Mr. Williams?

7 CROSS-EXAMINATION

8 BY MR. WILLIAMS:

9 Q (Victim ██████████) as I understand it you had a revelation in
10 2010 which God spoke to you and told you that you needed
11 to reveal all and that upon that revelation then you came
12 back and spoke to your mama and your father and then you
13 spoke to law enforcement; is that right?

14 A That's correct.

15 Q Is there any reason -- let me go about this different
16 way. Tell the jury something about the size of your
17 father's church?

18 A It fluctuates, but when exactly? When Eric was
19 attending or like now?

20 Q In say, 2010, what was the size of his church? How
21 many members attended church there?

22 A Thirty or forty roughly.

23 Q All right. So when you say 30 people attended there,
24 how many members are in your family?

25 A Nine children.

1 Q Nine children, your mama, and your daddy, and if 30
2 people are attending y'all take up roughly a third of the
3 entire congregation; right?

4 A Sure.

5 Q You know Donald VanCleave, don't you?

6 A I do.

7 Q He is the older gentleman there with the glasses
8 there and he was a member there, wasn't he?

9 A He was.

10 Q He was one of the major benefactors of the church,
11 wasn't he?

12 A I'm not prepared to answer that. I have no idea.

13 Q Isn't it true that you came forward with this
14 allegation after you learned from your father that his
15 salary was going to have to be reduced substantially
16 because he couldn't keep making the payments?

17 A That is not true.

18 Q Well, let's talk about what happened then at -- Who
19 was at the -- who was at this gathering? You and which
20 brother was there?

21 A [Victim 3] was there with me.

22 Q So, [Victim 3] is going to testify also about what
23 occurred at this because y'all were in the same classes or
24 fellowship there, weren't you, about responsibility and
25 things like that, weren't you?

1 A Are you talking about at the retreat?

2 Q Yes.

3 A We were in the same room, if that's what you're
4 referencing.

5 Q Well, if you were in the same room, did you attend
6 the same conference?

7 A Yes.

8 Q So Victim 3 would have been there and --

9 A He was there.

10 Q -- and heard the same lectures that you heard about
11 responsibility and giving things up; right?

12 A That's true.

13 Q Forgiveness?

14 A Yeah.

15 Q Do you know if Victim 3 plans to testify?

16 A He does.

17 Q Now, where was this held at?

18 A The church is called CLA, Christian Life Association,
19 and I believe it's off of either Bush River Road or Broad
20 River Road. I never remember. I get those two confused.

21 Q How many days after you got back from this conference
22 was it before you talked with the first law enforcement
23 member?

24 A Two days possibly.

25 Q Possibly?

1 A I didn't count the hours. I mean, three days. I
2 don't know.

3 Q Who was the first law enforcement member that you
4 talked to?

5 A His name was Detective Tim Shealy from Cayce Police
6 Department.

7 Q And you live in Cayce; right?

8 A I grew up in Cayce. We moved to West Columbia as I
9 stated earlier after I went to high school.

10 Q Do you remember talking to one of the witnesses that
11 was listed, a SLED officer -- female SLED officer about
12 the Barnwell trips?

13 A I do. I don't remember specifically what we spoke
14 about, but, yes, I do remember speaking with her.

15 Q Well, you remember telling her that you went to
16 Barnwell State Park every Easter holiday from 2001 to
17 2005, didn't you?

18 A I don't remember exactly what I told her.

19 Q Do you deny that's what you said?

20 A I do not deny that. I am saying that I do not
21 remember saying it.

22 Q Well, you wouldn't have said that because that's just
23 not true; right?

24 A Looking at it now, could there have been trips during
25 then? Yes. Ones that I specifically remember now, are

1 they as far back as 2001? No.

2 Q So they're not as far back as 2001?

3 A No, they're not.

4 Q Because we've already seen this picture which has
5 been introduced into evidence and that's your first time
6 going to Barnwell State Park, isn't it?

7 A That's correct.

8 Q So, now is this picture from 2002?

9 A I don't believe so.

10 Q 2003?

11 A I don't believe so.

12 Q 2004?

13 A Possibly 2004, 2005.

14 Q You don't know which one?

15 A There is not a date on the back.

16 Q Well, you know that Eric VanCleave got a pop-up
17 trailer in May of 2005, don't you?

18 A I do not know that.

19 Q Well, he didn't have a pop-up trailer when these
20 pictures were taken, did he?

21 A No, he did not.

22 Q And the reason we know that is because you're tent
23 camping; right?

24 A That is correct.

25 Q Now, who took these pictures?

1 A Mr. Mike Sanders.

2 Q But nothing happened on this trip; right? The one
3 which you have the photographs of, nothing happened on
4 that trip?

5 A That's correct.

6 Q The one in which Mike Sanders is there?

7 A That's correct.

8 Q The two trips and your allegations are with these two
9 Indictments was that you came to Barnwell State Park on
10 two occasions in the years 2005 -- 2005, 2006 and that you
11 were sexually assaulted on those two years in the Barnwell
12 State Park on those two years; is that correct?

13 A That's correct.

14 Q And I believe at some point in time you have
15 indicated the first time occurred at Easter of 2005,
16 didn't you?

17 A I may have.

18 Q Well, earlier this morning you indicated it happened
19 in Easter of 2005, didn't you?

20 A Well, I indicated that I remember the holiday
21 weekends being Easter and Memorial weekends.

22 Q All right.

23 A But I am not certain on either one of those.

24 Q Earlier this morning didn't you say that it happened
25 on Easter of 2005?

1 A I don't know. Do you have a recording?

2 Q Yes, we do, as a matter of fact.

3 A Well, then I may have. I don't remember, sir.

4 Q Are you saying that you are only going to remember
5 things that we have recorded?

6 A Do I have to answer that?

7 THE COURT: Uh-huh.

8 THE WITNESS: No, sir.

9 Q Did you also say that in 2006 -- Memorial Day of 2006
10 was the other occasion?

11 A Yes, I did.

12 Q So you admit that?

13 A I admit that.

14 Q So we have four Indictments dealing with two events
15 Easter of 2005 and Memorial Day of 2006 -- Memorial
16 weekend of 2006; is that correct?

17 MISS RINGLER: I would object, Your Honor. He's
18 already testified that he doesn't remember it being
19 specifically Easter.

20 THE COURT: He has testified.

21 Just answer his questions.

22 THE COURT: When do you remember it to be? That's
23 what he wants to know.

24 THE WITNESS: I mean, I remember it being 2005 and
25 2006. I cannot pinpoint exact dates to when those

1 happened.

2 Q But you do admit that you have testified that it was
3 Easter of 2005 and Memorial Day of 2006, don't you?

4 A Yes.

5 Q Now when you were describing the second trip that you
6 made to Barnwell State Park -- and I believe you've
7 indicated these pictures were taken in 2004?

8 A Or 2005; somewhere around there.

9 Q Would these pictures be taken Easter of 2005?

10 A I am not certain. No, they would not have because if
11 we did go on Easter weekend of 2005 then we had the pop-up
12 camper then and this first trip we did not have the pop-up
13 camper; so it could not have been Easter of 2005.

14 Q Do you know when Easter was in 2005?

15 A I do not.

16 Q What about 2006? Do you know when Memorial Day was
17 in 2006?

18 A I am not certain.

19 Q But you know that those are the two events
20 surrounding it; correct?

21 A I know Memorial Day is near my birthday and I
22 remember the 2006 trip being around my birthday.

23 Q Now the pictures which you have shown, these pictures
24 actually reveal a little bit more than just a camping
25 trip, don't they?

- 1 A (No response.)
- 2 Q Referring to State's Exhibit No. 7, do you see
- 3 anything in that picture?
- 4 A I see a restaurant.
- 5 Q What else do you see?
- 6 A I see two cars, one of them being Eric's truck.
- 7 Q So you see Eric's white truck in that picture, don't
- 8 you?
- 9 A Yeah.
- 10 Q So whatever event that this happened Eric VanCleave
- 11 would have had his truck at that point in time. That's
- 12 the truck y'all rode down to Barnwell in; is that correct?
- 13 A That's correct.
- 14 Q Did you ride with Eric down there or did you ride
- 15 with, what's his name? Mike?
- 16 A Mike Sanders.
- 17 Q Who did you ride down with?
- 18 A I don't remember. We took two cars. I don't know.
- 19 Q Well, you didn't take -- you've already stated that
- 20 Eric had a truck. So Eric took his truck, didn't he?
- 21 A Yes.
- 22 Q All right. So you don't remember if you went down
- 23 with Eric or if you rode down with Mike?
- 24 A We would have been following each other; so no, sir,
- 25 I don't remember.

1 Q Would you have been driving?

2 A No, sir.

3 Q So you would have been with one of the adults; right?

4 A That's correct.

5 Q Who all went down on that first trip?

6 A Myself; Eric; Mike Sanders; Jacob, my brother;

7 Victim 2 my brother.

8 Q How old is Jacob?

9 A Jacob is now 26, I believe, 27.

10 Q So Jacob is your older brother; isn't that correct?

11 A That's correct.

12 Q So how old are you now?

13 A Twenty-two.

14 Q So he's seven years older than you are; right?

15 A No he's five years older than me.

16 Q So he's 27?

17 A Yes.

18 Q So if he's five years older than you, then he,
19 obviously, would have had his driver's license back then,
20 wouldn't he?

21 A I believe so.

22 Q Now, do you think that Jacob drove or did you ride
23 with Jacob or did you ride with Eric or did you ride with
24 Mike?

25 A We would have only taken two cars. I believe the

1 adults would have driven, and I am not certain who I rode
2 with.

3 Q But Jacob would have been an adult, wouldn't he?

4 A Yes.

5 Q He would have been, what, 21?

6 A I am not certain.

7 Q What were the sleeping arrangements on the first
8 trip?

9 A The ones with the tents?

10 Q Yes.

11 A Myself and Victim 2 stayed in my tent and Eric, Jacob,
12 Mike Sanders, stayed in Eric's tent.

13 Q So the three adults stayed in one tent and the
14 children stayed in another tent; right?

15 A Yes.

16 Q All right. So let's move to this second time you
17 went to Barnwell State Park. On that occasion you said
18 something happened; right?

19 A Yes.

20 Q And that would have been the one on Easter of 2005;
21 correct?

22 A If that's when it was, yes.

23 Q Well, you have to tell us when it was.

24 A I told you I am not sure of the exact date.

25 Q Who went on that occasion?

1 A That occasion Mike Sanders; Victim 2 my brother;
2 Victim 3 my brother; Josiah, my brother; myself; and Eric.

3 Q Now these pictures here who took those pictures?

4 A Mike Sanders.

5 Q Where are the pictures from the second time you went?

6 A I don't know of any pictures.

7 Q Where did you get those pictures from?

8 A Those are from Mike Sanders.

9 Q So it was Mike Sanders' camera and he's the one that
10 took the pictures of the first trip; right?

11 A That's correct.

12 Q Do you know that there are no pictures from the
13 second trip or not?

14 A I do not know.

15 Q So, on the second trip which would have been Easter
16 of 2005 you stayed in a pop-up trailer; is that right?

17 A That's correct.

18 Q Would it have been Eric's pop-up trailer that he got
19 in May of 2005?

20 A It was Eric's pop-up camper.

21 Q Did he have -- when was the first time he got a
22 pop-up camper?

23 A I am not certain.

24 Q It was the first one he got, wasn't it?

25 A It was.

1 Q Whatever camper he got whatever date that he can
2 prove that he got it, then you would have stayed in his
3 camper on that date. Fair enough?

4 A I don't think we would have stayed the exact date
5 that he got the camper.

6 Q But you would have stayed in the camper after he
7 purchased the camper, wouldn't you?

8 A Yes.

9 Q Okay. Now, I believe you've already said that you
10 slept with Eric and who else slept in that camper?

11 A As I stated before Victim 2 slept on the table pull-out
12 bed. Mike Sanders, my younger brother Josiah and my
13 younger brother Victim 3 stayed in the other bed.

14 Q And this is when you were assaulted the first time at
15 the Barnwell State Park; is that right?

16 A The first time at the park. That is correct.

17 Q And nobody else woke up in that pop-up camper; right?
18 Nobody heard anything?

19 A I don't know, sir.

20 Q Well, you woke up. You gave a time. You said you
21 woke up at 3 o'clock. Is that what you said you woke up?

22 A I did not give that time. I said I was not sure what
23 time I woke up.

24 Q When you gave these interviews to the local law
25 enforcement persons that you met did you tell them

1 everybody that was with you on these dates that you went
2 to the Barnwell State Park?

3 A I'm not sure if I did or not.

4 Q Well, would your memory have been fresher back in
5 2010 when you talked to law enforcement or would it be
6 fresher now in 2013?

7 A I am not sure.

8 Q Is it about the same?

9 A I don't know. I think if you think about it more and
10 more, then more details come up the later the more you
11 think about it; so...

12 Q Could you be adding things that didn't occur?

13 A No, sir.

14 Q Well, when you woke up did you tell Mike Sanders --
15 Mike Sanders is a big guy, isn't he?

16 A He is.

17 Q I mean, he's a grown adult and you've got Stumpy over
18 there who's what, 5'3", 5'4"; right?

19 A Yes.

20 Q Did you tell Mike Sanders that you had been
21 assaulted?

22 A I did not.

23 Q But he was right there in the bed next to you; right?

24 A He was not in the bed next to me. He was in the bed
25 across the pop-up camper.

- 1 Q How wide is this pop-up camper?
- 2 A I don't know. Maybe 15 feet once it's extended.
- 3 Q Wide?
- 4 A Oh, wide? Maybe six, seven feet.
- 5 Q Six or seven feet. Now, where your brother sleep in
- 6 this camper?
- 7 A He was in the table that turned into a bed directly
- 8 when you walk into the camper.
- 9 Q How many brothers did you have that actually stayed
- 10 there?
- 11 A On the specific trip that you speak of in 2005?
- 12 Q The Easter trip of 2005.
- 13 A There was myself, Josiah, Victim 3 and Victim 2 So
- 14 myself and three brothers.
- 15 Q So there were four children and two adults?
- 16 A That's correct.
- 17 Q How old were you at this time?
- 18 A I would have been 15 years old.
- 19 Q Are you about the same size now that you were when
- 20 you were 15 and 16?
- 21 A No, sir.
- 22 Q The second occasion you said occurred the next year
- 23 around Memorial Day, is that right, of 2006?
- 24 A That's correct.
- 25 Q And who was present on that occasion?

1 A I don't remember exactly, but I believe it was
2 myself, Victim 2, Victim 3, and Josiah.

3 Q So that's five people?

4 A That's correct.

5 Q And did y'all stay in the same camper that you stayed
6 in at Easter of 2005?

7 A I believe so.

8 Q And this is Memorial weekend of 2006?

9 A I believe that's when it was. It was around my
10 birthday which is in May.

11 Q Is Memorial Day in May?

12 A I'm not certain.

13 Q Would it help to have a calendar?

14 MISS RINGLER: Can I see?

15 MR. WILLIAMS: Sure.

16 THE COURT: What is the question?

17 MR. WILLIAMS: I asked him if it was helpful if he
18 had a calendar.

19 THE COURT: You can ask him what day is Memorial Day.

20 Q What day is Memorial Day?

21 THE COURT: You can lead him, too.

22 Q Isn't Memorial Day actually on May 29 of 2006;
23 correct?

24 A If that's what the calendar says, yes, sir.

25 Q Do you need to look at it?

1 A I believe you.

2 Q And Easter would have been, what, in March? Or
3 April 16, rather?

4 A I don't know.

5 Q It doesn't matter because we know it's know it's
6 Memorial day in 2006; right?

7 A Yes, sir.

8 Q So we know that that event would have been May 28 of
9 2006, right, and you were in Barnwell State Park in May 28
10 of 2006; right?

11 A If that's when Memorial Day weekend is.

12 Q And you couldn't have been at any other location
13 other than Barnwell State Park?

14 A I am not sure.

15 Q You're not sure?

16 A If that's when I was there, then I was there. If
17 not, I don't know.

18 Q Do you have any pictures of the second events?

19 A No, sir, I do not.

20 Q Did you go back to Barnwell State Park again?

21 A Yes, sir, we did.

22 Q And what year would that have been?

23 A Are you talking about 2006?

24 Q Well, I don't know. You said you were there at
25 Easter of 2005, Memorial Day of 2006?

1 A Well, then it would have been 2006.

2 Q So you went back again in 2006?

3 A That's correct.

4 Q What month?

5 A It would have been May because it's around my
6 birthday. I can remember it being around my birthday.

7 Q We've already established that Memorial Day was May
8 28 of 2006. Did you go down another time in the year of
9 2006?

10 A No, sir.

11 Q So those are the two times; right? Memorial Day of
12 2006 and Easter of 2005?

13 A Yes, sir.

14 Q And you didn't come back to Barnwell State Park at
15 any other time; is that correct?

16 A There were other trips before then, but I do not
17 remember exactly when they were.

18 Q No time after that, did you?

19 A No time after that, no, sir.

20 Q Okay. Now, we've already covered, I guess, that you
21 had this revelation and you say this had nothing to do
22 with the fact that your father's income was going to be
23 reduced or anything like that?

24 A I had no idea that that was happening, so, no, it had
25 nothing to do with that.

1 Q And you went the third day after you were down there;
2 right?

3 A The third day of what?

4 Q After you came back to the conference you went and
5 talked to the police the third day after you came back
6 from the conference?

7 A I don't remember what day it was, sir.

8 Q Now the e-mails that you have talked about, is there
9 anything remarkable about those e-mails or is that
10 normally how y'all would talk?

11 A Define what you mean by remarkable.

12 Q Well, I say e-mails, that's Facebook, isn't it?

13 A Correct.

14 Q And when you have Facebook as you were explaining to
15 the jury, that's something where everybody can see. It is
16 something that you put on and any member of Facebook can
17 read it and see what you're saying. So there is nothing
18 sinister or secretive about Facebook, is there?

19 A That's incorrect. These were messages and messages
20 cannot be read by other people.

21 Q So what you were saying earlier about Facebook was
22 not that everybody could read it? You couldn't -- who
23 could read it then? Just you and him?

24 A I described Facebook as being able to write on each
25 other's walls. When you write on each other's walls,

1 everybody can see that. When you write each other
2 messages, only you and the person that sent it to you can
3 see it.

4 Q Did you tell law enforcement that you had received
5 some Facebook message -- when did you get that, 2009?

6 A One is from 2008 and one is from 2009.

7 Q Did you pull those two messages up in 2008 and 2009
8 and say there was something sinister in these Facebook
9 messages and I'd like for you to have this information?

10 A I did not, but I did tell them that we did have
11 corresponding e-mails and they said they were interested
12 in them.

13 Q Who did you give -- so you never gave those to any
14 law enforcement person?

15 A No.

16 Q And who actually -- how did you get those? Did you
17 prepare those or who prepared them?

18 A I pulled them off of my Facebook.

19 Q When did you do that?

20 A I did that for Solicitor -- the Solicitor.

21 Q When did you do that?

22 A A month ago, possibly.

23 Q So Eric was arrested three years ago and you pulled
24 these out a month ago for the Solicitor and not for law
25 enforcement?

1 A I told the law enforcement about them.

2 Q Who did you tell at law enforcement?

3 A I told Tim Shealy about it, the first man that I
4 spoke to with the Cayce Police Department.

5 Q So he would have some notes saying that you had told
6 him about that and he'll come testify about that?

7 A I don't know if he wrote it down.

8 Q Well, you had a very good relationship without a
9 doubt up until there was some disagreement in 2010; right?
10 You had a great relationship with Eric, didn't you?

11 A If you want to call our relationship great. I would
12 say more perverted than anything.

13 Q Well, how about you were in his wedding, weren't you?

14 A I was.

15 Q And so was Victim 2 also, wasn't he?

16 A That's correct.

17 Q And your other brother actually sang in the wedding;
18 right?

19 A Yes.

20 Q Or did you sing? You sang in the wedding?

21 A We both did.

22 Q And you had another brother that played the
23 instruments when he got married. When did he get married?

24 A I don't remember the dates, sir.

25 Q Would this refresh your memory?

1 A If it has the date on it. 2007.

2 Q 2007. You were all in the wedding ensemble. You had
3 pictures made; right?

4 A That's correct.

5 Q But something happened -- that was 2007. Something
6 happened in 2010 to cause a problem, didn't it?

7 A I don't understand what you're asking.

8 Q Well, you continued to correspond with Eric and with
9 Jennifer. You sent e-mails to Jennifer, his wife, didn't
10 you?

11 A I don't remember sending e-mails.

12 Q Are you saying you didn't send e-mails?

13 A I am not saying that I didn't. I am saying I did not
14 remember sending any e-mails to Jennifer. I very well may
15 have. I don't remember.

16 Q And you sent e-mails to Eric?

17 A I would say that he initiated all messages sent to
18 me. I did respond sometimes, yes.

19 Q How about Mr. VanCleave? Did you send e-mails to
20 Mr. VanCleave, his father, right there?

21 A Yes.

22 Q Told him you loved him, didn't you?

23 A I did care about him.

24 Q And you said, I love you, man?

25 A Possibly.

1 Q In the e-mail that Eric is referencing to you and he
2 says he had a dream about you and he also had one about
3 Rebecca, so he sent an e-mail to Rebecca also, didn't he?

4 A That's what the message says, yes.

5 Q And you've talked to Rebecca. You know he sent an
6 e-mail to her, don't you?

7 A I haven't talked to her about it.

8 Q Why would you not talk to your sister about the same
9 document that you have?

10 A I don't know. My sister and I are not in close
11 living quarters anymore. She lives in Columbia and I'm
12 off at school at Erskine.

13 Q Is your sister in the courtroom right now?

14 A She is.

15 Q She's on the first row; right?

16 A Yes.

17 Q And how old is your sister?

18 A My sister is 25 years old or 24 or 26. Twenty-six.

19 Q So, Eric is sending a kind, loving e-mail to you and
20 your sister?

21 A Yes.

22 Q But you thought that was sinister, but you won't even
23 talk to Rebecca to find out what he told Rebecca; right?

24 A I did not speak to her about it.

25 MR. WILLIAMS: That's all I have, Your Honor.

1 THE COURT: Miss Ringler?

2 REDIRECT EXAMINATION

3 BY MISS RINGLER:

4 Q Now, (Victim) the defense attorney during his
5 questioning kept calling it the Easter of 2005 trip. What
6 do you remember?

7 A I just remember it being in 2005 and I'm not certain
8 exactly what date it was honestly. It was around a
9 holiday weekend. I remember that and for some reason
10 Easter was in my head.

11 Q But you're not sure?

12 A I am not certain, no, ma'am.

13 Q And about -- I know we covered that before, but,
14 again, about how many trips do you think you took to
15 Barnwell State Park?

16 A I would say four or five.

17 Q But the one that you and about -- how many times were
18 you assaulted on those trips or how often?

19 A If it was five times that we went, then I would say I
20 was assaulted four times excluding the one where we went
21 with just tents.

22 Q What do you remember about the trip around your
23 birthday? What do you remember about the timing of that
24 trip?

25 A The timing?

1 Q If anything?

2 A I just remember it was around my birthday. That's
3 the only thing I remember and thought it was around a
4 holiday weekend.

5 Q And do you remember that being the last trip to
6 Barnwell State Park?

7 A Yes.

8 Q Okay. And the message that the Defense Attorney was
9 talking about, would you describe it as a kind, loving
10 e-mail?

11 A I believe Eric wanted it to sound kind and loving,
12 but I can read through it that he's talking about when he
13 refers back to the old times and talks about his wife
14 being gone and we can spend it in the camper. That to me
15 says he wants to do the same things that we did on camping
16 trips.

17 Q The things that were done to you?

18 A The things that were done to me. Yes, ma'am.

19 Q Thank you.

20 THE COURT: You may step down.

21 All right. Ladies and gentlemen, we're going to take
22 an afternoon break, bathroom, Coke, whatever you got back
23 there. Please do not discuss the case. Do not start any
24 deliberating. Please select me a foreperson when you come
25 back out. We're going to go until about 5 o'clock.

1 Everybody else remain seated.

2 (Whereupon, the jury exited the courtroom at 3:16.)

3 THE COURT: Miss Ringler, anything for the record
4 before we break?

5 MISS RINGLER: Nothing from the State, Your Honor.

6 THE COURT: Mr. Williams?

7 MR. WILLIAMS: Nothing from the Defendant, Your
8 Honor.

9 THE COURT: The Defendant is in custody. We'll start
10 back in about 15 minutes. Thank you.

11 (Whereupon, a break was taken.)

12 THE COURT: Anything for the record before we start?

13 MISS RINGLER: Nothing from the State, Your Honor.

14 THE COURT: Anything, Mr. Williams?

15 MR. WILLIAMS: Nothing from the Defendant.

16 THE COURT: Put your notebook back together.

17 MR. WILLIAMS: I don't really need it, once you do a
18 notebook. The reason you do a notebook is to prepare.

19 THE COURT: I understand that. Then when you try to
20 get one apart it goes flying.

21 (Whereupon, the jury came into open court at
22 approximately 3:34.)

23 THE COURT: Okay. Ladies and gentlemen, did y'all
24 get me a foreperson?

25 THE JUROR: Donne11 O'Berry.

1 THE COURT: Congratulations. You work for UPS?

2 THE JUROR: No, my wife works for UPS. I work for
3 Babcock Furniture.

4 THE COURT: Next witness.

5 MISS RINGLER: Your Honor, the State calls Marshall
6 Richburg, Jr.

7 MARSHALL E. RICHBURG, JR., after being duly
8 sworn, testified as follows:

9 THE CLERK: Be seated. State your name for the
10 Court.

11 THE WITNESS: Marshall Edward Richburg, Jr.

12 THE COURT: Spell your last, please.

13 THE WITNESS: R-I-C-H-B-U-R-G.

14 DIRECT EXAMINATION

15 BY MISS RINGLER:

16 Q Mr. Richburg, do you go by Eddie?

17 A Yes, ma'am.

18 Q Where do you work?

19 A Barnwell State Park. I am the manager.

20 Q What do you do as a manager?

21 A Everything from cleaning toilets to checking fishing
22 licenses.

23 THE COURT: Which one is more fun?

24 THE WITNESS: Checking licenses is much more fun.

25 Q And how long have you worked there?

1 A I have been in Barnwell for three years.

2 Q And are records kept at the state park?

3 A For like reservations?

4 Q Yes, sir.

5 A Yes, ma'am. They're kept. We do all of our
6 reservations through a website called Reserve America.

7 Q How long have you used that website?

8 A 2005 or six, I think it was, is when we started using
9 it.

10 Q I am handing you what's been marked as State's
11 Exhibit 19, 20, and 21. Do you recognize those?

12 A Yes, ma'am. These are copies of reservations.

13 Q And do they truly and accurately depict the
14 reservations that y'all keep?

15 A Yes, ma'am, it looks like it.

16 Q That's the software of the website that y'all use?

17 A Correct.

18 MISS RINGLER: Your Honor, at this time the State
19 would move to admit State's Exhibits 19, 20, and 21.

20 MR. WILLIAMS: Without objection, Your Honor.

21 (Whereupon, State's Exhibit Nos. 19 - 21 were
22 admitted into evidence.)

23 Q If you could, tell us a little bit about those
24 records.

25 A These, basically, show who made a reservation, as far

1 as who created it such as myself taking a reservation for
2 a camper or cabin guest -- basically, all of the
3 information for a particular camping trip, check-in dates,
4 check-out dates, what date the reservation was made, what
5 day it was paid, like I said, who created it, who actually
6 made the reservation.

7 Q And who made the reservation in that case from those
8 records?

9 A The reservation was created by George Hargrove which
10 was the past manager before myself.

11 Q Who was the reservation for?

12 A Eric VanCleave.

13 Q And what were the dates of the reservations?

14 A Arrival date was May 27, 2006, departure date of May
15 29, 2006.

16 Q And there seems to be two sets of records. Can you
17 please talk about that?

18 A Correct. It appears that there were two separate
19 camp sites reserved for those same dates of May 27 through
20 29; camp sites 14 and 15.

21 Q And then the Exhibit -- so State's Exhibit 20 and 21
22 -- Excuse me, 19 and 20, I'm sorry. Those are the
23 reservations?

24 A Those were two separate camp sites; correct.

25 Q State's Exhibit 21, what is that?

1 A Twenty-one is showing -- like I say, it's basically a
2 payment detail screen. It details when the actual date
3 and time that the payment was made, what order numbers the
4 payment was made to. It basically shows both payments for
5 both camp sites.

6 Q Do you still have records from before you started
7 using that website or that software?

8 A No, ma'am. Our records we had before then typically
9 after three to five years we destroy them. Everything was
10 on hard copy then.

11 Q And Barnwell State Park, where is that?

12 A It is located 3 miles south of Blackville on Highway
13 3.

14 Q Is there any part -- is the park in Barnwell County?

15 A Yes, ma'am.

16 Q Is there any part of the park that's not in Barnwell
17 County?

18 A No, ma'am.

19 Q Thank you. Please answer any questions that Defense
20 Counsel might have.

21 CROSS-EXAMINATION

22 BY MR. WILLIAMS:

23 Q Is it Officer Richburg?

24 A Ranger Richburg.

25 Q Ranger Richburg, as I understand it those exhibits

1 indicate that Eric VanCleave reserved two camp sites on
2 the same weekend; is that correct?

3 A Yes, sir.

4 Q And it would have been camp site 14 and camp site 15?

5 A Yes, sir.

6 Q When was that document generated?

7 A It was created on May 25 of 2006.

8 Q May 25 of 2006?

9 A Correct.

10 Q So that would have been that the reservation would
11 have gone in on that day?

12 A Yes, sir. That would have been the date that Ranger
13 Hargrove at the time made the reservation for
14 Mr. VanCleave.

15 Q All right. Now, when did you pull that off the
16 website?

17 A This information was not retrieved by me.

18 Q Do you know when that information was retrieved?

19 A It was gotten from our Columbia office.

20 Q So you had nothing to do with how that was retrieved;
21 right?

22 A You mean as far as printed out and given to, no, sir.

23 Q So in terms of searching the records, you did none of
24 the record searching?

25 A Well, when they -- when they asked me for the records

1 I had to contact my Columbia office. The Columbia office
2 gave them the records.

3 Q But the Columbia office is the one that pulled it
4 out; right?

5 A They're the ones that printed it out and give it to
6 us.

7 Q Okay. Okay. Now in terms of recordkeeping before --
8 because you said you didn't have a record of anything
9 before May 27 of 2006; is that right?

10 A No, sir. I said that before Reserve America I don't
11 have any records.

12 Q What is that you're talking about before Reserve
13 America?

14 A It is the website we use to make reservations
15 through.

16 Q What did you have before May 27 or before this date?
17 What method did you have to reserve camp sites?

18 A We reserved them. Everything was done by hand on
19 hard copies.

20 Q All right. And what is done with those hard copies
21 of those reservations of camp sites?

22 A After a certain period of time they get destroyed.

23 Q Have you actively searched to see if there was any
24 evidence that Eric VanCleave had reserved any camp site
25 other than the days of May 27 to the 29 of 2006?

1 A Other than researching on Reserve America we don't
2 have any records of it on our park.

3 Q Does Columbia have records?

4 A I don't know.

5 Q Have you gone to Columbia and searched to see if they
6 have records?

7 A I have not.

8 Q So it could be possible that there are hard copies of
9 records that exist?

10 A If Columbia has them. I don't.

11 Q But to your knowledge no one has done that?

12 A I don't know.

13 Q Now, on the records that you have which are,
14 obviously, computer-generated and it indicates that
15 another ranger was the one that took the information --

16 A Right.

17 Q -- does it indicate the number of people that
18 reserved the sites? I mean, that were at the site?

19 A There was not a number entered -- applicants, number
20 of other occupants shows zero on site 14.

21 Q What about on site 15?

22 A Fifteen is the same.

23 Q Well, the reason the block is there is so that you
24 can keep up with the number of occupants who arrive at the
25 site; isn't that correct?

1 A Yeah, the box is there for that.

2 Q So having looked at that can you tell -- can you
3 testify that anyone actually came to your park to that
4 site on May 27, 2006 or May 29 of 2006?

5 A I wasn't working there at the time.

6 Q So all you can say is that there was a reservation
7 and that in the reservation it had no list of occupants?

8 A That's what it shows on here, yes, sir.

9 MR. WILLIAMS: That's all the questions I have, Your
10 Honor.

11 THE COURT: Redirect, if any?

12 MISS RINGLER: Nothing from the State, Your Honor.

13 THE COURT: May he be excused?

14 MISS RINGLER: Yes, Your Honor.

15 THE COURT: You may step down.

16 MISS RINGLER: Your Honor, the State calls Mike
17 Sanders.

18 MICHAEL SANDERS, after being duly sworn,
19 testified as follows:

20 THE CLERK: Have a seat and state your name for the
21 record.

22 THE WITNESS: My name is Michael Sanders.

23 DIRECT EXAMINATION

24 BY MISS RINGLER:

25 Q Mr. Sanders, where do you live?

1 A I live in Lexington, South Carolina.

2 Q Where do you work?

3 A I work for Seibels Insurance Technology Services in
4 Columbia.

5 Q What do you do there?

6 A I am an underwriting manager for Seibels.

7 Q How do you know Victim [REDACTED]

8 A I know Victim [REDACTED] through Pavilion Ministries. I
9 attended church with the [REDACTED] at Pavilion Church for a
10 number of years. Me and my wife started actually
11 attending that church full time in June of 2003.

12 Q And do you know the Defendant in this case, Eric
13 VanCleave?

14 A I do.

15 Q How do you know him?

16 A He was a member of the Pavilion Church as well.

17 Q How would you describe your relationship with --
18 prior to 2010, how would you describe your relationship
19 with Eric VanCleave?

20 A Well, Eric was single at the time when we started
21 attending the church -- me and my wife -- and Eric made a
22 good effort to befriend us and become our friends and
23 began to want to spend time with us and previously he
24 spent time -- a lot of time with the Hallmans and when we
25 started coming -- coming to the church he sort of stopped

1 spending time with the Hallmans and kind of moved towards
2 spending time with us.

3 Q Do you spend time with the [REDACTED] or talk to them
4 outside of the church?

5 A Absolutely.

6 Q How would you describe your relationship with the
7 [REDACTED] family?

8 A My relationship with the [REDACTED] family is very, very
9 friendly. Yes.

10 Q Did you go on any camping trips with Victim [REDACTED] and
11 Eric VanCleave?

12 A Yes, I did.

13 Q Did you go on any camping trips to Barnwell State
14 Park with him?

15 A Yes.

16 Q How many trips did you go on?

17 A I went on two trips to the Barnwell County
18 campground.

19 Q Tell me about the first one. About when was that?

20 A The first trip was in or around Easter of 2004.

21 Q And I am showing you what's been previously admitted
22 as State's Exhibits 1 through 14. Do you recognize those?

23 A Yes, I do. I took ---

24 Q Okay.

25 A I took these photos.

1 Q What trip is that from?

2 A This trip is from the Easter or the Spring of 2004
3 camping trip.

4 Q Who all went on that trip?

5 A Eric, myself, **Victim 2**, **Victim** and Jake.

6 Q And did you go in a camper or tents on that trip?

7 A No, we slept in tents on that trip. There were two
8 camp sites rented, I believe, and we slept in tents.

9 Q Did you go on a -- tell me about the second trip that
10 you went on.

11 A I did go on a second trip to the Barnwell County Park
12 in which **Victim** and Eric both went on. That trip was in or
13 around the fall or Halloween of 2005. At that time we
14 went in a pop-up camper.

15 Q Was this the Defendant's pop-up camper?

16 A Yes, it was.

17 Q Where did y'all sleep in the camper?

18 A Well, the pop-up camper has two large beds on either
19 end and then there is a table that turns into a bed in the
20 middle. **Victim 2** slept on the table and Eric and **Victim** slept
21 on the far end on one of the beds and I slept on the other
22 end with Josiah and with **Victim 3** on that trip.

23 Q At some point did you get up during the middle of the
24 night -- how many days and nights was the trip?

25 A That trip was just one night. It was a quick trip.

1 We left sort of later in the afternoon and came back the
2 next day around lunch time; somewhere around lunch time.
3 A little before lunch we left the campground.

4 Q At some point during the night did you get up?

5 A I did. It's not unusual for me to have to get up in
6 the middle of the night to go to the restroom and as
7 normal protocol for me I woke up at some point in the
8 middle of the night and had to go out in the chill of the
9 night to use the restroom. Yes.

10 Q Do you remember if there was any kind of a curtain in
11 the camper?

12 A There were curtains on -- both of the beds had
13 curtains that you could pull for privacy and I do remember
14 curtains and I do remember when I got up in the night that
15 the curtain was pulled on the bed where Eric and Victim
16 were sleeping.

17 Q And those were the only two trips that you went on
18 with Victim and the Defendant to Barnwell State Park?

19 A Correct.

20 Q Thank you. Please answer any questions that the
21 Defense Counsel might have.

22 CROSS-EXAMINATION

23 BY MR. WILLIAMS:

24 Q Mr. Sanders, so it's your testimony then that these
25 pictures that we're looking at are not from the year 2004,

1 but they're actually from the year of 2005.

2 A No. That's not what I said. I said these pictures
3 are from a camping trip in the Spring around Easter time
4 in 2004.

5 Q So they're from Easter of 2004?

6 A In or around that time. They were in the Spring of
7 2004 and they were prior to Eric purchasing the pop-up
8 camper.

9 Q Do you remember when he purchased the pop-up camper?

10 A I do not specifically remember the date that he
11 purchased the pop-up camper, but I do know that this
12 particular camping trip took place before he had the
13 pop-up camper.

14 Q If I were to tell you he got it in May of 2005 that
15 would sound about right?

16 A That could possibly be accurate.

17 Q Because on the second trip that you've referenced
18 would be Halloween, is that correct, of 2005?

19 A It was in or around Halloween. It was in the fall of
20 2005.

21 Q What month would Halloween fall in?

22 A That would fall in October of 2005.

23 Q October?

24 A That's correct.

25 Q On either one of the two trips that you went to

1 Barnwell State Park did you observe my client doing
2 anything improper in any way in regards to Victim [REDACTED]

3 A I did not.

4 Q So if we had to pick out the most damaging part of
5 your testimony would it be the fact that there was a
6 curtain in his camper?

7 THE COURT: Mr. Williams, I can't let that
8 question -- that's for the jury to determine what's
9 damaging.

10 Q All you remember about the Halloween trip of 2005 is
11 that there was a curtain which was in his camper and that
12 all of y'all slept in the camper; right?

13 A That is correct and that the curtain where him and
14 Victim were sleeping was pulled closed when I got up in the
15 middle of the night.

16 Q Now, how big a camper was it?

17 A You know, I wouldn't be able to tell you exactly how
18 big it was. As far as the length of the camper, you know,
19 I'm no expert on this. You know, they look kind of small
20 when they're folded up and when you fold them out, it's a
21 pop-up; so, therefore, it pops out to be large -- larger.
22 So, I don't know. I don't know if it's from one end to
23 the other ---

24 THE COURT: If you don't know, you don't know. If
25 you don't, don't guess.

1 THE WITNESS: Yeah, I don't know. I think probably
2 everybody has a good idea in here of what a pop-up camper
3 looks like including yourself.

4 Q And you say you're a light sleeper or are you a
5 certain age where you just got to get up a lot?

6 A Well, I am a heavy sleeper. I am one of those
7 sleepers that if you back a U-haul up to my house you
8 could probably steal most of the furniture and I would
9 sleep through it, but it is normal protocol and I wake up
10 and have to go to the bathroom in the middle of the night
11 and actually take medication to help me to be able to go
12 to bathroom the way I should.

13 Q Why didn't you take pictures the second time?

14 A You know, I am not really a camper. Camping is not
15 my thing and Eric was an avid camper and he had encouraged
16 me to go camping. I had not -- prior to this, I hadn't
17 been camping, I don't guess, since probably junior high
18 school; so, you know, when we went on the first camping
19 trip, I thought it was -- you know, it seemed kind of
20 exciting. It seemed like something new. I decided I
21 would go. My wife was okay with it, and, you know, I took
22 the camera and I took a bunch of photos.

23 Q Right. And, of course, you're still real good
24 friends with the [REDACTED] is that right?

25 A That's correct.

1 Q Do you still go to the Pavilion Church?

2 A No, I do not. There is actually not a Pavilion
3 Church at the moment.

4 Q So the church didn't last? It folded?

5 A I mean, for the most part, basically, you know, it
6 sort of folded up. Pastor Tim decided to take a -- is now
7 pastoring a church in Mississippi. They remain to be good
8 friends of ours.

9 Q How many members were there in this Pavilion Church?

10 A You know, I would say it was one of those things that
11 it fluctuated a lot, but I would say that, you know,
12 sometimes we had, you know, 30. Sometimes we had 40.
13 Sometimes we had more than that. Sometimes we had, you
14 know, as many as 50 or 60 people there just depending on
15 what Sunday it was and what day of the week. There were a
16 lot of people that came and went and, you know, we were
17 sort of an interfaith church meaning that we had a lot of
18 friends that came to the Pavilion Coffee Shop for concerts
19 and various things and so sometimes some of those folks
20 would just pop in and come to church with us. So when
21 that would happen, we would have a lot of people.

22 Q Now, obviously, Eric was good friends at some point
23 in time with the [REDACTED] You were and still; correct?

24 A That's correct.

25 Q And financially you give to the children, don't you?

1 A I have given to them in the past and currently I
2 haven't really done a lot for them financially in
3 recent -- in the last recent years, but I do buy them
4 things from time to time, do things for them.

5 Q Would you be like Josiah's big brother?

6 A Not really.

7 Q Well, he was the one that basically you spent a lot
8 of time with, wasn't he?

9 A Not really.

10 Q Did you ever buy any of them cars and things like
11 that?

12 A Actually, me and my wife did finance a car at one
13 point for Rebecca. We did help her get a car.

14 Q And you babysat the children sometimes?

15 A There was a few times when we actually did babysit
16 the children, yes.

17 Q But insofar as my client is concerned you never saw
18 him do anything untoward any of the children, did you?

19 A No, I did not.

20 MR. WILLIAMS: That's all the questions I have, Your
21 Honor.

22 THE COURT: Redirect, if any?

23 MISS RINGLER: None from the State, Your Honor.

24 THE COURT: You may step down. You're excused from
25 your subpoena. Next witness.

1 MISS RINGLER: Your Honor, the State calls Victim 3

2 T. [REDACTED].

3 Victim 3 [REDACTED] after being duly sworn,
4 testified as follows:

5 THE CLERK: Have a seat and state your name for the
6 record.

7 THE WITNESS: Victim 3 [REDACTED] [REDACTED]

8 DIRECT EXAMINATION

9 BY MISS RINGLER:

10 Q Victim 3 how old are you?

11 A Twenty-one.

12 Q Where do you live?

13 A In West Columbia.

14 Q Tell me a little bit about your family.

15 A I come from a big family; nine kids. Dad is a
16 pastor, ran a restaurant for a while.

17 Q Where did you grow up?

18 A Cayce, Columbia area.

19 Q What are you doing now?

20 A I manage a cafe downtown and I do music on the side.

21 Q What kind of music?

22 A Singer songwriter kind of stuff.

23 Q Do you play an instrument?

24 A Yeah, I play guitar and drums.

25 Q Do you know the Defendant in this case Eric

- 1 VanCleave?
- 2 A I do.
- 3 Q Can you point him out in the courtroom to us?
- 4 A He is right there.
- 5 Q And describe what he is wearing.
- 6 A A red tie, white shirt, black blazer.
- 7 Q How did you meet the Defendant?
- 8 A Through my Dad's church.
- 9 Q What is the name of the church?
- 10 A Pavilion Ministries.
- 11 Q Is that in Lexington County or was it in Lexington
- 12 County?
- 13 A Yes, ma'am.
- 14 Q About how old were you when you first met the
- 15 Defendant, if you remember?
- 16 A Really young; probably eight or so.
- 17 Q Describe the relationship between the Defendant and
- 18 your family when you were young.
- 19 A Very friendly. He would come over and barbecue with
- 20 us sometimes or cook and we'd go to tailgates with him for
- 21 Carolina games, trips, stuff like that.
- 22 Q Did you take a trip to Cherokee, North Carolina?
- 23 A I did.
- 24 Q Where did you go in Cherokee?
- 25 A I think it was a KOA campground.

1 Q Was it a campground or camp site?

2 A Yes.

3 Q Did you go with the Defendant?

4 A I did.

5 Q About how old were you then?

6 A I would say around 13.

7 Q Do you remember maybe what year that was then if that
8 was your age?

9 A That would have been '05 if I was 13, give or take.

10 Q How long was the trip?

11 A It was a weekend trip, if I remember correctly. It
12 was a couple of nights.

13 Q Did you stay in tents or camper or where did you
14 stay?

15 A It was a camper.

16 Q Do you remember what type?

17 A Not exactly, no.

18 Q Did anybody else go on this trip?

19 A Yes, it was a family called the Wick family. Blair
20 And DeeDee and their kids.

21 THE COURT: Spell the last name.

22 THE WITNESS: Wick. I think it's W-H-I-C-H. I am
23 not exactly positive.

24 Q How do you know that family?

25 A They were friends of his, I think is how we met them

1 to begin with. I am not sure.

2 Q Where did everybody sleep at night?

3 A They had their own camper and me and my brothers
4 slept in the camper with them.

5 Q Which brother went with you on this trip?

6 A Josiah.

7 Q Where did everybody sleep at night in the Defendant's
8 camper?

9 A He arranged the first two nights for me to sleep in
10 the bed with him.

11 Q Do you remember how he arranged it or what he said or
12 did?

13 A I think he just said you can sleep here with me or
14 something like that. I am not really sure.

15 Q But you slept with the Defendant that first night?

16 A I did.

17 Q What, if anything, happened that night?

18 A I awoke to him grasping my privates and attempting to
19 masturbate me.

20 Q And by privates -- I'm sorry. You have to be a
21 little more specific.

22 A My penis. He was groping me.

23 Q Was it over the clothes or under the clothes?

24 A Over.

25 Q Was he doing something besides grasping or what was

1 he doing?

2 A Yeah. He was stroking me moving his hand back and
3 forth.

4 Q Where is Josiah when this was happening?

5 A He was on the other bed. It was like a table bed in
6 the middle.

7 Q What, if anything, did you do when you woke up to
8 that?

9 A I looked over at him and he was -- he looked like he
10 was asleep; so I just assumed it was a mistake. So I was
11 a little confused, but I just assumed it was an accident
12 and I went back to sleep.

13 Q Did you do anything -- how were you positioned when
14 you woke up?

15 A When I woke up to him doing the act?

16 Q Uh-huh.

17 A I was laying on my back. When I went to sleep I
18 always sleep on my stomach.

19 Q Did you say anything to the Defendant?

20 A No, I did not. I thought he was asleep.

21 Q Did he say anything to you about it?

22 A No. He didn't.

23 Q Did -- so you said there was more than one night.
24 Where did you sleep the second night?

25 A In the bed with him again.

1 Q What, if anything, happened that time?

2 A The exact same thing as the first night. I went to
3 sleep on my stomach and woke up on my back with him
4 performing the same act and this time I guess I realized
5 that it wasn't an accident even though he looked the same
6 as the first night. He looked like he was asleep. So I
7 moved and I looked over at him and he looked like he was
8 asleep. So I laid down and slept on the floor the rest of
9 the night.

10 Q Did you ever say anything to the Defendant?

11 A No, I did not.

12 Q Did you continue to spend time with the Defendant?

13 A Yes. I am not sure how many trips went on with him
14 after that or if very many at all, but, yeah, we were
15 still -- we still talked after that.

16 Q Was there -- I'm sorry. Was there a third night to
17 the trip?

18 A There was.

19 Q Where did you sleep that night?

20 A That night I slept in the other bed and Josiah slept
21 in the bed with him.

22 Q Did you ever tell your parents about what happened on
23 the trip?

24 A Yes.

25 Q Did you tell -- when did you tell your parents?

1 A Not until 2010.

2 Q What were the events that happened that led you to
3 tell your parents?

4 A My brother came forward and I just realized I needed
5 to do it because he was in a position with little kids and
6 I just decided that it was worth it even though I was
7 scared.

8 Q And why did you not tell anyone before that?

9 A I was just scared of what people would think and
10 stuff like that. I was more ashamed than anything.

11 Q Thank you. Please answer new questions that the
12 Defense Counsel might have.

13 CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q Victim 3 your full name is Victim 3 [REDACTED] is
16 that correct?

17 A Yes, sir.

18 Q And you are what, 21 now?

19 A Yes, sir.

20 Q And you're indicating that you went to Cherokee North
21 Carolina when?

22 A I was roughly 13; so around 2005.

23 Q 2005 because you were 13. Do you remember giving a
24 statement to law enforcement about shortly after I guess
25 the -- your brother told someone that this had occurred?

1 Do you remember giving a statement to law enforcement?

2 A Yes, I do.

3 MISS RINGLER: Your Honor, I would just ask that he
4 ask about the prior statement prior to ---

5 MR. WILLIAMS: I am.

6 MISS RINGLER: I would object as to the ---

7 THE COURT: He knows how to do it. If he doesn't,
8 I'll stop him.

9 Q Do you recall whether or not you gave an inconsistent
10 statement to another police officer on another date?

11 A I do not recall.

12 Q Having looked at that statement does that look like
13 your handwriting?

14 A It sure does.

15 Q All right. Have you read it?

16 A I have.

17 Q All right. Is your testimony still that you were 13
18 years of age at the time that you went to Cherokee and not
19 10 or 11?

20 A I did not say exactly 13. I said around 13.

21 Q So around 13. Could that be 10 or 11?

22 A It could be 12. This says 10 to 12 years old.

23 Q Ten to 12?

24 A Yes.

25 Q Did you tell the police officer it was 10 to 12?

1 A I told this paper. I wrote it down.

2 Q I'm sorry?

3 A Whoever received this paper. That's where the
4 writing is.

5 Q You told them 10 or 12?

6 A Sure. On this paper, yes, sir.

7 Q So you told the police officer when you interviewed
8 the police officer that you were 10 to 12 years of age and
9 now it's your testimony here today that you were 13 years
10 of age; right?

11 A I did not say 13. I said around 13.

12 Q Well, it makes a difference in regard to what year
13 we're talking about, doesn't it?

14 A Yes, sir.

15 Q Because you are how old now?

16 A Twenty-one.

17 Q So if you were 10 that would have put it 11 years ago
18 which would have put it 2002 and if you were 12 it would
19 be 2004; right?

20 A Yes, sir.

21 Q So now your testimony would be that it actually
22 occurred in 2002 or 2003 or 2004; right?

23 A In that writing, yes, sir.

24 Q Well, I mean, I just want to know which is true?

25 A It's a rough estimate. I really don't remember.

1 Q Who was present with you? Who went to this Cherokee,
2 North Carolina with you?

3 A My little brother Josiah.

4 Q How old was Josiah at the time?

5 A He's three years younger than me. So...

6 Q So he would have been seven to nine; right?

7 A Sure. Seven -- I don't know. I was around that age.
8 I am not positive.

9 Q I'm sorry.

10 A I was around that age. I am not positive what age he
11 was.

12 Q I am just extrapolating. If you were 10 to 12, he
13 would have been 7 to 9, wouldn't he?

14 A Yes, sir, if I would have been 10 to 12.

15 Q Okay. So as I understand your testimony that you
16 woke up in this camper. Was it the pop-up camper?

17 A I am not positive.

18 Q Well, you've described a pop-up camper, haven't you?

19 A I guess. I think both of them had a middle bed; so
20 I'm not...

21 Q Well, if Mr. VanCleave didn't have a pop-up camper
22 until May of 2005, then it couldn't have been in 2005
23 then, could it?

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

25 Q You said that you went to Cherokee, North Carolina

1 and you stayed with Josiah and Eric VanCleave who took a
2 camper. You described a pop-up trailer or camper, didn't
3 you?

4 A (No response.)

5 Q Did you ever know him before this date of having ---

6 THE COURT: Hold on a second. You got three
7 questions going.

8 Describe the camper to us.

9 THE WITNESS: I really don't remember if it was the
10 pop-up or a different camper.

11 Q Is it the first camper that you remember Eric having?

12 A I really don't know. It was a camper. That's the
13 best I have.

14 Q Okay. Well, describe again for the jury so they
15 understand what this camper looks like.

16 A It had little steps. There were -- either way there
17 were two beds on the inside; one on the right side, one on
18 the left. The three beds -- sorry -- and there was a
19 little bed that was actually a table that laid out into a
20 bed.

21 Q So there are four beds?

22 A No, sir. I just described three to you.

23 Q All right. So there are three beds and who is
24 staying in the camper?

25 A My brother, myself, and Mr. VanCleave.

1 Q All right. So there wouldn't have been any need for
2 you to get in the bed with Eric VanCleave because you had
3 three beds; right?

4 A That's correct, sir.

5 Q Did you tell him there was no need to get in the bed
6 with him because you had three beds?

7 A No, sir, I did not.

8 Q Where were the Wicks?

9 A In their own camper.

10 Q Where did you stay at?

11 A In Mr. VanCleave's camper.

12 Q No. I mean, which location at Cherokee? Did you
13 have a campground?

14 A It was a campground. I believe it was a KOA.

15 Q Well, who with the Wicks came on this occasion?

16 A Blair, DeeDee, Richard, and the two little ones. I
17 don't know if they had their little girl yet.

18 Q Did you go -- besides Cherokee, did you go to Ghost
19 Town?

20 A Ghost Town? We went -- we rode go-carts with Eric I
21 think the last day. I don't know what that place is
22 called. He took us to ride go-carts.

23 Q So you wouldn't have gone to Ghost Town on this trip?

24 A I'm not sure. If Ghost Town has go-carts, then
25 possibly.

1 Q Did you ever go with the Wicks on any other occasions
2 to North Carolina on a camping trip?

3 A On -- we went on a youth trip, also. I am not sure
4 -- I don't think the Wicks were there. I think this is
5 the only trip we went with the Wicks.

6 Q That's the only trip you went with the Wicks?

7 A The only trip I went with the Wicks.

8 Q And DeeDee Wick would have been along with you;
9 right?

10 A Yes.

11 Q And this would have been between 2002 and 2004?

12 A Yeah, around that time.

13 Q All right. And how long was the trip?

14 A A few days.

15 Q How many days?

16 A I think three.

17 Q Well, do you remember telling the police officer it
18 was -- do you remember telling him something different
19 with regards to how long it was?

20 A No, I don't.

21 Q Let me ask you to look at this again.

22 A This statement doesn't contradict what I said, sir.

23 Q You were there three to five days, weren't you?

24 A Yes, sir. I said three days.

25 Q So it's three days or three to five days; correct?

1 A Yes.

2 Q And did you move around during those three to five
3 days or did you stay in one campground?

4 A One campground.

5 Q What was the name of the campground?

6 A I believe it was a KOA.

7 Q Now, if you were concerned about something happening
8 because you say you got in the bed with him, why would you
9 have let your younger brother get in the bed to stay with
10 him?

11 A Do I have to ---

12 THE COURT: Yes, sir.

13 THE WITNESS: I don't know. I regret it to this day.

14 THE COURT: Do we need to take a break? All right.

15 Let's take a break.

16 You got any questions?

17 Ladies and gentlemen, let's step back in your jury
18 room, please.

19 (Whereupon, the jury exited the courtroom at 4:19.)

20 THE COURT: All right. These trials are emotional.
21 It works on people's emotions. If you cannot control your
22 emotions, leave now. Understand? I suggest y'all have a
23 word of prayer with him. We'll take about a five-minute
24 break.

25 You got one more witness?

1 MISS RINGLER: Yes, Your Honor.

2 THE COURT: Just sit tight, son. We're going to be
3 right back out.

4 THE WITNESS: Yes, sir.

5 (Whereupon, a break was taken.)

6 THE COURT: All right. Everybody cooled down a
7 little bit?

8 MISS RINGLER: Yes, Your Honor.

9 THE COURT: Bring the jury in, please.

10 (Whereupon, the jury came into open court at
11 approximately 4:24.)

12 THE COURT: Anything on redirect?

13 MISS RINGLER: Nothing from the State, Your Honor.

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

15 You may call your next witness.

16 MISS RINGLER: Yes, Your Honor. The State calls

17 Victim 2 T. [REDACTED]

18 [REDACTED] Victim 2 after being duly sworn,
19 testified as follows:

20 THE CLERK: If you would have a seat on the witness
21 stand and state your name for the record.

22 THE WITNESS: My name is Victim 2 [REDACTED]

23 DIRECT EXAMINATION

24 BY MISS RINGLER:

25 Q Do you go by Victim 2 or Victim 2 ?

- 1 A [REDACTED] or [REDACTED], yes, ma'am.
- 2 Q Where do you live right now?
- 3 A I currently live in Lexington with my wife and son.
- 4 Q How old is your son?
- 5 A He's nine months old.
- 6 Q What is his name?
- 7 A His name is [REDACTED]
- 8 Q After your brother?
- 9 A Yes, ma'am.
- 10 Q And are you in school or do you work?
- 11 A I work full time.
- 12 Q Where do you work?
- 13 A I work with a company called Allied Air Enterprises.
- 14 We manufacture heating and air equipment.
- 15 Q What do you do for them?
- 16 A I work in tech support. I do some traveling and
- 17 answer phonecalls for our products.
- 18 Q And tell me a little -- I know we've heard from a
- 19 couple of your family members today, but if you could talk
- 20 a little bit about them.
- 21 A We're a close family. There's nine of us. We spent
- 22 a lot of time working at my dad's restaurant. We spent a
- 23 lot of time up there just together. My father is a
- 24 pastor; pastor of Pavilion Ministries for a number of
- 25 years.

1 Q Where is your dad now?

2 A He's currently in Mississippi working in Mississippi.

3 Q Does he make it back a lot to see the grand baby?

4 A Yes, ma'am, he does.

5 Q And do you know the Defendant in this case Eric
6 VanCleave?

7 A Yes, I do.

8 Q How do you know him?

9 A He attended our church and worked at our restaurant
10 for my dad and also ran his own business out of the
11 restaurant.

12 Q And if you can point out Eric VanCleave to us in the
13 courtroom?

14 A Sure. Right there. (Indicating)

15 Q And describe what he's wearing.

16 A He's wearing a suit with a red tie and a white shirt.

17 Q When did you first meet the Defendant?

18 A I believe some time early 2000's. I think I was 11
19 or 12; '99 or 2000, sometime around in there.

20 Q And how did y'all know him?

21 A He started coming to our church.

22 Q And how would you describe his relationship with your
23 family?

24 A He was -- he spent a lot of time with our family,
25 especially when he started working up at our restaurant.

1 We spent a lot of time with him. Most of us worked for
2 him at one time or another doing catering jobs for him,
3 did a lot of traveling with him, went to a lot of Carolina
4 football games, a lot of camping.

5 Q Did you take a camping trip to Maggie Valley, North
6 Carolina?

7 A Yes, I did.

8 Q Do you remember approximately around when that was?

9 A I believe it was in 2005, possibly the summer of
10 2006. I don't remember exactly.

11 Q And about how old were you do you think on that trip?

12 A Seventeen.

13 THE COURT: I'm sorry. How old?

14 THE WITNESS: Seventeen.

15 Q Who all went on that trip?

16 A I remember my little brother Josiah, myself, and
17 Eric. I think there may have been others with us. I
18 really don't remember who all was there.

19 Q Do you remember where you stayed?

20 A We stayed in a campground in Maggie Valley.

21 Q Were you in tents or a camper?

22 A We were in a camper.

23 Q Was there more than one camper or one camper, if you
24 remember?

25 A I don't remember. I think there may have been

1 another camper with some other people staying there. I
2 remember in the camper we were staying in it was just
3 myself, Josiah, and Eric.

4 Q Was it Eric's camper?

5 A Yes, ma'am, it was.

6 Q Do you remember what the camper looked like?

7 A No, I don't. I remember it had two separate bedrooms
8 on either end and then a bedding area in the middle with a
9 little kitchen.

10 Q How many days and nights were the trip?

11 A I believe we were there for two nights. I know we
12 stayed the first night and went to Ghost Town the
13 following day and I believe we stayed an additional night.

14 Q Where did everybody sleep in the camper?

15 A I only really remember the first night. I know that
16 we put a movie in there. There was a small TV on one end.
17 We put a movie in. Myself and Eric were on the floor.
18 Josiah was up on the bed.

19 Q And this is in one of the kind of bed sections of the
20 camper?

21 A Yes, ma'am, that's correct.

22 Q So, but y'all are on the floor. If you can talk
23 about that.

24 A Yes, ma'am. We are laying on the floor. Again, we
25 had the TV playing the movie. Josiah was -- he wasn't on

1 the floor with us. I remember that. We fell asleep while
2 we were watching the movie.

3 Q Did anything happen during the night?

4 A Yes, ma'am, it did.

5 Q What happened?

6 A I woke up at some point in the middle of the night --
7 I don't know when -- and found that my pants had been
8 pulled down and that Eric was touching my penis and
9 stroking it, attempting to ejaculate me.

10 Q Were you wearing -- were you wearing underwear?

11 A Yes, ma'am; shorts, I believe.

12 Q Were your pants and underwear pulled down or just the
13 pants?

14 A Pants and underwear.

15 Q So was he touching ---

16 MR. WILLIAMS: Objection to leading.

17 Q Where was he touching?

18 A He was touching my bare penis.

19 Q And what was he doing?

20 A He was rubbing it and stroking it attempting to
21 ejaculate me, I believe.

22 Q What did you do?

23 A When I woke up and realized, I looked over and he had
24 his eyes closed as if he was sleeping. I think I moved
25 his hand. He may have moved his hand. I pulled my pants

1 up, rolled over, and went back to bed -- went back to
2 sleep.

3 Q What were you thinking when this was happening?

4 A I thought it was probably just an accident; that
5 there wasn't anything to it. I had been a friend of
6 Eric's for a while; our whole family had. I didn't think
7 anything, you know. I can't say I didn't think anything
8 of it, but I chose to believe that there was -- that it
9 wasn't what it seemed to be.

10 Q Now as an adult do you have a different opinion?

11 A Absolutely, yes, ma'am.

12 Q And what is that opinion?

13 A I believe he was taking advantage of the situation
14 that we were in and myself.

15 Q Did you tell your parents or tell anyone about what
16 happened that night?

17 A No, ma'am, I did not.

18 Q At some point did you tell somebody?

19 A Yes, ma'am, I did.

20 Q When was that?

21 A That was after my little brother had explained this
22 was something that had been happening for a number of
23 years and I realized that, you know, what exactly had
24 occurred.

25 Q So who did you tell at that point?

1 A I told my dad.

2 Q Please answer any questions that Defense Counsel
3 might have.

4 THE COURT: Mr. Williams?

5 CROSS-EXAMINATION

6 BY MR. WILLIAMS:

7 Q [REDACTED] your full name is what?

8 A [REDACTED]

9 Q And what is your date of birth?

10 A Date of birth is [REDACTED] 1988.

11 THE COURT: I'm sorry. [REDACTED] when?

12 THE WITNESS: 1988.

13 Q Now, you said that you went to -- was it Ghost Town
14 or Maggie Valley?

15 A We stayed in Maggie Valley and also went to Ghost
16 Town.

17 Q On the same trip?

18 A Yes.

19 Q And this happened on right before your 18th birthday;
20 is that right?

21 A It was either the summer before or the summer of my
22 18th birthday.

23 Q Well, if you're born on [REDACTED] of 1998 [sic] your
24 18th birthday would have been 2006; right?

25 A That's correct, yes, sir.

1 Q So are you saying that it was 2006 and 2005 would
2 have been one of those dates?

3 A One of those years.

4 Q Did you ever -- you said you don't remember if you
5 went with the Wick family or not?

6 A I didn't mention the Wick family.

7 Q Did you go with the Wick family?

8 A I don't recall them being there, no, sir.

9 Q And you would remember if you went with the Wick
10 family, wouldn't you?

11 A I suppose I would.

12 MR. WILLIAMS: I beg the Court's indulgence for one
13 minute.

14 Did you ever go to Ghost Town or Maggie Valley with
15 Eric on any other occasion other than the one you just
16 talked about?

17 THE WITNESS: No, sir.

18 Q Can I ask you to look at this picture?

19 MISS RINGLER: Can I see that?

20 Q You want to see it again?

21 A No, thank you, sir.

22 Q Now, having looked at the picture does it refresh
23 your memory in regards to being at Maggie Valley or Ghost
24 Town at a different year?

25 A I suppose it's possible. The Wicks could have been

1 there on the first trip.

2 Q Well, are you pictured in this picture?

3 A Yes, sir, I am.

4 MR. WILLIAMS: Your Honor, we would move to introduce
5 this -- I know.

6 MISS RINGLER: I would object as to authentication.

7 THE COURT: Ask him if he recognizes the picture.
8 Authenticate it.

9 Q You recognize your picture, don't you?

10 A That is me in the picture, yes, sir.

11 MISS RINGLER: Your Honor, I specifically object that
12 there is a date stamped on it. He doesn't remember when
13 the photo was taken. We don't have who took the photo,
14 what date -- if the time was accurate on the camera when
15 it was set and taken. I would object to that information
16 coming in, Your Honor. We just don't know anything about
17 it and the witness doesn't remember it being taken or when
18 it was taken.

19 THE COURT: Well, I'll let him introduce it when he
20 lays the proper foundation as to who took it and, et
21 cetera.

22 Which one is you? Purple shirt?

23 THE WITNESS: Yes, sir.

24 Q So now who all was at Maggie Valley with you at Ghost
25 Town?

- 1 A I suppose the Wicks were there as well, sir.
- 2 Q You're pretty sure the Wicks are there now, aren't
- 3 we?
- 4 A Yes, sir.
- 5 Q Who else was there besides the Wicks and you?
- 6 A My little brother Josiah was there.
- 7 Q And who else?
- 8 A Mr. VanCleave.
- 9 Q And who else?
- 10 A I don't recall, sir.
- 11 Q Would referring to this picture help any?
- 12 A Pictured are the Wicks, myself, and Eric.
- 13 Q And how many Wicks are there?
- 14 A It is their two youngest sons and their daughter.
- 15 Q It was Mr. and Mrs. Wick and their three children
- 16 along, also; right?
- 17 A Yes, sir.
- 18 Q Now, let's go back to the year that this happened.
- 19 Are you sure it's 2005 or 2006 now?
- 20 A Fairly certain is it was one of those two years.
- 21 Q All right. And now that we know the Wicks were
- 22 there, do you know what the sleeping arrangements were?
- 23 A Again, I said there may have another camper. It may
- 24 have been the Wicks' camper or tent. I don't remember.
- 25 Q Did you tell Mr. or Mrs. Wick that there was some

1 issue about you sleeping in the same camper as Eric?

2 A No, sir, I did not.

3 Q Now, if it was a camper that Eric owned then do you
4 know whether or not Eric VanCleave owned a camper before
5 May of 2005?

6 A I don't know when he purchased his camper, sir.

7 Q So if indeed that's when he purchased this camper it
8 would have had to be after May of 2005, wouldn't it?

9 A I suppose so, yes, sir.

10 Q And is it your testimony that you never told anyone
11 about this until your brother Victim talked to you in 2010
12 and you decided at that point in time was when you needed
13 to tell all these things?

14 A No, sir. That's not what I said.

15 Q All right. Who did you tell before your conversation
16 with Victim

17 A I did not have a conversation with Victim I spoke
18 with my father.

19 Q Okay. So your father talked to Victim and you talked
20 to your father?

21 A That's correct.

22 Q Same week?

23 A Yes, sir.

24 Q So from 2000 whatever year it was up until 2010 you
25 never saw fit to tell anyone or your brothers or anything

1 that something unusual had happened to you?

2 A No, sir.

3 Q And you say Victim 3 was with you on this trip?

4 A No, sir, Josiah.

5 Q Josiah. Did you go on a trip with Victim 3 to North
6 Carolina?

7 A Not that I recall; no, sir.

8 Q Well you would remember it if you had, wouldn't you?

9 A Not necessarily, sir.

10 Q Why?

11 A We went on a lot of camping trips.

12 Q How did you arrive at Cherokee or -- I'm sorry; Ghost
13 Town or Maggie Valley? How did you arrive there?

14 A I imagine we drove, sir.

15 Q When you say we drove, who drove?

16 A I believe I rode with Eric.

17 Q I'm sorry?

18 A I believe I rode with Eric.

19 Q Now, if this actually occurred in 2007 you would have
20 been -- you would have been over 18, wouldn't you?

21 A If it occurred in 2007.

22 Q Yeah.

23 A Depending on when in 2007.

24 Q Your birthday is when?

25 A [REDACTED] 1988.

1 Q So if it occurred after June 17 of 2006 you would
2 have been 18 years of age?

3 A That's correct.

4 Q Do you remember if there was a particular holiday
5 that was going on during this time span?

6 A I don't recall. No, sir.

7 Q You don't know whether or not it was the weekend of
8 July 4, perhaps?

9 A It's possible.

10 Q You really just don't remember much about it?

11 A No, sir.

12 Q That's all the questions I have, Your Honor.

13 THE COURT: Redirect, if any.

14 MISS RINGLER: None from the State, Your Honor.

15 THE COURT: All right. You may step down. Thank
16 you. Next witness.

17 MISS RINGLER: Your Honor, I believe that's all that
18 we have. If it's possible for us to rest in the
19 morning...

20 THE COURT: All right. Y'all step up here for a
21 minute.

22 (Whereupon, a bench conference was held.)

23 THE COURT: We're going to break for the evening. I
24 suspect that will be the conclusion of the State's case,
25 and then, of course, the Defense has an opportunity to put

1 up witnesses as well, but I suspect -- that's what I was
2 talking to them about -- that we'll have the testimony
3 concluded by lunch time tomorrow. So, my questions are
4 these. I have two for you. Would you rather start at
5 9:30 or 10 or does it make any difference? You're the
6 foreman.

7 THE FOREPERSON: Not to me; 9:30. 9:30 will be fine.

8 THE COURT: Y'all all go along with the foreman? No
9 imposition to anybody? Everybody good with that. All
10 right. And would you like for me to have you some hot
11 coffee? Mr. Foreman?

12 THE FOREPERSON: Iced tea. I don't drink coffee.

13 THE CLERK: How about soda or water?

14 THE COURT: No, no. Everybody else wants hot coffee.
15 One iced tea. All right. I can have you bananas and
16 grapes and peaches or sausage biscuits or what else is
17 available? Or what else you want? Sausage biscuits are
18 easiest. Is that good? Everybody okay? Anybody on a
19 particular diet? You would rather have Hardees or
20 McDonalds?

21 THE JUROR: Hardees.

22 THE CLERK: I have to answer to County Council about
23 spending money; so Hardees would be better with the
24 coupons.

25 THE COURT: Or I can ask Ms. McElveen get up early in

1 the morning to make some biscuits.

2 THE CLERK: And they might not be edible, but I can
3 try.

4 THE COURT: I can promise you they won't be edible.
5 All right. In all seriousness, we'll have you sausage
6 biscuits and coffee for everybody and sweet or unsweet
7 tea?

8 THE FOREPERSON: Sweet tea.

9 THE COURT: Sweet tea. If we're still going at lunch
10 time, if we're deliberating I'll probably order in some
11 sandwiches or things. If we're in a break point, we may
12 send you to get some lunch, but probably we'll order in
13 tomorrow to move things along, if that's okay with
14 everybody.

15 Where can we order from?

16 THE CLERK: We're going to order pizza. That seems
17 to do real well.

18 THE COURT: Pizza okay with everybody?

19 THE CLERK: I can have sandwiches from the place,
20 too.

21 THE COURT: All right. I want you to have a very
22 pleasant evening. Promise me this; that you won't go home
23 and do any kind of research on this. Don't discuss the
24 case with anybody. Do not let anybody discuss it with
25 you. If anybody tries, get their name and we'll deal with

1 them at the sheriff's office tomorrow. Have a very
2 pleasant evening. Everybody have a ride? Anybody need
3 rides? Transportation problems? Everybody okay? Okay.

4 Everybody remain seated and, my jurors, I'll see you
5 bright and early at 9:30. Of course, if you want your
6 biscuits and your tea, be here before then because we
7 can't bring them in the courtroom.

8 (Whereupon, the jury exited the courtroom at 4:47.)

9 THE COURT: Miss Ringler, anything for the record
10 before we break for the evening?

11 MISS RINGLER: Nothing from the State, Your Honor.

12 THE COURT: Assuming that you're going to rest, the
13 charge would simply be the four offenses as outlined in
14 the Indictment; is that correct?

15 MISS RINGLER: Yes, Your Honor, I think we would ask
16 for the corroboration-not-necessary charge. I think
17 that's in the standard charges. We'd be fine with that.
18 We would ask for that one.

19 THE COURT: Anything else in particular? I'll tell
20 you what. Over the evening if you have anything in
21 particular, get them to me early in the morning so I can
22 look at them while we're finishing up. Fair enough?

23 MISS RINGLER: Yes, Your Honor.

24 MR. WILLIAMS: Your Honor, I'd like to be heard on
25 whether or not he is allowed out. There is a reason why I

1 keep pushing that, Your Honor. He's been out of jail for
2 several -- several years now. He has a bondsman and here
3 is his letter, Your Honor, from -- Steve Thompson signed
4 this with Brad's Bonding Company.

5 THE COURT: Steve Thompson?

6 MR. WILLIAMS: Yes, sir. Steve works in Lexington
7 for Brad's Bonding Company.

8 THE COURT: Our brad?

9 MR. WILLIAMS: Yes, it is our Brad.

10 THE CLERK: He has been one in Lexington.

11 MR. WILLIAMS: The last time we were up here I had
12 Brad's Bonding Company sign a statement saying they would
13 remain on it. Really, one of the major reasons I am
14 concerned about it, I mean, is it's probably -- number
15 one, he is not going anywhere, but the other thing is he
16 takes Celexa, Wellbutrin because he has depression,
17 Phentermine. Of course, he takes Lipitor, but I take
18 that.

19 THE COURT: So do I.

20 MR. WILLIAMS: But the particular medicines that he
21 takes it may create a problem in terms of his testimony if
22 he is depressed or somehow he's anxious or something like
23 that. It would impact the trial of his case.
24 Secondarily, Your Honor, he has sleep apnea. He's not a
25 healthy man, Your Honor.

1 THE COURT: Well, does he have a CPAP machine?

2 MR. WILLIAMS: We have a CPAP machine, but we don't
3 have these drugs.

4 THE COURT: You got your CPAP with you?

5 MR. WILLIAMS: He's got one out in the car but he
6 doesn't have these drugs. The drugs are what I'm
7 concerned about.

8 THE COURT: You know, once you get on those things
9 you don't leave home without them. Believe me, I know.

10 MR. WILLIAMS: And, Your Honor, he's the one who
11 pushed for the speedy trial. It's not like he's the one
12 been hiding.

13 THE COURT: Where is he going to stay tonight?

14 MR. WILLIAMS: He is going to stay with his wife.

15 THE COURT: Where do they live?

16 MR. WILLIAMS: Stand up and give your address where
17 you live.

18 THE DEFENDANT: 136 Santa Barbara Court in West
19 Columbia.

20 THE COURT: How far is that from your dad?

21 THE DEFENDANT: From my dad? Ten minutes.

22 MR. WILLIAMS: He can stay with his dad if you prefer
23 that, Your Honor.

24 THE COURT: All right. Bail Bondsman -- it is your
25 representation -- Mr. Williams, your representations and

1 your reputation with me is outstanding. You know that.

2 MR. WILLIAMS: I wouldn't lie to you, Judge.

3 THE COURT: I know you wouldn't, but if he doesn't
4 show up in the morning and there is some problem -- how
5 much is his bond?

6 MR. WILLIAMS: Well, he's still got another bond he's
7 on with Lexington.

8 THE COURT: How much is his bond here?

9 MR. WILLIAMS: A hundred thousand here.

10 THE COURT: I am going to estreat every dime of it if
11 he doesn't show.

12 MR. WILLIAMS: I would hope you would.

13 THE COURT: I am. No question about it.

14 MR. WILLIAMS: I talked to Steve personally at Brad's
15 and the last time -- Your Honor, I actually had one from
16 the last time ---

17 THE COURT: Mr. Williams, your word is your bond.

18 MR. WILLIAMS: I know.

19 THE COURT: I stand by that.

20 MR. WILLIAMS: Well, it's true.

21 THE COURT: All right. You know how long it takes to
22 get a good reputation.

23 MR. WILLIAMS: It's taken me 62 years, Judge.

24 THE COURT: You know how long it takes for it to go
25 south.

1 MR. WILLIAMS: About 15 seconds.

2 THE COURT: That's correct. If he doesn't show up in
3 the morning, your reputation is...

4 MR. WILLIAMS: If he doesn't show up, I'll go get
5 him.

6 THE COURT: All right. Very well.

7 MR. WILLIAMS: Thank you, Your Honor.

8 THE COURT: 9:30. Y'all be here a little bit early
9 in the morning.

10 Mr. VanCleave, how about you and your dad sit tight
11 for a second. Let me see your lawyer, Miss Ringler, and
12 Mr. Hammack in chambers. Don't leave until he comes back
13 out.

14 (Whereupon, the proceedings were concluded for the
15 day and were reconvened on April 2, 2013 as follows:)

16 THE COURT: Is the State ready to proceed?

17 MISS RINGLER: There is one matter I would need to
18 address. Yesterday I mentioned that that was all the
19 testimony we would offer. However, in considering it last
20 night I realized that I failed to establish that the
21 Defendant was over the age of 18 at the time this
22 occurred. There was testimony that he was an adult, but
23 not that he was over the age of 18 and so I am prepared to
24 call a witness about that this morning.

25 THE COURT: Or y'all can stipulate.

1 MR. WILLIAMS: Your Honor, we'll stipulate that he's
2 over 18.

3 THE COURT: Anything else?

4 MISS RINGLER: That'll be it and the State will rest,
5 Your Honor.

6 THE COURT: Well, with that stipulation you want to
7 just go ahead and make your motions while the jury is out?

8 MR. WILLIAMS: I do, Your Honor. Your Honor, we
9 would ask the Court to take judicial notice that Easter in
10 2005 was March 27. I have a copy of the calendar.

11 THE COURT: I understand that. Nobody disputes that.
12 What is disputed is whether or not he was there on Easter
13 or around about Easter. That is a factual issue.

14 MISS RINGLER: It was Easter -- I'm sorry.

15 MR. WILLIAMS: March 27, 2005. We would argue, Your
16 Honor, that the testimony from the alleged victim was that
17 he was assaulted on two occasions; one being on March --
18 I'm sorry. It would have been on Easter of 2005, the
19 second occasion being on Memorial Day weekend of 2006. If
20 that is true, Your Honor, the Indictments allege that any
21 assault would have occurred between the dates of May 27 of
22 2006, May 29 of 2006, and or -- let me see if I get these
23 dates.

24 THE COURT: April 1, 2005; May 17, 2006.

25 MR. WILLIAMS: That's right. April 1, 2005; May 17,

1 2006. If, indeed, the victim is alleging that he was
2 assaulted on Easter of 2005, then they have failed to
3 establish that he was assaulted -- that first assault
4 would not have been within the Indictment period.

5 THE COURT: When was Easter that year?

6 MR. WILLIAMS: 2005 would have been on March 27,
7 2005. The Indictment period runs from April 1, 2005 to
8 May 17, 2006.

9 THE COURT: That's correct. Anything else?

10 MR. WILLIAMS: And, obviously, Your Honor, on all
11 four Indictments the general motion for directed verdict
12 that is the evidence taken in the light most favorable to
13 the State was insufficient as a matter of law to return a
14 verdict of guilty in regard to all of the Indictments.

15 I guess lastly, Your Honor, and I don't know -- you
16 have one Indictment which is the criminal sexual conduct
17 with a minor -- I'm sorry; yeah, criminal sexual conduct
18 with a minor. Even though the verbiage I think is
19 alleging a criminal sexual conduct with a minor second
20 degree, there's no allegation on the Indictment as to
21 being criminal sexual conduct with a minor second degree
22 meaning it's not titled that, and I think, obviously, the
23 verbiage might be sufficient to constitute that. They
24 don't call it that. They just call it criminal sexual
25 conduct on a minor.

1 THE COURT: Anything else?

2 MR. WILLIAMS: I think that's it, Your Honor.

3 THE COURT: Ma'am?

4 MISS RINGLER: Your Honor, I understand that
5 yesterday the defense questioned several times about that
6 Easter weekend. The victim's testimony that he wasn't
7 sure when it happened. He did testify to the incident
8 where he remembered that Mike Sanders was present, that
9 they were in the pop-up trailer, that he described the
10 sleeping arrangements, also a curtain, and Mr. Sanders
11 testified that that occurred -- that trip occurred around
12 Halloween of 2005. There has been evidence and testimony
13 confirming a sexual assault that happened within the range
14 listed on the indictment.

15 THE COURT: Well, if my notes are correct Mr. T. [REDACTED]
16 says that he was younger than 16; 14 or 15. It was around
17 2005, can't remember the exact date, but had oral sex,
18 masturbated, anal sex. It was in the pop-up camper and
19 there was evidence about when the pop-up was bought. I
20 think it is a jury question as to the date. I don't think
21 it's been established other than in Mr. Williams' mind
22 that it occurred on Easter day or Easter weekend. I think
23 that's a factual issue for the jury to determine whether
24 or not it did occur and if it did was it between the dates
25 as listed on the Indictment; so I will deny your motion

1 based on timeframe on those two Indictments.

2 MISS RINGLER: And, Your Honor, as far as the
3 Indictment goes, the language is, I mean, that's ---

4 THE COURT: That's the exact language of criminal
5 sexual conduct with a minor.

6 MISS RINGLER: Yes, Your Honor.

7 THE COURT: They're certainly on notice with what
8 he's charged with. Anything else?

9 MR. WILLIAMS: Just one item, Your Honor. I would
10 ask the Court to note that factor of Easter does not in my
11 mind -- there was testimony involved that he admitted
12 under oath that it occurred. He previously had testified
13 that it occurred on Easter of 2005 because he had a hard
14 time admitting it, if the court will remember, and then
15 finally you directed him to go ahead and answer the
16 question.

17 THE COURT: Well, I didn't mean to say it was only in
18 your mind. It is more established in your mind than ---

19 MR. WILLIAMS: It is. It is.

20 THE COURT: And I say that with all due respect to
21 you. You know that, but I think it's a jury question as
22 to the exact time if it occurred and when it occurred; so
23 I will respectfully deny your motions for directed
24 verdict. I think it is all an issue of fact and if the
25 jury believes the testimony of these young men, then,

1 obviously, it will support a conviction. Thank you. They
2 may not believe their testimony. That's why they're the
3 finders of the facts and we're not.

4 Anything else before we bring the jury in?

5 MISS RINGLER: Nothing from the State, Your Honor.

6 MR. WILLIAMS: Nothing from the Defendant, Your
7 Honor.

8 (Whereupon, the jury came into open court at
9 approximately 9:44.)

10 THE COURT: Good morning. Everybody enjoy their
11 sausage biscuits? Everybody enjoy their coffee except my
12 foreperson?

13 THE FOREPERSON: Beautiful. I loved it.

14 THE COURT: And she gave him a big cup.

15 THE FOREPERSON: Big cup.

16 THE COURT: Thank you very much. I just need one
17 favor from you when the county council complains about the
18 judge ordering too much money being spent on breakfast
19 y'all back it up.

20 THE FOREPERSON: Yes, sir, 100 percent.

21 THE COURT: All right. When we concluded yesterday
22 we got through a little earlier than the 5 o'clock that we
23 shot for and the State advised me at that time they
24 thought they had completed all of their testimony. There
25 was one additional piece of evidence that they realized

1 needed to come in and that was the age of the Defendant
2 because that's one of the elements of perhaps one of the
3 crimes alleged in the Indictment.

4 Mr. Williams and Miss Ringler have this morning
5 stipulated which means it's not in dispute -- it is an
6 agreed upon fact. It is a fact in the case that the
7 Defendant is indeed over the age of 18 and was so during
8 the times as alleged in the Indictment.

9 Is that correct, Miss Ringler?

10 MISS RINGLER: Yes, Your Honor.

11 THE COURT: Mr. Williams?

12 MR. WILLIAMS: It is, Your Honor.

13 THE COURT: So with that evidence having come in,
14 that will conclude the State's presentation of testimony.
15 Now we're at the stage of the trial where the Defendant is
16 in a position to present their defense.

17 So, Mr. Williams, let me see you at side bar one
18 minute before we start.

19 (Whereupon, a bench conference was held.)

20 (Whereupon, the Clerk confers with the Court.)

21 THE COURT: She runs a tight courtroom and the only
22 Clerk of Court in all the state that fusses at me. I
23 don't know what I am going to do with her. She's a
24 wonderful Clerk. She does a great job. She's organized
25 and she runs a good office downstairs. I appreciate all

1 she does. I appreciate letting her cut up with me at
2 times.

3 Mr. Williams, you may call your first witness.

4 MR. WILLIAMS: Your Honor, I would call DeeDee Wick
5 to the stand.

6 DENNEAUH R. WICK, after being duly sworn,
7 testified as follows:

8 THE CLERK: Have a seat on the witness stand and
9 state your full name for the record.

10 THE WITNESS: My full name is Denneauh Russ Wick.

11 DIRECT EXAMINATION

12 BY MR. WILLIAMS:

13 Q Mrs. Wick, where do you live? Well, let me stop you
14 here. Spell your first name for the Court Reporter,
15 please.

16 A Okay. D-E-N-N-E-A-U-H.

17 Q Thank you. Where do you live?

18 A In Gilbert, South Carolina.

19 Q And how long or do you know Eric VanCleave?

20 A Yes, I do.

21 Q How long have you known Eric VanCleave?

22 A I've known him since May of 2005.

23 Q Now, do you know Victim [REDACTED]

24 A I do.

25 Q Do you know all the [REDACTED] boys and girls and Mr. and

- 1 Mrs. [REDACTED] Do you know them all?
- 2 A Yes, I do.
- 3 Q How do you know them?
- 4 A We met to through a mutual friend in May of 2005.
- 5 Q All right. Now, are you married?
- 6 A I am.
- 7 Q And what is your husband's name?
- 8 A Blair Richard Wick.
- 9 Q Do you have children?
- 10 A I do. I have four.
- 11 Q And what are their names and ages?
- 12 A Elizabeth is age seven. Jackson is age 15. Jared is
- 13 16 and Richard is 23.
- 14 Q Have you on occasion gone camping with Eric and with
- 15 Victim [REDACTED]
- 16 A Yes.
- 17 Q On how many occasions have you gone to the Barnwell
- 18 State Park to camp?
- 19 A One.
- 20 Q And what occasion was that? When was that?
- 21 A It was Memorial weekend of 2006. I do not know the
- 22 exact date. I just know it was that weekend.
- 23 Q And do you recall Victim [REDACTED] being at the Memorial
- 24 weekend camp?
- 25 A I do not remember Victim [REDACTED] being on that camping trip.

State of South Carolina

County of Barnwell

) Court of General Sessions
) 2013-GS-06-76 THROUGH 79

State of South Carolina
Plaintiff
vs.

) Volume II of II
) Transcript of Record

Eric VanCleave
Defendant

April 1 -2, 2013
Barnwell, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge; and a jury.

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

Susanna M. Ringler, Assistant Solicitor
Jack W. Hammack, Jr., Assistant Solicitor
Attorneys for the Plaintiff

Robert T. Williams, Sr., Esquire
Attorney for the Defendant

Lisa H. Davenport, RPR
Official Court Reporter

INDEX OF WITNESSES

1		
2	Victim [REDACTED]	
3	Direct By Miss Ringler	5
4	Cross By Mr. Williams	10
5	Victim 2 [REDACTED]	
6	Direct By Miss Ringler	17
7	Cross By Mr. Williams	18
8	Victim 3 [REDACTED]	
9	Direct By Miss Ringler	21
10	Cross By Mr. Williams	24
11	Victim [REDACTED]	
12	Direct By Miss Ringler	86
13	Cross By Mr. Williams	113
14	Redirect By Miss Ringler	136
15	MARSHALL E. RICHBURG, JR.	
16	Direct By Miss Ringler	139
17	Cross By Mr. Williams	142
18	MICHAEL SANDERS	
19	Direct By Miss Ringler	146
20	Cross By Mr. Williams	150
21	Victim 3 [REDACTED]	
22	Direct By Miss Ringler	156
23	Cross By Mr. Williams	162
24		
25		

1	Victim 2	
2	Direct By Miss Ringler	.170
3	Cross By Mr. Williams	.177
4	DENNEAUH R. WICK	
5	Direct By Mr. Williams	.197
6	Cross By Miss Ringler	.203
7	Redirect By Mr. Williams	.204
8	DONALD D. VANCLEAVE	
9	Direct By Mr. Williams	.205
10	Cross By Miss Ringler	.218
11	Redirect By Mr. Williams	.219
12	JENNIFER J. VANCLEAVE	
13	Direct By Mr. Williams	.220
14	Cross By Miss Ringler	.227
15	ERIC N. VANCLEAVE	
16	Direct By Mr. Williams	.232
17	Cross By Miss Ringler	.249
18	TIM SHEALY	
19	Direct By Miss Ringler	.257
20	Cross By Mr. Williams	.258
21	Victim 2	
22	Direct By Miss Ringler	.259
23	Cross By Mr. Williams	.259
24	Redirect By Miss Ringler	.260
25		

» > o < «

1		
2	Opening Statement by Miss Ringler	79
3	Opening Statement by Mr. Williams	83
4	Closing Statement by Mr. Williams	267
5	Closing Statement by Miss Ringler	281
6	Jury Charge	292
7		

STATE EXHIBITS

9	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
10	1 - 14	Photos		94
11	15 - 18	Facebook Info.		109
12	19 - 21	Camp site Info.		140
13	22 - 23	Chart Pages	106	

DEFENDANT EXHIBITS

15	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
16	1	Photo	200	200
17	2	Wedding Program	222	222
18				
19	3	Sale of Vehicle Info.	237	237
20				
21	4	DMV Info.	238	238
22				
23				
24				
25				

1 Q Who do you recall being there?

2 A It was my family -- the six of us -- my husband and
3 my four children and myself, and Eric, **Victim 2** and Josiah.

4 Q But no **Victim**

5 A I don't remember him being on the trip. No.

6 Q Now, did you have the occasion to go camping to
7 Cherokee, North Carolina and or Maggie Valley, North
8 Carolina with Eric?

9 A Yes.

10 Q All right. And did you take pictures of that
11 occasion?

12 A Yes.

13 THE COURT: Which one? Maggie Valley or Cherokee or
14 both?

15 Q On the trip to Maggie Valley or Cherokee, was this
16 one trip or two trips?

17 A This was one trip. We camped in Cherokee. We also
18 visited Maggie Valley that same trip.

19 Q So this was one occasion --

20 A Yes, it was.

21 Q -- in which you went to Cherokee and Maggie Valley?

22 A Correct.

23 Q And you say you took pictures of this occasion; is
24 that correct?

25 A Yes, I try to take pictures on all of our camping

1 trips.

2 Q I am going to ask you to look at this picture and
3 tell me if you are the maker of that photograph?

4 A I am.

5 Q Are you the one who took the picture?

6 A I am.

7 Q Is that picture off of your camera?

8 A It is.

9 Q All right. And does that represent the persons who
10 were at Ghost Town, Maggie Valley, Cherokee that camping
11 trip?

12 A Yes, it does.

13 MR. WILLIAMS: Your Honor, we would move to introduce
14 this as Defendant's Exhibit No. 1.

15 THE COURT: Any objection?

16 MISS RINGLER: None from the State, Your Honor.

17 (Whereupon, Defendant's Exhibit No. 1 was marked for
18 identification and received into evidence.)

19 MR. WILLIAMS: Your Honor, if I could ask the witness
20 to step down.

21 THE COURT: You may.

22 Q If you will hold this so -- turn your body a little
23 bit so the Court Reporter can hear you, but at the same
24 time so that you can show the picture to the jurors. If
25 you will, pointing at each and every person on that

1 photograph, tell me the names of those persons on that
2 trip.

3 A My husband Blair Wick, Victim 2 Eric VanCleave,
4 Elizabeth Wick, Jared Wick, Josiah T. and Jackson
5 Wick, and this was in Ghost Town.

6 Q Was Victim 3 on that trip?

7 A No, he was not.

8 Q Thank you. You can have a seat. What were the
9 sleeping arrangements on the trip to North Carolina
10 meaning how -- did you go with -- there were a bunch of
11 people there; right? How many people were there?

12 A You're talking Cherokee?

13 Q Cherokee, North Carolina.

14 A The five of us were in our camper -- my family; my
15 husband and my three children. My oldest son did not
16 accompany us on that trip.

17 Q Okay.

18 A He had to stay behind. He had to work.

19 Q Okay.

20 A It was Eric, Victim 2 and Josiah in his camper.

21 Q All right. No Victim 3

22 A I do not remember Victim 3 being there.

23 Q Does the picture include those persons who were there
24 at the trip?

25 A Correct.

1 Q Was **Victim** there?

2 A Not at the campground, no.

3 Q Now, let me ask you about Memorial Day weekend of
4 2006.

5 A Okay.

6 Q Where were you camping on that occasion?

7 A Memorial weekend 2006 we were in Barnwell County
8 park.

9 Q All right. Who was present at the camp as far as you
10 remember again?

11 A My family; the six of us.

12 Q Right.

13 A My husband and my four children and it was Eric,
14 **Victim 2** and Josiah.

15 Q All right. Now, did Eric have a camper at that point
16 in time?

17 A He did. He had a pop-up.

18 Q Do you know when Eric got the pop-up camper?

19 A I just met Eric in 2005 -- May of 2005 --

20 Q Okay.

21 A -- and we hit it off pretty well and he said that he
22 just purchased his camper at that time.

23 Q May of 2005?

24 A Correct. We had just purchased ours also at the same
25 time.

1 Q All right. Now, the date that you went to Cherokee,
2 North Carolina and or Maggie Valley, North Carolina, what
3 is the date that you went there?

4 A It was the July -- it was the week of the Fourth of
5 July in 2007.

6 Q 2007?

7 A Correct.

8 MR. WILLIAMS: I beg the Court's indulgence.

9 Were there any other Cherokee, Maggie Valley, North
10 Carolina trips other than the one you testified to?

11 A That is the only trip that I accompanied with Eric,
12 yes.

13 MR. WILLIAMS: That's all the questions I have, Your
14 Honor.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MISS RINGLER:

18 Q You state that you take pictures on all of your
19 camping trips; is that right?

20 A Most of the trips.

21 Q Most of the trips, but you don't have any pictures
22 from the trip to Barnwell?

23 A I do not.

24 Q And you were contacted and in contact in 2010 -- in
25 February of 2010 with the Cayce Police Department;

1 correct?

2 A My son was contacted, yes.

3 Q And you spoke with the officer on the phone?

4 A I did.

5 Q And you did not give any statement to Cayce Police at
6 that time?

7 A I spoke with him.

8 Q You did not give a written statement or a statement
9 to Cayce Police?

10 A No, he really didn't want to speak to me.

11 THE COURT: Hold on, ladies. Now, the rule is this.
12 Let her finish her question.

13 THE WITNESS: I'm sorry.

14 THE COURT: Let her finish her answer before you ask
15 a question.

16 Q My question was did you give a written statement to
17 law enforcement in February of 2010 to the Cayce Police
18 Department?

19 A No, I did not.

20 MISS RINGLER: Nothing further, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. WILLIAMS:

23 Q Why did you not give a statement to the Cayce Police
24 Department?

25 A Officer Shealy said he didn't want to speak to me.

1 He got the information that he needed.

2 THE COURT: Ma'am, hold on. You can't elicit
3 hearsay.

4 MR. WILLIAMS: I am not trying to do that, Your
5 Honor.

6 THE COURT: Well, I know that, but the answer is
7 responsive to hearsay. Ask it another way.

8 Q Did you call the Cayce Police Department?

9 A I did.

10 Q Did you offer assistance if they wanted answers to
11 questions?

12 A Yes, I did.

13 MR. WILLIAMS: That's all I have, Your Honor.

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

15 Next witness.

16 MR. WILLIAMS: Your Honor, I'd call Donald VanCleave.

17 DONALD D. VANCLEAVE, after being duly sworn,
18 testified as follows:

19 THE CLERK: After you sit down state your full name
20 for the court.

21 THE WITNESS: My name is Donald Duanne VanCleave.

22 DIRECT EXAMINATION

23 BY MR. WILLIAMS:

24 Q Where do you live?

25 A I live in West Columbia, South Carolina.

1 Q What relationship are you to Eric VanCleave?

2 A I am his father.

3 Q What do you do for a living?

4 A I am working part time at the Department of Revenue
5 with Bingo Licensing Enforcement.

6 Q And how long have you had that job?

7 A I've had that since 2008.

8 Q What did you do before 2008?

9 A I retired from the University of South Carolina after
10 28 years.

11 Q And what did you do for 28 years at USC?

12 A I was an auditor in -- internal auditor at the
13 university.

14 Q When you say an auditor, does that mean basically you
15 kept up with records and books and things of that nature?

16 A Yes, sir.

17 Q Did you have the occasion to get to know the [REDACTED]
18 family?

19 A Yes, sir.

20 Q And how did you get to know the [REDACTED] family?

21 A My son had met them and started going to church there
22 and was talking about, you know, what a great family they
23 were and, you know, that he wanted me to maybe come there
24 a couple of times just to see what it was like.

25 Q All right. And did you go to the church?

1 A Yes, I did.

2 Q Tell the jury something about the number of members
3 that attended that church.

4 A It was approximately 30 to 35 at the best. For the
5 most part, maybe 19 to 25 came.

6 Q Nineteen to 25. And how many members were there of
7 the [REDACTED] family?

8 A Eleven.

9 Q So after you subtract 11 from at max the 25, that
10 leaves you like 14. Is that about right?

11 A Correct.

12 Q All right. Now how many people of your family came
13 to the services there?

14 A Eric and myself.

15 Q All right. Your wife didn't go?

16 A No, she's -- she was a pharmacist and she worked
17 every other weekend; so that's when I went to the church
18 is every other weekend.

19 Q All right. So you say she was a pharmacist. Where
20 did she work?

21 A She was a pharmacist with CVS.

22 Q All right. Did you ever join this, I guess -- what
23 was the name of the church?

24 A It was Pavilion Ministries.

25 Q All right. And is it a particular religious

1 affiliation? Is it Baptist, Methodist, Holiness?

2 A No. We determined it was called interdenominational
3 because people from all over from all different
4 denominations came. It was a little store-front church.

5 Q When you say store-front church, where was it
6 located?

7 A It was located on State Street in Cayce in an area
8 that -- in a building that used to be some kind of
9 business. I don't know what it was.

10 Q All right. And how many years did the church stay in
11 operation as far as you know?

12 A I believe from the best I know it was like from 1999
13 'til 2011 or so.

14 Q Is it still in existence now?

15 A Not that I know of.

16 Q All right. Did you obtain a position with the
17 Pavilion Ministries? Was it called the Pavilion
18 Ministries?

19 A Yes.

20 Q Did you obtain a position where you had a job duty
21 with the church?

22 A If you want to call it position, yes, I volunteered
23 to take care of the books, you know. I took in --
24 accounted for the tithes and offerings and wrote the
25 checks out for the different expenses.

1 Q Now, at this time I don't want to say you had extra
2 money, but your wife was working, wasn't she?

3 A Yes.

4 Q She was a pharmacist?

5 A Yes.

6 Q I don't know how to ask this delicately. Did you
7 give substantially to the church?

8 A Yes, I gave -- I tied my wife and my salary together
9 and tried to give 10 percent which was pretty substantial
10 coming from my pay.

11 Q And what percentage of the church's tithes did that
12 account for?

13 A Approximately 30 percent; 30, 31 percent.

14 Q Of the entire church?

15 A Yes.

16 Q Now, during the time span in which you became the
17 treasurer up until 2010 did changes effect the church
18 which required you to have conversations with Tim [REDACTED]
19 who is the father of the [REDACTED] boys?

20 A Not with the church. With my family it did.

21 Q All right. Did -- let me ask you this. Did you
22 prepare documents in your capacity of how much the church
23 was making and what Mr. [REDACTED]'s salary was?

24 A Yes, sir.

25 Q And you did that in your capacity as an auditor with

1 the church?

2 A Yes, sir.

3 MISS RINGLER: Your Honor, if we could have a side
4 bar for a moment.

5 (Whereupon, a bench conference was held.)

6 THE COURT: Mr. Foreman, ladies and gentlemen, y'all
7 step out in your jury room. Don't have any discussion.

8 (Whereupon, the jury exited the courtroom at 10:04.)

9 THE COURT: Mr. Williams proposes to go into
10 testimony about Tim [REDACTED] salary between the dates of
11 April 1 of 2009 and September 30, 2009. I really don't
12 know how that's relevant, but...

13 MR. WILLIAMS: Well, Your Honor, it's relevant
14 because the motive behind the [REDACTED] family in terms of
15 their allegations is that the father's salary was reduced
16 and he will testify as to that, but we can get into the
17 discovery issue if Your Honor ---

18 THE COURT: Hold on a second. Who is going to
19 testify that the salary was reduced?

20 MR. WILLIAMS: He will because he was the treasurer
21 of the church and he will testify that the salary was
22 reduced substantially and he had a meeting with Mr. [REDACTED]
23 the week before these allegations came out.

24 THE COURT: Where have you got proof that that has
25 anything to do with the alleged molestation of these boys?

1 MR. WILLIAMS: Well, he'll testify that -- well, that
2 has to go with motive, Your Honor. That doesn't have to
3 go with the allegation that it actually occurred. It has
4 to go with the motive of why these boys would say
5 something like that.

6 THE COURT: Because their dad's salary was cut?

7 MR. WILLIAMS: Because they were upset because dad's
8 salary was cut.

9 THE COURT: All right. Ma'am, what did you afford to
10 him as far as the discovery?

11 MISS RINGLER: Your Honor, I can pass that up. This
12 is my notice of motion, motion for discovery. With regard
13 to the alibi, yes, the Defense is correct that I initially
14 did it based on the Indictment that had been done
15 previously, but that would only pertain to the alibi
16 offense. It would not affect the request for documents
17 which these were not provided to me. Neither was the
18 photograph that was admitted earlier. So none of that was
19 sent to us, Your Honor, and so even though the dates -- I
20 did have to kind of change those and submit new
21 Indictments, I think that the requests for reciprocal
22 discovery requests would still be applicable and was not
23 complied with in this case.

24 THE COURT: All right. On February 11, 2013 it was
25 filed with the Court a notice of motion, motion for

1 disclosure of evidence by the State addressed to
2 Mr. Williams, Attorney for the Defendant, requesting the
3 inspection, copying of books, papers, documents which you
4 intend to introduce in evidence in chief at trial. I
5 assume that would include this schedule of salaries. Why
6 is this not applicable, Mr. ---

7 MISS RINGLER: And, Your Honor, he did comply. I
8 mean, he sent me some materials. Obviously, he received
9 it and made some efforts, but didn't completely comply
10 with the request.

11 THE COURT: Why did you not provide this Pavilion
12 Ministries salary recap?

13 MR. WILLIAMS: Two reasons, Your Honor. The first
14 reason is I didn't have that at the time and I received it
15 this morning. The second reason is ---

16 THE COURT: This morning?

17 MR. WILLIAMS: This morning. Handed it to me this
18 morning. And the second reason, Your Honor, is that here
19 is an e-mail from Susanna Ringler dated February 13, 2013
20 in which she states, I did want to let you know we'll be
21 submitting five additional Indictments to the February
22 grand jury, referring to the February grand jury which did
23 the new Indictments, and in it it says that it refers to
24 the ABHAN on or between May 27, May 29, 2006, all
25 occurring in Barnwell State Park. She says I will

1 amend -- I will amend my reciprocal Rule Five accordingly
2 which was never done, unless she's got another document
3 that I'm not aware of.

4 THE COURT: I assume she's talking about her response
5 to the Rule Five. The Rule Five was sent back in
6 February 11 of 2000 when? 2013 which would have just been
7 a day or two. She had asked you for everything two days
8 ahead of time.

9 MR. WILLIAMS: Well, I took the e-mail to say that
10 she was going to amend ---

11 THE COURT: Well, you couldn't have sent it to her
12 anyway. You just got it this morning.

13 MR. WILLIAMS: Well, that's true.

14 THE COURT: Well, you knew you were going to use this
15 man as a witness and this document was prepared back in
16 2009. Why would you wait until this morning to spring it
17 on her?

18 MR. WILLIAMS: We don't have to use that document,
19 Your Honor.

20 THE COURT: Very well. Why are we fussing?

21 MR. WILLIAMS: You're right.

22 THE COURT: Anything else?

23 MISS RINGLER: I would just ask if there are any
24 other documents that maybe were just received this morning
25 that we would try to get those at this point in time.

1 MR. WILLIAMS: Is she waiving the objection?

2 THE COURT: No, she's not. She is trying to make it
3 a little easier. We've gone all day yesterday, a month or
4 so ago, and we've not had any fusses. Y'all -- anything
5 else, Mr. Williams, that you're going to try to introduce?

6 MR. WILLIAMS: Well, I have his tithes and offerings
7 unless there is an objection to that.

8 MISS RINGLER: I think that would fall under the
9 document section of the reciprocal Rule Five, Your Honor.

10 THE COURT: He's already testified. You can ask him
11 how much he gave.

12 MR. WILLIAMS: Okay.

13 THE COURT: What's good for the goose is good for the
14 gander. All right. I am not going to allow the
15 documents, but you can ask him questions if you want to
16 talk about his tithing and what he gave to the church. I
17 think you're going down a slippery slope, but that's my
18 opinion and I am not trying the case.

19 Bring the jury in. This may open the door to the
20 other things we talked about in chambers on reply. I
21 don't know. The jury is not back in, but you know what
22 we're talking about and I'll put that on the record in a
23 little while.

24 (Whereupon, the jury came into open court at
25 approximately 10:11.)

1 THE COURT: In fact. Let me see y'all at side bar.

2 (Whereupon, a bench conference was held.)

3 THE COURT: You may proceed.

4 Thank you, Mr. Foreman, ladies and gentlemen.

5 Q Mr. VanCleave, in essence, then your tithes and
6 offerings were how much did you say? What percentage of
7 the amount of money of the church?

8 A Approximately 31 percent.

9 Q All right. And in your capacity as treasurer did you
10 periodically have to, I guess, adjust the preacher's
11 salary as it changed in terms of, I guess, how much money
12 was coming in?

13 A Yes. I tried to make up for it, but the best we
14 could.

15 Q Did something happen in January of 2010 that created
16 a change in your ability to give to the church?

17 A Yes. My wife lost her job.

18 Q When did she lose her job?

19 A It was January 11, 2010.

20 Q And how did that affect what you were going to be
21 able to give the church?

22 A Substantially. She made about probably about two to
23 two and a half more than I made -- times more.

24 Q How much was that going to reduce what you gave the
25 church?

1 A Approximately, a thousand to -- a thousand to 1200 a
2 month, something like that.

3 Q So ---

4 A Anyway -- or more than that. I was going back closer
5 -- yeah. About a thousand to \$2,000 a month.

6 THE COURT: I'm sorry.

7 THE WITNESS: I'm sorry.

8 THE COURT: Mr. Williams, that's not making sense.

9 Q A thousand to how much?

10 THE COURT: How much were you giving and then how
11 much were you ---

12 THE WITNESS: I was giving 1299. It was averaging
13 1299 a month and I was going to have to knock it down to
14 200.

15 Q So from approximately 1300 to \$200 a month?

16 A Yes.

17 Q You were contributing 31 percent of the salary?

18 A Correct.

19 Q I mean, 31 percent of the entire money into the
20 church?

21 A Correct.

22 Q Did you have a conversation with Tim [REDACTED] in
23 regards to ---

24 MISS RINGLER: I would object in regard as to
25 hearsay, Your Honor.

1 THE COURT: He can ask about a conversation.

2 Q Did you have a conversation with Tim T. [REDACTED] the
3 father of these children, in reference to ---

4 MISS RINGLER: Your Honor, I think he's asking about
5 the substance of the conversation and that would involve
6 hearsay.

7 THE COURT: You can ask if you have a had a
8 conversation. Yes or no. You can't say what it was.

9 Q Did you have a conversation with Tim T. [REDACTED] in
10 reference ---

11 MISS RINGLER: Objection, Your Honor. I think he's
12 still trying to get into the content of the conversation.

13 MR. WILLIAMS: I can ask him what he said, Your
14 Honor.

15 MISS RINGLER: Your Honor, that would still be
16 hearsay.

17 THE COURT: Not what this witness said. Did you have
18 a conversation with Mr. T. [REDACTED]

19 THE WITNESS: Yes, sir.

20 Q What did you tell Mr. T. [REDACTED]

21 MISS RINGLER: Your Honor, I object to that.

22 THE COURT: Overruled.

23 THE WITNESS: I told Mr. T. [REDACTED] that I was going to
24 have to cut down my tithing substantially because my wife
25 lost her job. I told him that it would be about 200 a

1 month.

2 Q When did this conversation take place?

3 A About two or three days after I found out from my
4 wife that she lost her job.

5 Q When did she lose her job?

6 A January 11.

7 Q Of what year?

8 A January 11, 2010.

9 MR. WILLIAMS: That's all I have for him, Your Honor.

10 THE COURT: Thank you. Any cross?

11 CROSS-EXAMINATION

12 BY MISS RINGLER:

13 Q Mr. VanCleave, you spoke to Mr. [REDACTED] in January of
14 2010?

15 A Correct.

16 Q And [REDACTED] came forward in February of 2010?

17 A No. He went to the police then.

18 Q In February of 2010?

19 A Correct.

20 Q Yes, sir. And you were still bookkeeper of the
21 church in February of 2010?

22 A Up until the second.

23 Q In February of 2010?

24 A Up until February 2.

25 Q And then you returned the books to Mrs. [REDACTED]

1 through another person, but you returned the books?

2 A Yes, I returned to books to another person that we
3 both knew.

4 Q So after this January conversation you were still a
5 member of the church; correct? You still attended
6 services?

7 A I sent a resignation in to the church; a letter of
8 resignation to the church and told them that I'm sorry but
9 I could no longer attend.

10 THE COURT: When was that?

11 THE WITNESS: I don't remember the exact date.

12 Q But you still had the books for the church in January
13 of 2010?

14 A Yes, I did.

15 Q And did not return them until February of 2010?

16 A Correct.

17 THE COURT: Anything else?

18 MISS RINGLER: I'm sorry. Nothing further, Your
19 Honor.

20 REDIRECT EXAMINATION

21 BY MR. WILLIAMS:

22 Q Just one question. Who did you give them to?

23 A I gave them to Mike Henderson who was the Pastor of
24 Cayce United Methodist Church who we both knew and both
25 could trust.

1 MR. WILLIAMS: That's all I have.

2 THE COURT: You may step down.

3 Next witness.

4 MR. WILLIAMS: Your Honor, I'd call Jennifer
5 VanCleave.

6 JENNIFER J. VANCLEAVE, after being duly sworn,
7 testified as follows:

8 THE CLERK: Have a seat and state your full name for
9 the Court.

10 THE COURT: Hold on one second.

11 Mr. Hammack, look here. It hadn't got anything to do
12 with this case.

13 (Whereupon, the Court spoke with Mr. Hammack.)

14 THE COURT: Mr. Williams.

15 DIRECT EXAMINATION

16 BY MR. WILLIAMS:

17 Q Jennifer, what is your full name?

18 A Jennifer Jennings VanCleave.

19 Q What is your relationship to Eric VanCleave?

20 A I am his wife.

21 Q And when were you married to Eric VanCleave?

22 A We married on November 3, 2007.

23 Q How long have you known Eric?

24 A We met in November of 2006.

25 Q Do you know the [REDACTED] family?

1 A I do.

2 Q How long have you known the [REDACTED] family?

3 A Since January of 2007.

4 Q Are you employed?

5 A I work for the Developmental Disabilities Counsel
6 Office of the Governor.

7 Q The Developmental -- does that deal with children
8 with disabilities or something?

9 A We maintain a federal grant program to serve the
10 needs of individuals with developmental disabilities.

11 Q So, it's not just children. It is adults?

12 A No, it's all ages.

13 Q Anybody with a disability?

14 A Right and we do not provide direct services to them.

15 Q Just financial?

16 A Yes.

17 Q Now, how did you first meet the [REDACTED]

18 A I met them through Eric. He took me to the coffee
19 shop. They were having musicians and a concert that
20 night.

21 Q Did you on occasion, I guess, use Facebook and talk
22 to the [REDACTED] boys on Facebook?

23 A I did. All of the [REDACTED] boys and Becca were friends
24 on my Facebook account.

25 Q When you say you were friends, how close friends were

1 you?

2 A We saw each other on a regular basis. Eric ran his
3 business out of the coffee shop that was owned by Pavilion
4 Ministries and a lot of times I would stop by. We would
5 have lunch together. A lot of the [REDACTED] family was there
6 at that time.

7 Q Now, you were married on you say November 3 of 2007?

8 A Yes.

9 Q Can I ask you to look at this and tell me if that is
10 what -- what that is?

11 A This is the program from our wedding.

12 Q So it's -- it is the program showing that you got
13 married?

14 A Yes.

15 Q Does it include who was in your wedding?

16 A Yes, it does.

17 MR. WILLIAMS: Your Honor, we would move to introduce
18 this as Defendant's Exhibit No. 2.

19 THE COURT: Any objection?

20 MISS RINGLER: None from the State, Your Honor.

21 (Whereupon, Defendant's Exhibit No. 2 was marked for
22 identification and received into evidence.)

23 Q Referring to Defendant's Exhibit No. 2, can you tell
24 me which members of the [REDACTED] family I guess participated
25 in your wedding?

1 A Jake [REDACTED] played the piano.

2 Q How old is he?

3 A He's in his, I guess, mid 20's now.

4 Q Is he younger or older than Victim [REDACTED]

5 A He is the oldest.

6 Q All right. Who else?

7 A Victim 2 [REDACTED] was a groomsman. Victim [REDACTED] sang
8 while his brother accompanied him on the piano and he was
9 also a groomsman.

10 Q Any other [REDACTED] involved in your wedding?

11 A Becca [REDACTED] was a bridesmaid.

12 Q So you knew the [REDACTED] family well?

13 A Yes, I did.

14 Q There has been introduced an E mail -- a Facebook
15 which is marked as State's Exhibit No. 15 and State's
16 Exhibit No. 17. I would ask you to look at that and tell
17 me if you're familiar with that.

18 A Yes, I am. I was with Eric whenever he wrote this.

19 Q When you say you were with Eric when he wrote that,
20 what do you mean?

21 A We had actually gone to my aunt's house that weekend
22 to go to the Carolina Clemson game. We had camped that
23 weekend. Eric and I were alone camping. We had just
24 purchased a motor home. We were sitting in my aunt's
25 driveway. It was raining at the time and we were talking

1 and he remembered that he needed to talk to **Victim** about
2 helping him with a catering job. So we talked about it
3 and then he pulled the laptop out and he messaged him on
4 Facebook.

5 THE COURT: Let me see that exhibit number. Thank
6 you. Go ahead.

7 Q Now, you are referring to State's Exhibit where it
8 talks about him coming by and working. Is that the one
9 you're talking about?

10 A Yes.

11 THE COURT: Mr. Williams, there are two exhibits.
12 Actually, there are three exhibits and they're dated ---

13 MR. WILLIAMS: If I can have them back, I am going to
14 see if I can break it down. She was just looking at the
15 top.

16 All right. The one about working ---

17 THE COURT: Do the number, please. Exhibit number,
18 please.

19 Q Well, let me just take them one by one. Look at
20 State's Exhibit No. 15. Which exhibit -- is that the one
21 that you were just referring to?

22 A Yes, it is Exhibit 15.

23 THE COURT: Let me see it, please.

24 Q What is the date on that exhibit?

25 A November 29, 2008.

1 Q Now, let me ask you to refer to State's Exhibit
2 No. 17 and tell me if you're familiar with that exhibit.

3 A I am.

4 Q What is the date on that exhibit?

5 A November 4, 2009.

6 Q And how is it that you're familiar with that exhibit?

7 A We were getting ready for our day and Eric had talked
8 about having a dream about some of the [REDACTED] kids the
9 night before and he thought that that may be a way of God
10 speaking to him saying that he had not seen the [REDACTED] in
11 a while and that he needed to contact them and just check
12 on them and see how they were doing.

13 Q Now when you look at State's Exhibit No. 17 and
14 State's Exhibit No. 18, are those different exhibits? I
15 mean, with those different text or are they the same?

16 A It is part of the same conversation.

17 Q So, you're saying that even though you have different
18 numbers that there is really one conversation that
19 continues over?

20 A Yes, and that particular one is what was said to

21 [REDACTED] Victim Eric also sent a similar message to Becca, [REDACTED] Victim
22 sister.

23 Q And were you present when the message was sent to
24 Rebecca, also?

25 A Yes, I was.

1 MISS RINGLER: Your Honor, may we approach?

2 THE COURT: Yes, ma'am.

3 (Whereupon, a bench conference was held.)

4 Q So you were present when the e-mail was sent to
5 Rebecca?

6 A I was.

7 Q Now is Rebecca in the courtroom?

8 A Yes, she is.

9 Q Now, did you know of any ill will between Victim
10 prior to January of 2010?

11 A No, I did not. My husband actually had surgery on
12 his stomach in August of 2008 and Victim came over. He was
13 the first person to come see Eric after his surgery and he
14 spent about an hour at our home with Eric and my husband.

15 Q And what about did you see any of the T. boys
16 within the week of -- I guess we've heard some testimony
17 about him going to some kind of convention or something.
18 Did you see any of the T. boys within the week prior
19 to that?

20 A The Friday prior -- I'm sorry. Victim 2 had called my
21 husband and wanted to ---

22 THE COURT: No, ma'am. Mr. Williams ---

23 MR. WILLIAMS: Don't say what he said. I just asked
24 if you saw him.

25 THE WITNESS: Yes, he took us to lunch the Friday

1 before.

2 Q That was the Friday before the convention that he
3 supposedly went to?

4 A Yes.

5 MR. WILLIAMS: That's all the questions I have, Your
6 Honor.

7 THE COURT: Any cross examination?

8 CROSS-EXAMINATION

9 BY MISS RINGLER:

10 Q Now, Mrs. T. [REDACTED] the line that you're referring
11 to ---

12 A I'm Mrs. VanCleave.

13 Q Mrs. VanCleave. I'm so sorry. Mrs. VanCleave, the
14 line that you're referring to is the one -- the part that
15 you're referring to is Jennifer may go out of town. If
16 she does I was thinking that if you could help me Friday
17 night we can hang out afterwards. We can hang out like
18 old times in the camper even. That would be fun.

19 Is that the line you're referring to?

20 A I was referring to the whole message.

21 Q But that is part of the message?

22 A Yes, it is.

23 Q And that's State's Exhibit 15?

24 A Yes. We had just purchased a motor home on
25 November 10 and Eric had shown his family -- Victim [REDACTED]

1 family -- the motor home and **Victim** was constantly having
2 conversation with Eric about he wanted to be the first to
3 see it.

4 Q If you could just refrain from talking about what
5 other people have said, but just what you saw and ---

6 THE COURT: Ma'am, the rules don't allow you to
7 testify about what somebody else said; so please don't
8 bring in hearsay to the trial.

9 Q You didn't meet Eric VanCleave until November of
10 2006?

11 A That's correct.

12 Q So you didn't go on the camping trip to Barnwell or
13 any of the camping trips to Barnwell in 2005?

14 A No, I did not.

15 Q And you didn't go on the camping trips to Barnwell in
16 2006?

17 A No, I did not.

18 MISS RINGLER: Nothing further, Your Honor.

19 THE COURT: Anything else?

20 MR. WILLIAMS: No questions on redirect, Your Honor.

21 THE COURT: You may step down.

22 Next witness.

23 MR. WILLIAMS: Your Honor, I call Eric VanCleave to
24 the stand.

25 THE COURT: We need to take a quick little break on

1 that one.

2 Mr. Foreman, ladies and gentlemen of the jury, I got
3 to ask some questions before he takes the stand. The law
4 requires that; so step down back in your jury room. It
5 looks like we're going to be -- lunch time is going to be
6 about the time that we're going to be deliberating; so I
7 am going to ask Mrs. McElveen to step back and see what
8 y'all went to do about lunch. She suggested pizza. If
9 that's agreeable, that might be the easiest way. If not,
10 maybe y'all can suggest whatever you'd like. Thank you.
11 Don't discuss the case and don't deliberate.

12 (Whereupon, the jury exited the courtroom at 10:33.)

13 THE COURT: All right. Mr. VanCleave -- I'm sorry.
14 Go ahead.

15 MR. WILLIAMS: That's all right, Your Honor.

16 ERIC N. VANCLEAVE, after being duly sworn,
17 testified as follows:

18 THE COURT: You can sit down if you'd like.
19 Mr. VanCleave, we've entered the portion of the trial
20 where, obviously, you're presenting your own defense.
21 Your lawyer has called three witnesses and he says now
22 that he's getting ready to call you as a witness to
23 testify in the case or testify as the Defendant.

24 Let me remind you that under the United States
25 Constitution you have a right to remain silent. In other

1 words, no one can force you or compel you to testify in a
2 case where you are accused of certain criminal activity
3 such as in this case. Obviously, you have the right to
4 testify if you choose to do so.

5 If you choose to testify, obviously, you'll be
6 subjected to the same rules of confrontation of cross
7 examination. You can be cross-examined on any relevant
8 material in the case. I want to make sure you understand
9 that. Do you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Does he have a record?

12 MISS RINGLER: He does not, Your Honor.

13 THE COURT: So, the Solicitor will be able to cross
14 examine you on all relevant matters in the case. If you
15 exercise your constitutional right to remain silent, then
16 when I instruct the jury or charge them at the conclusion
17 of the case I will tell them that they cannot hold the
18 fact that you did not testify against you in any manner
19 whatsoever and I will further instruct them that they
20 could not even consider the fact that you did not testify
21 when they deliberated your guilt or innocence and I would
22 further tell the foreperson of the jury that if it were
23 brought up that you did not testify that he was to stop
24 deliberations and advise me of that because that matter
25 should not be mentioned at all during the deliberations

1 and in the discussion of the case.

2 Now, do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The decision as to whether or not you
5 wish to testify, obviously, is your own decision. You can
6 get advice from Mr. Williams, your able lawyer, or your
7 family. You have your wife and your dad here today if you
8 want to talk to any of them, but in the long run, in the
9 end, obviously, the decision is a personal decision that
10 has to be made by you.

11 My questions to you are these. Number one, do you
12 understand your right to remain silent?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that if you testify
15 you'll be subjected to being cross examined on any and all
16 relevant matters in this trial?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that if you do not
19 testify that I would strongly instruct the jury that they
20 could not consider the fact that you didn't testify when
21 they deliberated your guilt or innocence? Do you
22 understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Any questions?

25 THE DEFENDANT: No, sir.

1 THE COURT: Anything you need to talk with
2 Mr. Williams, your dad, your wife, or anybody else?

3 THE DEFENDANT: No, sir.

4 THE COURT: I need to know whether or not you intend
5 to testify.

6 THE DEFENDANT: Yes, sir, I do.

7 THE COURT: Very well. Thank you.

8 Everybody okay? You need a break?

9 Bring the jury in, please.

10 (Whereupon, the jury came into open court at
11 approximately 10:37.)

12 THE COURT: You may call your next witness.

13 MR. WILLIAMS: Your Honor, I'd call Eric VanCleave to
14 the stand.

15 ERIC N. VANCLEAVE, after being duly sworn,
16 testified as follows:

17 THE CLERK: Have a seat here and state your name for
18 the Court.

19 THE WITNESS: Eric Nelson VanCleave.

20 DIRECT EXAMINATION

21 BY MR. WILLIAMS:

22 Q Eric, where do you live?

23 A I live in West Columbia, South Carolina.

24 Q Who are you married to?

25 A I am married to Jennifer.

1 Q And what do you do for a living?

2 A Right now I'm unemployed.

3 Q Before you were arrested -- When were you arrested?

4 A I was arrested April 1, 2010.

5 Q That's -- when you were arrested, you were working at
6 that time; is that right?

7 A I was part-time working in an after-school care while
8 I was going to school.

9 Q Now, in terms of the [REDACTED] and the Pavilion, did
10 you have a job working, I guess, in West Columbia with the
11 [REDACTED]?

12 A Yeah. I had a catering business that I ran out of
13 the coffee shop that the ministry ran.

14 Q All right. And how long -- when you say catering
15 business, what did you do?

16 A I did lunch time catering, weddings, kind of a little
17 bit of everything. I did specialty cakes.

18 Q Now, when you were arrested on these Barnwell charges
19 on April 1 of you say 2010 --

20 A Correct.

21 Q -- what was your understanding of the charges that
22 they had against you?

23 A My understanding was ---

24 MISS RINGLER: Your Honor, I would object to this
25 line of questioning.

1 THE COURT: Overruled.

2 Q What was your understanding?

3 A My understanding was that I was accused of a sexual
4 assault of **Victim** from 2001 through 2006 every
5 Easter weekend in Barnwell State Park.

6 Q When did you learn that the accusations were
7 different?

8 A February 19 of 2013.

9 Q Now, when we talk about the different allegations ---

10 MISS RINGLER: Your Honor, I would object to this
11 line of questioning. It calls for speculation. We've
12 established he was provided this information. His state
13 of mind -- anything beyond that would call for
14 speculation, Your Honor.

15 THE COURT: Ask the question.

16 MR. WILLIAMS: Thank you, Your Honor.

17 THE COURT: What is the question?

18 MR. WILLIAMS: I was kind of lost there.

19 THE COURT: I understand. Go ahead.

20 Q When you learned of these new charges February of
21 2013, are those the charges that we're being tried for
22 today?

23 A Correct.

24 Q All right. The Indictments that we're trying today?

25 A Yes, sir.

1 Q And for what time period are those Indictments for?

2 A For April 1, 2005 through May 17, 2006 and May 27
3 through the 29th of 2006.

4 THE COURT: What is the 2006 dates?

5 THE WITNESS: May 27 through the 29th.

6 THE COURT: Of what?

7 THE WITNESS: Of 2006.

8 THE COURT: Go ahead.

9 Q All right. Now, do you know Victim [REDACTED]

10 A I do.

11 Q And in terms of your knowledge about Victim [REDACTED]
12 how long have you known him?

13 A I met the [REDACTED] family, I believe it was, in August
14 of 1999.

15 Q And have you gone on any camping trips to Barnwell
16 State Park with Victim [REDACTED] between May 27 of 2006 and
17 May 29 of 2006 --

18 A No, sir.

19 Q -- question one?

20 A No, sir.

21 Q And have you gone to Barnwell State Park on any
22 camping trips between April 1 of 2005 and May 17 of 2006?

23 A No, sir.

24 Q Now, did you have a pop-up camper that you took on
25 camping trips?

1 A Yes, sir.

2 Q When did you purchase the pop-up camper?

3 A May 2, 2005.

4 Q And from whom did you purchase the pop-up camper
5 from?

6 A It was a company called Holiday on Wheels. It's out
7 like you're going towards Sumter.

8 Q I am going to ask you to look at this Affidavit and
9 Notification of Sale. Is that your notification of your
10 motor vehicle that you just referenced?

11 A Yes, sir.

12 MISS RINGLER: Your Honor, I would object to this
13 document. I don't think it's been -- he's testified to
14 when he purchased it. I don't think we have the required
15 foundation to establish these records, Your Honor.

16 MR. WILLIAMS: He is saying it's his.

17 THE COURT: Let me see it. Let me see it, please.

18 THE WITNESS: I'm sorry.

19 THE COURT: I'll allow it, if you want to introduce
20 this.

21 MR. WILLIAMS: We would move to introduce this as --
22 is this the Affidavit of Sale where you purchased it?

23 THE WITNESS: Yes, sir.

24 MR. WILLIAMS: We would move to introduce this as
25 Defense Exhibit No. 3.

1 (Whereupon, Defendant's Exhibit No. 3 was marked for
2 identification and received into evidence.)

3 Q What is the date that you purchased that pop-up
4 camper?

5 A May 2, 2005.

6 Q Do you still have it?

7 A No, sir.

8 Q I'm sorry?

9 A No, sir.

10 Q Where is it now?

11 A I'm not real sure.

12 Q When did you sell it?

13 A I sold it September 27, 2006.

14 MISS RINGLER: Your Honor, my objection would be the
15 same. He's not the custodian of records and that the
16 proper foundation has not been laid to introduce these
17 records, Your Honor.

18 MR. WILLIAMS: I am getting ready to lay the
19 foundation.

20 MISS RINGLER: It's not a certified copy. I mean,
21 it's -- I would object to that.

22 MR. WILLIAMS: If I could ask the questions.

23 THE COURT: You can ask the question.

24 Q Let me ask you to look at this document. Tell me if
25 you know what is document is.

1 A It's a bill of sale from the Department of Motor
2 Vehicles.

3 Q Is that the bill of sale -- is that your bill of
4 sale?

5 A Yes, sir.

6 Q And is it a bill of sale from what -- of what, I
7 should say?

8 A It's from myself, my pop-up camper, where I sold it
9 to John's RV for and -- and then I purchased pop-up camper
10 -- I mean, another camper.

11 Q But it wasn't a pop-up camper?

12 A No, sir.

13 Q And is that your signature which is on that document?

14 A Yes, sir.

15 MR. WILLIAMS: Your Honor, we'd move to introduce as
16 Defendant's Exhibit No. 4.

17 THE COURT: Any objection?

18 MISS RINGLER: Just my previous objection, Your
19 Honor, to him not being a records custodian and it's not a
20 certified copy.

21 THE COURT: Thank you. Overruled.

22 (Whereupon, Defendant's Exhibit No. 4 was marked for
23 identification and received into evidence.)

24 Q Now, there's been introduced some pictures of a
25 camping trip to Barnwell State Park.

1 A Yes, sir.

2 Q Referring to State's Exhibit No. 1 through 14, are
3 you familiar with that camping trip?

4 A Yes, sir.

5 Q And were you there?

6 A Yes, sir, I was.

7 Q And did you have a pop-up camper at the time?

8 A No, sir, I did not.

9 Q So how did you camp on that occasion?

10 A We tent camped.

11 Q All right. Which means, I assume, you have a tent?

12 A Correct. I used to have a tent.

13 Q When did you get your tent?

14 A I got my tent in 2001.

15 Q Now, there's also been some testimony that you went
16 on camping trips with Michael -- what is Michael's last
17 name?

18 A Sanders.

19 Q Do you know Michael Sanders?

20 A I do.

21 Q How long have you known Michael Sanders?

22 A I met Mike Sanders through Pavilion Ministries at
23 church and I guess it was from 2003.

24 Q All right.

25 A Around that time.

1 Q Did you go on camping trips with Michael Sanders?

2 A Yes, I did.

3 Q Did you go on camping trips with Michael Sanders and

4 Victim [REDACTED]

5 A Yes, I did.

6 Q And when was this camping trip with Mike Sanders and

7 Victim [REDACTED]

8 A In 2004.

9 Q And would that be the picture that you're referring
10 to there?

11 A Yes, sir.

12 Q What about Easter of 2005? Where were you Easter of
13 2005?

14 A I was in Charleston.

15 Q Where were you on Memorial Day of 2006?

16 A Memorial Day of 2006 I was in Barnwell State Park.

17 Q Who were you in Barnwell State Park with?

18 A I was with the Wick family.

19 Q And?

20 A And there were a couple of the [REDACTED] -- Josiah and

21 Victim 2 [REDACTED]

22 Q Was Victim [REDACTED] there?

23 A No, sir.

24 Q Where were you Halloween weekend of 2005?

25 A I was in Cayce, West Columbia.

1 Q And how is it that you remember Halloween weekend of
2 2005?

3 A From the Carolina football games.

4 Q Tell me who Carolina was playing and how you observed
5 that game?

6 A Carolina was playing Tennessee on Halloween weekend
7 2005 and they were playing in Knoxville, Tennessee, and
8 what I remember about that game was I listened to it on
9 the radio and -- because we had live music at the coffee
10 shop that night and I was helping cook at the coffee shop
11 and as a big Carolina fan I remember that game because
12 they kicked a field goal at the end to win 16 to 15 and
13 that was the first time we had beaten Tennessee in
14 Knoxville in like a hundred years or something like that.

15 Q Okay. And that's how you remembered the Halloween
16 weekend of 2005?

17 A Yes, sir.

18 Q The -- Did you at my request go home last night and
19 think about all the -- all of the holidays between April 1
20 of 2005 and May 17 of 2006?

21 A Yes, sir.

22 Q All right. If I gave you, I guess, a calendar, would
23 that assist you in terms of just to review or do you know
24 them offhand?

25 A I can take -- I mean, I know most of them.

1 Q Well, let me hear. Let me hear about the holidays
2 during that time span.

3 A Well, the first holiday that I came up with after
4 April 1, 2005 was Mother's Day and Mother's Day weekend I
5 would have been at my grandparents in Pauline, South
6 Carolina.

7 Q All right. And when is the next holiday?

8 A The next one that I can remember was probably
9 Memorial Day weekend in May of 2005 and at that time I was
10 on -- I was as a chaperone on a joint youth group camping
11 trip to Bryson City, North Carolina.

12 Q All right. What is the next holiday?

13 A The next holiday would have been Father's Day, I
14 believe, and I would have been at my Uncle Dale's lake
15 house for Father's Day. We did that every Father's Day
16 until he passed away in 2007.

17 Q What is the next holiday?

18 A Okay. Now I am starting to lose it. After Father's
19 Day it would have been July 4. Most likely July 4 of that
20 year I did not go anywhere. I stayed at home in Cayce,
21 West Columbia.

22 Q That's in 2000 and...

23 A Five.

24 Q Five.

25 A Correct.

1 Q Where were you on July 4 of 2007?

2 A July 4, 2007 I was in Cherokee, North Carolina.

3 Q Who were you in Cherokee North Carolina with?

4 A I was with the Wick family for that week and a couple
5 of those days Victim 2 and Josiah T. [REDACTED]

6 Q Was Victim [REDACTED] there?

7 A No, sir.

8 Q Was Victim 3 [REDACTED] there?

9 A No, sir.

10 Q When is the next holiday in 2005?

11 A I believe it's Labor Day. I believe that's September
12 and that year I was with the Wick family and we went
13 camping at Lakewood Campground in Myrtle Beach.

14 Q Okay. How about the next holiday?

15 A Okay. After September that would have been Halloween
16 that I've already referenced.

17 Q Okay.

18 A That was in Cayce, West Columbia, and then after that
19 would have been Thanksgiving and that's the year that I
20 went with the Wick family. We met up at exit 52 on 26,
21 the Clinton exit, because my grandparents were in Pauline
22 and that's where I was for lunch and then we met up and we
23 went to Biltmore and stayed in our pop-up camper for that
24 -- for that long weekend.

25 Q Next holiday.

1 A It would have been Christmas and I was -- I spent
2 every Christmas Eve with my grandparents up until they
3 passed.

4 Q Okay. What about holidays the beginning part of
5 2006?

6 A Okay. It would have been Valentine's.

7 Q What about -- it's January 1.

8 A Yeah, I don't remember. Well, let's see. I don't
9 know if we played in a bowl game that day, but I would
10 have been watching it if we were.

11 Q Okay.

12 THE COURT: Let me have order, please.

13 Q Next holiday.

14 A I guess it was back to Mother's Day again after
15 Valentine's.

16 Q What about Valentine's Day?

17 A I just -- I mean, that's in February.

18 Q Right.

19 A And I don't remember going camping on Valentine's Day
20 until I got married.

21 Q All right. Now, how much time did you spend going
22 over these holidays and checking records and stuff like
23 that to be able to testify to that?

24 A Last night after I learned that it was Halloween
25 weekend of 2005.

1 Q Did you -- did you have -- you heard about the
2 e-mail. Is ---

3 A Yes, sir.

4 Q Is it an e-mail? Is it a posting or what is this
5 called?

6 A It's like e-mail for Facebook.

7 Q All right. Referring to State's Exhibit No. 15, did
8 you send that e-mail?

9 A Yes, sir, I did.

10 Q Who did you send that e-mail to?

11 A To Victim [REDACTED]

12 Q And what are you referencing in that e-mail?

13 A I am referencing asking for help with a catering job.
14 Victim used to help me on a good many different catering
15 jobs and I was asking for help for that Friday and
16 Saturday evening.

17 Q All right. And what's the date of that e-mail?

18 A November 29, 2008.

19 Q What about State's Exhibit No. 16? Is that an e-mail
20 from you to whom?

21 A Yes, sir. This is an e-mail from me to Victim [REDACTED]

22 Q And what is that in reference to?

23 A That's in reference to my wife and I had started
24 going full time over out to United Methodist Church in
25 August of 2008 -- I mean, August of 2009 and we weren't

1 spending as much time over at the church where the
2 T. [REDACTED]'s were at the Pavilion and one night I woke up and
3 I told my wife that -- I said it was the weirdest thing.
4 I had a dream last night and Becca and Victim [REDACTED] were in my
5 dreams and the odd thing is every time I went to sleep --
6 you know, every time I woke up and went back to sleep
7 there they were again, and I said, so, I am going to take
8 that as a sign that God wants me to contact them and so I
9 sat down that morning and wrote both of them.

10 Q When you say both of them, you're referring to who?

11 A Victim [REDACTED] and Rebecca T. [REDACTED]

12 Q All right. Now, let me ask you to look at State's
13 Exhibit No. 17.

14 A Yes, sir.

15 Q Is that from you to somebody?

16 A Yes, sir. That's's the continuation of my e-mail
17 from Exhibit 16.

18 Q So it's the same e-mail?

19 A Yes, sir.

20 Q Just got two different numbers on it?

21 A Yes, sir.

22 Q Let me ask you to look at State's Exhibit No. 18.

23 Tell me, who is that from and who is it to?

24 A That is the end of my e-mail to Victim [REDACTED]

25 Q From which date?

1 A From -- that would have been from the 4th of
2 November.

3 Q So how many total e-mails do you have in those four
4 lettered exhibits?

5 A Two.

6 Q Thank you. I am going to ask you to look at
7 Defendant's Exhibit No. 1 and tell me if you recognize
8 that picture.

9 A Yes, sir, I do.

10 Q And what does that picture commemorate?

11 A That was the end of the July 4 week, 2007, that we
12 went up to Ghost Town in Maggie Valley.

13 Q Who took that picture?

14 A DeeDee Wick took the picture.

15 Q Who is in the picture?

16 A There is Blair Wick, **Victim 2** myself holding
17 Elizabeth Wick, Jared Wick. Then it's Josiah and then
18 Jackson is on the other side.

19 Q Is **Victim 3** in that picture?

20 A No, sir.

21 Q Was **Victim 3** present?

22 A No, sir.

23 Q There's also been introduced a -- I guess it's a
24 reservation from the Barnwell State Park referencing
25 State's Exhibit No. 19 and 20. If you could, look at

1 those two.

2 A Yes, sir.

3 Q Now, do you recall those reservations?

4 A Yes, sir.

5 Q Did you make those reservations?

6 A Yes, sir.

7 Q For what date did you make those reservations?

8 A For the 27th through the 29th.

9 Q Of what month of what year?

10 A May of 2006.

11 Q That would be Memorial Day weekend?

12 A Yes, sir.

13 Q Are there two different occasions or one occasion?

14 A It is one occasion with two sites.

15 Q So you have two camp sites on one occasion on
16 Memorial Day weekend of 2006?

17 A Yes, sir.

18 Q Was **Victim** with you that weekend?

19 A No, sir.

20 Q Who was present on that occasion?

21 A That occasion was the Wick family in one site and
22 then it was **Victim 2** and Josiah.

23 Q The accusations clearly are that you sexually
24 assaulted **Victim**

25 A Yes, sir.

1 Q Did you sexually assault Victim [REDACTED]

2 A No, sir.

3 Q Did you sexually assault these other two young boys
4 who testified yesterday?

5 A No, sir, I did not.

6 Q If you had to could you recall every weekend or at
7 least if you had the information in 2005 to 2006 and where
8 you were?

9 A Yes, sir, I could.

10 Q Can you do it by memory or would you need assistance?

11 A I would need assistance for every weekend.

12 Q Meaning you have a list or something?

13 A Yes, sir, I do.

14 Q Do any of those involve being with Victim [REDACTED]
15 during that time span?

16 A No, sir.

17 MR. WILLIAMS: That's all I have, Your Honor.

18 THE COURT: Cross.

19 CROSS-EXAMINATION

20 BY MISS RINGLER:

21 Q So you met the [REDACTED] in around 1999 you said?

22 A Yes, ma'am.

23 Q And when did you start spending a good bit of time
24 with them?

25 A Well, in 1999 I started going to church with them and

1 then in 2004 is when I opened my catering business out of
2 the coffee shop.

3 Q Did you go to the [REDACTED] s house?

4 A I did on occasion, yes.

5 Q Did the [REDACTED] boys come over the your house?

6 A On occasion, yes.

7 Q And you went on trips with them?

8 A Some, yes.

9 Q You went on trips to football games?

10 A Yes.

11 Q And you went on camping trips, too?

12 A Yes.

13 Q So you were seeing them at least once a week from
14 during that time period of 2002 to 2006?

15 A Yes, I would have seen them once a week at least.

16 Q At least. So a couple of times a week, then?

17 A Yes. My business was based out of the ministry's
18 coffee shop.

19 Q So would you see them daily?

20 A Yes.

21 Q And you owned a pop-up camper?

22 A In May of 2005 to September 27, 2006.

23 Q And you took the [REDACTED] children on camping trips?

24 A On some of my camping trips, yes.

25 Q And you went to Maggie Valley on a camping trip?

1 A In 2007, yes.

2 Q And you went to Cherokee on a camping trip?

3 A In 2007, yes.

4 Q And you went to Barnwell State Park with Victim

5 A In 2004.

6 Q And Mr. Sanders was on that trip, too?

7 A In 2004, yes.

8 Q And you left Pavilion Ministries in 2008?

9 A No, in 2009.

10 Q In 2009 you left Pavilion Ministries. And you
11 switched to your wife's church?

12 A Correct. We had been attending both churches until
13 we moved over fully in August of 2009.

14 Q But in 2009 you were attending a different church?

15 A Right. Correct.

16 MISS RINGLER: Nothing further, Your Honor.

17 THE COURT: Redirect?

18 MR. WILLIAMS: That's all I have, Your Honor, for
19 him.

20 THE COURT: You may step down.

21 Next witness.

22 MR. WILLIAMS: That would be the Defendant's case,
23 Your Honor.

24 THE COURT: Thank you. Anything in reply?

25 MISS RINGLER: Yes, Your Honor, but we would ask for

1 a brief break prior to presenting our reply witness.

2 THE COURT: What kind of break you want?

3 MISS RINGLER: If we could have 15 minutes, Your
4 Honor.

5 THE COURT: Sure. All right. We're going to step
6 back and start back in 15 minutes. Don't discuss the
7 case. Don't deliberate. If anybody needs some fresh air,
8 you can step outside. Have a bailiff go with them. We'll
9 start back in 15 minutes. Thank you.

10 (Whereupon, the jury exited the courtroom at 11:07.)

11 (Whereupon, a break was taken.)

12 THE COURT: Anything for the record before we start
13 back.

14 MISS RINGLER: Yes, Your Honor. We do plan on
15 calling Detective Shealy from the Cayce Police Department
16 to talk about other charges related to this Defendant. I
17 didn't know if we could proffer that at this time.

18 THE COURT: Other pending charges?

19 MISS RINGLER: Yes, Your Honor. There are two
20 pending charges relating to members outside of the [REDACTED]
21 family. There is a pending charge of lewd act relating to
22 Austin Cole and pending charges that are related to Ryan
23 Hart presently in Lexington County and this would be in
24 response to the accusation that the [REDACTED] came forward
25 as part of some conspiracy, some kind of -- over some

1 issue relating to the church. We would offer this
2 testimony to show that there were individuals outside of
3 the [REDACTED] family who came forward and that they were
4 charged resulting from that as a result of this
5 investigation.

6 We wouldn't go to the specifics of the allegation;
7 just that there are these other pending charges that
8 others had come forward outside of the [REDACTED] family.

9 MR. WILLIAMS: Tim Shealy can only testify to hearsay
10 information. Arguably, if she had those two witnesses
11 come testify, then we could go through some sort of Lyle
12 procedure to see whether or not the information was proper
13 to be heard or not, but just having a detective come in
14 and say that there are other charges, clearly the
15 probative value of that versus the prejudicial value of
16 that is substantially outweighed by the prejudice.

17 MISS RINGLER: Your Honor, we would not be offering
18 them for the truth; just that there was the accusation --
19 not to the substance of it, not to the validity of it --
20 just that others had come forward outside of the [REDACTED]
21 family other than the [REDACTED] That's the only purpose of
22 introducing that evidence in this case, Your Honor, to
23 show that this wasn't just some conspiracy with the
24 [REDACTED] -- that other came forward as well.

25 MR. WILLIAMS: For him to say that he's going to have

1 to testify to hearsay.

2 THE COURT: He can testify there are warrants
3 pending. How is that hearsay?

4 MR. WILLIAMS: Well, then it's not relevant if he
5 only says there is warrants pending without giving some
6 basis to the warrants. Clearly, it is hearsay.

7 MISS RINGLER: Your Honor, I would disagree that it's
8 not being offered for the truth. We're not stating that
9 he did abuse these other children; just that others have
10 come forward and there were pending charge relating to it.
11 We're not trying to elicit testimony that the Defendant
12 did, in fact, assault these children; just that others had
13 come forward and there are these other pending charges.

14 THE COURT: What are the charges that are pending?

15 MISS RINGLER: One count of lewd act relating to
16 Austin Cole and one count of lewd act relating to Ryan
17 Hart.

18 MR. WILLIAMS: None involved on a camping trip, Your
19 Honor.

20 THE COURT: Where were they involved?

21 MR. WILLIAMS: One was at a school and the other was
22 maybe at a house.

23 THE COURT: Do I have to make a Lyle analysis if
24 she's simply not -- she's simply offering it to rebut your
25 theory that these boys made up this -- concocted this

1 story because your Defendant's dad cut the funds off at
2 the church?

3 MR. WILLIAMS: That doesn't relate to the charges of
4 these other two boys. The dad is testifying as to
5 possible motive of the individuals who swore out the
6 warrant. What she's bringing in has absolutely nothing to
7 do with having a motive or not having a motive.

8 THE COURT: What she's bringing in is to say that
9 your alleged motive is flawed because there are other kids
10 out there saying the same thing.

11 MR. WILLIAMS: Then I guess she could bring in those
12 other kids and see if that substantially complied with
13 Lyle or formed a basis of Lyle, but motive has -- the
14 motive is not that there are other -- the motive is
15 regards as to why these children would say what they would
16 say. It has nothing to do with why some other child may
17 say something.

18 THE COURT: All right. I am not going to allow it.
19 I am going to find that under a 403 analysis it's more
20 prejudicial than probative. Who else would you put up?

21 MISS RINGLER: We would still intend to call him,
22 Your Honor.

23 THE COURT: In response to what?

24 MISS RINGLER: In response to the comments made by
25 Mrs. Wick during her testimony.

1 THE COURT: Anybody else?

2 MISS RINGLER: And also Victim 2

3 THE COURT: Which one is Victim 2?

4 MISS RINGLER: The oldest brother that we've called.

5 He's older than Victim

6 THE COURT: The one that's married?

7 MISS RINGLER: With the small baby, yes, Your Honor.

8 THE COURT: All right. Bring the jury in.

9 (Whereupon, the jury came into open court at
10 approximately 11:40.)

11 MR. WILLIAMS: I have a motion and I should have said
12 something earlier, but it's important that it be dealt
13 with before the next witness. We can do side bar.

14 (Whereupon, a bench conference was held.)

15 THE COURT: All right. You may call your next
16 witness.

17 This is what's called reply testimony. The State has
18 the right to offer reply testimony to the defense
19 testimony and as I'm informed this will not take long.

20 MISS RINGLER: No, Your Honor.

21 THE COURT: Thank you.

22 MISS RINGLER: Detective Tim Shealy.

23 TIM SHEALY, after being duly sworn, testified as
24 follows:

25 THE CLERK: State your full name for the record,

1 please.

2 THE WITNESS: Tim Shealy.

3 DIRECT EXAMINATION

4 BY MISS RINGLER:

5 Q Detective Shealy, where do you work?

6 A I work at Cayce Department of Public Safety.

7 Q What do you do there?

8 A I'm a detective with them.

9 Q In February of 2010 did you conduct an investigation?

10 A I did.

11 Q Did you conduct an investigation relating to this
12 Defendant Eric VanCleave?

13 A I did.

14 Q During the course of your investigation did you talk
15 to DeeDee Wick?

16 A I talked to Mrs. Wick, I believe it was, on the
17 telephone.

18 Q During the course of your conversation with her did
19 you tell her that you didn't want to talk to her?

20 A No, I didn't.

21 Q Did you tell her that you didn't want her to give a
22 statement?

23 A I don't think I told her I didn't want her to give a
24 statement. I don't think I asked for a statement from
25 her, but I didn't tell her --

1 Q You didn't tell her that you didn't want one?

2 A -- I didn't want her to give a statement, no.

3 Q Thank you. Please answer any questions that Defense
4 Counsel might have.

5 CROSS-EXAMINATION

6 BY MR. WILLIAMS:

7 Q Good morning. How are you doing, Tim?

8 A I'm doing fine. How are you doing, sir?

9 Q Fine. So as I understand your testimony, you didn't
10 ask her for a statement?

11 A No, sir.

12 Q And ---

13 A I don't remember asking for a statement.

14 Q And when she asked you questions did you refuse to
15 answer her questions?

16 A I don't recall any questions that she did ask.

17 Q Would it be helpful if I showed you --

18 A Okay. Thank you.

19 Q -- notes from that?

20 A Okay. She might have asked questions I didn't answer
21 according to that. I don't recall what type of questions
22 they were. They might have been questions that ---

23 Q But you don't dispute that you didn't answer all of
24 her questions?

25 MISS RINGLER: Your Honor, I would ask that the

1 witness have the opportunity to explain.

2 A No, I don't dispute that I might not have answered
3 all of her questions. I'm not aware of what she might
4 have asked that I didn't answer, but it's possible I
5 didn't answer them all. Right.

6 MR. WILLIAMS: That's all I have, Your Honor.

7 THE COURT: All right. Anything else?

8 MISS RINGLER: Nothing from the State, Your Honor.

9 THE COURT: You may step down.

10 Next witness.

11 MISS RINGLER: Victim 2 [REDACTED]

12 THE COURT: Come on around. You're still under oath.

13 [REDACTED] Victim 2 [REDACTED] after being previously
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MISS RINGLER:

17 Q [REDACTED] Victim 2 [REDACTED] did you go to the Barnwell State Park with the
18 Defendant Eric VanCleave Memorial Day weekend 2006?

19 A No, ma'am.

20 Q Did you go on a camping trip with Eric VanCleave at
21 any time during 2007?

22 A Not that I recall; no, ma'am.

23 Q Please answer any questions Defense Counsel might
24 have.

25 THE COURT: Cross?

CROSS-EXAMINATION

1
2 BY MR. WILLIAMS:

3 Q Can I ask you to look at Defense Exhibit No. 1? Tell
4 me if you're in that picture.

5 A Yes, sir, I am.

6 MR. WILLIAMS: That's all I have, Your Honor.

7 THE COURT: You may step down. Anything?

8 REDIRECT EXAMINATION

9 BY MISS RINGLER:

10 Q Can you explain a little bit about the picture and
11 why you're confident you didn't go on a camping trip in
12 2007?

13 A Sure. The summer between 2007 I was between college
14 campuses between Midlands Tech and the University of South
15 Carolina. I was working that summer. I don't recall
16 really taking any vacations that summer.

17 Q Do you remember -- do you remember that photo?

18 A Yes, ma'am, I do. I remember the trip, yes, ma'am.

19 Q And when was that trip?

20 A I believe it was '05 or '06 -- 2005 or 2006 before I
21 was in college.

22 Q Thank you.

23 A Yes, ma'am.

24 THE COURT: You may step down.

25 Any additional witnesses?

1 MISS RINGLER: None from the State, Your Honor.

2 THE COURT: All right. Anything before we argue and
3 charge?

4 MR. WILLIAMS: Yes, Your Honor.

5 THE COURT: All right. We got to step out one more
6 minute. Y'all can order your lunch now. When you come
7 back in we're going to hear the final arguments and my
8 charge. Be ready. Your food will be ready when you get
9 ready to start deliberating. Don't discuss the case.

10 (Whereupon, the jury exited the courtroom at 11:47.)

11 THE COURT: Any motions by the State?

12 MISS RINGLER: None from the State, Your Honor.

13 MR. WILLIAMS: Your Honor, we would move for directed
14 verdict and without repeating ad nauseam the same motion
15 for directed verdict at the end of the State's case would
16 incorporate the motions at the end of this case only in a
17 different vein in that now the evidence is all in so that
18 it would no longer be in the light most favorable to the
19 State but there is insufficient evidence for these jurors
20 to return a verdict of guilty on any of the Indictments.

21 THE COURT: Respectfully denied for the same reasons
22 as earlier stated. All right.

23 Now, ladies and gentlemen, on the Indictment 76 --
24 13-GS-76. That's the Indictment for criminal sexual
25 conduct with a minor that allegedly took place between

1 April 1 of '05 and May 17 of '06. That is simply has to
2 prove that they engaged in sexual battery and that the
3 victim was less than 16 but at least 14 and the Defendant
4 was either in a position of familial, custodial -- That's
5 the one we're going on that one; right?

6 MISS RINGLER: Yes, Your Honor, or that he was older
7 than the victim.

8 THE COURT: And consent is not required. You agree
9 with that --

10 MISS RINGLER: Correct.

11 THE COURT: -- Mr. Williams? That's the one -- the
12 charge you want on criminal sexual conduct with a minor?

13 MR. WILLIAMS: I assume that she's also saying that
14 that would be the second offense -- criminal sexual
15 conduct with a minor second offense.

16 THE COURT: Second offense?

17 MR. WILLIAMS: I mean, second degree.

18 THE COURT: That's correct.

19 MR. WILLIAMS: You are asking if I agreed to what?

20 THE COURT: As that being the correct charge.

21 MR. WILLIAMS: That's what he is indicted for.

22 THE COURT: Strike that. If that would be the
23 correct charge for that Indictment.

24 MR. WILLIAMS: It would be.

25 THE COURT: Thank you. Lewd act is a pretty easy

1 one. Y'all all know what that one is. Now, on the
2 assault and battery of a high and aggravated nature,
3 that's Indictment 78. Assault and battery of a high and
4 aggravated nature includes -- assault and battery of a
5 high and aggravated nature is an unlawful act of violent
6 injury to the person of another accompanied by
7 circumstances of aggravation.

8 MISS RINGLER: Yes, Your Honor. I think that the old
9 standard charge for that lists that and then talks about
10 the aggravating circumstances for the old common law that
11 this is under.

12 THE COURT: Aggravating circumstances is includes the
13 use -- it talks about a deadly weapon. It is a difference
14 in the gender, the taking of indecent liberties. Which
15 one are you talking about?

16 MISS RINGLER: Because so many of them are -- because
17 we're dealing with the same gender here, we looked at
18 disparity of sizes and conditions and also that the
19 purpose was to shame and disgrace.

20 THE COURT: So the aggravating circumstance would
21 be ---

22 MISS RINGLER: We listed and or all of those.

23 THE COURT: Are of great disparity in ages and
24 physical conditions of the parties.

25 MISS RINGLER: Yes, Your Honor.

1 THE COURT: And the purposeful infliction of shame
2 and disgrace.

3 MISS RINGLER: The physical conditions, the ages, the
4 sizes and the infliction of shame or disgrace.

5 THE COURT: And then the last one is 79. That's your
6 criminal sexual conduct.

7 MISS RINGLER: Yes, Your Honor. I think the charge
8 that we were looking at kind of elaborates a little bit
9 more on ---

10 THE COURT: 6-54. Section 6-54.

11 MISS RINGLER: Yes, Your Honor, and it talks about
12 physically helpless and it specifically lists being asleep
13 under that. That would be the charge that we would
14 request. I think that is included in that standard charge
15 and we would request that language.

16 THE COURT: Which would be simply in order to prove
17 third degree criminal sexual conduct proved beyond a
18 reasonable doubt engaged in a sexual battery which we
19 define sexual battery. If you find that the battery
20 occurred, you must then decide whether the State has
21 proven beyond a reasonable doubt. The defendant used
22 force or coercion without any aggravating circumstances to
23 accomplish the battery. Using force or coercion means to
24 make the victim follow prescribed dictated course to
25 inflict or impose or to force one's will on someone or the

1 defendant knew or had reason to know that the victim was
2 physically helpless and that aggravated force or
3 aggravated coercion was not used. Physically helpless
4 means that the victim was unconscious, asleep, or for any
5 other reasons to communicate a consent to the battery.

6 MISS RINGLER: Yes, Your Honor.

7 THE COURT: Anything else particularly y'all want?

8 MISS RINGLER: And I just mentioned yesterday I think
9 there is a standard charge that states that corroboration
10 is not required or necessary.

11 THE COURT: Anything else?

12 MR. WILLIAMS: I would request simple assault and
13 battery.

14 THE COURT: As a lesser included offense of assault
15 and battery of a high and aggravated nature?

16 MR. WILLIAMS: Yes, sir.

17 THE COURT: What is the State's position on that?

18 MISS RINGLER: We would just ask for the
19 justification of giving a charge of a lesser included,
20 Your Honor, in this case.

21 MR. WILLIAMS: Your Honor, as I read the assault and
22 battery statute it says -- and I just read the Indictment.
23 It says that it doesn't necessarily refer to having sex in
24 the Indictment.

25 THE COURT: It doesn't. It says violent injury.

1 MR. WILLIAMS: It could have been a minor injury.

2 THE COURT: It may not have been an injury at all.

3 MR. WILLIAMS: It may not have been an injury at all.
4 It might have just been an assault.

5 THE COURT: In fact, I am not sure where the evidence
6 is there was an injury. All right. I am going to stick
7 with what I just said. I'll note your request for that,
8 but I'm going to charge what we just went over. Anything
9 else?

10 MR. WILLIAMS: Nothing from the Defendant, Your
11 Honor.

12 THE COURT: Ma'am?

13 MISS RINGLER: Nothing from the State, Your Honor.

14 THE COURT: Are y'all ready? Are you going to waive
15 opening on the law?

16 MISS RINGLER: Yes, Your Honor.

17 THE COURT: All right. See if they're ready. Hold
18 on a second. Have y'all looked at the verdict forms?
19 They were e-mailed to you. Simply not guilty or guilty.

20 MISS RINGLER: I haven't had a chance to check it,
21 but I'm sure that's fine.

22 (Whereupon, the jury came into open court at
23 approximately 12:00.)

24 THE COURT: Mr. Foreman, ladies and gentlemen, we're
25 now going to go into the final or closing arguments in the

1 case. Please bear in mind that both the lawyers are
2 arguing the evidence in the light most favorable to their
3 clients. They are adversaries for their client.

4 So you've already heard all the evidence. You won't
5 hear any additional evidence. It's not evidence in the
6 case, but you decide it. You've heard the testimony so
7 you'll decide the true facts from that testimony, but the
8 lawyers will make the arguments as to how they see the
9 evidence in the light most favorable to their clients.

10 Once they finish their closing arguments I'll
11 instruct you on the law and you'll be in a position to
12 start your deliberation. So please pay close attention.

13 CLOSING STATEMENT

14 MR. WILLIAMS: Mr. Foreman, ladies and gentlemen of
15 the jury, I want to thank you for listening to the trial
16 for the last two days. Trials of this nature are not easy
17 for anyone. They're not easy to represent. They're not
18 easy in terms of as a lawyer to represent somebody who is
19 charged with that. They're not easy for the State to
20 prosecute because of the delicate matters. It's not easy,
21 I'm sure, for the Judge or for anyone to listen to these
22 types of allegations and that includes you because you had
23 to listen to it and now that you've listened to it now you
24 have to come up with a decision.

25 Now, the decision you must make as jurors -- you

1 notice that when you took your chairs in there -- I don't
2 know if -- they're chairs. When you came in there and you
3 took your chairs you were sworn meaning someone made you
4 take an oath that you would do your job as a juror, and,
5 see, there is a little more importance created on things
6 when you're sworn just like when witnesses take the stand
7 they're sworn and you're sworn to do your job as a juror.

8 Your job as a juror involves you setting aside any
9 type of prejudice you may have -- and I am not referring
10 to anything other than any type of prejudice you have
11 regards to any person, any thing, and make a decision
12 based on the facts that you deem true. It sounds pretty
13 fancy, doesn't it? But what you have to do -- and I know
14 it sounds real complicated, but it's not. You have to use
15 your common sense and determine whether or not one witness
16 is telling the truth, one witness may be changing the
17 truth a little bit, or just whatever the facts are. You
18 determine what the facts are based on the evidence
19 presented whether it be from the testimony of witnesses or
20 whether it be from documents.

21 See, you've got other documents. Some documents you
22 have by the very nature of them are probably more
23 trustworthy and I say that because you can't change
24 certain documents. You got a picture. It is what it is.
25 If you got something that's typed out, it is what it is.

1 When you testify then what you're accounting for is the
2 ability of the person to recall what they're actually
3 testifying to from their perspective or from whatever
4 perspective they're trying to show you.

5 Having said all that, it is your job as a juror to
6 remember what we're talking about is four charges. The
7 charges are assault and battery of a high and aggravated
8 nature, criminal sexual conduct with a minor second
9 degree, lewd act upon a child, criminal sexual conduct in
10 the third degree. I tell you that because after I get
11 through arguing the State will get the last argument
12 because they have the burden of proof and then the Judge
13 is going to charge you as to what those -- it sounds
14 repetitive -- what those charges mean, what those
15 violations of the law mean.

16 I am going to save you some grief. I am not going to
17 argue about what these charges mean. I am not going to.
18 Each and every one of these charges involve allegations
19 that my client assaulted Victim Remember, it's Victim --
20 Victim who is the alleged victim. If you believe that he
21 did these things beyond a reasonable doubt and that it
22 occurred as in accordance with the Indictment, then it's
23 your job to find him guilty. So I am not going to argue
24 about what the charges say because I don't believe that
25 the State will be able to prove that anything occurred,

1 number one, and, number two, that anything occurred during
2 these time spans.

3 It is hard to say that, but when you do an
4 Indictment -- essentially, what that is, those are
5 allegations that the grand jury makes the determination to
6 bring forward for you 12 jurors plus one to make a call as
7 to whether or not the person is guilty or not guilty.
8 They have to prove that it occurred during those time
9 spans in Barnwell County. That's the only legal fancy
10 thing here meaning they have to prove that my client
11 assaulted **Victim** between May 27 of 2006 and May 29 of 2006
12 or during the time span of April 1 of 2005 and May 17 of
13 2006. If they don't do it, he's not guilty. Period.

14 You know he doesn't have anything to prove. He
15 doesn't have to take the stand. He doesn't have to
16 present any evidence whatsoever. He did in this case. I
17 don't know how you took what he said, but he did in this
18 case and that's always to explain because he doesn't have
19 to prove anything, but when you're charged with something
20 you want to tell everybody, well, it's just not true. You
21 can't just sit back and let people say things without
22 coming forward and to show why it's not true.

23 Let's talk about the first witness that testified.
24 That was **Victim** He is the victim -- alleged victim -- in
25 this case. Now, I don't know if you remember how we

1 talked about -- and I hope that everything I talked about
2 was in reference to dates because I attempted to do that.
3 Remember when he was on the stand and I asked him about
4 Easter of 2005 and Memorial Day of 2006 and I asked him, I
5 said, isn't it true that you testified earlier on the
6 record that the two events that you're referring to are
7 Easter of 2005 and Memorial Day of 2006? And he was
8 hesitant. Mr. Williams, do you have a recording of that?
9 Yes, we do. Then he was directed to answer those
10 questions. He said, well, I may have said that.

11 Why is that important? Because Easter of 2005 was
12 March 27, 2005. March 27 of 2005. There is no Indictment
13 that you'll hear today or that you heard yesterday that
14 encompasses the date of March 27 of 2005. It seems to me
15 that if you're going to attempt to convict somebody of a
16 charge, that man needs to know what the allegations are,
17 where it happened, and when it happened.

18 So if it didn't happen Easter 2005, let's look at
19 Memorial Day of 2006 because that's the other event.
20 Well, you have to decide, obviously, which witnesses you
21 believe, what you don't believe, who is telling the truth,
22 who is not telling the truth, how much you believe of one
23 witness, how much you don't believe of another witness.

24 You heard one witness on behalf of the State testify
25 that Memorial Day of 2006 that she was present on this

1 camping trip. Memorial Day of 2006 Victim [REDACTED] was not
2 there. Period. Some other [REDACTED] boys were here. Did
3 you hear them come up and take the stand and say that they
4 were there but their brother wasn't there and that Mr. and
5 Mrs. [REDACTED] were there with the family? Well, I guess we
6 could say that Mrs. [REDACTED] -- I mean, that DeeDee -- I
7 always get her confused -- that DeeDee is just confused
8 about the date.

9 You notice it's the little things that you find that
10 tends to prove matters because on this particular occasion
11 she didn't take any photographs, but here is how you know
12 that that's correct in regards to that assessment.

13 State's Exhibit No. 21 along with --

14 THE COURT: There's a couple up here.

15 MR. WILLIAMS: -- along with State's Exhibit No. 19,
16 these are one of those things that you can't change. It
17 is preprinted. Just can't change it. It is from ranger
18 -- the ranger that came up here and testified. It's got
19 the date Memorial Day weekend which is May of 2006, but
20 the interesting part -- there are two pieces of paper here
21 for the same date. For the same date. Well, the reason
22 for that is that there were two lots.

23 Now, obviously, if Eric was there with his camper and
24 it was just Eric with the [REDACTED] guys, he wouldn't have
25 needed but one lot, would he? One camper. But there are

1 two lots. The reason he has two lots is because DeeDee
2 was there with her family and she testified that she was
3 there and that Victim was not there. Okay?

4 What else did Victim say? Well, he said that these
5 terrible things happened to him. He said that on the
6 first occasion that he went to Barnwell they were tent
7 camping and he had all these pictures brought in. So they
8 go to all this trouble in bringing all these pictures and
9 Mike was there -- bringing all of these pictures and you
10 heard the Solicitor say that there is going to be
11 testimony that these pictures are from 2005. Well, you
12 know who took the pictures; right? Michael, the tall guy
13 from the insurance company. You know what he said. He
14 said 2004. 2004.

15 That's important for what reason? The first reason
16 is there is no allegation that encompasses the year 2004.
17 It's just not here. Second reason is that there is no
18 allegation that anything occurred on this camping trip; so
19 unless you just want to look at a bunch of guys camping in
20 a tent, that doesn't prove anything. So, there is some
21 allegations from Mike that he went camping a second time
22 and the reason he was put up there is because, remember,
23 Victim testified that the second time he went camping, the
24 second time he went camping he went with Michael and that
25 he was in the camper and something happened and the

1 curtain was pulled or some kind of thing like that.

2 Of course, Michael testified that he didn't see
3 anything that happened. He said he got up to go to the
4 bathroom and the curtain was pulled. Okay. Okay.
5 Six-foot wide. All these people in a camper. Something
6 is going on. You don't hear it? You're a grown man.
7 Innuendo is you're supposed to figure, well, if the
8 curtain was drawn -- if he remembers the curtain being
9 drawn, something must have happened.

10 Well, why didn't her hear something? Well, that's
11 your case right there, isn't it? I mean, that's the
12 allegations right there, isn't it? Well, no, that's
13 really not enough because what we have to do is we have to
14 somehow indicate to you that it must have happened that
15 way because it happened to these two other brothers at
16 some other location in North Carolina.

17 Well, you heard their testimony and you have the
18 pictures. I don't need to pull it out. You've seen it
19 one time before, but you got all these guys standing --
20 it's got a sign that says Ghost Town. It's got all the
21 pictures of everybody there. On the bottom of the picture
22 it says 2007. They said it didn't happen in 2007.
23 They're saying that they didn't go to North Carolina in
24 2007. Well, I guess Mrs. Wick -- I don't know. Somehow
25 she got her camera to say 2007 and the date and it just so

1 happened to have all of the pictures of everybody there,
2 but guess who wasn't there? Victim 3 Because, remember,
3 Victim 3 testified. Remember? It's hard to keep up with
4 everything.

5 I guess what I am trying to indicate to you is
6 there's an attempt to buttress the allegations here.
7 You're trying this case. You're trying this case over
8 here. These four charges right here. You're trying those
9 charges, but you got all this stuff about North Carolina
10 on the wrong dates. You got all this stuff from people
11 who think they were at a location whether they were or not
12 there. You got people debating over whether they were
13 there or not there and this thing in North Carolina has
14 nothing to do with these charges over here, does it?

15 So then you got the ranger coming in and he's got
16 something in writing; so you say that's Memorial Day. So
17 we got something we can prove, but Victim wasn't there.
18 Well, so, if you can't prove it that way, then I guess
19 what you have to do is you have to -- here's the picture.
20 This is the one where the child -- the witness said that
21 he's in this picture. He is in this picture, but this is
22 not from 2007. What do you believe? Do you think that it
23 happened in 2005 or 2006? Do you think it happened that
24 the camping trip happened in 2007?

25 Well, I don't know what you were thinking when we

1 tried to introduce these documents about the pop-up
2 trailer. These are things which can't be changed. I
3 guess Eric VanCleave can say whatever he wants to on the
4 stand, but clearly he purchased his pop-up trailer May 2
5 of 2005 and he sold this pop-up trailer September 27,
6 2006.

7 Why is that important? If you got somebody saying
8 that something occurred at a particular location on a
9 particular time and they describe how these events
10 probably happened according to them whether it be on the
11 floor, in a bed, what have you, it needs to match up with
12 the camper you're talking about, doesn't it? This is a
13 lot for a guy who doesn't have to prove anything, isn't
14 it?

15 So if you don't believe that, then we're going to
16 tell you -- and here's the thing. Here's the thing that
17 gets me, really. We got this printout on the computer
18 showing that my client reserved two spots Memorial weekend
19 of 2006. That is the only document from a governmental
20 agency the Barnwell State Park can show in regards to
21 whether or not my client had -- was at Barnwell State
22 Park. That's it.

23 Well, the argument is, well, we get rid of them after
24 three or four years. Remember that? We get rid of it
25 after three or four years. When was this document

1 produced? This year. 2013. How did he get the document?
2 He had to go to Columbia and the people in Columbia gave
3 him the document. Well, I guess you can say, well, maybe
4 for 2005 that they didn't have that on the computer
5 system. They had it on the computer system for 2006.

6 When did they change over from the computer system?
7 When did they change over? Do you know? I don't know.
8 When did it go into effect? I don't know. Does somebody
9 in Columbia know? I hope so. So, why do we not have
10 anything other than that one document? Well, the answer
11 is we send all our stuff to Columbia after a few years. I
12 can understand that. Who wants to keep all that stuff
13 around? What did you do before you had computers? Well,
14 we kept it on cards. Did you go to Columbia and see if
15 you had any card that had Eric VanCleave reserving a spot
16 at the Barnwell State Park on any other occasion? No.

17 No? Isn't that police work? What would you have
18 done? I mean, you know, what would you have done? Would
19 you have checked that out? Is it that so far removed?
20 Does that have anything to do with the fact that my client
21 learned of these allegations in February of 2013, been
22 arrested, three years, thought the allegations involved
23 Easter weekends or other dates?

24 So if you're not believing that -- and I'm working
25 hard to convict my client. I am doing the best I can here

1 for him. You got these exhibits Facebook users. I'm not
2 very Facebook friendly either. I'm an old guy. I'm 62.
3 I don't know if that's old in front of everybody. There's
4 two texts, not four. It just happens to be marked with
5 four exhibits just like over here. That exhibit was for
6 one occasion, but it was for two lots. So don't think
7 that there are four texts because there's two.

8 And these are real incriminating because it says --
9 and I'll try to do it in a low and sultry voice so maybe I
10 can make it sound like it's really bad. Hey, bud. I just
11 wanted to send you a little note letting you know that I
12 was thinking of you. Thinking about you. You're in my
13 dreams last night and so was Becca. So I sent her a
14 message, too.

15 You know, when you take things out of context -- see,
16 that's the problem with e-mails, with texting, and things
17 like that. There is a problem with it because you don't
18 know what people mean. You can get something and think
19 that person is mad with you and they're not mad with you.
20 Because their fingers get tired they don't want to type
21 enough you can get something and it sounds, oh, that
22 doesn't sound good, but the fact that he says that he had
23 a dream about him and that he referenced Becca who is the
24 sister who is right there on the bench -- sent her an
25 e-mail the same day after he had this concern or dream,

1 and, of course, Victim says, well, I didn't talk to her.
2 We're not as close as we used to be. She's down in
3 Columbia and I am way up here. She's right over there on
4 the bench -- because this is not about anything other than
5 pointing at stuff in hopes that you'll think something was
6 wrong.

7 There is something wrong. Something wrong with Eric
8 because Eric doesn't know enough to be suspicious of
9 everything. He sends text mails to people and tells them
10 he loves them; that he had a dream about them. As a man
11 you're not supposed to do that unless -- I don't know,
12 unless you're a caring man.

13 They had a relationship where -- you'll have this
14 information. It's the wedding invitation. I'll tell you
15 that. It's got in there all the T. [REDACTED] who came to the
16 wedding invitation. Some were singing. Some were
17 playing. He didn't know anything was wrong. Nobody knew
18 anything was wrong until after -- until after dad had to
19 tell the father of these children that he was going to
20 have to cut the salary.

21 That's the only thing I can think of. I don't know
22 what the answer is. You know, you sit around here and
23 speculate and you try to come up with some kind of motive
24 for them to say something like this. We deal in facts as
25 lawyers. It's like being a scientist to a certain extent.

1 You deal in facts. As jurors you're supposed to deal in
2 facts. You're supposed to determine what the facts are,
3 whether or not they fit here. You're not supposed to
4 speculate because when you do sometimes you can make a
5 wrong decision.

6 I am going to sit down, I guess. You've heard my
7 witnesses. You've heard dad testify salary is going to
8 have to be cut 1300 to \$200 a month. Why? Because he --
9 I don't know. He was being mean? No, because his wife
10 lost her job. You heard Jennifer VanCleave testify. She
11 testified that she was present when these were typed up.
12 Why is that important? If he was coming up with some
13 sinister thing, do you think she would have noticed it?

14 And you heard Eric testify. His testimony was
15 pointing to dates. It was pointed to times. He even
16 referenced Halloween of 2000 and -- let me see if I got
17 this right -- 2006, 2005. 2006, I think. 2005? Went
18 back, found out that Carolina was playing Tennessee and
19 they won. He remembers now. I mean, he's done all he can
20 do to show you where he was and why he's not guilty. He
21 shouldn't have to do that.

22 You know there are two themes here. One theme I
23 guess could be what does a defendant have to do to prove
24 he's innocent? The answer to that is nothing. The other
25 theme is no good deed goes unpunished.

1 I apologize if I've been abrupt, if I have said
2 something or objected when you thought I should have sat
3 down and shut up. I am doing my job. I do my job. You
4 do your job. Look at these. Study these dates on these
5 Indictments and make them prove beyond a reasonable doubt
6 the guilt of my client or let this poor man go home.
7 Three years he's had to suffer with this. Thank you.

8 THE COURT: Everybody okay? Bathroom?

9 CLOSING STATEMENT

10 MISS RINGLER: Can everybody see this? Well, I guess
11 it is good afternoon again. As a young man Eric VanCleave
12 -- Excuse me. As a young man Victim [REDACTED] was finally
13 able to come forward and talk about the abuse that that
14 man Eric VanCleave inflicted on him. The years of sexual
15 abuse that he had gone through he was finally ready to
16 come forward and talk about it in 2010 after attending
17 that conference and after Victim [REDACTED] was ready to come forward,
18 so were his brothers.

19 You heard from his two brothers that said when they
20 saw Victim [REDACTED] come forward and talk about what was done to him
21 that if he had the strength to come forward and admit what
22 happened to him as well. So after Victim [REDACTED] was able to come
23 forward, so were his brothers Victim 2 [REDACTED] and Victim 3 [REDACTED] You heard
24 from them as well.

25 Now the Defense has talked a little bit about this

1 tithing issue that something came up with the church, but
2 you also heard from the Defendant's father and you heard
3 from the Defendant's wife. These are two people that care
4 about the Defendant that realized he's facing very serious
5 charges and they're concerned about him, but the father
6 did admit that this came out in 2010 -- that, yes, he was
7 going to have to give less to the church, but he still
8 stayed on as a bookkeeper. He stayed on until Victim made
9 his disclosure, and, also, Mrs. T. -- Excuse me,
10 Mrs. VanCleave even stated that the T. family took her
11 out to lunch just before Victim went to this convention.

12 So even after this tithing issue came up and,
13 unfortunately, the older Mr. VanCleave, the father, wasn't
14 able to give as much to the church, he was still a part of
15 the church. He was still a part of the T. family.
16 His daughter-in-law was taken to lunch by the T.

17 And you've had the opportunity over the last two days
18 to observe the T. family, and you've seen the love
19 that this family has for one another. They have sat with
20 each other. They've supported each other during some very
21 difficult testimony for these boys and you heard Victim 2 talk
22 about how he named his baby boy his first child after his
23 brother. The love that this family has for one another is
24 obvious. Would a father put his sons through this? Put
25 his sons through a police investigation? Put his sons

1 through a criminal trial having to get up there and
2 testify the way that they did over something as petty as
3 this?

4 These are three young men that have everything going
5 for them. Victim is a college student right now.
6 Victim 3 he is pursuing his dream, his love of music. Victim 2
7 has just started a family and right now Victim
8 should be at college. He should be with his friends, with
9 his girlfriend enjoying his last couple of months of
10 college looking forward to his life ahead, but instead
11 he's here and he told you about the worst thing that has
12 ever happened to him.

13 He told you about the shame, the humiliation, the
14 fear, the helplessness that he felt while he was being
15 abused by that man Eric VanCleave and he talked about the
16 pain -- the physical pain that he felt when he was being
17 violated by that man Eric VanCleave. It was very
18 difficult for him to do so, but he came forward and he has
19 followed through. He has come here and he has told you
20 what happened to him.

21 Now one of the other witnesses that testified for the
22 defense was Mrs. DeeDee Wick. She testified and there's
23 been talk about this date on a camera. How many people go
24 and actually set the date on their camera? You heard from
25 Victim 2 who said I remember that trip, but it didn't happen

1 in 2007. I know it didn't. That was when I was in
2 school. I didn't go on any trips during that time. He
3 admits he remembers that trip, but it happened in 2005,
4 2006.

5 And, yes, the assaults that took place on **Victim 2** and
6 **Victim 3** did happen out of this date; so they're not charges
7 for you to consider, but they are still very important
8 evidence because you see a pattern of behavior that this
9 is how he was abusing boys -- that when they were asleep
10 or he would manipulate the arrangements so they would be
11 asleep in the same bed or the instance with **Victim 2** when he
12 fell asleep and each time the boys woke up to being
13 assaulted -- woke up to this Defendant with his hands in
14 their pants grabbing their genitals. So, this pattern of
15 behavior is why we introduced that evidence and why it's
16 for your consideration.

17 And there's been a lot of talk about dates. The
18 Defense event went through it quite a bit in their
19 closing. You heard **Victim** testimony. That's pretty much
20 the only thing that he was asked about were dates because
21 that's all that the Defense had to ask about. **Victim** has
22 been very consistent and very clear as to what happened to
23 him, who did it, what was done to him, but he admits very
24 freely I don't remember the exact time. I know that there
25 was abuse before and after my 16th birthday, but I can't

1 remember exactly when. And that is what you consider --
2 Victim testimony.

3 Questions asked by the lawyers -- that's not evidence
4 in this case. The only thing that's evidence is the
5 testimony from the witness on the stand. That's what you
6 are to consider. That's what you should take into account
7 and Victim was consistent with that, but he just doesn't
8 remember specifically exactly when it happened, but he
9 remembers assaults before and after. He remembers four or
10 five trips to Barnwell around this time period.

11 All this talk about dates because that's the only
12 thing that the Defense can attack and that's just a
13 distraction. That's not doubt. They're trying to
14 distract you from the facts because they don't want you to
15 consider the real reason that we're here and that's
16 because this man raped a young boy in Barnwell County.
17 That's what we're here for. That's what you're here to
18 consider, and trying to distract you with all this other
19 -- all these other issues when that's the true reason
20 you're here. That's what's being alleged in the
21 Indictments. That's what you're here to consider.

22 And we did talk about the first time that Victim was
23 assaulted. He did testify to that because, again, that
24 sets up the big picture. It's not taking these assaults
25 in Barnwell out of contest, but showing you the big

1 picture of what Victim was going through; that this started
2 when he was a young boy and continued into his teenage
3 years and he remembers so clearly what happened that night
4 at the Defendant's house.

5 He remembers being asleep and waking up to the
6 Defendant with his hand in his pants. He remembers
7 getting up and going to the bathroom and his thought
8 process and when you hear him talk about it, it truly is
9 the thought process of a child -- what a child would
10 think. He is worried that, you know, he did something to
11 cause this; that he's going to get in trouble with his
12 parents if they find out.

13 It is very child-like and he's so afraid of what's
14 going to happen; that he's done something wrong. He
15 blames himself and he's so afraid that he goes back into
16 that bed and he remains silent and he tries to position
17 himself -- tries to protect himself, but he's not able to.
18 He remains silent and he's not able to say anything until
19 years later, and so the abuse continues and it escalated.

20 By the time that they take the trips to Barnwell the
21 abuse is regular and it involves penetration, and we'll
22 talk a little bit about these Barnwell trips. Victim did
23 testify that there were about four or five total. He said
24 that the first one are the ones where the pictures in the
25 tents and, yes, nothing happened, but that sort of grounds

1 him as far as time. He remembers that being the first
2 trip and he remembers Mike Sanders being on that trip and
3 he remembers Mike Sanders being on another trip and
4 something did happen on that trip.

5 This was the chart that I was starting on yesterday,
6 but I think it's helpful to see what Victim testimony and
7 then what Mike testified to. Everybody can see that.

8 Victim remembers that second trip where Mike Sanders was
9 there. He remembers it being at the Barnwell State Park
10 and he remembers a pop-up camper with a curtain and he
11 remembers when he was assaulted. He remembers seeing that
12 curtain. He remembers the curtain being drawn, and he
13 remembers that that night he and the defendant slept in
14 the same bed.

15 Well, Mike Sanders remembers that trip, too. He
16 remembers taking two trips. He remembers that first one
17 with the tent and then he remembers the second one with
18 the pop-up trailer and he -- pop-up camper and he
19 remembers it being around Halloween that fall of 2005 and
20 when he gets up in the middle of the night he remembers
21 that curtain -- that same curtain that poor Victim is
22 looking at and remembers when he was being assaulted, and
23 also Mike Sanders remembers that Victim and the Defendant
24 did sleep together in the same bed in that camper that
25 night.

1 So Mike Sanders is able to corroborate what Victim has
2 told you and also he helps a little bit because as an
3 adult he's got a little better memory of the date. It is
4 difficult. I mean, adults have difficulties remembering
5 dates. There are some adults that can't remember their
6 own anniversary and this happened to a child. We're
7 asking a child to remember. We're asking Victim to
8 remember what happened to him as a child -- something that
9 he spent the last seven years trying to forget.

10 And then so for this -- for the assaults that
11 happened before Victim was 16 years old, the charge is
12 criminal sexual conduct with a minor and lewd act. The
13 criminal sexual contact with the minor is the sexual
14 battery. That involves the penetration. That involves
15 when Victim says he felt the Defendant insert his finger
16 into his behind. He remembers the Defendant inserting his
17 penis in his behind. He remembers the pain he felt when
18 that was done. He is a young man at this point and he
19 distinctly remembers that physical pain when that was done
20 to him, and also the charge of lewd act which is the
21 sexual touching which is the other conduct in touching --
22 the groping of the genitals, the rubbing that was going on
23 when poor Victim was in that camper.

24 Now, Victim said that he was assaulted on all the
25 trips but the one with the tents, but these are ones that

1 he specifically remembers and he remembers another trip to
2 Barnwell -- the last trip to Barnwell which was after his
3 16th birthday and he said that his date of birth is in May
4 18 of 1990; so sometime in late May is the time that they
5 took the trip. He remembers it being about one or two
6 weeks after he was 16 years old and it would have been in
7 2006 and you heard from Ranger Eddie and he showed you
8 that reservation record and they were for Eric VanCleave
9 for Barnwell State Park and it was for that Labor Day
10 weekend which would have been shortly after Victim 16th
11 birthday.

12 So, again, this corroborates what Victim told you that
13 there was this trip shortly after his birthday and it was
14 on this time because he's 16 years old that there are
15 different charges. So that's really the only times that
16 the dates matter is when it affects the charges. The ones
17 -- the incidents that happened before he is 16 and the
18 ones that happened after.

19 On this one his charges are for criminal sexual
20 conduct and assault and battery of a high and aggravated
21 nature which is our aggravated assault statute and the
22 criminal sexual conduct, that's, again, a sexual battery,
23 but because he's 16 there needs to be some kind of force
24 or coercion or that the victim was helpless at the time
25 and Victim testified that he wakes up with the Defendant --

1 with his penis in the Defendant's mouth. So as he's
2 asleep he is being sexually assaulted and then it
3 continues and Victim remembers feeling helpless, that he
4 couldn't leave, and the fear that he felt. So this was
5 certainly against his will. It was certainly not what he
6 wanted, against his will what was being done to him and
7 then the aggravated assault statute -- Excuse me; the
8 aggravated assault charge he describes the pain that he
9 felt when this was happening to him, the humiliation, the
10 fear that he was feeling, and that supports that charge
11 when he's being assaulted there in that camper trailer.

12 So I tried to do that chart to try to make some sense
13 because there were multiple trips and the statutes -- the
14 Indictments that we have, they do cover a large amount of
15 time and that's because it is difficult for children to
16 remember and it's also because this was a pattern of a
17 behavior. We're not talking about isolated events. This
18 took place for years and this took place over a course of
19 time. There were multiple trips to Barnwell. There were
20 also assaults in other places as well. So this -- taking
21 these out of context, that's not giving you the complete
22 picture. This was ongoing abuse. The Defendant was a
23 constant figure in the victim's life.

24 You heard testimony from pretty much everyone who
25 described that Eric VanCleave was always around Victim

1 [REDACTED] Always. The Defendant even said there wasn't a
2 day probably that went by that he didn't see some member
3 of the [REDACTED] family for that period of time. [REDACTED] Victim
4 couldn't get away from him. Eric was always around,
5 always there and on trips, at his house, at school --
6 Excuse me; at church, and it wasn't until [REDACTED] Victim was 16
7 years old and he started public school that he was able to
8 get away. He was able to get away from the Defendant and
9 the abuse stopped, and it wasn't until he was a young man
10 that he was able to come forward and disclose to you what
11 happened.

12 When you go back there after hearing the charges from
13 the judge I just ask that you not lose focus, not get
14 caught up in all this talk about dates and things going on
15 with the church, and focus on what you're really here for.
16 Focus on that testimony that [REDACTED] Victim gave, that very
17 emotional difficult testimony that he gave and he told you
18 what happened to him. The worst thing possible, the worst
19 thing that happened to him he told you about and that
20 happened in Barnwell County and that's the basis for the
21 charges and to focus on that and not let the other matters
22 distract you because that's what you're here for. For

23 [REDACTED] Victim And the State is confident that you'll go back and
24 convict the Defendant on all four charges. Thank you.

25 THE COURT: Mr. Foreman, ladies and gentlemen, the

1 charge is about 15 minutes. Do we need a bathroom break?

2 Ma'am, are you okay with your back?

3 JURY CHARGE

4 THE COURT: Mr. Foreman, ladies and gentlemen of the
5 jury, the Indictments in this particular case were for a
6 lewd act, assault and battery of a high and aggravated
7 nature, criminal sexual conduct with a minor, and criminal
8 sexual conduct in the second degree. Let me remind you
9 the fact that he's been charged in this case and indicted
10 in this case is not evidence in the case and cannot be
11 considered by you as evidence of guilt in the case; nor
12 does the fact that he was indicted on all four Indictments
13 create any presumption or inference of guilt. The
14 Indictments are simply the documents by way this case
15 comes in the courtroom. It is the formal document by
16 which the Defendant is brought before you.

17 As I said, there are four separate Indictments and
18 each Indictment charges a separate and distinct offense.
19 You must decide each Indictment separately on the evidence
20 and the law applicable to it uninfluenced by your decision
21 on the other Indictments. He can be convicted on one and
22 found not guilty on three or any combination -- not guilty
23 on all, guilty on all, or a combination. You have to
24 consider each Indictment separate and write a separate
25 verdict of guilty or not guilty as to each Indictment and

1 you'll have in the jury room with you, Mr. Foreman, a
2 verdict form as to each Indictment when you've considered
3 each one separate and apart from the other when you make
4 your decision as to each one. I'll go over that verdict
5 form with you in just a few minutes.

6 The Defendant in this case, Mr. VanCleave, has plead
7 not guilty to all four Indictments. A plea of not guilty
8 Public Defenders the burden on the State of South Carolina
9 to prove his guilt to you and that guilt must be proven
10 beyond a reasonable doubt. A person charged with
11 committing criminal offenses in our state is never
12 required to prove himself innocent. I charge and instruct
13 you that it is an important constitutional rule of law
14 that a defendant in a criminal trial no matter how serious
15 the charges may be will always be presumed to be innocent
16 of the crimes for which the Indictments were issued unless
17 guilt has been proven by evidence satisfying you of that
18 guilt beyond a reasonable doubt.

19 Presumption of innocence does not end when you start
20 your deliberations, but it stays with the Defendant
21 throughout the trial until you reach a verdict of guilt
22 based on evidence satisfying you of that guilt beyond a
23 reasonable doubt. The presumption of innocence is not a
24 mere legal theory, nor a legal phrase. It is a
25 substantial constitutional right to which every defendant

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

4 What is a reasonable doubt? Our State Supreme Court
5 has defined for juries and for judges what reasonable
6 doubt means. It is simply this: A reasonable doubt is
7 the kind of doubt that would cause a reasonable person to
8 hesitate to act. A reasonable doubt is the kind of doubt
9 that would cause a reasonable person to hesitate to act.
10 It's also been held to say that proof beyond a reasonable
11 doubt is proof that leaves you firmly convinced of the
12 Defendant's guilt.

13 There are very few things in the world that we know
14 with absolute certainty and in criminal cases the law does
15 not require proof that overcomes every possible doubt. If
16 based on your consideration of the evidence you're firmly
17 convinced that the Defendant is guilty of the crimes
18 charged, then you must find him guilty. If, on the other
19 hand, you think there is a real possibility that he is not
20 guilty, you must give him the benefit of the doubt and
21 find him not guilty.

22 Mr. Foreman, ladies and gentlemen of the jury, let me
23 remind you that during the trial of this case that you and
24 I have had different functions to perform. My job as the
25 Judge of the law is to rule on the admissibility of the

1 evidence and also to instruct you on the law; so I tell
2 you under our law that you must accept what I tell you the
3 law is; therefore, if you have some preconceived idea
4 about what the law is or what it should be and it does not
5 agree with what I tell you, you've taken an oath to set
6 aside your preconceived ideas and accept the law as I give
7 it to you. I tell you or I instruct you, I charge you
8 what the law is and you must accept that as the law of
9 this state.

10 Likewise, I rule on the admissibility of evidence.
11 Most all the testimony came in. Maybe there were a few
12 objections where it did not come in, but once that
13 testimony is admitted into the trial of the case, then
14 your duty as judges of the facts take over. You become
15 the fact-finders of the case. So, I'm the Judge of the
16 law. I tell you what the law is. You're the judges of
17 the facts. You'll tell me what the facts are.

18 Now, if at any time during the trial of the case --
19 you know, I sit up here day-in and day-out all over the
20 state; so if I chew on my glasses or roll my eyes or frown
21 or smile or you think I have some opinion about the facts,
22 please set that aside. The law does not allow me to have
23 any opinion whatsoever about the facts. You are the sole
24 judges of the facts in the case and when you determine
25 what those true facts are, then, obviously, you apply it

1 to what I tell you the law is and that's when you render a
2 true and just verdict. Verdict means to speak the truth.

3 Now, in performing your duty as the finder or the
4 judges of the facts, as I told you when we started you
5 must necessarily determine the credibility of the
6 witnesses who have testified in the case. I told you
7 earlier that as I go around the state as a lawyer -- as a
8 Judge and as I did as a lawyer when we try cases in the
9 courtroom we try cases because there are disputed facts
10 and this case is a prime example. One person says one
11 thing. The other person says the opposite. So it becomes
12 your duty as the judges of the facts to determine the
13 credibility or the believability of the witnesses who have
14 testified in the case. Credibility simply means
15 believability.

16 Now, in determining the believability or the
17 credibility of the witnesses who have testified in this
18 case you have the right to believe one witness over
19 several, several over one. You can disbelieve everything
20 a witness says. You can believe everything he says. You
21 can believe a little bit and disregard the other part.
22 You have the right to determine what part, if any or all,
23 is true from each and every witness who have testified in
24 the case.

25 As I told you when we started, you're all mature

1 adult people. You've had experiences in life. You deal
2 with people at work. You deal with wives, husbands,
3 girlfriends, boyfriends, and children. You know how to
4 judge using your own common sense what is the truth. Do
5 not leave that common sense out here when you go back to
6 deliberate. Please use your everyday common sense in
7 determining what the true fact are in this case.

8 That is your main job. That is your sole job to
9 determine the believability or the credibility of the
10 witnesses. You have the right to consider whether anyone
11 has exhibited to you any particular interest, bias,
12 prejudice, or other motive in the case, and you can also
13 consider the appearance and the manner of the witness
14 while he or she testified.

15 Now, Mr. Foreman, ladies and gentlemen, that is
16 general criminal principles that apply in all criminal
17 cases. What I am going to do now is charge you on the law
18 dealing with the four specific indictments in the case and
19 the Indictments are broken down into two timeframes.
20 There are two Indictments -- one for criminal sexual
21 conduct with a minor in the second degree. That is
22 Indictment 76 -- 2013-GS-06-76. That's the Indictment
23 dealing with the dates between April 1 of 2005 and May 17
24 of 2006. He's indicted for that timeframe for criminal
25 sexual conduct with a minor in the second degree.

1 The Defendant in this particular Indictment is
2 charged with second degree criminal sexual conduct with a
3 minor. The State must prove beyond a reasonable doubt
4 that the Defendant engaged in a sexual battery with the
5 victim. Sexual battery is defined as sexual intercourse,
6 oral sex such as cunnilingus, fellatio, or anal
7 intercourse or any intrusion, however slight, of any part
8 of a person's body or of any object into the genital or
9 anal openings of another person's body except when -- or
10 the intrusion, however slight, of any part of a person's
11 body or of any object into the genital or anal openings of
12 another person's body.

13 The State must also prove beyond a reasonable doubt
14 that the victim was less than 16 years old but at least 14
15 and that the Defendant was either in a position of
16 familial, custodial, or official authority to coerce the
17 victim to submit or that the Defendant was older than the
18 victim. That's what they must prove beyond a reasonable
19 doubt for second degree criminal sexual conduct with a
20 minor and that is in the indictment 76 which you'll have a
21 specific verdict form for on that one. It simply says as
22 to the offense of criminal sexual conduct with a minor we,
23 the jury, find the defendant either not guilty or guilty
24 for the dates between April 1, '05 and May 17, '06. Okay?

25 Now, for that same timeframe he is charged with the

1 offense of a lewd upon a child between the dates of
2 April 1, '05 to May 17, '06. The Defendant is charged
3 with committing a lewd act on a minor. A minor is a
4 person under the age of 18. The State must first prove
5 beyond a reasonable doubt that the Defendant was over the
6 age of 14 -- the Defendant was over the age of 14. Next,
7 the State must prove beyond a reasonable doubt that the
8 Defendant willfully and lewdly committed or attempted a
9 lewd or lascivious act on or with the body or its parts of
10 a child under the age of 16 years with the intent to
11 arouse, appeal to, or gratify the lusts, passions, or
12 sexual desires of the Defendant or the child.

13 Willfully means voluntarily and intentionally with
14 the specific intent to do something the law forbids and
15 lewd means obscene, lustful, indecent, or lecherous.
16 Lascivious means tending to incite lust, lewd, indecent
17 obscene, intending to deprave the morals with respect to
18 sexual relations. So, that's the other offense or
19 Indictment for the time period between April 1, '05 to May
20 17, '06. Those are the two on that one: Lewd act and
21 criminal sexual conduct with a minor.

22 Now we turn to the other two Indictments dealing with
23 the timeframe between May 27 of '06 and May 29 of '06, the
24 last alleged encounter. There are two Indictments dealing
25 with that timeframe. One of them is the assault and

1 battery of a high and aggravated nature. That is in
2 Indictment 78. Assault and battery of a high and
3 aggravated nature is the unlawful act or violent injury to
4 the person of another accompanied by circumstances of
5 aggravation. An assault occurs when a person unlawfully
6 attempts or offers to commit a violent injury upon another
7 person and had the present ability to complete the
8 attempted injury. An assault is the intentional creation
9 of a reasonable fear of immediate bodily harm. It is not
10 necessary that the attempted injury or harm actually take
11 place and the battery which accompanies that -- assault
12 and battery -- the battery is the unlawful touching.

13 The assault is the attempt. The battery is the
14 touching. If I draw back to hit you, that's the assault.
15 If I hit you, that's the battery. The battery is the
16 unlawful touching of another person by a person who has
17 committed the assault. An unlawful touching can be caused
18 by a part of the accused's body or by any object the
19 accused puts in motion. The battery is the completion of
20 the assault by using or applying force to another person,
21 however slight, in a rude, angry, or resentful manner
22 without legal justification for doing so.

23 So, in order to prove assault of a high and
24 aggravated nature, the State must prove beyond a
25 reasonable doubt an assault which is the intent and a

1 battery which is the touching and they must also prove
2 beyond a reasonable doubt a circumstance of aggravation.
3 Circumstances of aggravation include the infliction of a
4 serious bodily injury, a great disparity between the ages
5 or physical conditions of the parties, or the purposeful
6 infliction of shame and disgrace. These are examples of
7 circumstances of aggravation.

8 So, in order to prove assault of a high and
9 aggravated nature the State must prove beyond a reasonable
10 doubt the intent which is the assault, the touching which
11 is the battery accompanied by aggravation and aggravation,
12 as I said, can be found from great disparity between the
13 ages or physical conditions of the parties or the
14 purposeful infliction of shame and disgrace.

15 And the last Indictment that we're looking at is the
16 Indictment for criminal sexual conduct from the timeframe
17 of May 27 '06 to May 29, '06 which is criminal sexual
18 conduct in the third degree and in order to prove third
19 degree criminal sexual conduct the State must prove beyond
20 a reasonable doubt that the Defendant engaged in a sexual
21 battery with the victim and, once again, sexual battery as
22 I just described to you is intercourse, sexual
23 intercourse, oral sex, anal intercourse, or any intrusion,
24 however slight, of any part of a person's body or any
25 object into the genital or anal openings of another

1 person's body.

2 If you find that a sexual battery did occur, then you
3 must also find and decide whether the State has proven
4 beyond a reasonable doubt that the Defendant used force or
5 coercion without any aggravating circumstances. Using
6 force or coercion means to make the victim follow a
7 prescribed and dictated course or to inflict or impose or
8 to force one's will on someone else or that the victim
9 [sic] knew or had reason to know that the victim was
10 incapacitated or physically helpless. Incapacitated
11 simply means the victim was temporarily unable to evaluate
12 or control the conduct. Physically helpless means that
13 the victim was unconscious, asleep, or for any other
14 reason physically unable to communicate consent to the
15 battery.

16 Now, Mr. Foreman, ladies and gentlemen of the jury,
17 number one, on sexual -- the two sexual Indictments, let
18 me state that there is a statute 16-3-657 that says that
19 the testimony of the victim under our law does not have to
20 be corroborated in these prosecutions. Corroborated means
21 it has to be verified. So, it does not have to be
22 verified or corroborated under that statute for these
23 particular type of offenses.

24 Now, Mr. Foreman, ladies and gentlemen of the jury,
25 your verdict as to each of the four Indictments has to be

1 considered separate and apart from the others. In other
2 words, you decide one, then the next one, then the next
3 one -- four of them. The verdict has to be unanimous.
4 All 12 of you must unanimously agree as to the verdict on
5 each one of them. Your verdict can be one of two things:
6 Not guilty or guilty. But it must be unanimous.

7 Please bear in mind that your job in this case you
8 don't have any friends to reward or enemies to punish.
9 You are the conscience of the community. You come in here
10 to determine what the true fact are and to determine
11 whether or not from those true facts the State has been
12 able to prove beyond a reasonable doubt the four offenses
13 as outlined in the four Indictments. So you determine
14 what those facts are and determine whether or not the
15 State has mets its burden.

16 If you determine that on them, then it would be a
17 guilty. If you determine that it's not, then it would be
18 not guilty. So, I'll let you take the verdict forms.
19 They'll be sent back into the jury room with you. The
20 exhibits will be sent back to you. You can look at all
21 the exhibits, whatever you need to look at. I am going to
22 ask you not to start your deliberations quite yet. I have
23 to ask the lawyers if I have left anything out or I need
24 to take anything out. That won't take but just a few
25 seconds. The bailiff will then bring in the four verdict

1 forms, hand them to you, and you can start your
2 deliberations.

3 Your lunch should be delivered. You can deliberate
4 while you eat or stop. Y'all are in charge of your
5 deliberations, however you want to do it. If at any time
6 during your deliberations you have a question, the
7 protocol or the proper procedure is for you to write it on
8 a piece of paper what the question is. Knock on the door
9 and the bailiffs will send it out here to me.

10 Sometimes I can answer it. Sometimes I can't. I'll
11 send you back the best explanation I can give you, but
12 sometimes the law will not allow me to comment on it. It
13 may be a comment on a fact or something. I can't do that.
14 That's your job. But I'll do the best I can.

15 I am going to let you go back to your jury room now.
16 Do not start the deliberating until I get everything back
17 to you in just a few minutes. Thank you.

18 (Whereupon, the jury exited the courtroom at 1:10.)

19 THE COURT: All right. Are there any requested
20 deletions, alterations, additions, et cetera, to my charge
21 by the State?

22 MISS RINGLER: None from the State, Your Honor.

23 THE COURT: Mr. Williams?

24 MR. WILLIAMS: Two items, Your Honor. Out of an
25 abundance of caution, I did not hear the Court instruct

1 that it had to occur -- I realize this is silly, but that
2 it had to have occurred in Barnwell County. I didn't hear
3 that. The second, Your Honor, is simply to except to the
4 Court's failure to charge the simple assault and battery.

5 THE COURT: Thank you. Ms. Rhonda, go ask the jury
6 to step right back in real quick.

7 While they're stepping in, Miss Ringler, Mr. Theo
8 Williams, y'all come make sure we got all of the exhibits.
9 I'll tell you what. Let's wait until they come back in.

10 (Whereupon, the jury came into open court at
11 approximately 1:13.)

12 THE COURT: Don't get real comfortable. I left out
13 one little teeny thing. It won't take but five seconds to
14 tell you. The State must also prove beyond a reasonable
15 doubt to you that the they each occurred in the County of
16 Barnwell, State of South Carolina. Thank you. Now, as
17 soon as you go back you can start your deliberating.
18 They'll send these back in there to you. Did the food get
19 here?

20 THE CLERK: Yes, sir.

21 THE COURT: So just however you want to handle that.

22 (Whereupon, the jury exited the courtroom at 1:14.)

23 THE COURT: Let the record reflect that the lawyers
24 have reviewed all of the exhibits and find them to be in
25 order and complete.

1 Mr. Williams, any additional objections after that
2 recharge other than the simple assault and battery?

3 MR. WILLIAMS: No, Your Honor.

4 THE COURT: Thank you. You may take them back and
5 tell them to start the deliberation. It is 1:15. I would
6 ask that everyone stand at ease. Be available. Do not
7 get out of sight.

8 (Whereupon, a break was taken.)

9 THE COURT: All right. I understand that we have a
10 verdict. Is the Defendant ready to receive it?

11 MR. WILLIAMS: He is, Your Honor.

12 THE COURT: All right. Ladies and gentlemen of the
13 audience, I commend you on your behavior all week long.
14 These are very, very, very difficult cases for everyone
15 involved. I have no idea what the verdict is, but I
16 expect everyone in here to respect the decision that the
17 jury renders. I will not tolerate any emotional displays.

18 So, fair warning. If you're unable to control
19 yourself or your emotions, please leave now. If I have
20 any outbursts or any problems, I have the courtroom full
21 of security and you'll be immediately taken care of by the
22 department of the officers and I'll deal with you for
23 contempt of court which means I can incarcerate you or
24 fine you substantially. So, please, please, continue to
25 act as you've acted throughout the trial. If you feel

1 like you cannot, I am asking and begging that you leave
2 now. Thank you.

3 (Whereupon, the jury came into open court at
4 approximately 1:58.)

5 THE COURT: Mr. Foreman, y'all reached a verdict?

6 THE FOREPERSON: Yes, sir, Your Honor.

7 THE COURT: Pass it up to the bailiff, please. I
8 need for you to sign the verdict as foreperson and I will
9 date it for you.

10 (The Foreman complies.)

11 THE COURT: All right. Mr. Williams, are you ready
12 to receive the verdict?

13 MR. WILLIAMS: Yes, Your Honor.

14 THE CLERK: This the matter of the State of South
15 Carolina versus Eric VanCleave on Indictment number
16 2013-06-77, as to the offense of lewd act upon a child we,
17 the jury, find the Defendant guilty. In the matter of the
18 State of South Carolina versus Eric VanCleave, Indictment
19 number 2013-GS-076, as to the offense of criminal sexual
20 conduct with a minor we, the jury, find the Defendant
21 guilty. In the matter of the State of South Carolina
22 versus Eric VanCleave, Indictment number 2013-06-79, as to
23 the offense of criminal sexual conduct we, the jury, find
24 the Defendant guilty. In the matter of the State of South
25 Carolina versus Eric VanCleave, Indictment number

1 2013-GS-078, as to the offense of assault and battery of a
2 high and aggravated nature we, the jury, find the
3 Defendant guilty.

4 THE COURT: Thank you. Anything from the jury before
5 I dismiss them by the Defendant?

6 MR. WILLIAMS: Yes, Your Honor. We'd request
7 polling.

8 THE COURT: Thank you.

9 THE CLERK: Do I need to poll for each charge?

10 THE COURT: All right. Ladies and gentlemen of the
11 jury panel, what that means is that I am going to ask --
12 the Clerk is going to ask you a question. She'll call
13 your name and say, Is this your verdict and is it still
14 your verdict? If is answer is yes, it's yes. If it's no,
15 you tell us no. She's just asking you to reaffirm your
16 verdict. So, as she calls your name, please stand. You
17 want me to do it?

18 THE CLERK: I can handle it if you want me to.
19 Indictment number 2013-079 -- this is the criminal sexual
20 conduct from 5/27/06 through 5/29/06 ---

21 THE COURT: You don't have to do each Indictment.

22 THE CLERK: I don't? Okay. All right.

23 Ms. Patricia, was that your verdict read?

24 THE JUROR: Yes.

25 THE COURT: Is it still your verdict?

1 THE JUROR: Yes.

2 THE COURT: Ms. Charlene, was that verdict that you
3 just heard?

4 THE JUROR: Yes.

5 THE COURT: Is it still your verdict?

6 THE JUROR: Yes.

7 THE COURT: Ms. Jennifer, was that the verdict that
8 you just heard?

9 THE JUROR: Yes.

10 THE COURT: Is it still your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Mr. Berry -- Jones, sorry. Jones. Was
13 that your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Ms. Viola, was that the verdict you just
18 heard?

19 THE JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Mr. Tony, was that verdict you just
23 heard?

24 THE JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 THE JUROR: Yes.

2 THE CLERK: Mr. Donald Frazier -- how many names you
3 got? Was that your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 THE JUROR: Yes.

7 THE COURT: Ms. Monique, was that your verdict and is
8 it still your verdict?

9 THE JUROR: Yes, ma'am.

10 THE CLERK: Thank you. Ms. Bertha, was that your
11 verdict?

12 THE JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Mr. O'Berry, was that your verdict?

16 THE JUROR: Yes, ma'am.

17 THE CLERK: Is it still your verdict?

18 THE JUROR: Yes, ma'am.

19 THE CLERK: And Mr. Jason, was that your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: And Ms. Gloria, was that your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 THE JUROR: Yes.

2 THE COURT: Thank you. All right.

3 Mr. Williams, the jury has been polled. They all
4 answered in the affirmative affirming the verdict.
5 Anything else for the jury?

6 MR. WILLIAMS: Nothing for the jury, Your Honor.

7 THE COURT: Thank you. Mr. Foreman, ladies and
8 gentlemen, that concludes, obviously, your service for
9 this week. We have to -- it will take us about 15 or 20
10 minutes to get all the forms for me to look at in order to
11 sentence the Defendant. You're welcome to stay for me to
12 sentence him or you are welcome to leave at the present
13 time. It will take about 10 or 15 minutes to have that
14 done.

15 If you want to go back in your jury room I'll call
16 you back out when we get ready to sentence him or you're
17 welcome to leave, whatever your pleasure may be. Y'all
18 can go back there and discuss it. The ones that want to
19 stay, stay. The ones that want to leave, fine. It won't
20 take us but just a few minutes to get ready to go.

21 (Whereupon, the jury exited the courtroom at 2:05.)

22 THE COURT: Mr. Williams, anything before I sentence
23 your client?

24 MR. WILLIAMS: No, Your Honor, except for it
25 customarily made, obviously, after the return of the

1 verdict that the Defendant would be allowed to file a
2 motion for a new trial based on the evidence presented.
3 We would argue based on the totality of the evidence
4 presented there is insufficient evidence for this jury to
5 return a verdict of guilty to any of these Indictments,
6 but other than that motion, Your Honor, we wouldn't have
7 any additional motion -- and renewing any other motions
8 I've made.

9 THE COURT: Thank you. All right. Mr. Williams,
10 obviously, it was a question of fact as to whether they
11 believed your client or believed the victim and if you --
12 if the fact-finders believe the victim, obviously, the
13 facts are there to support the verdict and to support all
14 the elements that were required to be proven on each and
15 every allegation of each and every Indictment. It was
16 strictly a factual issue and a jury question. They
17 decided against your client and found him guilty. I
18 respectfully deny the same.

19 I will do this for you. If you think that you may
20 have -- get home this afternoon and forgot that you should
21 have said something else, I'll give you 10 days to file
22 any post-trial motions that you deem -- that you may have
23 forgotten about or, you know, I remember how I used to get
24 after a trial and sometimes you don't think of everything
25 you want to think about; so I'll give you 10 days if you

1 have anything else you want to add to it.

2 MR. WILLIAMS: Thank you, Your Honor.

3 THE COURT: All right. Give me my sentencing sheets,
4 please. Does he need to sign anything?

5 MISS RINGLER: Yes, Your Honor.

6 (Whereupon, the jury came into open court at
7 approximately 2:10.)

8 THE COURT: Mr. Williams, you want to bring your
9 client forward?

10 (Whereupon, Mr. Williams and the Defendant come
11 forward.)

12 THE COURT: Mr. Williams?

13 MR. WILLIAMS: Your Honor, he's 35 years of age. He
14 was a caterer for most of his life. He's been working
15 part time. I think at one point in time we got his bond
16 changed so that he would be allowed to do displays which
17 allowed him to actually go out of town and do displays.
18 He actually has been to a psychiatrist prior to the trial
19 of this and the psychiatrist evaluated him and determined
20 that he was not subject to commit any type of sexual, I
21 guess, assault. I can -- if Your Honor allows me, I will
22 produce the document. I think Attorney Breibart had sent
23 him there. That may impact on, I guess, what you may do.
24 I don't know if you want to delay sentencing on that,
25 reason or not.

1 THE COURT: No, sir. I will -- I am going to go
2 ahead and sentence him today. If you want to submit that
3 to me along with a motion to reconsider, I'll be glad to
4 hear it.

5 MR. WILLIAMS: All right. His family are in the back
6 three rows. His father you've met. That's his mother
7 next to his father. That's his wife. Everybody else is
8 friends and or family. He's got a sister there. He's got
9 an uncle on the back row who is actually from Barnwell
10 County and his wife. He's got a lot of people that
11 support him.

12 Clearly, it's a decision by the jury. He -- it's an
13 unusual situation where you have a client who filed two
14 motions for a speedy trial to get it over with, but,
15 obviously, he did. Charges were pending for like three
16 years. He has never wavered in regards to his
17 representations to me. Obviously, it's a question of fact
18 for a jury to determine. He has no prior record.

19 THE COURT: And he understands notwithstanding what
20 has taken place here that he still faces a number of
21 charges in Lexington County dealing, I assume, with these
22 same victims?

23 MR. WILLIAMS: With the same victims.

24 THE COURT: And additional victims?

25 MR. WILLIAMS: Yes. I guess in a different venue

1 meaning, obviously, it's Lexington County versus Barnwell
2 County. He understands that that is additional potential
3 convictions and or sentencings that would be imposed.

4 THE COURT: And I assume that you've gone over with
5 him that on the criminal sexual conduct with a minor that
6 carries up to 20 years in the Department of Corrections?

7 MR. WILLIAMS: Yes, sir.

8 THE COURT: The lewd act carries up to 15.

9 MR. WILLIAMS: Yes.

10 THE COURT: Criminal sexual conduct in the third
11 degree carries up to 10 years.

12 MR. WILLIAMS: Yes, sir.

13 THE COURT: And assault and battery of a high and
14 aggravated nature carries up to 10 years.

15 MR. WILLIAMS: Yes.

16 THE COURT: The criminal sexual conduct with a minor
17 is to no-parole, 85 percent sentence classified as most
18 serious and violent.

19 MR. WILLIAMS: He understands that he'll do
20 85 percent of that particular charge and depending on how
21 Your Honor sentences whether it's concurrent or
22 consecutive he would have to serve, obviously, I guess,
23 85 percent of that sentence and maybe different amounts on
24 the ABHAN versus the 85 percent on that one. It's going
25 to be a lot of time he understands that he's facing.

1 How's that?

2 THE COURT: Mr. VanCleave, anything you want to tell
3 me before I impose sentence?

4 MR. WILLIAMS: If you want to tell him something,
5 tell him. This is your life.

6 THE DEFENDANT: Your Honor, I just -- I guess I'd
7 like to state that when the original accusations were made
8 I knew that they were false. I hired Richard Breibart who
9 at that time as you know is now in legal troubles for
10 stealing money from clients which my parents were victims
11 of that as well and I have been fighting this for three
12 years. I still stand by the fact that I did not do these
13 alleged events and when I supplied an alibi for the
14 original Indictments to my lawyer and we handed that over
15 to the prosecution, that's when they changed the dates to
16 corroborate with a time period that they were able to find
17 that I actually stayed at Barnwell County State Park and
18 it's hard to fight the fact that I stayed there that
19 weekend because I did but ---

20 THE COURT: Well, you stayed there with the children.
21 You stayed there and obviously in the bedroom ---

22 THE DEFENDANT: But the alleged victim was not there.

23 THE COURT: I understand what your position is, but,
24 you know, when you have a trial it's not unusual for one
25 side to say one thing and one side to say another thing.

1 That's why we have juries to determine and judge the
2 credibility of witnesses, and even though I am not
3 supposed to act as a fact-finder -- I am the Judge of the
4 law -- I have to sit up here and listen as well and I
5 found your story to be totally incredible, highly
6 unbelievable, and the victim -- I can't imagine why he
7 would want to come into the courtroom and fabricate the
8 deeds that were done to him for any reason whatsoever. So
9 I found him to be most credible. I agree with the jury's
10 decision.

11 Sir, you have chosen a lifestyle that is just not
12 accepted in our society. One of my main responsibilities
13 as a trial judge is to protect our children and to protect
14 them from people who pray upon them as you have done and I
15 will have to punish you accordingly. Thank you. Anything
16 else?

17 MR. WILLIAMS: No, Your Honor.

18 THE COURT: All right. As to indictment 13-GS-06-76,
19 the Indictment for criminal sexual conduct with the minor,
20 that is the most serious offense classified as violent and
21 most serious. It is an 85 percent sentence, no-parole
22 sentence. The sentence of this court is that you be
23 committed to the State Department of Corrections for a
24 period of 20 years.

25 As to the lewd act the decision of the Court is that

1 you be committed to the Department of Corrections for 15
2 years. As to criminal sexual conduct in the third degree,
3 the sentence is that you be committed to the Department of
4 Corrections for a period of 10 years. On the assault and
5 battery of a high and aggravated nature, the sentence is
6 that you be committed to the Department of Corrections for
7 10 years. I will let the lewd act, assault and battery of
8 a high and aggravated nature, and the third degree
9 criminal sexual conduct run concurrent with your 20-year
10 sentence, but you'll do 85 percent of 20 years. If my
11 math is correct, that's about 17 years before you will be
12 getting out. Good luck to you.

13 MR. WILLIAMS: Thank you, Your Honor.

14 THE COURT: Mr. Foreman, ladies and gentlemen of the
15 jury, when the legislature enacts a statute such as
16 criminal sexual conduct or lewd act they give me a range
17 that I can sentence someone to and the range I think you
18 heard me say on the assault and battery was zero to 10,
19 lewd act is zero to 15, criminal sexual conduct in the
20 third degree is zero to 10, and criminal sexual conduct
21 with a minor is zero to 20. That one is classified as a
22 most serious offense and that is a no-parole sentence.

23 If he had only been sentenced to 10 years under
24 assault and battery he would be eligible to get out on
25 parole in about two and a half years. The criminal sexual

1 conduct with a minor is a no-parole offense which means he
2 has to do 85 percent of that sentence. So he'll do 17
3 years before he is eligible for release. I ran all of the
4 other sentences -- I gave him the max, but I ran them
5 concurrent which means he'll do them all at the same time.

6 So when he's finished his sentence of 17 years he'll
7 be released not on parole but to a community supervision
8 program and he'll also be subjected to a program called
9 Sexual Violent Predator Program which means that when he
10 gets ready to be released unless he has rehabilitated
11 himself and gone through certain requirements, that he
12 could remain incarcerated under that criminal Sexually
13 Violent Predator Program indefinitely. So, if he doesn't
14 change his ways or becomes rehabilitated, he could be
15 there for a long, long time.

16 I thank you very much. Y'all paid unbelievable
17 attention. These cases are tough. When I say tough, none
18 of us like to hear things like this that goes on in our
19 community. Unfortunately, it goes on more than we know,
20 and, unfortunately, a lot of times it's not reported, and
21 it's not unusual in my experience in almost 40 years now
22 for children not to report until long after the fact.
23 It's for a number of psychological reasons and psychiatric
24 reasons. Sometimes we have psychiatrists who come into
25 the courtroom and testify about why children do not

1 report -- the stigma, the embarrassment. It's all kind of
2 reasons why they don't, but -- and a lot of these cases
3 are resolved by the Defendant going ahead and pleading
4 guilty and we'll structure some kind of sentence so he
5 won't have to serve quite as much time if he'll admit his
6 guilt. We offered this guy the same situation I did with
7 his lawyer last week. He's got charges pending in
8 Lexington County with the same victim and additional
9 victims as well. Two additional charges? At least two
10 additional victims outside of the [REDACTED] family.

11 MISS RINGLER: I think there is a total of five
12 victims in the Lexington case.

13 THE COURT: So, you know, it's tough sitting in here
14 having to listen to it. Y'all did a wonderful job. I
15 appreciate it. We can't hold criminal court without
16 people like you being ready, willing, and able to come in
17 and serve and perform your civic duty. So, I thank you on
18 behalf of the citizens of Barnwell and the judiciary and
19 everyone else. You're to be commended. I wish I could
20 get you a bigger check, but Ms. McElveen would fuss if I
21 ordered additional money. I don't want her fussing.

22 Anyway, enjoyed working with you. If there is
23 anything we can do to help you, please let us know. I'll
24 let you check out this way now. Leave your badges back
25 there and she'll send you a huge check, and, Mr. Foreman,

1 I need you to stick around.

2 (End of Transcript of Record.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



STATE'S
EXHIBIT



396

328

STATE'S
EXHIBIT



397

329

STATE'S
EXHIBIT



STATE'S
EXHIBIT





Miller's Bread-Basket





STATE'S
EXHIBIT

8



STATE'S
EXHIBIT

9



STATE'S
EXHIBIT



STATE'S
EXHIBIT

11



STATE'S
EXHIBIT

12



STATE'S
EXHIBIT

13



STATE'S
EXHIBIT

14

Hey, call me sometime Monday. Let me know what your schedule is like next weekend. Jennifer may go out of town. If she does, I was thinking that if you can help me fridat night then we can hang out afterward. We could hang out like old times in the camper even. That would be fun. Just let me know. I would love to have you help me fridat night and saturda night. But I would not need you all day Saturday, but it would be fun to have you hang out with me fridat night if Jennifer goes out of town. Well, I will talk atcha mounday sometime. See ya later bud.

Eric

STATE'S
EXHIBIT

15

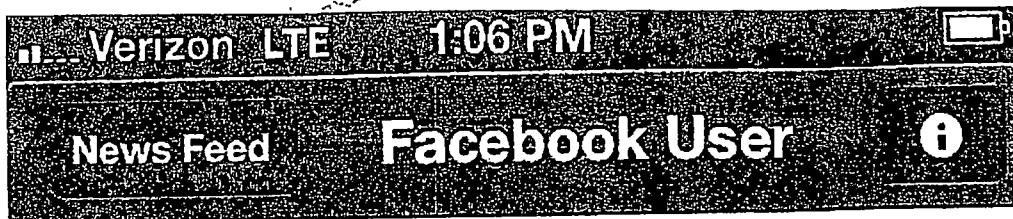
Hey bud,

I just wanted to send you a little note letting you know that I was thinking about you. You were in my dreams last night, and so was Bekah, so I sent her a message too. I just wanted you to know that even though life has sent me into a busy schedule and I don't see you very much, I still love ya man. You will always be one of my little brothers (and my favorite Shhhhhh. don't say anything). I love ya man, and I pray for you many times. I hope we can get together sometime soon. I miss ya, but I know that God is useing us where we are at. Just let this be a little reminder today that I care about you and let this encourage you to know that your biggest brother Stumpy is always here. Have a great day.

STATE'S
EXHIBIT

+

16



11/04/2009, 7:25 AM

Hey bud,

I just wanted to send you a little note letting you know that I was thinking about you. You were in my dreams last night, and so was Bekah, so I sent her a message too. I just wanted you to know that even though life has sent me into a busy schedule and I don't see you very much, I still love ya man. You will always be one of my little brothers (and my favorite Shhhhhh. don't say anything). I love ya man, and I pray for you many times. I hope we can get together sometime soon. I miss ya, but I know that God is useing us where we are at. Just let this be a little reminder today that I care about you and let this encourage you to know that your biggest brother Stumpy is always here. Have a

STATE'S
EXHIBIT

+

17



thinking about you. You were in my dreams last night, and so was Bekah, so I sent her a message too. I just wanted you to know that even though life has sent me into a busy schedule and I don't see you very much, I still love ya man. You will always be one of my little brothers (and my favorite Shhhhhh. don't say anything). I love ya man, and I pray for you many times. I hope we can get together sometime soon. I miss ya, but I know that God is useing us where we are at. Just let this be a little reminder today that I care about you and let this encourage you to know that your biggest brother Stumpy is always here. Have a great day.

Love ya man,
Eric

11/12/2009, 7:37 AM

STATE'S
EXHIBIT

+

8

Field Manager

Home | Map | Availability | Open Cash Drawer | Search | Reservations

Reports | Admin | Financials | Help | Sign Out

BARNWELL

Mark Dudley - SC Contract
SC - Park Manager II - BARNWELL - South Carolina State Parks

FIND RESERVATION: Reservation Search/List » Reservation Detail

TRANSFER DATE CHANGE EARLY CHECKOUT SWAP SITES CANCEL RES. VOID NO SHOW CHARGE POS.

ADD TO CART FEES

Reservation Actions

ADJUST FEES TO PAID REPRINT PERMIT HISTORY REPRINT RECEIPT RECEIPTS REQUEST CONF LETTER

NOTES & ALERTS

Reservation

Reservation #	Arrival	Departure	Nights	Status	Order Status	Created Date	Created By	Price	Paid
2-238289	May 27, 2006	May 29, 2006	2	Checked Out	Active	May 25, 2006 EDT	Hargrove, George, 2917	\$30.24	\$30.24

Unissued Refund	Confirmation Status	Balance	Collection Status
\$0.00	Full	\$0.00	Good Standing

Location

Park	Area	Site# (Name)	Type of Use
BARNWELL	Campground	014-BARN_CAMPGROUND_014	Overnight

Invoice

Invoice #	# of Active Charges
9316555	0

Customer

Name	Phone	Email	Phone Contact Preference	Preference Contact Type
VANCELEAVE, ERIC	8034469733		No preference	No preference

Notes/Alerts

ADD NOTE/ALERT

Reservation Details

Primary Occupant

☒ Same as customer ☐ Completed Res Details from Primary Occupant's Profile REPLACE PRIMARY OCCUPANT EDIT PRIMARY OCCUPANT

Identity/Address

Last Name	First Name	Phone	Email
Vanceleave	Eric	8034469733	

City	Zip	State/Province
Greenville	29603	South Carolina

Street Address	Country
1400 Promiss St.	United States

Customer Type Eligibility

Customer Type	ID	Eligibility Notes	Proof Shown
Standard			☐ Proof Shown

REMOVE CUSTOMER TYPE

ADD CUSTOMER TYPE

Promotional Discount

Rate Type

Family

Group

Other occupants

# of Other Occ	Max Total Allowed	Min Total Allowed
0	6	1

☐ Complete from Primary Occupant's Profile ☐ Save to Primary Occupant Profile

Pet:

Pets Allowed	# Dog	# Cat	# Horse	# Other	Pet Notes
Domestic	0	0	0	0	

☐ Complete from Primary Occupant's Profile ☒ Save to Primary Occupant Profile

of Vehicles

# of Vehicles	Max Allowed
0	2

☐ Complete from Primary Occupant's Profile ☒ Save to Primary Occupant Profile

Vehicle Info

Plate	State	Year	Model	Color

ADD VEHICLE

Camping Unit/Equipment

Max Allowed
2

☐ Complete from Primary Occupant's Profile ☒ Save to Primary Occupant Profile

Info

ADD UNIT

OK Cancel Apply

STATE'S
EXHIBIT

19

Field Manager

Home | Map | Availability | Open Cash Drawer | Search:

Reports | Admin | Financials | Help | Sign Out

BARNWELLMark Dudley - SC Contract
SC - Park Manager II - BARNWELL - South Carolina State ParksFIND RESERVATION: [Reservation Search/List](#) » [Invoice Summary](#) » [Reservation Detail](#) » [Reservation History](#)
Reservation History

Reservation	Reservation #	Arrival	Departure	Nights	Park	Area	Site # (Name)
	2-238288	May 27, 2006	May 29, 2006	2	BARNWELL	Campground	014-BARN_Campground_014

DATE/TIME	TRANSACTION TYPE	TRANS OCC	INFORMATION AT TIME OF TRANSACTION	TRANSACTION LOCATION	USER
May 25, 2006 4:18 PM EDT	Reservation	Within 7 Days before Arrival Date	Barnwell; Site# 014, Arr, May 27, 2006; Dep May 29, 2006	BARNWELL	Hargrove, George
	Make Payment	Within 7 Days before Arrival Date	\$30.24 of \$60.48 MC payment		
May 27, 2006 10:42 AM EDT	Checkin	Day of Arrival on or before 6:00pm Local Time		BARNWELL	Hargrove, George
May 29, 2006 10:43 AM EDT	Checkout	After Day of Arrival on or before Departure Date		BARNWELL	Hargrove, George

[Return To Reservation Details](#)

Production



3 03 00 259 - Thu Jan 31 21 15 00 EST 2013 generated on Thu Feb 18 10 11 13 EST 2013
 52A74D69D180XG18701240188400850 eweb03 ny 24FF66E3 C41C 485F 088B F5E013F6003A SC Contract
 Copyright © 2003-2013 The Active Network, Inc

Field Manager

Home | Map | Availability | Open Cash Drawer | Search:

Reports | Admin | Financials | Help | Sign Out

BARNWELL

Mark Dudley - SC Contract
SC - Park Manager II - BARNWELL - South Carolina State ParksFIND RESERVATION: [Reservation Search/List](#) » [Reservation Detail](#)

Reservation Actions

Reservation #	Arrival	Departure	Nights	Status	Order Status	Created Date	Created By	Price	Paid	Unissued Refund	Confirmation Status
2-238290	May 27, 2006	May 29, 2006	2	Checked Out	Active	May 25, 2006 EDT	Hargrove, George, 2917	\$30.24	\$30.24	\$0.00	Full

Reservation
 Balance Collection Status
 \$0.00 Good Standing

Location
 Park: BARNWELL Area: Campground Site# (Name): C15-BARN_CAMPGROUND_015 Type of Use: OverNight

Invoice
 Invoice #: 9310599 # of Active Charges: 0

Customer
 Name: VANCLEAVE, ERIC Phone: 8034469733 Email: No preference Phone Contact Preference: No preference Preference Contact Time:

Notes/Alerts

Reservation Details

Primary Occupant
☒ Same as customer ☐ Complete Res. Details from Primary Occupant's Profile

Last Name	First Name	Phone	Email
VanCleave	Eric	8034469733	

Identity/Address

Street Address	City	Zip	State/Province	Country
1400 Promotions Ct.	Cayson	29033	South Carolina	United States

Customer Type Eligibility
 Customer Type: Standard ID: Eligibility Notes: Proof Shown: ☐ Proof Shown:

Promotional Discount

Rate Type
 Family Group

Other occupants
 # of Other Occ: 0 Max Total Allowed: 8 Min Total Allowed: 1 ☐ Complete from Primary Occupant's Profile ☐ Save to Primary Occupant Profile

Pet
 Pets Allowed # Dog: 0 # Cat: 0 # Horse: 0 # Other: 0 Pet Notes: ☐ Complete from Primary Occupant's Profile ☒ Save to Primary Occupant Profile

of Vehicles
 # of Vehicles: 0 Max Allowed: 2 ☐ Complete from Primary Occupant's Profile ☒ Save to Primary Occupant Profile

Vehicle Info
 Plate: State: Make: Model: Color:

Camping Unit/Equipment
 Max Allowed: 2 ☐ Complete from Primary Occupant's Profile ☒ Save to Primary Occupant Profile

Info
 ADD UNIT

Production

ACTIVE
network.STATE'S
EXHIBIT

20

Field Manager

Home | Map | Availability | Open Cash Drawer | Search:

Reports | Admin | Financials | Help | Sign Out

BARNWELL

Mark Dudley - SC Contract
SC - Park Manager II - BARNWELL - South Carolina State Parks

FIND RESERVATION: [Reservation Search/List](#) » [Invoice Summary](#) » [Reservation Detail](#) » [Reservation History](#)

Reservation	Reservation #	Arrival	Departure	Nights	Park	Area	Site# (Name)
	2-238290	May 27, 2006	May 28, 2006	2	BARNWELL	Campground	015-BARN_Campground_015

DATE/TIME	TRANSACTION TYPE	TRANS OCC.	INFORMATION AT TIME OF TRANSACTION	TRANSACTION LOCATION	USER
May 25, 2006 4:19 PM EDT	Reservation	Within 7 Days before Arrival Date	Barnwell, Site# 015, Arr: May 27, 2006, Dep May 29, 2006	BARNWELL	Hargrove, George
	Make Payment	Within 7 Days before Arrival Date	\$30.24 of \$60.48 MC payment		
May 27, 2006 10:43 AM EDT	Checkin	Day of Arrival on or before 6:00pm Local Time		BARNWELL	Hargrove, George
May 28, 2006 10:43 AM EDT	Checkout	After Day of Arrival on or before Departure Date		BARNWELL	Hargrove, George

[Return To Reservation Details](#)

Production



2 33 00 2013 - Thu Jan 31 21:15:00 EST 2013 generated on Tue Feb 19 10 12:13 EST 2013
53A74890D19D503701241210B40308 mrc62-ny 24TY09EG-CAIC-EDF-90BB-F8E025F8D03A - SC Contract
Copyright © 2001-2013 The Active Network, Inc.

Field Manager

Home | Map | Availability | Open Cash Drawer | Search:

Reports | Admin | Financials | Help | Sign Out

BARNWELL

Mark Dudley - SC Contract
SC - Park Manager II - BARNWELL - South Carolina State Parks

Financial Sessions Payments Refunds Issue Refunds Deposits

Payment	Payment ID	Payment Status	Payment Type	Payment Group	Collect Location	Collect Station
	9318581	Received	MC	Credit Card	BARNWELL	

Payment Details Payment Distributions

Actions VOID PAYMENT REVERSE CHARGE BACK RETURN PAYMENT

Amount	Change Tendered	Net Amount
\$60.48	\$0.00	\$60.48

Payment Details

Batch ID	Reconciliation Job ID - Reference #
9550580	4547957830 - 9584007

Customer	Name	Phone #	Email
	Vancleave, Eric	8034469733	

Payment Attributes	Credit Card Expiry Date	Credit Card Swiped	Credit Card Holder Name	Credit Card Number	Authorization #
	12/2049	false	PURGED DATA	5491*****9403	508802

Orders	\$30.24 of this payment has been allocated to order #
	2-238289

Orders	\$30.24 of this payment has been allocated to order #
	2-238290

Refunds

Collection Info	User	Pin User	Collect Location	Collect Station	Date & Time	Phone #	Email
	sc-phargrove	Hargrove, George	BARNWELL		May 25, 2006 4:19 PM EDT		barnwell@scprt.com

Void Info	User	Void Location	Date & Time	Phone #	Email

NSF Info	User	NSF Location	Date & Time	Phone #	Email

Charge Back Info	User	Charge Back Location	Date & Time	Phone #	Email

Reverse Charge Back Info	User	Reverse Charge Back Location	Date & Time	Phone #	Email

Return Info	User	Return Location	Date & Time	Phone #	Email

Notes	Notes

Additional Notes	Add To Notes

OK Apply Cancel

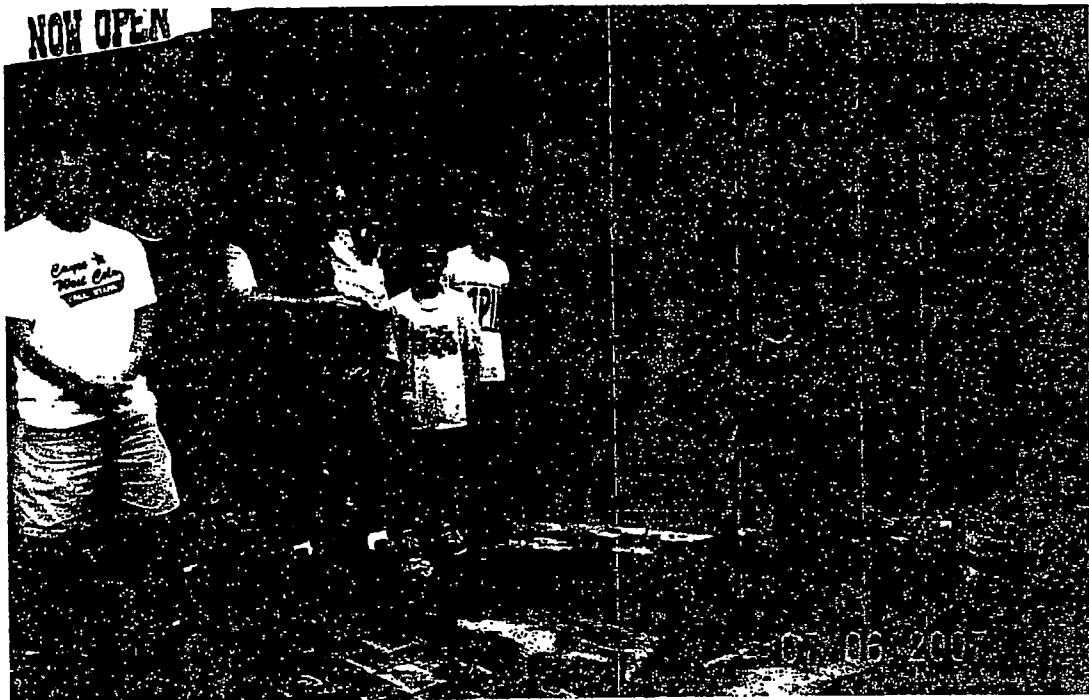
Production

ACTIVE
network.

3 03 00:299 - Thu Jan 31 21:15:00 EST 2013 generated on Tue Feb 19 10:21 10 EST 2013
52A74099018D0628701243D1B64D6B56 wwwb02-ny.24FFB0EB.CA1C-466F-988B-F5E035F8U03A - SC Contract
Copyright © 2002-2013 The Active Network, Inc.

STATE'S
EXHIBIT

21



The Wedding Ceremony
Uniting
Jennifer Rebecca Jennings
And
Eric Nelson Van Cleave

The Wedding Party
Parents of the Bride
Mr. and Mrs. Gary Joe Jennings, Sr.
Parents of the Groom
Mr. and Mrs. Donald Duane Van Cleave

Vocalist
Mr. Victim 1
Mrs. Carol Wyndham

Instrumentalist
Dick Van Cleave
Carol Wyndham
Jack T.

Guest Book Attendant
Mrs. Sarah Bach

Program Attendants
Mrs. Melia Duke
Mrs. Ellie Bragan

Reception Attendants
Miss Carol Coleman
Mrs. Judi Rollings

Officiant
Reverend Jeff Kersey

Directors
Mrs. Maria Ponder
Mrs. Leila Whitaker

The flowers are placed in loving memory of
Mr. Jim Jennings
Mr. and Mrs. Joe Martin
Mr. Dale Lawson
Mr. and Mrs. George Van Cleave

Grandparents of the Bride
Mr. and Mrs. J.C. Jennings
Grandparents of the Groom
Mr. and Mrs. Robert Lawson
Maid of Honor
Miss Jennifer Marie Pack

Best Man
Mr. Donald Duane Van Cleave

Bridesmaids
Mrs. Carol Cockran Ivey
Mrs. Karla Parris Jennings
Miss Morgan Brianne Midgett
Miss Amy Joanne Moore
Miss Rebekah T.

Groomsmen
Mr. Thomas Alexander Bean
Mr. Gary Joe Jennings, Jr.
Mr. Victim 1
Mr. Victim 2
Mr. Neil Allen Van Cleave

Flower Girl
Miss Gina Grace Ivey

Ring Bearer
Mr. Drew Alexander Ivey

Prelude
Seating of the Grandmothers
Seating of the Mothers
Solo
Come and Fill This Place
Wedding Party Processional
Greeting
Declaration of Intent
Response of family and friends
Scripture Reading *Ephesians 5*
Prayer
Exchanging of Vows
Blessing and Exchange of Rings
Solo *I Will Be Here*
Declaration of Marriage
Dismissal with Blessing
Recessional *Hallelujah Chorus*

**AFFIDAVIT & NOTIFICATION OF
SALE OF MOTOR VEHICLE**
(Entire Form Must Be Typed or Printed)

No. 34267944

Personally appeared before me Gary A. Davis for Holiday On Wheels, Inc. 40 279 885
(Seller) (Dealer Retail Tax #)

8015 Sumter Highway, Columbia, B. C. 29209

(Address)

who being duly sworn, deposes and says that on the 2nd day of May 20 05,

he sold the following motor vehicle: Make Coleman CT Model Bayside

Year 2004 Identification (Serial) No. 4CP678H1947257772

License No. _____ to Eric N. Vancleave
(Buyer)

1409 Prentiss St., Cayce Lexington South Carolina 29033
(Street) (City) (County) (State) (Zip)

Special Mailing Address

Deponent further states that there are no liens or encumbrances on the said vehicle except as listed below:

Lienholder S. C. Federal Credit Union Amount \$10,000.00
Rivers Annex, 6209 Rivers Avenue
Address N. Charleston, S. C. 29149 Date 05/02/2005

I certify that the odometer now reads NA (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

☐ (1) I hereby certify that to the best of my knowledge, the odometer reading reflects the amount of mileage in excess of its mechanical limits.

☐ (2) I hereby certify that the odometer reading is NOT the actual mileage. WARNING - ODOMETER DISCREPANCY

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Gary A. Davis
(Signature of Seller)

Holiday On Wheels, Inc.
(Print Seller's Name)

Eric N. Vancleave
(Signature of Buyer)

Eric N. Vancleave
(Print Buyer's Name)

Property Tax Section

Check One:

☐ Purchase License Plate

D.L. Number ✓ 007253832

License Plate Issued CT68860

☐ Transfer License Plate

Eric N. Vancleave
Signature of Buyer/If purchasing plates

Property taxes will be due in 120 days

**DEFENDANT'S
EXHIBIT**

TOP COPY - TO DIVISION OF MOTOR VEH.
PINK COPY - TO DIVISION OF MOTOR VEH.

3
LICENSING APPLICATION. YELLOW COPY - FOR DEALER'S FILE.
PAGES ARE TO BE OBTAINED. GOLDENROD COPY - TO BUYER.



South Carolina Department of Motor Vehicles

BILL OF SALE
(Must Be Typed or Printed in Black Ink)

FOR DEPARTMENT USE ONLY

Check One:

☐ Purchase License Plate

☐ Transfer License Plate

I, ERIC N VAN CLEAVE
1409 PRENTISS ST. CAYCE SC 29033
Street City State Zip Code

state that on the 27th day of SEPTEMBER Yr. 2006 the following vehicle:

MAKE FLEETWOOD MODEL GRAND BODY TYPE CMP YEAR 2004

VEHICLE IDENTIFICATION NO. 4CP678H1947257772 LICENSE NO. _____

was sold to JOHNS RV SALES + SERVICE
242 GLASSMASTER RD. LEXINGTON SC 29072
Street City State Zip Code

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle \$ _____
Less trade-in \$ _____
Taxable Total \$ _____

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads N/A (no tenths) miles and to the best of my knowledge that it reflects the ACTUAL MILEAGE of the vehicle described herein, UNLESS one of the following statements is checked.

STOP!

DO NOT check one of the following unless it applies.

1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.

2. I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

WARNING: Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

[Signature] 9-27-06
Signature(s) of Buyer(s) Date
[Hand Print]
Hand Print Name(s) of Buyer(s)

[Signature] 9/27/2006
Signature(s) of Seller(s) Date
Eric VanCleave
Hand Print Name(s) of Seller(s)

Return to: South Carolina Department of Motor Vehicles
P.O. Box 1498
Blythewood, S.C. 29016-0024

ANY ALTERATION OR ERASURE VOIDS THIS DOCUMENT.
ORIGINALS MUST BE SUBMITTED TO THE DEPARTMENT.

Form 4031 (Rev. 8-05)

**DEFENDANT'S
EXHIBIT**
4

STATE OF SOUTH CAROLINA
COURT OF APPEALS
APPEAL FROM BARNWELL COUNTY
COURT OF GENERAL SESSIONS

The Honorable Doyet A. Early, III, Circuit Court Judge

Indictments Nos. 2013-GS-06-76, 2013-GS-06-77, 2013-GS-06-78, 2013-GS-06-79

The State of South Carolina Respondent,

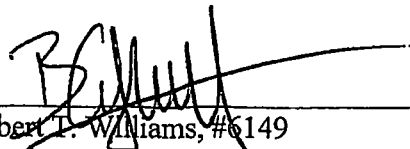
v.

Eric VanCleave Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and complies with the Supreme Court's Order dated August 13, 2007.

February 20, 2014



Robert T. Williams, #6149
Benjamin A. Stitely, #75339
Williams, Hendrix, Steigner & Brink, P.A.
206 East Main Street
Post Office Box 849
Lexington, South Carolina 29071
(803) 359-1550
Attorneys for Appellant

STATE OF SOUTH CAROLINA
COURT OF APPEALS
APPEAL FROM BARNWELL COUNTY
COURT OF GENERAL SESSIONS

RECEIVED
MAR 05 2014
SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit Court Judge

Indictments Nos. 2013-GS-06-76, 2013-GS-06-77, 2013-GS-06-78, 2013-GS-06-79

The State of South Carolina Respondent,

v.

Eric VanCleave Appellant.

FINAL BRIEF OF APPELLANT

Robert T. Williams, Sr., #6149
Benjamin A. Stitely, #75339
Williams, Hendrix, Steigner & Brink, P.A.
206 East Main Street
Post Office Box 849
Lexington, South Carolina 29071
(803) 359-1550

Attorneys for Appellant

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	2, 3
Argument	4
1. The Trial Judge erred in allowing the State to go forward with new indictments that were presented to the Grand Jury in February of 2013, after Appellant had presented his alibi evidence and almost three years after his arrest.	4
2. The Trial Judge erred by allowing into evidence the testimony from two brothers of the alleged victim as to alleged bad acts committed by Appellant on the two brothers at different times and at different locations from those alleged by their victim brother.	10
3. The Trial Court erred in not granting Appellant's motions for directed verdict where the evidence presented by the State fell far short of what is required for a jury to return a verdict of guilty beyond a reasonable doubt.	14
Conclusion	20

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Barker v. Wingo</u> , 407 U.S. 514, 92 S.Ct. 2182 (1972)	8, 9
<u>State v. Beck</u> , 342 S.C. 129, 536 S.E.2d 679 (2000)	12
<u>State v. Edwards</u> , 298 S.C. 272, 379 S.E.2d 888 (1989)	14
<u>State v. Gillian</u> , 373 S.C. 601, 646 S.E.2d 872 (2007).	12
<u>State v. Henry</u> , 313 S.C. 106, 432 S.E.2d 489 (Ct. App. 1993)	14
<u>State v. Langford</u> , 400 S.C. 421, 735 S.E.2d 471 (2012).	7, 8, 9
<u>State v. Lee</u> , 375 S.C. 394, 653 S.E.2d 259 (2007).	9
<u>State v. Tutton</u> , 354 S.C. 319, 580 S.E.2d 186 (Ct. App. 2003)	14
<u>State v. Wallace</u> , 384 S.C. 428, 683 S.E.2d 275 (2009)	11, 12, 13
<u>State v. Weaverling</u> , 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999)	12
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001)	12
<u>United States v. MacDonald</u> , 456 U.S. 1, 102 S.Ct. 1497 (1982)	8

STATUTES

Article VI United States Constitution	7
S.C. Const. art. I, § 14	7
Rule 3(c)(d), South Carolina Rules of Criminal Procedure	7
Rule 5(e), South Carolina Rules of Criminal Procedure.	5
Rule 19(a), South Carolina Rules of Criminal Procedure	14
Rule 401, South Carolina Rules of Evidence	11
Rule 403, South Carolina Rules of Evidence	12
Rule 404(b), South Carolina Rules of Evidence	10, 13

STATEMENT OF ISSUES ON APPEAL

- 1. Did the Trial Judge err in allowing the State to go forward with new indictments that were presented to the Grand Jury in February of 2013, after Appellant had presented his alibi evidence, and almost three years after his arrest?**
- 2. Did the Trial Judge err by allowing into evidence the testimony from two brothers of the alleged victim as to alleged bad acts committed by Appellant on the two brothers at different times and at different locations from those alleged by their victim brother?**
- 3. Did the Trial Court err in not granting Appellant's motions for directed verdict where the evidence presented by the State fell far short of what is required for a jury to return a verdict of guilty beyond a reasonable doubt?**

STATEMENT OF THE CASE

On April 1, 2010 Eric VanCleave was arrested on eight (8) charges emanating from Barnwell County: K-338461 Criminal Sexual Conduct with a Minor 11-14 YOA 2nd Degree; K-338462 Criminal Sexual Conduct with a Minor 11-14 YOA 2nd Degree; K-338463 Criminal Sexual Conduct with a Minor 11-14 YOA 2nd Degree; K-338464 Criminal Sexual Conduct with a Minor Under 16 YOA 2nd Degree; K-338465 Committing/Attempting Lewd Act on Minor; K-338466 Committing/Attempting Lewd Act On Minor; K-338467 Committing/Attempting Lewd Act on Minor; and, K-338468 Committing/Attempting Lewd Act on Minor. (Warrants)

On September 30, 2010 the Grand Jury for Barnwell County returned True Billed indictments for four (4) of the charges: 2010-GS-06-272 for warrant K-338462 Criminal Sexual Conduct with Minor 2nd Degree; 2010-GS-06-273 for warrant K-338464 Criminal Sexual Conduct with a Minor 2nd Degree; 2010-GS-06-274 for warrant K-338466 Lewd Act Upon Minor; and 2010-GS-06-275 for warrant K-338468 Lewd Act Upon a Minor.

On June 26, 2012 Attorney Robert T. Williams, Sr., attorney for Appellant filed and served on the State Motions for Discovery. On July 25, 2012 Attorney for Appellant filed and served a Notice of Motion and Motion for Speedy Trial. On January 16, 2013 Attorney for Appellant filed and served an additional Notice of Motion and Motion for Speedy Trial.

On February 25, 2013 Appellant appeared in Barnwell General Sessions Court, prepared for trial on the September 2010 indictments. On February 25, 2013, four (4) new indictments were true billed by the Barnwell County Grand Jury, Indictment Numbers 2013-GS-06-76, 2013-GS-06-77, 2013-GS-06-78, and 2013-GS-06-79.

The Trial Judge continued the trial of Appellant until April 1, 2013 as a result of the

newly indicted charges.

Appellant was tried over a two (2) day period of April 1, 2013 and April 2, 2013 with a guilty verdict being rendered as to all four (4) February 2013 indictments. The 2010 indictments were never tried. Appellant was sentenced to a term of twenty (20) years on Indictment No. 2013-GS-06-76 for Criminal Sexual Conduct with a Minor - 2nd Degree; fifteen (15) years on Indictment No. 2013-GS-06-77 for Lewd Act Upon a Child Under 16; ten (10) years on Indictment No. 2013-GA-06-78 for Assault and Battery of High and Aggravated Nature; and ten (10) years on Indictment No. 2013-GS-06-79 for Criminal Sexual Conduct - 3rd Degree. All sentences were ordered to run concurrent.

Appellant timely served and filed his Notice of Intent to Appeal on April 10, 2013. The Court Reporter requested and was granted several extensions of time until Appellant's attorney received the transcript on July 23, 2013. Appellant requested and was granted an extension to file his Initial Brief and Designation of Matter until September 23, 2013.

ARGUMENT

I. The Trial Judge erred in allowing the State to go forward with new indictments that were presented to the Grand Jury in February of 2013, after Appellant had presented his alibi evidence and almost three years after his arrest.

Eric VanCleave was arrested on April 1, 2010 and charged with eight (8) counts of sexual misconduct: (1) Criminal Sexual Conduct with a Minor 2nd Degree (Warrant No. K-338461); (2) Criminal Sexual Conduct with a Minor 2nd Degree (Warrant No. K-338462); (3) Criminal Sexual Conduct with a Minor 2nd Degree (Warrant No. K-338463); (4) Criminal Sexual Conduct with a Minor 2nd Degree (Warrant No. K-338464); (5) Committing or Attempting a Lewd Act Upon a Minor (Warrant No. K-338465); (6) Committing or Attempting a Lewd Act Upon a Minor (Warrant No. K-338466); (7) Committing or Attempting a Lewd Act on a Minor (Warrant No. K-338467); and, (8) Committing or Attempting a Lewd Act Upon a Minor (Warrant No. K-338468).

Four (4) of the above stated warrants, K-338462, K-338464, K-338466, and K-338468, were subsequently submitted to the Barnwell Grand Jury on September 30, 2010 resulting in True Billed Indictments. Those indictments incorporated the allegations contained in those warrants specific to dates, times, and places. All four (4) warrants and the resulting indictments alleged sexual crimes allegedly committed by Appellant on Victim 1 on the dates of April 20, 2003 and March 27, 2005 in Barnwell County, South Carolina. Those indictments were for the offenses of Criminal Sexual Conduct with a Minor Second Degree, Criminal Sexual Conduct with a Minor Second Degree, Lewd Act Upon a Minor, and Lewd Act Upon a Minor, respectively.

On July 24, 2012 Appellant's attorney filed and served a Notice of Motion and Motion for Speedy Trial. When no hearing was granted, nor order addressing the trial date was issued,

Appellant's attorney filed and served a second Notice of Motion and Motion for Speedy Trial on January 14, 2013.

Appellant was notified that his case would be tried February 25, 2013. In compliance with Rule 5(e) of the South Carolina Rules of Criminal Procedure, Appellant timely notified the Prosecutor of his intention to offer alibi evidence that would conclusively prove that Appellant could not have been in the County of Barnwell on the two (2) dates alleged in the indictments. This alibi, therefore, would have resulted in an acquittal of all charges that were pending for trial, on the 2010 Grand Jury Indictments in Barnwell County.

On February 25, 2013, the first day of the trial week selected for Appellant, the State presented to the Barnwell Grand Jury four (4) new indictments for warrants K-338463, K-338467, K-338465, and K-338461. These indictments were listed as 2013-GS-06-76 Criminal Sexual Conduct with Minor, 2013-GS-06-77 Lewd Act Upon a Child, 2013-GS-06-78 Assault and Battery of a High and Aggravated Nature and 2013-GS-06-79 Criminal Sexual Conduct Third Degree .

These new indictments, presented almost thirty-five (35) months after Appellant's arrest, now alleged a different and more expanded time frame for the offenses occurring between April 1, 2005 and May 17, 2006 (R. pp. 302-304), for indictment 2013-GS-06-76 and 2013-GS-06-77; and between May 27, 2006 and May 29, 2006 (R. p. 304, l. 22; p. 307, l. 1); for Indictment 2013-GS-06-78 and 2013-GS-06-79.

These new indictments reflected the warrant numbers of those arrest warrants that had previously not been presented before by the Grand Jury, K-338461, K-338463, K-338465, and K-338467: The allegations contained on those warrants were for offenses that allegedly occurred either on April 11, 2004 or March 30, 2002.

These allegations contained in the new indictments expanded the time period Appellant was forced to defend from April 11, 2004, on the Criminal Sexual Conduct with a Minor 2nd Degree, and Lewd Act Upon a Minor to the time period of April 1, 2005 until May 17, 2006. Additionally, the Assault and Battery of a High and Aggravated Nature and Criminal Sexual Conduct in the 3rd Degree Indictments expanded the time period the Appellant had to defend from March 30, 2002 to between May 27, 2006 and May 29, 2006.

Appellant argued that the State should not be allowed to prosecute the new indictments presented on February 25, 2013, the very week Appellant was to be tried, because of the extreme length of time that had elapsed since Appellants arrest; and because the change of the dates of the alleged events was clearly an attempt to circumvent Appellant's timely alibi defense presented. The Appellant was forced to defend himself without the aid of two of his witnesses who would have supported his innocence during the new additional time periods because they had died during this thirty-five (35) month period between arrest and new indictments. (R. pp. 058-072)

The Trial Judge erred by refusing to dismiss the indictments (R. p. 067, l. 3-18) requiring Appellant's attorney to acquiesce in a continuance. (R. p. 066, l. 18; p. 67, l. 18) Appellant did not have the ability to present evidence these two (2) witnesses would have been able to state and thus hamstrung his defense.

The Trial was rescheduled for April 1, 2013. Appellant reiterated his contention that the State should not be allowed to move forward with these four (4) new indictments for the identical reasons stated at the prior hearing. The Trial Judge again allowed the State to go forward. (R. pp. 106-110)

Appellant contends that the delay in trial and the efforts of the State to seek new indictments after being presented with definitive alibi evidence acted to deny Appellant a fair

trial.

The right of an accused to a fair, speedy, and impartial trial was first set forth by the VI Amendment of the United States Constitution and by Article I, Section 14 of the South Carolina Constitution.

The right of trial by jury shall be prescribed inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by counsel or by both.

S.C. Const. art. I, § 14.

The South Carolina Legislature took steps in furtherance of this important protection of the rights of an accused when it enacted Rule 3(c)(d) of the South Carolina Rules of Criminal Procedure and placed a frame work for how the State was to handle warrants.

Within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the Solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, *and* presented to the Grand Jury...

(d) Extensions of Time: the Solicitor may petition circuit court for an order delaying action on the warrant, as set forth above, for successive ninety (90) day periods *if* the circuit court specifically finds good cause for such delay for each successive ninety (90) day period.

Rule 3(c)(d), SCRCrimP.

The South Carolina Supreme Court recently dealt with due process, speedy trial issues, and what control the Solicitor, i.e.. The State, has to call a Defendant to trial. State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012).

In State v. Langford the Court determined that § 1-7-330 was unconstitutional in that it

gave the Solicitor exclusive authority as to the order in which cases on the trial docket are called for trial.

Although there was some time spent in State v. Langford dealing with whether the Solicitor engaged in calling certain cases when a particular Judge was available, its true importance is its ongoing discussion as to an accused's right to a speedy trial. State v. Langford, 400 S.C. 421, 735 S.E. 2d 471 (2012), *See also* Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182 (1972); *See also* United States v. MacDonald, 456 U.S. 1, 102 S.Ct. 1497 (1982) which set forth what examinations must be done to determine whether an accused's due process rights were violated by his being denied a speedy trial.

The Court in Barker v. Wingo provides the four (4) factors that must be examined to determine whether there has been a denial of a defendant's right to a speedy trial. First, the Court must look to the length of delay. Secondly, the Court must look to the Government's (State's) reasons for delay. Thirdly, the Court must look to the Defendant's assertions of his rights to a speedy trial. Lastly, the Court must look to the prejudice that Defendant has suffered as a result of this delay. Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182 (1972). The first factor of delay is apparent in Appellant's case. Appellant was arrested April 1, 2010 and was not *scheduled* for trial until the term of General Sessions Court of February 25, 2013. The delay is obviously thirty-five (35) months or approximately three (3) years.

There is nothing in the Record that excuses this long period of delay. The Solicitor argues as an excuse for the delay that there was: (1) a change of attorneys; (2) other pending charges in Lexington County; (3) only Court in Barnwell County four (4) times a year (R. pp. 063-064). At no point does she say how those three (3) factors caused a delay in Appellant's trial.

As to the third factor referenced in Barker, supra, there is no action undertaken by Appellant to delay his trial up until the week of February 25, 2013 but quite the opposite. He filed a Motion for Speedy Trial on July 24, 2012 and then again on January 14, 2013. (R. p. 61, l. 8-10) (see Motions)

A deliberate attempt by the State to delay the trial as a means of impairing the accuser's ability to defend himself 'should be weighed heavily against the government...' Neutral reasons, which could include overcrowding dockets or negligence are weighted less heavily 'but still count against the State because it bears the ultimate responsibility for these circumstances'.

State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012)

Here, where Appellant filed two (2) Motions for a Speedy Trial, this delay State caused should be weighed heavily against the State. There is nothing in the record that was presented by the Solicitor that indicated any complicating factors as to the facts that were alleged; or lack of availability of any witnesses; or anything further explaining why Appellant had not been tried.

The Appellant has sufficiently presented evidence as to the first three (3) factors set forth by Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182 (1972) as elucidated by State v. Langford, supra. Lastly, the Court should look at what prejudice the Appellant has suffered.

After almost three (3) years, after two (2) Motions for a Speedy Trial, after the State is shown that it cannot convict Appellant as indicted, the State informs Appellant of four (4) new indictments. The State sought these new indictments alleging different time periods in his life almost eight (8) years prior to the date of trial. Additional prejudice was caused with the new indictments where Appellant was forced to proceed without those two witnesses to substantiate Appellant's innocence because they were deceased. (R. pp. 062-063)

Appellant further relies upon State v. Lee, 375 S.C. 394, 653 S.E.2d 259 (2007). In Lee,

the Court recognizes that pre-indictment delay is a violation of the Due Process clause of the Fifth Amendment and does not require a Defendant to prove that the State possessed improper motives in order to succeed in a challenge to the State's improper delay in bringing Appellant's case to trial.

The Appellant has been denied his due process rights by his trial not being held in a prompt manner, violating procedures enumerated by the Federal and State Constitutions, the South Carolina Rules of Criminal Procedures, and in contradiction to Federal and State case law and jurisprudence.

II. The Trial Judge erred by allowing into evidence the testimony from two brothers of the alleged victim as to alleged bad acts committed by Appellant on the two brothers at different times and at different locations from those alleged by their victim brother.

Rule 404(b), South Carolina Rules of Evidence provides "evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent."

The State in Appellant's case was permitted to introduce the testimony from the alleged victim's two brothers to support and bolster victim's veracity and assert additional support to the allegations of abuse allegedly committed by Appellant.

Victim 2 was allowed to testify before a jury that he had his private parts grabbed by Appellant while they were on a camping trip to Maggie Valley, North Carolina. (R. pp. 206-208) He further testified that this event occurred either during the Summer of 2005 or Summer of 2006 and that he was 17 at the time. (R. p. 206, l. 8-14) He further testified that he did not report the alleged event, for several years, until after his brother Victim 1, the alleged victim, did. (R. p.

209, l. 15; p. 210, l. 1)

Victim 3 was allowed to testify before a jury that he also had his private parts grabbed by Appellant while he was camping in Cherokee in either 2004 or 2005 when he was either 12 or 13. He further testified that he did not report it until his brother, Victim 1, the alleged victim, came forward in 2010. (R. pp. 190-202)

The alleged victim, Victim 1, testified during an in camera hearing that the assaults began as early as 2000 or 2001. (R. p. 078, l. 15-17) He further testified that assaults occurred on camping trips to Barnwell County, at Appellant's home, at Barnyard Flea Market in Lexington County, as well as at Florida and Auburn football games. (R. p. 080, l. 11-18) Lastly, the victim testified that the alleged abuse was ongoing from ages of 11 to 16. (R. p. 081, l. 21-22)

The Court concluded that the brother's testimonies were admissible because they were, (a) relevant under Rule 401, SCRE; (b) they were are substantial similarities with the allegations raised by the victim; (c) that under a 403 analysis their testimonies were more probative than prejudicial. (R. p. 112, l. 1-15)

The four (4) indictments that Appellant was tried on alleged that Appellant had engaged in a sexual battery with the victim who was between the ages of 14 and 16 and that he committed a lewd act upon that victim while the victim was under the age of 16 during the time span between April 1, 2005 and May 17, 2006 in Barnwell County. The indictments further alleged that the Appellant committed a sexual battery and committed a violent injury to the victim between May 27, 2006 and May 29, 2006 in Barnwell County. (See Indictments 2013-GS-06-76, 77, 78, and 79)

State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009) provides a format for the Trial Judge to use when admitting evidence of other bad acts. The Appellant contends the trial court

erred in its Wallace analogy. In the Wallace case, the Court emphasizes that (1) the evidence must be relevant; (2) the similarities of the testimony must outweigh the dissimilarities; (3) then the issue is then whether the evidence is more prejudicial than probative under such so as to require its exclusion under Rule 403, South Carolina Rules of Evidence. (See State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007))

Additionally, in the review of bad act evidence that does not result in a conviction, it must be "clear and convincing." State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001); State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000); State v. Weaverling, 337 S.C. 460, 523 S.E.2d. 787 (Ct. App. 1999)

If the allegations raised by the victim's two brothers are to be considered as admissible, those allegations must be demonstrated by clear and convincing evidence.

In this testimony, Victim 2 could not recall if the one-time assault occurred in the Summer of 2005 or 2006 although he does recall he was 17. (R. p. 091, l. 1-14)

In his testimony, Victim 3 could not recall if the two (2) events he recalled being subject to happened in 2004 or 2005. (R. pp. 094-095) He lastly testified that he told no one until after his brother the victim came forward. (R. p. 097, l. 6-18)

Appellant argues that none of the allegations presented by either brother was supported by an arrest and that both alleged events were investigated by the Federal Bureau of Investigation without issuance of any warrant. (R. p. 100, l. 17-24) Obviously the lack of detail offered by both brothers as to the events, failing to testify exactly when it occurred, as well as failing to testify to a time span elapsed, demonstrates a failure of proof shown to be clear and convincing evidence.

The trial court should consider five (5) factors when determining

whether there is a close degree of similarity between the bad act and the crime charged: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and the manner of the occurrence.

State v. Wallace. 384 S.C. 428, 683 S.E.2d 275 (2009)

When reviewing the similarities of the testimony of the three (3) brothers vs. the dissimilarities and in an attempt to analyze the evidence in accordance with State v. Wallace, the following must be noted: (1) that the age of the victims differed; (2) locations of the alleged assaults differed; (3) there was no alleged coercion or threats linked with any of the allegations; and, (4) the time spans are different.

Although the State argued that all three (3) events allegedly occurred on camping trips, one was reportedly in Cherokee, North Carolina, another one was Maggie Valley, North Carolina, and the victim's allegations involves Barnwell State Park in Barnwell, South Carolina.

Particularly of note, was that there is no alleged coercion nor threats linked with any of the allegations. This lack of coercion go to the weight of any testimony to why these alleged events would go for an extended period of time without being reported and clearly falls short of the standard of clear and convincing.

Lastly, the testimony of the two (2) brothers offered under Rule 404(b) is certainly more prejudicial than probative. Without the improperly admitted testimony, the State would be restricted to testimony of one alleged victim who did not report any alleged abuse for several years; who could not testify with accuracy or specificity as to when the alleged abuse occurred; and a lack of any corroborating testimony.

Appellant denied each and every allegation the alleged victim asserted while having to

resort to the only way of conclusively proving he was innocent, by proving he was not in Barnwell when the events supposedly happened. With the unsupported allegations of the brothers, the State is bootstrapping unsupported evidence to bolster prejudice against the Appellant.

The admission of the testimony of the brothers should have been barred if, one looks to the cases of State v. Tutton, 354 S.C. 319, 580 S.E. 2d. 186 (Ct. App. 2003) and State v. Henry, 313 S.C. 106, 432 S.E.2d. 489 (Ct. App. 1993). There appeared to be a substantial period of time between the uncharged assaults and the charged offenses. There was further no alleged allegations involving the "victim's" brothers after these isolated allegations.

When the question of evidence admission is a close one, the Appellant should be given the benefit of the doubt. State v Henry, 313 S.C. 106, 432 S.E.2d 489 (Ct. App. 1993)

III. The Trial Court erred in not granting Appellant's motions for directed verdict where the evidence presented by the State fell far short of what is required for a jury to return a verdict of guilty beyond a reasonable doubt.

Rule 19 of the South Carolina Rules of Criminal Procedure provides the framework for motions for directed verdicts in criminal cases.

On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charges in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial Judge shall consider only the existence or non-existence of the evidence and not its weight.

Rule 19, South Carolina Rules of Criminal Procedure (a)

State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989) reminds us that a trial court should not hesitate to grant a Defendant's (Appellant's) motion where the evidence presented merely raises a suspicion of guilt.

Appellant moved for a directed verdict at the end of the State's case; (R. pp. 221-224) and at the conclusion of the entry of all evidence (R. p. 291, l. 13-22); additionally he renewed all prior motions as well as moved for a New Trial at the return of the Jury's Verdict. (R. pp. 316-317) All to no avail.

A review of the testimony is appropriate to consider whether the directed verdict motions should have been granted.

Indictment 2013-GS-06-76 alleges that Appellant committed a sexual battery on Victim 1 in Barnwell County when the victim was between the ages of 14 and 16 sometime during a time span between April 1, 2005 and May 17, 2006. (See Indictment)

Indictment 2013-GS-06-77 alleges that Appellant committed a lewd and lascivious act upon Victim 1 who was under the age of 16 in Barnwell County sometime during a time span between April 1, 2005 and May 17, 2006. (See Indictment)

Indictment 2013-GS-06-78 alleges that Appellant committed an act of violent injury to Victim 1 in Barnwell County between the dates of May 27, 2006 and May 29, 2006. (See Indictment)

Indictment 2013-GS-06-79 alleges that Appellant engaged in a sexual battery on Victim 1 in Barnwell County between the dates of May 27, 2006 and May 29, 2006. (See Indictment)

In its totality, review of the testimony presented indicates that there was, at best, merely a suspicion of guilt and nothing more.

Victim 1, the alleged victim, testified that the sexual assaults began around 2001-2002 in Lexington County. He further alleges the basis of the four (4) indictments Appellant is being tried on are for two (2) events in Barnwell County, Easter of 2005 and Memorial Day 2006. (R. pp. 152-154; p. 158; p. 161; p. 164) This testimony was different from what he previously

provided SLED, when he stated that the assaults occurred every Easter holiday from 2001-2006 at Barnwell State Park. (R. p. 150, l. 15-25) This testimony appears to be further contradicted when considering the photographs introduced over Appellant's objection, which indicated the first trip to Barnwell was either 2004 or 2005. (R. p. 151)

The alleged victim further testified that the first assault occurred on a trip to Barnwell State Park that included Mike Sanders, Eric (Appellant), victim's brothers, Victim 3, Victim 2, and Victim 4. (R. p. 131, l. 8-23) This trip included no photographs, the only photographs offered (Exhibit 1-14), having been introduced over Appellant's objection, were for a trip in 2004 where no alleged assault occurred. (R. pp. 127-128)

The alleged victim testified the second assault in Barnwell County occurred Memorial Day weekend of 2006, or May 28, 2006 - May 29, 2006. (R. p. 153, l. 9-13; pp. 162-164) On this occasion he stated that Victim 2, Victim 3, and Victim 4, his brothers were present. (R. p. 161, l. 22; p. 162, l. 4)

Marshall Richburg, the administrator for Barnwell County State Park testified that Appellant reserved two (2) campsites for the dates of May 27, 2006 - May 29, 2006 but could not testify who stayed at the sites. (R. pp. 172-179)

Mike Sanders testified that he went on two (2) trips to Barnwell State Park, Easter of 2004 (Spring 2004) and Halloween of 2005. He further testified that he never observed anything done improperly in regards to the victim. (R. pp. 181-185)

Victim 3 testified that Appellant assaulted him on a trip to Cherokee when he was 13. (R. pp. 191-194) He admits under cross-examination that he told the police officer that he was between the ages of 10-12. (R. pp. 196-197) He further confirms that this trip was taken along with the Wick family. (R. p. 191)

Victim 2 testified to a similar assault that occurred on a camping trip to Maggie Valley in the Summer of 2005 with Victim 4 and Appellant present, when he was 17. (R. pp. 206-208) Lastly, he admits that if he went to Maggie Valley or Ghost Town he would have been over 18 if it occurred after June 17, 2007 and the Wick family would not have been there. (R. pp. 210-211) When confronted with pictures of the Wicks, himself, Victim 4, and Appellant, he was forced to admit that the Wick family was there. (R. pp. 212-213)

Denneah Wick, the creator of the pictures of the Maggie Valley, Ghost Town, and Cherokee trips, which accurately revealed who was present, testified that this occurred on the July 4, 2007 weekend. Present on that trip was Blair W., Victim 2, Eric VanCleave, Elizabeth W., Jared W., Victim 4, Jackson W., and herself. (R. pp. 229-233) Ms. Wick further denies that Victim 3 was present contrary to his testimony. (R. p. 231, l. 20-25)

Additionally, Denneah Wick testified that she went to Barnwell State Park on that Memorial Day weekend of 2006 along with her husband, four (4) children, Appellant, Victim 2 and Victim 4 but *not* Victim 1, again contrary to his testimony. (R. pp. 228-232)

Eric VanCleave the Appellant, testified that; (1) he never went to Barnwell State Park between the dates of April 1, 2005 and May 17, 2006; (2) he was in Charleston on Easter Weekend of 2005; (3) and he was home listening to the University of South Carolina Football game on the Halloween of 2005 weekend. (R. p. 265; pp. 270-271) He further testified where he was on all of the Holidays between April 1, 2005 and May 17, 2006 and confirming he was not at Barnwell State Park. (R. pp. 271-274)

Appellant testified that on Memorial Day weekend of 2006 he *was* at Barnwell State Park along with Victim 4 and Victim 2 and the Wick family but that Victim 1 was not there (R. p. 277, l. 23; p. 278, l. 22), testimony which is supported by Denneah Wick.

Appellant further testified that on the Cherokee, Ghost Town, Maggie Valley trip Victim 3 was not present (R. pp. 277-278), also supported by testimony by Denneah Wick.

Victim 2 was called in reply to testify that he did not recall going on a camping trip to Barnwell State Park during the Memorial Day weekend of 2006 and to deny that the trip to North Carolina occurred 2007 but that it occurred either 2005 or 2006. (R. p. 289, l. 17-25; p. 290, l. 1-21) This testimony denying the date of the North Carolina trip flies directly in the face of what is definitely shown in the photograph taken on the trip, i.e. July 6, 2007. (R. p. 350) (Defendant's Exhibit 1)

In this present matter, the question is where is there evidence presented more than a suspicion of guilt. No records from Barnwell State Park indicates that Appellant was present during any time other than the Memorial Day weekend of 2006. Appellant and Denneah Wick both testified that Victim 1, alleged victim, was not present on this weekend. Also of note, Victim 4 another one of the victim's brothers who was named present on this weekend never testified.

The alleged assault in 2005 was not substantiated in any way. The alleged victim stated an assault occurred Easter of 2005, outside the indictment period. If it occurred at some later date when Mike Sanders was present it would have had to be Halloween of 2005 to conform to his testimony.

The victim never states that this event occurred over the Halloween 2005 weekend. Indeed, Appellant contends he was in Lexington County listening to a football game. Even if there were any possibility that the victim was mistaken on his dates, and Appellant was incorrect on what he was doing on Halloween 2005, Mike Sanders, the witness in common, stated that he did not observe anything improper.

The attempts by the State to buttress the testimony of their victim through Rule 404(b) evidence are additionally lacking. Victim 3's testimony relies on him being 10-12 to 13; and further that Victim 4 not Victim 2 went with him (R. pp. 191-192) on the trip to Cherokee where he was supposedly assaulted.

Victim 2's testimony that the trip to Maggie Valley and Ghost Town where he allegedly was assaulted also occurred the Summer of 2005 or 2006 not July 4, 2007 weekend as established to be false by Denneah Wick, Appellant, and the front of the photograph showing July 6, 2007. His testimony was at least on one point changed when confronted with the photograph showing that the Wick family was present. (R. pp. 212-213)

The record is void of explanation when considering the trip was to Cherokee, Maggie Valley, and Ghost Town. Specifically, both Victim 2 and Victim 3 neglect to say the other brother was present on this North Carolina excursion.

More importantly, where the alleged abuse of the victim allegedly ends in August of 2006 (R. p. 140, l. 5-12); Victim 1 and Victim 2 both participate in Appellant's wedding in November 3, 2007; and no one reports any type of wrong doing or assault until 2010. (R. p. 145, l. 11; p. 146, l. 20; p. 194, l. 22; p. 195, l. 1; p. 209, l. 15; p. 210, l. 1)

Testimony was offered as to a bias and reason for the allegations. Appellant's father informed the victims' father that he can no longer contribute thirty-one percent (31%) of the church's income, the source of the alleged victim's father's salary (R. pp. 237-248)

Appellant would assert a Directed Verdict should have been granted as there was less than a mere suspicion raised as to guilt. The evidence presented was contradictory at times, not relevant, and certainly more prejudicial than probative.

CONCLUSION

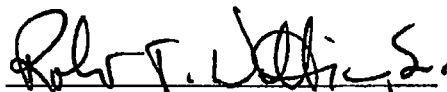
The Trial Judge erred in allowing the State to proceed with new indictments after Appellant had presented alibi evidence disproving a case which had been pending for almost three (3) years.

The Trial Judge further erred in allowing testimony of prior bad acts from other alleged victims where the evidence was less than clear and convincing.

Lastly, the Trial Judge erred by not granting Appellant's Motions for Directed Verdict of Not-Guilty where the evidence presents at best offered a mere suspicion of guilt.

Respectfully submitted,

March 5, 2014



Robert T. Williams, Sr., #6149
Benjamin A. Stitely, #75339
Williams, Hendrix, Steigner & Brink, P.A.
206 East Main Street
Post Office Box 849
Lexington, South Carolina 29071
(803) 359-1550

Attorneys for Appellant

STATE OF SOUTH CAROLINA

COURT OF APPEALS

APPEAL FROM BARNWELL COUNTY

COURT OF GENERAL SESSIONS

The Honorable Doyet A. Early, III, Circuit Court Judge

Indictments Nos. 2013-GS-06-76, 2013-GS-06-77, 2013-GS-06-78, 2013-GS-06-79

The State of South Carolina Respondent,

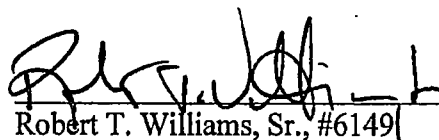
v.

Eric VanCleave Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

March 5, 2014



Robert T. Williams, Sr., #6149

Benjamin A. Stitely, #75339

Williams, Hendrix, Steigner & Brink, P.A.

206 East Main Street

Post Office Box 849

Lexington, South Carolina 29071

(803) 359-1550

Attorneys for Appellant

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County
Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case Tracking No. 2013-000748

The State,

Respondent,

vs.

Eric VanCleave,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

RECEIVED

MAR 12 2014

SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
ARGUMENT	6
I. The trial court properly allowed trial to proceed on new indictments and properly granted Appellant a continuance to allow him time to prepare.	6
II. The trial court properly allowed testimony of prior and other bad acts by Appellant because the acts were admissible as part of a common scheme or plan under Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).....	16
III. The trial court properly denied Appellant's motion for a directed verdict.	22
CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases

<u>Barker v. Wingo</u> , 407 U.S. 514 (1972).....	passim
<u>Beavers v. Haubert</u> , 198 U.S. 77 (1905).....	7
<u>Doggett v. U.S.</u> , 505 U.S. 647 (1992).....	8, 9
<u>Evans v. State</u> , 363 S.C. 495, 611 S.E.2d 510 (2005).....	14
<u>Fields v. J. Haynes Waters Builders, Inc.</u> , 376 S.C. 545, 658 S.E.2d 80 (2008).....	8
<u>State v. Brazell</u> , 325 S.C. 65, 480 S.E.2d 64 (1997).....	12
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004)	22
<u>State v. Clasby</u> , 385 S.C. 148, 682 S.E.2d 892 (2009)	20
<u>State v. Fennell</u> , 340 S.C. 266, 531 S.E.2d 512 (2000)	15, 23
<u>State v. Fletcher</u> , 379 S.C. 17, 664 S.E.2d 480 (2008)	18
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005)	14
<u>State v. Haselden</u> , 353 S.C. 190, 577 S.E.2d 445 (2003)	7
<u>State v. Kirton</u> , 381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008)	20
<u>State v. Langford</u> , 400 S.C. 421, 735 S.E.2d 471 (2012)	8, 10
<u>State v. Lee</u> , 375 S.C. 394, 653 S.E.2d 259 (2007)	12, 13
<u>State v. Lyle</u> , 125 S.C. 406, 118 S.E. 803 (1923).....	1, 16, 18
<u>State v. Nicholson</u> , 366 S.C. 568, 623 S.E.2d 100 (Ct. App. 2005)	14
<u>State v. Odems</u> , 395 S.C. 582, 720 S.E.2d 48 (2011).....	22
<u>State v. Pierce</u> , 326 S.C. 176, 485 S.E.2d 913 (1997)	18
<u>State v. Stahlnecker</u> , 386 S.C. 609, 690 S.E.2d 565 (2010)	7
<u>State v. Thompson</u> , 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991).....	15

<u>State v. Tumbleston</u> , 376 S.C. 90, 654 S.E.2d 849 (Ct. App. 2007).....	14
<u>State v. Waites</u> , 270 S.C. 104, 240 S.E.2d 651 (1978)	8
<u>State v. Wallace</u> , 384 S.C. 428, 683 S.E.2d 275 (2009)	18, 19
<u>State v. Weaverling</u> , 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999).....	18, 20
<u>State v. Weston</u> , 367 S.C. 279, 625 S.E.2d 641 (2006)	22
<u>State v. Wingo</u> , 304 S.C. 173, 403 S.E.2d 322 (Ct. App. 1991).....	14
<u>Vermont v. Brillon</u> , 129 S.Ct. 1283 (2009)	8, 9

Other Authorities

Rule 404(b), SCRE	1, 16, 18, 19
S.C. Code Ann. § 16-15-140 (Supp. 2010).....	15, 23
S.C. Code Ann. § 16-3-654 (Supp. 2010).....	15, 23
S.C. Code Ann. § 16-3-655(B) (Supp. 2010)	15, 22
U.S. Const. amend VI	7

STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly allowed trial to proceed on new indictments and properly granted Appellant a continuance to allow him time to prepare.
- II. The trial court properly allowed testimony of prior and other bad acts by Appellant because the acts were admissible as part of a common scheme or plan under Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).
- III. The trial court properly denied Appellant's motion for a directed verdict.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

Appellant became a member of the church run by the victim's father in 2000 or 2001. Appellant developed a close relationship with the victim's family including multiple brothers of the victim. According to the victim, Appellant was always touching him, giving back rubs or hugs. (4/1T.88; R. 122).

In 2001 or 2002, the victim began spending the night occasionally over at Appellant's home. Appellant made certain the victim would sleep in the same bed with him. The victim awoke during the night to Appellant "messaging with [the victim's] penis." (4/1T.89; R.123). Appellant's hand was inside the victim's pants moving in a motion trying to cause the victim to ejaculate. The victim indicated Appellant touched him and touched him on the butt. Eventually, Appellant caused the victim to ejaculate and then used the victim's hand on Appellant's penis to cause him to ejaculate. (4/1T.89-90; R.123-124).

The victim indicated he was really scared and did not know what people would think of him. He contemplated trying to get home, but worried about what his parents would think. So instead, he went back to the bed with Appellant and laid on his stomach the remainder of the night to prevent Appellant from "messaging" with him. (4/1T.90; R. 124). The victim did not tell anyone about the incident because he was afraid to say anything. (4/1T.91; R. 125).

The abuse occurred frequently at his house, often once a month. Much of the abuse was similar to the first incident with touching and masturbating. However, the abuse progressed and Appellant began performing oral sex on the victim until the victim

masturbated. Appellant also began putting his finger into the victim's anus. Finally, Appellant sodomized the victim during the abuse. (4/1T.91; R.125).

The victim and members of the victim's family went on camping trips with Appellant. They went camping in Barnwell County at Barnwell State Park Campground. On their second trip to Barnwell, the victim, several of the victim's brothers, Appellant, and Mike Sanders all stayed in Appellant's pop-up camper. (4/1T.97; R.131). The camping trip happened in 2005, though the victim could not remember exactly when it occurred. He did indicate he believed he was either 14 or 15 years old. (4/1T.98; R.132).

Appellant made certain the victim was sleeping in the same bed with him in the camper and everyone else was in different beds. The curtain to the bed was closed, blocking any view from the remainder of the camper. During the night, the victim awoke to Appellant performing oral sex on him. Appellant then had the victim use his hand to touch and masturbate Appellant. Then the abuse escalated and Appellant put his finger into the victim's anus and, eventually anally raped the victim. (4/1T.99; R.133). While abusing the victim, Appellant whispered to him asking if he liked it or if he would smile. Appellant also whispered that he was sorry for what he was doing. (4/1T.100; R.134).

Approximately two weeks after the victim turned 16 on May 18, 2006, he went on another camping trip with Appellant to Barnwell State Park. Again, they stayed in Appellant's pop-up camper, with Appellant and the victim sleeping in the same bed. (4/1T.102-103; R. 136-137). Appellant again fondled the victim and performed oral sex on the victim until he ejaculated. Appellant again had the victim touch Appellant's penis. Appellant then anally raped the victim again. (4/1T.103; R. 137).

The abuse was not revealed until 2010 when the victim finally told his parents. He attended a conference in which the speaker discussed forgiveness and how holding onto something could keep someone from getting closer to God. The victim knew Appellant worked for an elementary school and taught Vacation Bible School and so he felt he had to disclose the abuse. (4/1T.111-112; R.145-146).

Michael Richburg, the manager of Barnwell State Park testified regarding the records kept of campers at the park. He testified Appellant made a reservation for Barnwell State Park for arrival on May 27, 2006 and departure on May 29, 2006. (4/1T.140-141; R.173-174). He indicated no records were kept from 2005 or earlier. (4/1T.142; R.175).

Michael Sanders testified he was a friend of the victim's family and Appellant. He testified he went on a couple camping trips with Appellant and the victim to Barnwell State Park. He indicated the first trip they slept in tents, but on the second trip they slept in Appellant's camper. He also verified Appellant and the victim slept in the same bed on the second trip while in the camper. (4/1T.149; R. 182). He indicated the trip with the camper was in the fall of 2005, possibly around Halloween. (4/1T.149; R. 182). He further verified the fact the curtain was pulled closing off Appellant and the victim from the remainder of the camper. (4/1T.150; R.183).

ARGUMENT

- I. **The trial court properly allowed trial to proceed on new indictments and properly granted Appellant a continuance to allow him time to prepare.**

Appellant contends the trial court erred in not dismissing and allowing the State to proceed on indictments obtained shortly before Appellant's case was initially called. The trial court properly concluded the State could obtain new indictments based on information obtained from the victim and granted Appellant's motion for a continuance. While Appellant renewed his motion to dismiss, he did not indicate a need for a further continuance or explain any prejudice resulting from going forward at the term of court his case was called for trial. Finally, to the extent Appellant argues the State violated his right to a speedy trial, the issue is not preserved for review on appeal.

Preservation

At the hearing on February 25, 2013, Appellant mentioned the two motions for speedy trial he filed, but he never argued the case should be dismissed on the basis of a violation of his right to a speedy trial. (2/25T.6; R. 061). Instead, he argued that the case should be dismissed because it was a due process violation for the State to bring new indictments against him three years after he was arrested and just before trial. (2/25T.7; R.062). Additionally, in renewing the motion prior to trial, Appellant argument was to "renew our objection to those four new Indictments being presented three years after my client's arrest and only after presentation of alibi evidence in regards to the prior four Indictments." (4/1T.65; R. 107). Again, counsel never articulated an argument based on a violation of his right to a speedy trial.

The issue of a speedy trial is not preserved for review on appeal because it was not argued as an issue to the trial court, and Appellant cannot raise one ground at trial and another on appeal. State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) (“For an issue to be properly preserved it has to be raised to and ruled on by the trial court.”); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding a defendant may not argue one ground at trial and another on appeal).

Merits

On the merits, the trial court properly denied Appellant’s motion to dismiss the case whether based on pre-indictment delay or based on an alleged violation of his right to a speedy trial. Further, to the extent counsel maintains the indictments are invalid because they allege a range of dates for the acts to have occurred, time is not of the essence in any of the indicted offenses, and the ranges are, therefore, proper.

Speedy Trial

The Sixth Amendment guarantees: “In all criminal prosecutions, the accused shall enjoy the right to a speedy ... trial.” U.S. Const. amend VI. The United States Supreme Court (USSC) explained: “The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.” Beavers v. Haubert, 198 U.S. 77, 87 (1905); see also, Barker v. Wingo, 407 U.S. 514, 522 (1972) (finding “any inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case”). As the USSC stated:

In Barker, the Court refused to “quantif[y]” the right “into a specified number of days or months” or to hinge the right on a defendant’s explicit request for a speedy trial. Id., at 522–525, 92 S.Ct. 2182. Rejecting such “inflexible

approaches,” Barker established a “balancing test, in which the conduct of both the prosecution and the defendant are weighed.” Id., at 529, 530, 92 S.Ct. 2182.

Vermont v. Brillon, 129 S.Ct. 1283, 1290 (2009).

A court’s decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion. State v. Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012). “An abuse of discretion occurs when the trial court’s decision is based upon an error of law or upon factual findings that are without evidentiary support.” Id. (quoting Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 555, 658 S.E.2d 80, 85 (2008)).

In Barker, the USSC identified several factors to be used in determining whether a defendant has been denied the right to a speedy trial including: (1) the length of delay, (2) the reason the government uses to explain the delay, (3) when and how the defendant asserted his speedy trial right, and (4) the prejudice to the defendant. Barker, 407 U.S. at 530; see also, State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978) (applying Barker factors in South Carolina). “The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.” Barker, 407 U.S. at 530.

Even assuming the three-year delay between his arrest and trial, is sufficient to warrant consideration of the remaining factors, the trial court properly denied the motion to dismiss. See Doggett v. U.S., 505 U.S. 647, 652 (1992) (“Depending on the nature of the charges, the lower courts have generally found postaccusation delay ‘presumptively prejudicial’ at least as it approaches one year.”); see also, Waites, 270 S.C. at 108, 240 S.E.2d at 653 (holding a two-year-and-four-month delay in a prosecution for assault and

battery of a high and aggravated nature and for pointing and presenting a firearm implicated the rest of the Barker analysis).

The second factor is the reason for the delay. In Brillon, the USSC explained:

Barker instructs that "different weights should be assigned to different reasons," *id.*, at 531, 92 S.Ct. 2182, and in applying Barker, we have asked "whether the government or the criminal defendant is more to blame for th[e] delay." Doggett v. United States, 505 U.S. 647, 651, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). Deliberate delay "to hamper the defense" weighs heavily against the prosecution. Barker, 407 U.S., at 531, 92 S.Ct. 2182. "[M]ore neutral reason[s] such as negligence or overcrowded courts" weigh less heavily "but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." Ibid.

Brillon, 129 S.Ct. at 1290. Further, the Court has instructed delays caused by the defendant should be weighed against him. See Barker, 407 U.S. at 529.

In the instant case, the State explained any delay in the trial of Appellant. First, the solicitor explained Appellant changed counsel, and as soon as Appellant's new counsel requested the matter be heard expeditiously, the State placed the trial on the first available term of court. (2/25T.4; 9; R. 059; 064). The solicitor explained other pending charges in Lexington County contributed to the delay in this case. Further, she explained Barnwell County only has four terms of court a year, and as soon as she received the motion for speedy trial from Appellant's counsel she began discussing the terms of court and placed the case on the first available term. (2/25T.9; R. 064). The reasons provided do not indicate any intent to hamper the defense or purposeful delay caused by the State. The reasons are mostly neutral and relate to the lack of court time available. Finally, Appellant changed counsel and the case was scheduled for the first available term of

court after receipt of Appellant's new counsel's motion for a speedy trial. Accordingly, this factor does not weigh in favor of a violation of Appellant's right to a speedy trial.

The third factor for consideration is Petitioner's assertion of the right. Langford, 400 S.C. at 444, 735 S.E.2d at 483. As the Court instructed in Barker:

Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. . . . We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

Barker, 407 U.S. at 531-532.

In the instant case, Appellant first asserted his right by filing a motion in July 2012. (Motion for Speedy Trial dated July 24, 2012; R.045-046). This motion was filed twenty-seven months after his arrest. His second motion was filed almost six months later and right before his case was to be called for trial. (Motion for Speedy Trial dated January 14, 2013; R. 047-049). As discussed above, his case was called in February 2013 at the first available term of court in Barnwell County after his motion was received. Further, as discussed in the preservation section above, it is important to note that Appellant did not raise a motion to dismiss for violating his right to a speedy trial at his trial. As a result, he did not vigorously or aggressively seek to assert his right to a speedy trial and this factor should weigh in the State's favor.

In considering the fourth prong of the test, whether Appellant suffered prejudice, the South Carolina Supreme Court found Barker instructive. Langford, 400 S.C. at 445, 735 S.E.2d at 484. The USSC stated:

Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past.

Barker, 407 U.S. at 532. During the time prior to trial, Appellant was out on bond so he did not suffer oppressive pretrial incarceration. He asserts as his main allegation of prejudice that two witnesses died prior to the case being called for trial. However, the record fails to disclose when these individuals died, who the witnesses were, and how their testimony would have been helpful to Appellant's case. He merely makes the general assertion: "it would be a violation of due process for my client to have to defend those dates after he's been out for three years, after he's lost two of the witnesses who were potential witnesses on his case." (2/25T.7; R. 062). This general assertion is insufficient to establish the prejudice necessary to demonstrate a violation of Appellant's right to a speedy trial.

In looking at the factors and the case as a whole, taking into account both the interest of Appellant and the State, Appellant has failed to demonstrate he was entitled to a dismissal based on a violation of his right to a speedy trial.

Pre-indictment Delay

Appellant also seems to maintain he is entitled to dismissal based on excessive pre-indictment delay by the State. Appellant has failed to prove the delay caused substantial actual prejudice to his right to a fair trial. Further, the State was justified in

bringing the new indictments after discussions with the victim lead to different and uncertain timeframes being involved.

The South Carolina Supreme Court established a two prong test to determine if a defendant's right to due process has been violated by delay in indictment. See State v. Brazell, 325 S.C. 65, 72-73, 480 S.E.2d 64, 68-69 (1997). "First, the defendant must prove that the delay caused substantial actual prejudice to his right to a fair trial. The second prong requires the court to consider the reason for the State's delay and to balance the justification for the delay against the prejudice to the defendant." State v. Lee, 375 S.C. 394, 397, 653 S.E.2d 259, 260 (2007) (citing Brazell, 325 S.C. at 72-73, 480 S.E.2d at 68-69)(internal citations omitted).

In order to prove substantial prejudice, Appellant must show he was "meaningfully impaired in his ability to defend against the [S]tate's charges to such an extent that the disposition of the criminal proceeding was likely effected [sic]." Lee, 375 S.C. at 398, 653 S.E.2d at 260-261. "To meet his burden of showing substantial prejudice, the defendant must identify the evidence and expected content of the evidence with specificity, as well as show that he made serious efforts to obtain the evidence and that it was not available from other source." Id. at 398, 653 S.E.2d at 261 (emphasis added)(citing Brazell).

In the instant case, Appellant failed to show he was meaningfully impaired in his ability to defend the charges by the delay. He made a vague reference to possible witnesses who were deceased at the time of trial, but failed to identify any evidence they could provide, much less exculpatory evidence. Appellant failed to identify to the trial court or this Court, "with specificity," any evidence he has been prevented from

presenting to the jury which could have been at all beneficial to his case. As a result, he has failed to meet the first necessary prong of the test.

Additionally, even if he met the first prong and could establish substantial actual prejudice, the State was justified in bringing the indictments three years after Appellant's arrest. "[T]he second part of the due process inquiry requires the court to consider the prosecution's reasons for the delay and balance the justification for delay with any prejudice to the defendant." *Id.* at 400, 653 S.E.2d at 262. "When balancing the prejudice and the justification, the basic inquiry then becomes whether the government's action in prosecuting after substantial delay violates 'fundamental conceptions of justice' or 'the community's sense of fair play and decency.'" *Id.*

The solicitor explained Appellant changed counsel and other charges were pending in Lexington County for Appellant. (2/25T.4; 9; R. 059;064). Further, she explained the new indictments were based on discussions with the victim and determinations that there was ongoing conduct and between Appellant and the victim. (2/25T.3-4; 9; R. 058-059; 064). The State's reason for the delay in bringing the new indictments provides sufficient justification. Accordingly, even if Appellant can demonstrate substantial actual prejudice, the prejudice of the delay, when weighed against the valid reasons of the State in the three-year delay, is not sufficient to warrant vacating Appellant's convictions and sentences.

Indictment Time Frame

Finally, Appellant seems to contend the use of a range as opposed to specific dates in the indictment was a basis for dismissal or quashing the indictments. "The primary purposes of an indictment are to put the defendant on notice of what he is called

upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted.” Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) (citing State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005)). If the objection to an indictment is timely made, the circuit court should evaluate the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it appries the defendant of the elements of the offense intended to be charged. Gentry, 363 S.C. at 102-03, 610 S.E.2d at 500.

As explained in State v. Tumbleston, 376 S.C. 90, 98-99, 654 S.E.2d 849, 853-854 (Ct. App. 2007), this Court has adopted a two-prong test for determining the sufficiency of an indictment involving a purportedly overbroad time period: “(1) whether time is a material element of the offense; and (2) whether the time period covered by the indictment occurred prior to the return of the indictment by the grand jury.” Id. The Court provided as examples: State v. Nicholson, 366 S.C. 568, 574, 623 S.E.2d 100, 103 (Ct. App. 2005) (holding an indictment alleging commission of second-degree criminal sexual conduct during periods of June 1 through July 20, 1995; July 1 through July 31, 1995; and August 1 through August 18, 1995, was sufficient as to time); State v. Wingo, 304 S.C. 173, 175, 403 S.E.2d 322, 323 (Ct. App. 1991) (finding an indictment charging first-degree criminal sexual conduct with a minor covering a two-year period was sufficient as to time); and State v. Thompson, 305 S.C. 496, 500-01, 409 S.E.2d 420, 423 (Ct. App.

1991) (“The specific date and time is not an element of the offense of first-degree criminal sexual conduct.”).

None of the offenses for which Appellant was charged have time as an element which must be specifically pled. See S.C. Code Ann. § 16-3-655(B) (Supp. 2010) (criminal sexual conduct with a minor second degree); S.C. Code Ann. § 16-15-140 (Supp. 2010) (committing a lewd act upon a child); S.C. Code Ann. § 16-3-654 (criminal sexual conduct third degree); State v. Fennell, 340 S.C. 266, 274, 531 S.E.2d 512, 516 (2000) (defining ABHAN as “the unlawful act of violent injury to another accompanied by circumstances of aggravation.”). As a result, the roughly one year range provided in the indictments for lewd act and CSC with a minor, and the two day range in the ABHAN and CSC third degree indictments, did not render them invalid as the range occurred prior to the date of the indictments and time was not of the essence in any of the charges.

II. The trial court properly allowed testimony of prior and other bad acts by Appellant because the acts were admissible as part of a common scheme or plan under Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

Appellant maintains the trial court erred in allowing the State to admit the testimony of the victim's two brothers regarding other bad acts by Appellant. Further, he seems to argue the victim's testimony of the continuous nature of the conduct should not have been allowed. The trial court properly considered the evidence and allowed the evidence of the brother's victimization as part of a common scheme or plan based on the similarities to the acts charged. Further, the court properly allowed the victim to testify to the continuous course of illicit conduct between Appellant and himself.

Prior to trial, the State moved *in limine* to admit the testimony of the victim's two brothers as well as the victim's testimony about the continuous abuse by Appellant. The victim testified first regarding the abuse by Appellant. He testified Appellant became a friend of the family. Sometime in 2000-2001, when the victim was either 10 or 11, the Appellant began having the victim over to his house for the night. The victim stated he would wake up to Appellant fondling him and Appellant trying to ejaculate the victim. The victim testified Appellant also used the victim's hand to try and do the same to Appellant. The victim testified similar abuse occurred numerous times at Appellant's house. (4/1T.6-7; R. 078-079).

The victim testified the abuse progressed. He stated Appellant would use his mouth on the victim's penis. The victim testified Appellant would put his finger in the victim's anus and eventually anally raped him. (4/1T.7; R. 079).

The victim testified the abuse would occur in other locations as well. The abuse occurred on camping trips, at the flea market, and on trips to football games. He said the abuse on the trips would occur in the bed of Appellant's pop-up camper. (4/1T.8; R. 080).

On the trips to Barnwell Appellant committed the abuse for which he was charged and forms the basis of this appeal. The victim testified he would be in the bed of the pop-up camper with Appellant. He stated the abuse began similar to the other abuse. The victim would wake up to Appellant fondling, kissing, or rubbing him. He testified Appellant would put the victim's penis in Appellant's mouth and Appellant would ejaculate the victim. Appellant then would anally rape him. (4/1T.9; R. 081).

The victim's older brother testified Appellant became a friend of the family and spent time with the victim's family, including going on a lot of trips. He specifically testified to a camping trip to Maggie Valley. (4/1T.17; R. 089). The victim's older brother testified he fell asleep in the camper with Appellant. He stated he woke up to his pants pulled down and Appellant attempting to ejaculate him. The victim's older brother testified Appellant appeared to be sleeping so he moved his hand off, pulled up his pants and went back to sleep. The abuse occurred when the victim's older brother was about 17. (4/1T.18; R. 090).

The victim's younger brother testified Appellant was a friend of the family. He testified they would go to football games, on trips, and camping with Appellant. (4/1T.21-22; R.093-094). He testified on a trip to Cherokee, North Carolina Appellant when he was about 12 or 13, Appellant made arrangements for him to sleep in the same bed with Appellant in Appellant's camper. He testified he woke up to Appellant grasping his penis and trying to ejaculate him. Appellant was doing this to the boy through the

outside of his clothes. The victim's younger brother testified he looked over and Appellant appeared to be asleep. He assumed it was a mistake. However, the following night the same thing happened so the victim's younger brother got out of the bed and slept the rest of the night on the floor. (4/1T.22-23; R. 094-095).

Evidence of other bad acts is not admissible to prove the defendant's guilt except to show motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. See Rule 404(b), SCRE; State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Proof of prior bad acts must be clear and convincing if they are not the subject of a conviction. State v. Pierce, 326 S.C. 176, 178, 485 S.E.2d 913, 914 (1997); State v. Weaverling, 337 S.C. 460, 468, 523 S.E.2d 787, 791 (Ct. App. 1999). Even if the evidence is clear and convincing and falls within a Lyle exception, the trial judge must exclude the evidence if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. State v. Wallace, 384 S.C. 428, 435, 683 S.E.2d 275, 278-279 (2009).

The brothers' allegations, as well as the testimony of the continuous illicit conduct with the victim, were clear and convincing. While Appellant argues the brother's allegations are not supported by criminal charges, charges or investigations are not required in order for the court to find the testimony clear and convincing. "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. Such proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." State v. Fletcher, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008).

All three testified to their ages during the conduct. They all provided specifics as to location where the conduct occurred. The brothers both described the camper they were in when the sexual conduct occurred. They both testified how Appellant either ended up in the same sleeping area or arranged for the brother to be in the sleeping area with Appellant so that he had access to them. The victim testified how the abuse progressed from touching to anal rape. The details provided, even though specific dates could not be remembered for events occurring roughly 6-7 years or more previously, provided clear and convincing evidence of the acts to allow their admission.¹

Further, the brothers' testimony is sufficiently similar to the testimony by the victim to be admissible. "When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity. When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b)." Wallace, 384 S.C. at 433, 683 S.E.2d at 277-278. The South Carolina Supreme Court provided some factors to consider including: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery. Id. at 433-434, 683 S.E.2d at 278.

In the instant case, the victims were all in their mid to late teens when the abuse occurred. The victims were brothers and all had a relationship with Appellant because he was a family friend with whom they spent significant time. The abuse of each boy

¹ It is questionable if the issue of whether the siblings provided proof by clear and convincing evidence of the acts is preserved.

occurred on camping trips, in Appellant's camper. While none of the boys testified regarding threats, the victim and one of his brothers testified Appellant "arranged" for them to be sleeping with him when the sexual abuse occurred. Finally, each of the boys testified to Appellant fondling them, grasping their penis, and trying to ejaculate them. The similarities in this case certainly outweigh the slight differences of where the camping trips occurred and exactly when the events occurred.

Further, the victim's testimony regarding prior acts of abuse by Appellant is admissible under the common scheme or plan exception as well. The South Carolina Supreme Court reaffirmed that the common scheme or plan exception can be established through continuous illicit conduct between the defendant and the victim. See State v. Clasby, 385 S.C. 148, 157-158, 682 S.E.2d 892, 897 (2009); see also, State v. Kirton, 381 S.C. 7, 36, 671 S.E.2d 107, 121-22 (Ct. App. 2008) (holding evidence that defendant began touching and committing other sexual misconduct with victim when she was six or seven years old was admissible to show common scheme or plan during trial for the indicted offense of CSC with a minor, second degree on the ground that the "six to seven year pattern of escalating abuse of Victim by [defendant was] the essence of grooming and continuous illicit activity"); State v. Weaverling, 337 S.C. 460, 471, 523 S.E.2d 787, 792 (Ct. App. 1999) (finding victim's testimony regarding pattern of sexual abuse he suffered by the defendant was properly admitted as part of a common scheme or plan exception in trial for CSC with a minor and disseminating harmful material to a minor where the "challenged testimonial evidence of [defendant's] prior bad acts show[ed] the same illicit conduct with the same victim under similar circumstances over a period of several years").

In this case, the victim testified the abuse began when he was young, and included touching and masturbation. The victim testified about the grooming and continuing illicit conduct for several years between Appellant and the victim. He discussed the escalation of abuse from touching, to oral sex, to anal rape. This testimony is clearly admissible as part of a common scheme or plan related to the abuse of the victim.

Finally, the trial court properly determined the probative value outweighed any prejudicial impact of the testimony. The testimony established Appellant's means of getting the children alone, using his camper as the location, and taking advantage of the situation for his benefit. The probative value of the common scheme or plan as strong proof of the underlying charges outweighs any prejudice which may occur.

III. The trial court properly denied Appellant's motion for a directed verdict.

Appellant contends the trial court erred in denying his motion for directed verdict because the evidence created at most a mere suspicion of guilt. The testimony of the victim established the basis for conviction of all four charges and was supported by other testimony in the record. Accordingly, the trial court properly allowed the case to go to the jury.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Cherry, 361 S.C. 588, 593-593, 606 S.E.2d 475, 477-478 (2004). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

Appellant faced charges of criminal sexual conduct with a minor second degree, committing a lewd act upon a child, criminal sexual conduct third degree, and ABHAN. Pursuant to section 16-3-655(B) of the South Carolina Code (Supp. 2010):

A person is guilty of criminal sexual conduct with a minor in the second degree if:

(2) the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial,

custodial, or official authority to coerce the victim to submit or is older than the victim. However, a person may not be convicted of a violation of the provisions of this item if he is eighteen years of age or less when he engages in consensual sexual conduct with another person who is at least fourteen years of age.

Section 16-15-140 of the South Carolina Code defines the crime of committing a lewd act upon a child:

It is unlawful for a person over the age of fourteen years to wilfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of the child.

To convict Appellant of criminal sexual conduct in the third degree, the State must show:

[T]he actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances.

S.C. Code Ann. § 16-3-654 (Supp. 2010).

ABHAN is defined as "the unlawful act of violent injury to another accompanied by circumstances of aggravation." State v. Fennell, 340 S.C. 266, 274, 531 S.E.2d 512, 516 (2000).

The testimony presented in this case as detailed in the statement of facts above, especially the testimony of the victim, creates much more than a mere suspicion and is direct evidence tending to prove Appellant's guilt. The victim's testimony established when he was 15 Appellant touched him on the penis, Appellant made the victim touch Appellant's penis, Appellant performed oral sex on the victim, and anally raped the

victim. His testimony established this occurred while camping in Appellant's camper at Barnwell State Park. The testimony was further supported by Michael Sanders testimony that the camping trip occurred in the fall of 2005 and that he observed the curtain around Appellant and the victim closed during the night. This evidence is sufficient to warrant sending the charges of criminal sexual conduct with a minor in the second degree and committing a lewd act on a child to the jury.

The victim also testified in 2006, shortly after his 16th birthday, he again went on a camping trip. The dates of the camping trip were corroborated by records from Barnwell State Park indicating it occurred the end of May over Memorial Day Weekend. While on this camping trip, the victim testified Appellant again touched his penis, made the victim touch Appellant's penis, performed oral sex on the victim, and then anally raped the victim. This evidence is sufficient to warrant sending the charges of criminal sexual conduct third degree and ABHAN to the jury.

While Appellant may have denied the charges and presented evidence conflicting with the State's evidence, neither this Court nor the trial court performs a weighing of the evidence. The State presented evidence demonstrating Appellant's guilt of the charges brought. Accordingly, the trial court properly denied Appellant's motion for directed verdict and correctly sent all charges to the jury for consideration.

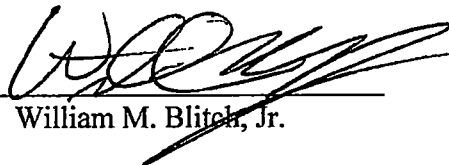
CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY: 
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 12, 2014

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

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

The State, Respondent,

v.

Eric VanCleave, aka Eric N. VanCleave, Appellant.

Appellate Case No. 2013-000748

Appeal From Barnwell County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2014-UP-444
Heard October 9, 2014 – Filed December 10, 2014

AFFIRMED

Robert T. Williams, Sr. and Benjamin Allen Stitely, both
of Williams Hendrix Steigner & Brink, PA, both of
Lexington, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blich, Jr., both of
Columbia, for Respondent.

PER CURIAM: Eric VanCleave appeals his convictions for criminal sexual
conduct (CSC) with a minor in the second degree, committing a lewd act upon a
child, assault and battery of a high and aggravated nature, and CSC in the third

degree. VanCleave argues the circuit court erred in (1) denying his motion to dismiss the February 2013 indictments on the ground that his right to a speedy trial had been violated, (2) denying his motion to dismiss the February 2013 indictments on the ground that pre-indictment delay violated his due process rights, (3) refusing to exclude testimony on prior and other bad acts allegedly committed by him, and (4) denying his directed verdict motions. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in denying VanCleave's motion to dismiss the February 2013 indictments on the ground that his right to a speedy trial had been violated: *Barker v. Wingo*, 407 U.S. 514, 530, 533 (1972) (holding that in evaluating a speedy trial claim, the court must consider the length of and reason for the delay, the defendant's assertion of his right, the prejudice to the defendant, and any other relevant circumstances); *State v. Langford*, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012), *cert. denied*, 134 S. Ct. 60, 187 L. Ed. 2d 51 (2013) ("A court's decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion."); *State v. Foster*, 260 S.C. 511, 514, 197 S.E.2d 280, 281 (1973) (explaining that the length of delay is merely a triggering mechanism which brings additional factors into consideration); *State v. Chapman*, 289 S.C. 42, 45-46, 344 S.E.2d 611, 613 (1986) (holding the bare assertion of a witness's unavailability is insufficient to warrant the conclusion that the defendant suffered actual prejudice thereby); *State v. Robinson*, 335 S.C. 620, 626, 518 S.E.2d 269, 272 (Ct. App. 1999) (finding the defendant failed to establish actual prejudice under a speedy trial analysis where the defendant generally asserted he had lost witnesses and documents that would have been available had the case been tried in a timely manner, but cited no specific witnesses or documents); *State v. Smith*, 307 S.C. 376, 381, 415 S.E.2d 409, 412 (Ct. App. 1992) (noting in a speedy trial analysis that the court was unable to determine whether the defendant was actually prejudiced by the witness's death because the defendant made no proffer as to what the witness would have testified); *id.* (rejecting the defendant's argument that witnesses' faded memories amounted to prejudice under a speedy trial analysis because the same disadvantage hampered the State).

2. As to whether the circuit court erred in denying VanCleave's motion to dismiss the February 2013 indictments on the ground that pre-indictment delay violated his due process rights: *State v. Brazell*, 325 S.C. 65, 72, 480 S.E.2d 64, 68 (1997) ("The United States Supreme Court has developed a two-prong inquiry when pre-indictment delay is alleged to violate due process."); *id.* ("First, the defendant has the burden of proving the pre-indictment delay caused substantial actual prejudice to his right to a fair trial."); *id.* at 72, 480 S.E.2d at 68-69 ("Second, if the

defendant shows actual prejudice, the court must consider the prosecution's reasons for the delay and balance the justification for delay with any prejudice to the defendant. If the court finds the delay was an intentional device to gain a tactical advantage over the accused, the court should dismiss the indictment."); *id.* at 73, 480 S.E.2d at 69 ("Substantial prejudice requires a showing that 'he was meaningfully impaired in his ability to defend against the state's charges to such an extent that the disposition of the criminal proceeding was likely effected [sic].'" (alteration in original) (quoting *Jones v. Angelone*, 94 F.3d 900, 907 (4th Cir.1996))); *id.* ("When the claimed prejudice is the unavailability of a witness, courts require that the defendant identify the witness he would have called [and] demonstrate, with specificity, the expected content of that witness' testimony").

3. As to whether the circuit court erred in refusing to exclude testimony on prior and other bad acts allegedly committed by VanCleave: Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent."); *State v. Wallace*, 384 S.C. 428, 433-34, 683 S.E.2d 275, 278 (2009) (providing the following nonexclusive list of factors to consider in determining whether a prior bad act is admissible under the common scheme or plan exception: (1) the age of the victims at the time of the abuse; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the abuse); *State v. Gaines*, 380 S.C. 23, 29, 667 S.E.2d 728, 731 (2008) ("If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing."); *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001) (stating the appellate courts are bound by the trial court's factual findings when considering whether there is clear and convincing evidence of other bad acts unless such findings are clearly erroneous).

4. As to whether the circuit court erred in denying VanCleave's directed verdict motions: Rule 19(a), SCRCrimP ("In ruling on [a directed verdict] motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight."); *State v. Brandt*, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011) ("When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State."); *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.").

AFFIRMED.

FEW, C.J., and THOMAS and LOCKEMY, JJ., concur.

STATE OF SOUTH CAROLINA

COURT OF APPEALS

APPEAL FROM BARNWELL COUNTY

The Honorable Doyet A. Early, III, Circuit Court Judge

RECEIVED

DEC 18 2014

SC Court of Appeals

The State of South Carolina Respondent,

v.

Eric VanCleave Appellant.

Unpublished Opinion 2014-UP-444, filed December 10, 2014

PETITION OF REHEARING

On December 10, 2014, this Court issued an opinion which affirmed the decision of the Trial Court on a multitude of rulings made during the Appellant's trial, State v. VanCleave, Unpub Op. No. 201-UP-444 (S.C. Ct. App. December 10, 2014). The Appellant respectfully petitions for rehearing.

The Court ultimately affirmed the rulings and convictions of the Appellant, by citing Rule 220(b), SCACR, and issued rulings as it related to four elements involved in the Appellant's appeal; (1) As to whether the circuit court erred in denying Appellant's motion to dismiss the February 2013 indictment on the grounds that his right to a speedy trial had been violated; (2) As to whether the circuit court erred in denying the Appellant's motion to dismiss the February 2013 indictment on the grounds that pre-indictment delay violated his due process rights; (3) As to whether the circuit court erred in refusing to exclude testimony on prior and other bad acts.

allegedly committed by Appellant; (4) As to whether the circuit court erred in denying the Appellant's directed verdict motion. However, the Appellant would respectfully submit that in this Court's ruling, the Court did not fully and adequately consider the essential elements of this case. In addressing the matters in this Petition the Appellant considers the first two matters interconnected. The Court overlooked that the error made by the trial court was the fact the February 2013 indictments were only sought after the Appellant provided alibi notice as required by Rule 5(e), thus making the delay improper, overly prejudicial, and further making it impossible to secure potential witnesses for trial. It is imperative to examine the two issues together, in that together they collectively illustrate the violation of the Appellant's due process right.

- 1. In this matter, the Court overlooked and did not fully consider the Trial Court's denial of the Appellant's motion to dismiss the February 2013 indictments on both the issues of violation of the Appellant's right to speedy trial and on the grounds that pre-indictment delay violated his due process rights.**

On July 24, 2012, Appellant's attorney filed and served a Notice of Motion and Motion for Speedy Trial. When no hearing was granted, nor order issued addressing this matter, Appellant's attorney filed and served a second Notice of Motion and Motion for Speedy Trial on January 14, 2013. Finally, Appellant was notified that his case would be tried February 25, 2013. In compliance with Rule 5(e) of the South Carolina Rules of Criminal Procedure, Appellant timely notified the Prosecutor of his intention to offer alibi evidence that would conclusively prove that Appellant could not have been in the County of Barnwell on the two (2) dates alleged in the indictments. The Appellant's alibi as presented completely exonerated the Appellant during the time frame listed in the indictments that had been pending for more than two years.

(App. Br. pp 4-6)

The right of an accused to a fair, speedy, and impartial trial was first set forth by the VI Amendment of the United States Constitution and by Article I, Section 14 of the South Carolina Constitution. The South Carolina Legislature took steps in furtherance of this important protection of the rights of an accused when it enacted Rule 3(c)(d) of the South Carolina Rules of Criminal Procedure and placed a frame work which states that within ninety (90) days upon receiving an arrest warrant the Solicitor shall seek indictment before the Grand Jury, and if some extenuating circumstance were to arise they should petition the Circuit Court for an extension of an additional ninety (90) days. Rule 3(c)(d), SCRCrimP. (App. Br. p 7)

The Court overlooked the onus on the State to demonstrate sufficiently what good cause exists to justify the delay in the prosecution of a case. State v. Lee, 375 S.C. 394, 653 S.E.2d 259 (2007) Where the Defendant can make a good showing that his ability to prepare and offer a defense to the charges against him (i.e. alibi witnesses no longer available to the Defendant, as in the current matter), the Court must place a higher degree of scrutiny on the State's actions or inaction. Situations like the present matter have precipitated rulings in accordance with State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012) examining the ultimate unconstitutionality of the Solicitor's control over trial dockets and the delays causing undue prejudice to a Defendant's right to a speedy and fair trial. (App. Br. pp 8-10)

It was improper to allow the State to utilize the initial underlying arrest warrants to seek new indictments thirty-five (35) months after initial arrest. The actions of the State should have been barred by the Court, where there was no additional investigation nor new evidence obtained and the State's actions were solely precipitated upon notice that the Defendant intended to offer

an alibi encompassing the dates in the initial indictments. The State's undertaking was clearly an attempt to circumvent justice and deny the Appellant his right to a fair trial.

The extraordinary delay in indictment relating to the newly altered time frame, put the Appellant in a position where any potential alibi witnesses would be impossible to secure, creating prejudice sufficient to satisfy an analysis under Barker v. Wingo 407 U.S. 514, 92 S.Ct. 2182 (1972). It is impossible to foresee the need to elicit testimony from witnesses for use at trial, or even preserve, by way of proffer, potential alibi witness testimony where the Appellant was not on notice he would need to do so before an unreasonable thirty-five (35) month delay. It is never upon a Defendant to prove his innocence, and it is a burden shifting to compel a Defendant to prepare a defense for a time period which he is not on notice he would be required to do so. (App. Br. pp 7-10)

The Court overlooked the Trial Court's failure to dismiss the newly sought indictments where the actions of the State were clearly taken to abuse Rule 5(e) of the South Carolina Rules of Criminal Procedure which mandates the Defendant provide notice of alibi. The State's actions were deliberately designed to abuse the due process and fair trial rights of the Appellant. (App. Br. pp 4-7)

- 2. The Court overlooked essential elements of the Appellant's appeal by affirming the Trial Court's improper admission of testimony of prior or other bad acts in accordance with Rule 404(b), in doing so the Court failed to ensure the Defendant's right to a fair trial.**

Before it can be admitted and presented at trial, 404(b) prior bad act evidence that did not result in a conviction must be demonstrated to the Court to be "clear and convincing." State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001); State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000);

State v. Weaverling, 337 S.C. 460, 523 S.E.2d. 787 (Ct. App. 1999) Before the Court allows into evidence testimony that indicates unindicted, prejudicial, and highly inflammatory acts the Court must first ensure that the evidence is clear and convincing and that said evidence must only be used to resolve issues of motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

The Court overlooked the stunning variance and discrepancy of the alleged prior bad acts in this matter. A complete examination of the testimony of the non-victim witnesses does not satisfy the long standing standard for admissibility of alleged prior bad acts. Where the State fails to establish its burden the alleged evidence and testimony should be barred. State v. Tutton, 354 S.C. 319, 580 S.E. 2d. 186 (Ct. App. 2003) (App. Br. pp 10-14)

In its ruling, the Court overlooks the actual purpose of 404(b) evidence. The allowance of prior bad acts should be limited in its use for situations where there is an actual question as to the motive, identity, common scheme or plan, mistake of accident, or intent of a Defendant. In this matter, the 404(b) evidence was offered to simply add additional inflammatory and prejudicial allegations which were never previously founded. The expansive allowance of the admission of alleged bad acts which did not result in convictions, or in this matter even charges (following a thorough previous investigation), creates an absolute bar to a Defendant's right to a fair trial on the charges which are indicted.

The Court cannot allow the State to label a set of facts a common scheme or plan or Rule 404(b) evidence and make it so. Likewise, establishing potential 404(b) evidence, in and of itself, does not render otherwise inadmissible evidence admissible. A Defendant must be tried and ultimately convicted or acquitted on the individual merits of the indicted case, it is improper

to create an inference of guilt and bolster otherwise insufficient evidence through the use of improperly admitted 404(b) evidence. (App. Br. pp 10-14)

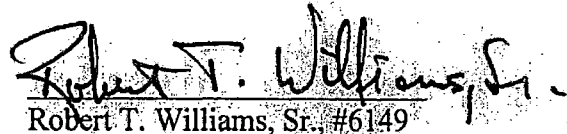
3. **The Court overlooked essential elements of the Appellant's appeal by affirming the Trial Court's denial of the Appellant's motion for directed verdict in accordance with Rule 19(a) where the evidence raised merely a suspicion of guilt.**

The Court overlooked that at the conclusion of the State's case there existed insufficient "competent evidence tending to prove the charge in the indictment." Rule 19, South Carolina Rules of Criminal Procedure. A proper examination of State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989) states that a trial court must not hesitate to grant a Defendant's (Appellant's) motion where the evidence presented merely raises a suspicion of guilt. In the present matter, the State did not offer any physical or tangible evidence supporting the Appellant's guilt, instead it relied solely on conflicting testimonial evidence, some of which was improperly admitted as stated before. (App. Br. pp 14-19)

The prerequisite requirement for the State to present evidence above that which only rises to a mere suspicion of guilt exists to protect a Defendant's rights in a case such as this where the nature of the allegation contained within the indictment would naturally generate prejudice in the minds of a jury. It is the duty of the Court to act as a gate keeper and to ensure that at the conclusion of a case the evidence presented is legally sufficient to seek a verdict of guilt. It is the absolute province of a Jury to act as fact finders in a case, however where there is only evidence arising to mere suspicion the Court must act. (App. Br. pp 14-19)

In light of the foregoing, the Appellant would respectfully request the Court grant this
Petition, withdraw its previous opinion, and reverse the rulings of the Trial Court.

December 18, 2014



Robert T. Williams, Sr., #6149

Benjamin A. Stitely, #75339

Williams, Hendrix, Steigner & Brink, P.A.

206 East Main Street

Post Office Box 849

Lexington, South Carolina 29071

(803) 359-1550

Attorneys for Appellant

The South Carolina Court of Appeals

The State, Respondent,

v.

Eric VanCleave, aka Eric N. VanCleave, Appellant.

Appellate Case No. 2013-000748

ORDER

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



C.J.



J.



J.

Columbia, South Carolina

cc:

Robert T. Williams, Sr., Esquire
Benjamin Allen Stitely, Esquire
Alan McCrory Wilson, Esquire
William M. Blitch, Jr., Esquire
The Honorable Doyet A. Early, III

FILED

January 27, 2015

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF BARNWELL)

Eric VanCleave, 00354843)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-06-00326

APPLICATION FOR

POST-CONVICTION RELIEF

FILED FOR RECORD
SEP 17 2:35
CLERK OF COURT
JANET L. WILSON

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Court of General Session, Barnwell County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-06-76
 - (b) 2013-GS-06-77
 - (c) 2013-GS-06-78
 - (d) 2013-GS-06-79
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

- (a) April 2, 2013
- (b) same
- (c) same
- (d) same
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. South Carolina Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. conviction affirmed
- ii. Petition for Writ of Certiorari denied
- iii. _____
- (c) the date of each such result:
- i. December 10, 2014
- ii. June 18, 2015
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2014-UP-444
- ii. Denied by Summary Order
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Trial counsel was not effective in preserving for review the admission of other alleged bad act which were admitted under Rule 404b of the S. C. Rules of Evidence.

(b) Trail counsel was not effective in arguing against the admissibility of the other bad act which were admitted under Rule 404b of the South Carolina Rules of Evidence.

(c) Trial counsel was not effective in providing the state with his alibi and other evidence required to be submitted under Rule 5 of the South Carolina Rules of Criminal Procedure

(d) Trial counsel was not effective in crossing examining the witness against the applicant.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Trial counsel failed to object when the testimony that was present in a pre-trial motion was admitted during the trial. This error prevented an effective review of the admissibility of the evidence..

(b) Trial counsel failed to argue that the other alleged bad acts were not admissible under Rule 404b because mere similarity is not a basis for admitting other bad acts when identity is not an issue, trial counsel failed to not that one of the other allged bad acts was not committed on a minor, and trial counsel failed to read the law in this area to make an effective argument.

(c) The Applicant had several documents that would have support the fact that he was not at the camp at the date and time as alleged by the state. Trial counsel failed to provide these documents to the state pursuant to Rule 5 and therefore he was not able to use them at the trial.

(d) Trial counsel failed to cross-examine the complaining witness about several of the alleged incidents. This failure to cross-examine the complaining witness gave the jury the impression that those incident were true from which the jury could conclude that the other allegations were true.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

Revised 3/2003

- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

Revised 3/2003

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. _____
 - iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
 - (b) your trial, if any? yes
 - (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Richard Briebart, address unknown
 - ii. Robert T. Williams, Sr., P. O. Box 849, Lexington, SC 29071
 - iii. Benjamin Stitely, P. O. Box 849, Lexington, SC 29071

Revised 3/2003

iv. C. Rauch Wise, 305 Main St., Greenwood, SC 29646

(b) the proceedings at which each such attorney represented you:

i. Initial arraignment

ii. trial and appeal

iii. appeal

iv. preparation of Post Conviction Relief Petition

19. State clearly the relief you seek in filing this application:

A new trial on all charges.

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of Greenville)

VERIFICATION

I, Eric VanCleave, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Eric VanCleave

SWORN to and subscribed before me this 28th
day of August, 2015.

[Signature] (L.S.)
Notary Public

My Commission Expires: 12/7/2019

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2015-CP-06-00326

RETURN

V.

Respondent.

I.

1 of 5

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. VanCleave, 2014-UP-444 (S.Ct. App. filed December 10, 2014). Certiorari was filed to the South Carolina Supreme Court and was denied on June 18, 2015. The remittitur was issued on June 24, 2015.

Attached herewith and incorporated herein are the records of the Barnwell County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Trial Counsel was not effective in preserving for review the admission of other alleged bad act which were admitted under Rule 404(b) of S.C. Rules of Evidence.
 - a. Trial counsel failed to object when the testimony that was present in a pre-trial motion was admitted during the trial. This error prevent an effective review of the admissibility of the evidence.
2. Trial counsel was not effective in arguing against the admissibility of the other bad act which were admitted under Rule 404(b) of the South Carolina Rules of Evidence.
 - a. Trial counsel failed to argue that the other alleged bad acts were not admissible under Rule 404(b) because mere similarity is not a basis for admitting other bad acts when identity is not an issue, trial counsel failed to not that one of the other alleged bad acts was not committed on a minor, and trial counsel failed to read the law in this area to make an effective argument.
3. Trial Counsel was not effective in providing the state with his alibi and other evidence required to be submitted under Rule 5 of the South Carolina Rules of Criminal Procedure.
 - a. The Applicant had several documents that would have supported the fact that he was not at the camp at the date and time as alleged by the state. Trial counsel failed to provide these documents to the state pursuant to Rule 5 and therefore he was not able to use them at trial.
4. Trial Counsel was not effective in crossing examining the witness against the applicant.

- a. Trial counsel failed to cross-examine the complaining witness about several of the alleged incidents. The failure to cross-examine the complaining witness gave the jury the impression that those incidents were true from which the jury could conclude that the other allegations were true.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

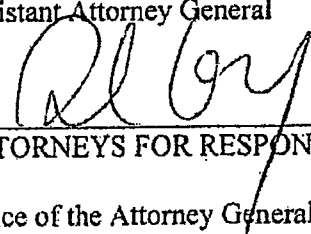
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

January 28, 2016.