

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOUGLAS KELLY PHILLIPS,

APPELLANT

APPELLATE CASE NO. 2016-001875

RECORD ON APPEAL

RECEIVED

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
-VS-)
)
DOUGLAS KELLY PHILLIPS,)
)
DEFENDANT.)

2013-GS-39-02327 - 02329

TRANSCRIPT OF RECORD

JULY 25 - 26, 2016
PICKENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE THOMAS A. RUSSO

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CIRCUIT COURT REPORTER

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1 and a half hours for lunch. So if you would, please, make
2 sure you're back in time to find parking and get back into
3 the courtroom. And if you would be in the jury room at 2:30
4 and we'll start at that time.

5 So if everyone else would please remain seated. Folks,
6 I want to excuse you now to go to lunch. And we'll see you
7 back at 2:30, okay?

8 (Whereupon the jury exited the courtroom at 11:47 am)

9 **THE COURT:** Okay. What we do pretrial-wise will help
10 us get down the road here.

11 **MR. JONES:** Your Honor, I did serve on Ms. Aaron a
12 motion to comply with the Rape Shield Statute potential
13 testimony that could come up in this trial as to the
14 victim's other sexual activity. And I would ask that the
15 Defense be restrained from bringing up any other sexual
16 activity that the victim has acted on.

17 **THE COURT:** All right. Ms. Aaron, I'd be happy to hear
18 from you.

19 **MS. AARON:** May it please the Court, Your Honor. I did
20 receive the motion. I just, as I think the State expected,
21 served the required notice regarding the statute that we
22 would intend to speak of other instances.

23 The Rape Shield Statute is designed to prevent a
24 defendant from attacking the morality of the victim by
25 saying that there were other sexual encounters involving the

1 victim, therefore, she must somehow be at fault in this
2 sexual encounter. But case law supports an absolute
3 exception to the Rape Shield Statute when evidence of a
4 victim's contact is offered for a purpose other than to
5 attack her morality.

6 This case, there is testimony evidence, as I understand
7 it, from the victim. There's no physical evidence. There's
8 no medical evidence. It's testimony from the victim, and
9 that's it.

10 She has some significant behavioral problems. The
11 State has already indicated that they're going to attribute
12 or attempt to call a witness, expert witness, to attribute
13 those behavioral problems to being a victim of sexual abuse.

14 This victim has already complained, and as I understand
15 it, there are pending criminal charges in two other
16 instances where an adult and she have engaged in sex. They
17 may be, but for her age, consensual. But, obviously, she
18 can't consent.

19 So I'm not saying that they're rape charges. I'm
20 saying that they are CSC charges due to age. She's by all
21 accounts a promiscuous sixteen year old or thirteen year old
22 at that time.

23 So my purpose in talking about the other two instances,
24 which the victim spoke about in the forensic interview to
25 police, to relatives is to attribute her behavior, which is

1 going to be attributable to having sex as a young child to
2 attribute it to other people possibly other than my client.
3 And I think that evidence is tantamount to him being able to
4 provide a complete defense.

5 Because if the State's explanation that her acting out
6 and her behavior problems are due to a sexual abuse
7 situation, and I'm prevented from talking about two out of
8 three instances where she has alleged this conduct, then I
9 believe it prejudices my client, and he is unable to present
10 a complete defense.

11 **MR. JONES:** Your Honor, if I may. One, I don't intend
12 to argue that her behavioral problems are specifically
13 because of this particular Defendant. The expert that she's
14 talking about is going to talk about the process of
15 disclosure, sexual victim, sexual abuse in general. Of
16 course, it's a blind expert that has not talked to my
17 victim, does not know my victim or anything about this
18 particular case. So I'm not going to try and do that.

19 And that's -- it is an interesting point. In doing
20 some research on the Rape Shield Statute I came across State
21 v. Grovenstein where the court did allow the defense to get
22 into the prior sexual knowledge of the victim, but it was to
23 respond or rebut the state's argument that the only way this
24 six or seven year old in that particular case would have
25 known about this sexual activity is because of this

1 defendant.

2 And in that particular case the child had previously
3 done the same acts on another child of the same age, if that
4 makes sense. The child had been accused of doing something
5 to other children that that child then accused this
6 defendant of doing. And in that case the exception was
7 granted that, yes, the jury needs to know that.

8 But in this particular case, Your Honor, the fact that
9 she is a victim on another CSC, if she wants to talk about
10 that, where that particular defendant admitted the sex, Your
11 Honor, I don't see how that has anything to do with this
12 particular case and the facts of this case. And I don't
13 think the Defense counsel has articulated any -- any reason
14 that would be an exception to the Rape Shield Statute, Your
15 Honor.

16 I believe it is their intent to show that she has been
17 promiscuous, that she has had sex with other adults and,
18 therefore, she is making this up, and that's the only reason
19 we're here today, Your Honor.

20 **MS. AARON:** Your Honor, if I may. Since he did quote
21 Grovenstein, there's an absolute exception in that case that
22 I've already articulated. The Rape Shield Statute does not
23 bar evidence of a victim's sexual conduct if the evidence is
24 offered for a purpose other than to attack the victim's
25 morality.

1 I can't attack the victim's morality because she's
2 underage. She could walk around here with a sign on her.
3 That's inappropriate.

4 **THE COURT:** Didn't you just get through telling me,
5 Judge, this girl's promiscuous? We need to let the jury ...

6 **MS. AARON:** I don't intend to talk about her
7 promiscuity. I was trying to give you an idea about the
8 demeanor of this victim. That is not my intent.

9 If the State is indicating that Shauna Galloway-
10 Williams is not going to testify that the behavior problems
11 involving this child are -- fit into the child abuse
12 dynamic, if he tells me that that is not her purpose, and I
13 would doubt that because that's what she's called to say, if
14 her behavioral problems -- if she's not going to say that
15 her behavioral problems fit the child abuse dynamic, then I
16 would have no reason to bring up other people ---

17 **THE COURT:** I think what he said was she's not going to
18 allege that her behavioral problems are a result of the
19 alleged actions of your client.

20 **MR. JONES:** Well, Your Honor, first off, I don't see
21 why we're going to get into any behavioral problems at all
22 of the victim. I think that's completely irrelevant of any
23 behavior -- that's what we're talking about.

24 I don't want -- I think it's irrelevant that she has
25 alleged that another twenty-two year old, twenty-three year

1 old, she had sex with him, I think that's completely
2 irrelevant. So we shouldn't be talking about behavioral
3 problems at all is my point, Your Honor.

4 **MS. AARON:** Your Honor, and with the State v. Williams
5 case, which is kind of a prodigy of the other one, they did
6 call the expert witness in camera. And maybe we need to do
7 that. What I'm trying to do is preempt what I believe she's
8 going to say. She may not say that.

9 I don't intend to talk about behavioral problems with
10 this child. She did make a late disclosure. I would assume
11 that the witness is going to talk about that fitting into
12 the parameters of a child abuse dynamic or a sex abuse
13 dynamic.

14 If the term sexual abuse dynamic or anything like it is
15 discussed to explain this case, then if this child has
16 alleged that she has had sex with other adults, then her
17 behavior can be attributable to a sexual dynamic involving
18 those individuals, not just my client. And that's my point.

19 I don't believe the expert witness can attribute her
20 behavior to my client. And I don't believe she's going to
21 intend to. But if my client and this child's interaction is
22 the only evidence before the jury and there are interactions
23 with other adults having "consensual sex" with this child,
24 then that's the only evidence that's before the jury, and
25 they don't have the complete picture.

1 **MR. JONES:** And, Your Honor, ---

2 **MS. AARON:** So if we can call her in camera, maybe
3 that'll solve the problem.

4 **MR. JONES:** Your Honor, again, Ms. Aaron is assuming
5 that we're talking about the victim's behavior at all. The
6 victim's going to come in here and testify as to what
7 happened between the Defendant or what she's alleging the
8 Defendant did to her on multiple occasions. And another
9 witness is going to testify to something that she witnessed
10 happen. And the officer's going to testify to what he told
11 -- what the Defendant told the officer.

12 So she's -- Ms. Aaron keeps bringing up the victim's
13 behavior. I don't see -- she wants that to be, I believe
14 their defense, she wants that to be brought up so they can
15 see that this child has had sex with a couple of other
16 adults, one other adult, however many it is. But again,
17 that's the purpose of the Rape Shield is we're not focusing
18 on what we need to be focusing on.

19 **THE COURT:** All right. Obviously Officer Hamby is the
20 police department.

21 **MR. JONES:** That's correct, Your Honor.

22 **THE COURT:** All right. Minor ?

23 **MR. JONES:** That's the victim.

24 **THE COURT:** That's the victim. Peggy Robinson?

25 **MR. JONES:** Is the mother of the victim and girlfriend

1 of the Defendant.

2 **THE COURT:** All right. And Kelsey Beals?

3 **MR. JONES:** Kelsey Beals and Shauna Galloway are both
4 experts. I had a possible timing issue with Shauna
5 Galloway. I'm only going to call one of those, but it just
6 depends on where we are in the trial.

7 **THE COURT:** Right.

8 **MR. JONES:** One might be the expert or it might be the
9 other one's the expert.

10 **THE COURT:** Yeah. And you want to proffer that
11 testimony to see where that's going?

12 **MS. AARON:** Yes, sir. I see no reason to call an
13 expert other than to explain some problem or some issue the
14 jury would have problems understanding as a lay person.
15 That's the reason for calling an expert. And I would like
16 to, yes, sir, before we're prohibited from doing what ---

17 **THE COURT:** Chris, ---

18 **MS. AARON:** --- what we need to do.

19 **THE COURT:** --- have you got either one of those
20 experts here?

21 **MR. JONES:** They're not here at the moment. I can have
22 them here this afternoon, though, Your Honor.

23 **THE COURT:** How long would you think it would take to
24 proffer their testimony?

25 **MR. JONES:** Well, it would depend on the cross

1 examination, but ---

2 **THE COURT:** Yeah, I understand.

3 **MR. JONES:** Just to get my testimony out, thirty
4 minutes.

5 **THE COURT:** All right. We'll do that.

6 **MR. JONES:** I can have them here after lunch and try to
7 still do it.

8 **THE COURT:** If you could have them -- if you could have
9 them here, say, by 1:30.

10 **MR. JONES:** Okay. Yes, sir, Your Honor.

11 **THE COURT:** So we're going to table that issue at this
12 point and we'll just move on to the other ---

13 **MS. AARON:** Thank you, Your Honor.

14 **THE COURT:** Okay.

15 **MR. JONES:** The other issue, Your Honor, I think we
16 need to take up, I believe there's some Lyle evidence that I
17 intend to get into, Your Honor. As I briefly mentioned, the
18 victim was thirteen years old at the time of the acts that
19 occurred in the indictments and the time she disclosed the
20 abuse.

21 And in the disclosure to law enforcement and in
22 preparing for the case the victim has indicated that sexual
23 abuse began when she was six or seven years old when her
24 mother started dating the Defendant, however, at that time
25 it was touching, some oral sex and then culminated in the

1 month of July of 2013 with several actual sexual intercourse
2 acts, Your Honor. So I would intend to have the victim
3 testify to all of that.

4 I think there are several cases on point that indicate
5 it is admissible when the acts have been over several years,
6 but is a continuous illicit sexual abuse that culminates in
7 the sexual act, Your Honor.

8 I can go further and direct you to State v. Kirton and,
9 I believe, State v. Clasby gives a good analysis of what
10 Your Honor's supposed to go through, Your Honor. But I'll
11 allow Ms. Aaron to make some arguments and see how much
12 further I need to go into those.

13 **THE COURT:** Yes, ma'am.

14 **MS. AARON:** May it please the Court, Your Honor. I
15 would object first of all that this would be an attempt by
16 the solicitor to introduce evidence that was known on the
17 day the warrant was issued in July of 2013 that he cannot
18 prove beyond a reasonable doubt. So his effort in
19 introducing this evidence that the victim has been talking
20 about since the beginning, this isn't something that was
21 discovered over the course of time. Because he cannot prove
22 that beyond a reasonable doubt, why he's using Lyle as a
23 back door.

24 I would also point you to some dicta in one of the
25 cases that he mentioned, and I will put my hands on it in

1 just a minute, which talks about the only way that the State
2 can do this is common scheme or plan. But the common scheme
3 has to be the same type of abuse.

4 The abuse that's listed in the warrants and omitted
5 from the indictment, which would be another thing that I
6 would hope to talk about, but it's different. It's not the
7 same act.

8 The one particular case that did not allow the State to
9 do common scheme or plan evidence involved a different type
10 of sexual touching. And the court excluded it because it
11 wasn't exactly the same.

12 So I would submit to you that this is an attempt by the
13 State to introduce evidence they cannot prove by a
14 reasonable doubt to compound or to bolster the cases that
15 they chose to prosecute. And I would object to it.

16 **MR. JONES:** Your Honor, that's simply not true. In
17 State v. Kirton, the facts are almost exactly like this.

18 **THE COURT:** Y'all have ---

19 **MR. JONES:** Yeah, I have a cite, Your Honor. I'm
20 sorry. It's 381 S.C. 7.

21 **THE COURT:** 301?

22 **MR. JONES:** No, 381.

23 **THE COURT:** 381.

24 **MR. JONES:** S.C. 7.

25 **THE COURT:** 7?

1 **MR. JONES:** 7, yes, sir. It's a 2008 case, Your Honor.
2 And essentially the victim testified, or excuse me, the
3 indictment was for criminal sexual conduct, second degree.
4 The victim testified that over six or seven years there was
5 touching, touching the victim's crotch and making the victim
6 touch his penis and also oral sex.

7 And the court held that this is the six or seven
8 pattern -- year pattern of escalating abuse of the victim by
9 the defendant is the essence of grooming and continuous
10 illicit activity. And that is exactly what happened and
11 what we intend to show, Your Honor, in this case.

12 And it was admissible in 2009 in front of the South
13 Carolina Supreme Court. I do not -- I'm not aware of -- I
14 don't believe Ms. Aaron indicated what case she was
15 referring to, Your Honor.

16 And, again, in Kirton the Supreme Court said that when
17 prior bad acts are directed towards the same victim and are
18 very similar in nature, those acts are admissible in the
19 common scheme or plan, Your Honor. And, again, it mentioned
20 that the six or seven year pattern of escalating abuse was
21 the essence of grooming and a continuous illicit activity.

22 And I would also say that the acts in Kirton were not
23 the exact same. At first it was touching and then it moved
24 up to actual sexual intercourse.

25 **THE COURT:** Does anybody have a copy of that case that

1 I can look at?

2 **MS. AARON:** Your Honor, for the record, I would respond
3 to the escalation issue, which is the very -- and I'm
4 searching right now for the cite that I have. It's the very
5 -- is the essence of the case that I'm talking about. And I
6 will get it for Your Honor very shortly.

7 This is -- the case that we're trying today is not an
8 escalation. He's charged with CSC, third degree, which
9 doesn't even involve a sexual battery. The prior acts that
10 are being complained of do.

11 So this is not an escalation case. This is not a
12 grooming case. This is an attempt by the solicitor to
13 convict my client of six or seven year's worth of acts that
14 he does not believe he can prove beyond a reasonable doubt,
15 which is why the indictments are limited to date. I submit
16 to the Court that that is improper and that is the very
17 reason why prior bad acts are excluded.

18 **MR. JONES:** Your Honor, I appreciate her opinion, but
19 this is my case and it is a grooming case. And he's charged
20 with not only CSC, third, she failed to mentioned he's also
21 charged with CSC, second, with actually having sex with this
22 victim. And, again, the six or seven year pattern of
23 illicit -- continued illicit activity is the essence of
24 grooming as the Supreme Court said, Your Honor.

25 **THE COURT:** What's the pattern here or the allegations?

1 **MR. JONES:** The allegations are for six or seven years

2 ---

3 **THE COURT:** That's the six or seven years you're
4 talking about ---

5 **MR. JONES:** Yes, ---

6 **THE COURT:** --- in the case?

7 **MR. JONES:** In both cases. In Kirton they mention six
8 or seven years.

9 **THE COURT:** Right.

10 **MR. JONES:** And in the facts here that we intend to
11 present, the Defendant and the victim's girlfriend, or
12 excuse me, the victim's mother dated for six or seven years
13 before the child disclosed the sexual abuse. And in that
14 time-frame the victim alleges that he did touch her
15 inappropriately on a regular basis and performed oral sex on
16 her and she performed oral sex on him.

17 And, Your Honor, I also direct you to State v. Clasby.
18 I can give you a cite on that one as well.

19 **THE COURT:** All right.

20 **MR. JONES:** It's 385 S.C. 148.

21 **THE COURT:** And that's State versus who?

22 **MR. JONES:** That's State v. Clasby, C-l-a-s-b-y. And
23 in that case there were four prior incidents of touching,
24 however, the indictment was just for one date per digital
25 penetration. And, again, the court referred to Kirton and

1 indicated that this was an escalating pattern of abuse and
2 that it was only logical to bring those prior events in.

3 **MS. AARON:** And, Your Honor, maybe we need to proffer
4 the victim as well. But I think the key to my objection is
5 the escalating. If you hear from the victim to what
6 activity she alleges occurred over the six or seven years,
7 we are not escalating.

8 Grooming is a touching of the shoulder and then the
9 waist and then -- that's not what we have here as I
10 understand what the victim's statements have been. This is
11 not an escalation. I think that goes to the heart of why
12 our case is distinguishable from those two.

13 (Pause)

14 **THE COURT:** Solicitor, are you ready to proffer that
15 testimony?

16 **MR. JONES:** Of the victim?

17 **THE COURT:** Um-hum (affirmative).

18 **MR. JONES:** The victim is arriving at 1:00 today, Your
19 Honor. She's in a group home and had to be transported
20 here.

21 **THE COURT:** Well, we'll do that at 1:00 then.

22 **MR. JONES:** Yes, sir.

23 **MS. AARON:** Your Honor, I would want to mention one
24 particular case that is not a Lyle case, but it does talk
25 about the six year period of time. It's State versus Baker.

1 It is from February of 2015. It is at 411 S.C. 583.

2 And in that particular case the -- it's a little bit
3 different situation. The solicitor indicted two weeks
4 before trial a six year period rather than what Mr. Jones is
5 proposing, which is to simply mention these activities over
6 a six year period.

7 We've been preparing for trial based on the allegations
8 on the warrants, which were specific dates. And today we
9 learn that the solicitor intends to in effect have my client
10 defend a six year -- six to seven year period of time with
11 non-specific allegations.

12 And the court in Baker says with regard to that, aside
13 from the concrete example of prejudice, which they found in
14 Baker, we are unable to discern how any defendant could
15 effectively defend himself against a six year time-frame.

16 What the court in Baker determined is that the
17 defendant had been preparing his defense based on the
18 indictments that he was given, which is exactly what we have
19 been doing. And now to allow the solicitor, again, to
20 introduce evidence of prior bad acts that he claims are
21 common scheme, and he's going to argue are the same exact
22 acts as these particular dates, we are now in a position of
23 having to defend a six year time period with no notice and
24 effectively no threshold of beyond a reasonable doubt that
25 the jury would have to find with regard to this evidence.

1 So I would ask -- I would throw that one out there for
2 the Court's consideration, I assume, after we're going to
3 argue after proffer.

4 **MR. JONES:** I would say they did have notice because
5 it's in the discovery what the child's statement is and she
6 made that statement at that time. And I do think that State
7 v. Kirton is exactly on point, Your Honor, and that this is
8 exactly the kind of case and the kind of facts the Supreme
9 Court of South Carolina allowed ---

10 **THE COURT:** Was it in the discovery, Ms. Aaron?

11 **MS. AARON:** It was in the discovery, Your Honor. And
12 the solicitor chose not to indict for it. The solicitor ---

13 **THE COURT:** He didn't have to indict him for it.

14 **MS. AARON:** I understand, but if ---

15 **THE COURT:** If you're aware of it.

16 **MS. AARON:** I was absolutely aware of it. It's all
17 over the map. But I was absolutely aware of her
18 allegations.

19 It was in the discovery, but the solicitor elected
20 three instances where he believed he could prove what the
21 victim said beyond a reasonable doubt and did not indict my
22 client on any of that other information, yet it's going to
23 be presented to the jury in a situation where they're going
24 to be required to find him guilty beyond a reasonable doubt
25 on three instances, but hear about a six to seven year

1 period, which the court has said is impossible for the
2 defendant to ---

3 **THE COURT:** How is this case different from ---

4 **MS. AARON:** --- defend against.

5 **THE COURT:** --- Kirton?

6 **MS. AARON:** I think there's two reasons. One is the
7 escalation. This is not an escalation case.

8 **THE COURT:** It seems to mirror Kirton.

9 **MS. AARON:** Your Honor, I understand. If we had
10 escalation, it would, but this is not an escalation case.
11 He is charged in our trial today with less on one indictment
12 than she alleged happened six years ago. There's no way in
13 the world that's escalation.

14 If she'd alleged intercourse ---

15 **THE COURT:** What about the other two?

16 **MS. AARON:** I understand the other two, but they're
17 specific dates. If she's alleging intercourse over a six to
18 seven year period, now we have not escalated.

19 **MR. JONES:** She's not alleging intercourse ---

20 **MS. AARON:** We have not -- her testimony with regard to
21 the ---

22 **THE COURT:** Well, I got to hear her testimony.

23 **MS. AARON:** I understand. And maybe we'll ---

24 **THE COURT:** My understanding of her testimony, based on
25 just what's going on here, is it didn't start out with

1 intercourse.

2 **MS. AARON:** Well, if that's what she said, then that's
3 different than ---

4 **THE COURT:** I mean, ---

5 **MS. AARON:** --- what I understand it.

6 **THE COURT:** --- I don't know. I haven't heard it. So,
7 ---

8 **MS. AARON:** I understand.

9 **THE COURT:** --- obviously, I've got to wait and hear
10 that. So ---

11 **MS. AARON:** Yes, sir.

12 **THE COURT:** --- we'll have to do that. All right.
13 What else?

14 **MR. JONES:** Your Honor, all I have are Lyle, the Rape
15 Shield issue, which we're going to get to with the other
16 proffering of the witnesses.

17 There's statement of the co-defendant, Your Honor. He
18 did not admit to the sexual acts, however, he did admit to a
19 portion of something that is important in this particular
20 case. He was given Miranda and all that, however, there's
21 no video or no written statement. So I don't know if we
22 need to do the whole full Jackson/Denno thing.

23 **THE COURT:** Well, I mean, it's a statement by the
24 Defendant that he made.

25 **MR. JONES:** To law enforcement.

1 **THE COURT:** To law enforcement.

2 **MR. JONES:** Okay.

3 **THE COURT:** Yeah.

4 **MR. JONES:** Yes, sir, Your Honor.

5 **THE COURT:** We need to do that.

6 **MR. JONES:** Okay. Well, again, we'll have to do that
7 at 1:00 as well.

8 **THE COURT:** Guys, we can't push everything off to --
9 are you ready to do anything this morning? Do you have any
10 of your witnesses here?

11 **MR. JONES:** No, Your Honor. They're getting here at
12 1:00, Your Honor. Generally, -- I apologize. Generally, we
13 pick the jury and then begin after lunch. So that's what I
14 was preparing to do, Your Honor.

15 **THE COURT:** Well, that's what we're doing. But I --
16 I've got a jury coming back at 2:30 and it sounds like we
17 got way more than we can say grace over before we -- before
18 2:30. I mean, I -- I was prepared to take up pretrial
19 matters this morning so we could start at 2:30.

20 **MR. JONES:** Yes, sir, Your Honor.

21 **THE COURT:** Well, it doesn't -- we might as well break
22 for lunch at this point. I don't think there's anything we
23 can do that's constructive. And we'll just start back at
24 1:30.

25 **MR. JONES:** Yes, sir. And the victim and the officer

1 will be here at 1:00 -- at 1:30.

2 **THE COURT:** Well, the only reason I'm saying start at
3 1:30 is I've got to give, you know, the court personnel a
4 chance to get something to eat ---

5 **MR. JONES:** Yes, sir, Your Honor.

6 **THE COURT:** --- before we start back. Is there
7 anything we can do right now that we can resolve or do we
8 just need to come back at 1:30?

9 **MR. JONES:** Your Honor, I believe since we have to
10 proffer the two witnesses, ---

11 **THE COURT:** Anything from the Defense side?

12 **MS. AARON:** The only question I would have would just
13 to confirm that there's no prior record that the State
14 intends to cross examine my client regarding. I don't
15 believe there is.

16 **THE COURT:** Is there any prior history that you could
17 ---

18 **MR. JONES:** No, sir, Your Honor.

19 **THE COURT:** --- impeach with?

20 **MR. JONES:** No. And one thing I will mention is Ms.
21 Aaron did not give me a list of her witnesses. She said
22 that she did not do that, however, if she does present a
23 case ---

24 **THE COURT:** She doesn't have any except possibly her
25 client.

1 **MS. AARON:** That's correct.

2 **MR. JONES:** Okay.

3 **THE COURT:** And that's the concern -- but there's no
4 record with regard to the Defendant?

5 **MR. JONES:** That's correct. There's no record, Your
6 Honor.

7 **THE COURT:** Okay.

8 **MS. AARON:** And, Your Honor, I guess for the record,
9 while we're here, I would like to put on the record that the
10 State did strike a black juror. I had intended to consider
11 a Batson motion with regard to that.

12 I did speak with the solicitor. He indicated a
13 racially neutral reason for striking the juror, which
14 satisfied me. So in the event this record is ever reviewed
15 by someone later down the road, I wanted to put on the
16 record that we did have that discussion and he did present a
17 racially neutral reason.

18 **THE COURT:** Okay. All right. Well, let's start back
19 at 1:30 then. And we'll take it from there, okay?

20 **MR. JONES:** Yes, sir.

21 **THE COURT:** Court will be in recess til 1:30.

22 (Whereupon court was in recess at 12:19 pm)

23 (Whereupon State's exhibits 1 - 3 were marked for
24 identification)

25 (Whereupon court reconvened at 1:35 pm)

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

1 **THE COURT:** Thank you, ladies and gentlemen. Please
2 have a seat. All right. We ready to start?

3 **MR. JONES:** Yes, sir, Your Honor. We're prepared to go
4 forward on the Jackson v. Denno hearing now.

5 **THE COURT:** All right. Let's go ahead and start with
6 that then.

7 **MR. JONES:** Your Honor, the State would call Detective
8 Jon Hamby to the stand.

9 **THE COURT:** Detective Hamby, if you'd come around to be
10 sworn, sir.

11 Jonathan Hamby, being
12 duly sworn testified as follows;

13 **THE CLERK:** Thank you. If you would have a seat and
14 state your name for the record.

15 **MR. HAMBY:** Jonathan Hamby.

16 Direct Examination by Mr. Jones:

17 Q. Detective Hamby, tell the Court where you're employed.

18 A. The City of Easley Police Department.

19 Q. And what's your position there?

20 A. Investigations. Currently assigned to narcotics and
21 vice.

22 Q. And on July 30th of 2013 you had the occasion of
23 questioning Kelly Phillips?

24 A. I did.

25 Q. Tell the Court just briefly how the investigation got

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

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1 there and how you made contact with Mr. Phillips.

2 A. The police department was notified by a doctor's office
3 of a juvenile in their facility that had disclosed sexual
4 abuse. A road patrol officer had responded to that
5 location. And after verifying or hearing the story, he
6 contacted our investigations division, which was where I was
7 employed at the time or assigned at the time. And my
8 captain asked me to respond to the doctor's office to handle
9 the investigation.

10 Q. Okay. And did you go to the doctor's office?

11 A. I did.

12 Q. Okay. And just briefly, who did you talk to at the
13 doctor's office?

14 A. At first I talked with Dr. Richards. And then I talked
15 with Peggy Robinson and Minor

16 Q. Okay. And you did mention you did talk to Mr.
17 Phillips. Tell the Judge how you made contact with Mr.
18 Phillips.

19 A. Later on in the investigation the investigation was
20 moved from the doctor's office to the police department.

21 And after speaking with Minor and Peggy Robinson
22 further, I made contact with Mr. Phillips by his cell phone.
23 I requested him come to the police department. He agreed
24 and met me at the police department.

25 Q. Okay. And when you were talking with him in the police

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

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1 department, can you just describe the room where you were.

2 A. It's our standard interview room, approximately nine or
3 ten by ten, a bench or a desk with two chairs, three chairs
4 in that room.

5 Q. And who all was in the room when you talked to him?

6 A. At that time it was just myself and him.

7 Q. Okay. Did he -- did Mr. Phillips appear to be under
8 the influence of any drugs or alcohol at the time?

9 A. No.

10 Q. Did he appear to be impaired by any mental or physical
11 disability?

12 A. No.

13 Q. Do you remember about how long the questioning lasted?

14 A. I don't recall right off.

15 Q. Was it -- would you say it was over three hours?

16 A. No, not with just his part. Now I was back and forth
17 between several different people during this time-frame.
18 And I was there more than three hours, but not just his
19 part.

20 Q. Okay. Was he ever denied access to the telephone or
21 the bathroom?

22 A. No. As a matter of fact, there's a telephone in the
23 room that we're in sitting on the desk.

24 Q. What about food or drink?

25 A. No. He never requested any, but never denied him any

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

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1 either.

2 Q. Did you make him any promises or anything in exchange
3 for testifying or for, excuse me, talking to you?

4 A. No.

5 Q. Was he under arrest at the time you were talking to
6 him?

7 A. At that time, no.

8 Q. Was he free to go at any time during the questioning?

9 A. He was free to stop the questioning, however, I did
10 have active warrants on him at that time. And after the
11 interview was over he was placed under arrest for those
12 warrants.

13 Q. All right. And did you read Mr. Phillips his Miranda
14 warning?

15 A. I did.

16 Q. And how did you advise those rights?

17 A. On our standard form that the police department has.

18 **MR. JONES:** Your Honor, may I approach the witness?

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

20 Q. Deputy Hamby, I'm showing you State's exhibit 1. Would
21 you take a look at that for me. Do you recognize that?

22 A. Yes.

23 Q. Can you tell the Court what it is?

24 A. It's a copy of the form that we filled out that evening
25 before I talked to him.

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

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1 Q. And is there anybody's signature on that form?

2 A. Yes.

3 Q. Okay. And whose is that?

4 A. The top signature where it says -- signature would be
5 Douglas Kelly Phillips and then below that as a witness
6 would be myself as the one who read the form to him.

7 Q. Did the Defendant appear to have any trouble
8 understanding that form and his rights?

9 A. No.

10 Q. Did his answers appear to be rational and responsive to
11 what you were asking him about?

12 A. Yes.

13 Q. Did you ever threaten or coerce the Defendant in any
14 fashion?

15 A. Absolutely not.

16 Q. How did he respond when you asked him if he wanted an
17 attorney?

18 A. He said that he understood it and he was willing to
19 talk to me about Minor .

20 Q. Did he ever at any point change his mind throughout the
21 questioning and request an attorney?

22 A. No. He never requested an attorney at all. Towards
23 the end -- how our conversation ended is he got agitated and
24 he said he didn't want to talk anymore. And that's how we
25 wrapped up the interview.

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

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1 Q. And was the statement video or audio recorded?

2 A. It was not.

3 Q. Did he write a statement?

4 A. He did not.

5 Q. Okay. How did you record or make a record of what Mr.

6 Phillips told you?

7 A. During the interview I was documenting, taking notes.

8 Q. Okay. Would you tell the Court what the Defendant told
9 you?

10 A. Yes. I called him there and post Miranda waiver I
11 informed him that we were up there to talk about Minor

12 Started off the interview by -- this was on a
13 Tuesday. And the victim in this case said the most recent
14 incident had happened on that Sunday before at her house.

15 So I started the conversation off with him by asking
16 him if anything out of the ordinary had happened on that
17 Sunday night before. He stated nothing out of the ordinary
18 had happened.

19 He confirmed that he did stay at the Robinson's house,
20 which is in the City of Easley on that Sunday night. And
21 then he said on Saturday night they all had stayed at his
22 house.

23 And then the previous Friday night, which was another
24 key date that this -- the victim had given that they had all
25 stayed at the victim's house again. But again, he said

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

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1 nothing out of the ordinary had happened.

2 And then I went on by asking him where he slept on that
3 Sunday night when he was at Minor 's house. And at
4 that point he said, oh, you're talking about when Minor saw
5 me and Peggy having sex or woke up while me and Peggy were
6 having sex.

7 And I asked him, I said, well, how did that go? And he
8 told me that him and Minor had went into Minor 's bedroom
9 to watch a movie. A little while later, mama, which is
10 Peggy Robinson, had come in there, watched a movie with
11 them.

12 According to him, Minor had fell asleep and him and
13 Peggy started having sex in the same bed where Minor was
14 sleeping and sometime during that ordeal Minor had woke up
15 and was observing them having sex. And he said at that
16 point they just both stopped having sex.

17 Q. Okay.

18 A. He also stated -- I asked him had incidents like that
19 ever happened before. He confirmed that it happened several
20 times at different places where Minor had observed him and
21 her mama having sex.

22 Then I directly asked him had he ever touched her in a
23 sexual manner. And he stated, no. And I asked had she ever
24 touched him in a sexual manner. And he stated, no.

25 Speaking with him further he changed his story at that

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1 point and stated he remembered one time when he was staying
2 at Minor 's house and that she had come in -- let's see.
3 That he had stayed at her house and she had tried to touch
4 him before.

5 And I asked him how that happened. And she said -- he
6 said it was about a year before this time-frame when I was
7 talking to him and that he was sleeping on the couch and she
8 had come in there and laid down beside him and was trying to
9 touch him in his private areas. Mr. Phillips stated that he
10 told her to stop and go back to bed and that she did that.

11 I asked if he had ever told her mama about that
12 incident. He said, no, he thought just telling her to stop
13 and go back to bed was enough and he never told Peggy
14 Robinson, which is Minor 's mother.

15 And at that point -- during that time I was also
16 interviewing -- I had Ms. Robinson up there. And I was
17 going back and forth after he was not giving me anymore
18 information.

19 And Ms. Robinson had told me a totally opposite story.
20 And she said that if she could see Mr. Robinson -- Mr.
21 Phillips that she would tell him to tell the truth because
22 she was telling the truth. So I made it available for them
23 to see each other.

24 She told him that she was telling the truth, that he
25 needed to tell the truth. And while she was saying that, he

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

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1 didn't say anything.

2 And then after he left -- she left out of the -- she
3 never came into the room, she was just in the doorway. And
4 after she left that area he changed his story again. And on
5 this third story he stated that he did remember a time -- he
6 actually said it happened about three or four times where
7 Minor had come on to him.

8 He remembered one particular time where she was
9 crawling on him and rubbing on him and stated that this
10 night he was asleep on the couch at their house again and
11 woke up and Minor had her hands down his pants when he woke
12 up and that he had told her to stop. And she went back to
13 bed.

14 And then I asked about telling her mother about that
15 incident. And he confirmed that he did. Or at that time he
16 said he did tell Ms. Peggy Robinson about that incident.

17 And then at that time is when I started confronting him
18 about his counter statements that was totally opposite of
19 what he just told me. And that's when he got agitated and
20 didn't want to talk anymore. And that's how the interview
21 ended.

22 Q. Okay. And when Kelly Phillips and Peggy spoke with
23 each other did they ever have a chance to be alone?

24 A. No.

25 Q. Okay. And were you witnessing them the entire time

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

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1 they were talking?

2 A. Yes. I was in the room with Mr. Phillips. And another
3 officer had brought Ms. Robinson up the hallway to where the
4 door was open. And they could just see each other, but they
5 were never in the same room.

6 Q. Okay.

7 **MR. JONES:** And, Your Honor, I apologize. I believe I
8 forgot to ask that State's exhibit 1 be moved into evidence.
9 I believe I've asked all the proper questions. I just
10 forgot to ask that it be moved in.

11 **MS. AARON:** I have no objection.

12 **THE COURT:** All right. Without objection, State's 1 is
13 in evidence.

14 (Whereupon State's exhibit 1 was admitted into evidence
15 for this hearing)

16 **MR. JONES:** Thank you, Your Honor. That would be all
17 from the State.

18 **THE COURT:** Ms. Aaron.

19 **MS. AARON:** Your Honor, procedurally, and I didn't
20 interrupt this detective because we're not in front of the
21 jury, but he did make some statement with regard to what
22 Peggy Robinson told him. And I would, of course, object
23 that that's hearsay. I would ask that he be cautioned not
24 to testify to that in the presence of the jury.

25 **THE COURT:** Sure.

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

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1 **MS. AARON:** I certainly didn't want to interrupt to do
2 that.

3 **Cross Examination by Ms. Aaron:**

4 Q. Detective, did you make any notes during your time that
5 you were -- in July of 2013 when you were talking to Mr.
6 Phillips?

7 A. Oh, I do take notes, yes.

8 Q. Do you have those notes with you?

9 A. No. After I transcribe them into my report, I no
10 longer keep them.

11 Q. So you throw them away?

12 A. Yes.

13 Q. And when did you write this report?

14 A. Shortly thereafter the interview.

15 Q. So the date of 7/30/2013 is the day you're saying that
16 you wrote the report?

17 A. I would have started on it that evening and then
18 followed up on the next day and finished it out. I mean,
19 it's a long report. So it took me a while to type the
20 report. But, yes, within a short time-frame.

21 Q. Don't you think it would have been important to record
22 this type of conversation?

23 A. It would have ---

24 **THE COURT:** All right.

25 A. --- been, yes.

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

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1 **THE COURT:** Hold on. Okay. I was going to say -- go
2 ahead.

3 Q. What's your purpose for talking to him?

4 A. Purpose for talking to him is get his side of the
5 allegations that was made against him.

6 Q. So it's to -- if he's going to make any admissions to
7 you, it's to get those admissions made to you post Miranda
8 so that you can put them in your case?

9 A. He was being accused by a victim of a serious crime.
10 So I -- he was willing to cooperate with the investigation.
11 I ---

12 Q. I understand.

13 A. --- needed to interview him for the investigation.

14 Q. Is it your purpose to document any admissions he makes
15 so that they can go into your case file or into your case?

16 A. Of course.

17 Q. Post Miranda?

18 A. Yes.

19 Q. So your ear is out looking for "admissions"?

20 A. No. I'm documenting the interview. I mean, as I ask
21 questions and receive the answer. It's not looking for any
22 particular answer or, you know, I don't understand what
23 you're getting at, but, no, ---

24 Q. No, you don't ---

25 A. --- I mean, I just ---

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

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1 Q. You're not going to answer my question the way -- I'm
2 not going to go there anyway. This room has a desk, two
3 chairs and a telephone?

4 A. Could be two chairs, could be three or four, chairs
5 depending on ---

6 Q. Doesn't it have recording equipment ---

7 A. No.

8 Q. --- in it? No?

9 A. No.

10 Q. It's not equipped to record?

11 A. No.

12 Q. Do you have a portable cassette tape that you could
13 have -- a cassette recorder? It's old-timey, but could you
14 have taken that in there?

15 A. No.

16 Q. Does your phone record?

17 A. I don't know what phone I had at the time, but it may
18 have had a -- I don't know, but, I mean, it's a smartphone
19 issued. Do I record conversations on it? No.

20 Q. So you routinely don't record statements made by
21 Mirandized defendants?

22 A. Routinely as of 2013, yes.

23 Q. Do you now?

24 A. We have -- currently we have the rooms fitted up with
25 audio and video recording.

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

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1 Q. And you now record statements given by defendants?

2 A. When applicable, yes.

3 Q. When applicable, what does that mean?

4 A. I mean, if it's occupied at the time or out of service,
5 I can't do it. But if it's available and I can do it and it
6 lends itself to it, yes, I do it.

7 Q. So why is it important now and not important then?

8 A. It's just as important either way, but ---

9 **THE COURT:** All right. I'm going to restrict this
10 hearing. This isn't cross examination in front of the jury.
11 This is whether or not the statement was given voluntarily
12 and given pursuant to Miranda.

13 **MS. AARON:** I understand, Your Honor.

14 **THE COURT:** So let's restrict it to that.

15 **MS. AARON:** I understand. Thank you, Your Honor.

16 **THE COURT:** Now, you -- now, that doesn't mean that --
17 in front of the jury you can go into all this, ---

18 **MS. AARON:** I understand.

19 **THE COURT:** --- you know.

20 **MS. AARON:** I think my purpose with this detective is
21 that there's no documentation of what the Defendant said,
22 how he said it, what his tone was ---

23 **THE COURT:** There's ---

24 **MS. AARON:** --- in an important -- except what he wrote
25 in his report.

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

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1 **THE COURT:** Show me the law that requires it be
2 documented.

3 **MS. AARON:** It doesn't. I understand it doesn't.

4 **THE COURT:** Again, ---

5 **MS. AARON:** I think to be reliable ---

6 **THE COURT:** Again, you can go into all of this at
7 length in front of the jury, but for the purpose of this
8 hearing, I'd rather stick to the issue of whether or not --
9 and it may be your argument is that it's not reliable, but
10 -- so, you know, and that's -- since I understand what
11 you're saying, and you can certainly argue that.

12 **MS. AARON:** That would be my point, Your Honor, but ---

13 **THE COURT:** Yeah.

14 **MS. AARON:** --- if you believe that I've made it
15 sufficiently, then I'm not going to go any further or waste
16 anymore time.

17 **THE COURT:** I think you've -- well, for purposes of the
18 hearing, I think you've made it very clear that it could
19 have been recorded, it wasn't recorded and whatever the
20 significance that has.

21 **MS. AARON:** I understand.

22 **THE COURT:** Okay.

23 **MS. AARON:** And that's all I have on that issue.

24 **THE COURT:** Anything further of this witness?

25 **MR. JONES:** Nothing further of this witness, Your

1 Honor.

2 **THE COURT:** All right. Thank you very much, sir. You
3 may step down. Anything further as to this issue?

4 **MR. JONES:** Your Honor, I'd ask that you find that the
5 statement of the Defendant was freely and voluntarily given.

6 **THE COURT:** And, Ms. Aaron, I'd be happy to hear from
7 you.

8 **MS. AARON:** Your Honor, I would argue that reliability
9 is a significant issue in that from now on law enforcement
10 has determined that it is important to record the demeanor
11 of the Defendant to record how he makes a statement rather
12 than exactly the words that he says. And we don't even know
13 what he said because there's absolutely nothing in the
14 report in quotation marks. So I would object and to the
15 reliability of this officer transcribing whatever his notes
16 may say and then offering it as a statement given by my
17 client.

18 **THE COURT:** All right. It appears from the testimony
19 that the Defendant at least pursuant to what was testified
20 here today that he was not under the influence or any type
21 of concern that the officer had regarding his ability to
22 understand. He reviewed his Miranda rights with him.

23 There was a waiver of those rights initially, but then
24 there was a subsequent -- there was a opportunity that the
25 Defendant chose to exercise those rights and he did so. But

1 in between it appears that the initial statements were given
2 freely, voluntarily.

3 As far as the reliability, I think the testimony from
4 the officer was that he took notes throughout the
5 conversation and then he transcribed his notes into his
6 report, which was done that evening into the following day.
7 And that report is, I guess, in the case file.

8 I'm going to allow the testimony as to the statement.
9 I think it was given freely and voluntarily. It was,
10 although, not recorded, which as I stated earlier isn't a
11 requirement. There were notes taken. It was memorialized
12 in those notes through the report.

13 And then, again, the jury is going to be the ultimate
14 decider as to whether or not it's reliable or not. The jury
15 is the one that can believe the statement or can disbelieve
16 it. But I think for purposes of Jackson v. Denno, I think
17 it comes in. What next?

18 **MR. JONES:** Your Honor, then I think we can move on to
19 the expert. The State intends to call Ms. Kelsey Beals. I
20 believe it's specifically for the purpose of -- I believe it
21 was to a problem the Defense had as to whether or not we
22 could get into a certain part of the Rape Shield Statute.

23 **THE COURT:** Correct. That was my understanding.

24 **MR. JONES:** Okay. So, Your Honor, at this time the
25 State would call Kelsey Beals to the stand.

KELSEY BEALS - IN CAMERA VOIR DIRE

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1 **THE COURT:** All right. Ma'am, if you would please come
2 around to be sworn.

3 **Kelsey Beals**, being duly
4 sworn testified as follows;

5 **THE CLERK:** Thank you, ma'am. If you would, have a
6 seat and state your name for the record, please.

7 **MS. BEALS:** Kelsey Beals.

8 **Direct Examination by Mr. Jones:**

9 Q. Ms. Beals, where do you currently work?

10 A. I work at the Julie Valentine Center.

11 Q. And what's your position there?

12 A. I'm a therapist.

13 Q. Okay. And do you have any other jobs or any other
14 things that you're responsible for?

15 A. As a therapist I see individual child and adolescent
16 clients, also, usually the young adult population. I run a
17 girls' group for teen girls who have been sexually abused.
18 And then I run a safe families' group for non-offending
19 caregivers of children who have been sexually abused.

20 And then at times I also have interns, clinical interns
21 completing their masters in clinical mental health
22 counseling, specifically from Clemson is all I've had.

23 Q. Okay. And describe briefly your educational
24 background, please.

25 A. I got my undergraduate degree and my doctorate in

KELSEY BEALS - IN CAMERA VOIR DIRE

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1 science and psychology at Ohio State University. And I
2 graduated in 2010. And then I went on to get my Master's in
3 clinical mental health counseling at Clemson University.
4 And I graduated there in 2012.

5 Q. Do you have any specialized training that goes beyond
6 your education?

7 A. I do. After I got my Master's in education in clinical
8 mental health counseling I was a -- I was deemed a licensed
9 professional counselor in the State of South Carolina, a
10 Nationally Certified Counselor. I'm also a South Carolina
11 victim's service provider for working at a non-profit
12 center.

13 I'm EMDR trained, which is Eye Movement Desensitization
14 and Reprocessing. And that's a therapy technique that is
15 utilized in sessions that you have to go to extensive
16 training for and get certified in that. I'm also trained in
17 trauma focused cognitive behavioral therapy and mind-body
18 medicine techniques.

19 Q. Okay. How many years would you say you've been in this
20 field?

21 A. Including my internship, I've been there since 2011.
22 I, obviously, graduated in 2012 and I took a full-time
23 position at Julie Valentine Center immediately following.
24 And so practicing fully with my license for four years under
25 an internship status and then being supervised while I get

KELSEY BEALS - IN CAMERA VOIR DIRE

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1 my full licensure, which is the typical process.

2 Q. And when did you get your full licensure?

3 A. In 2013.

4 Q. And how many clients would you say you've served
5 throughout your career?

6 A. So between groups and individual, I probably see about
7 a hundred to a hundred and fifty every year. And I've been
8 doing that since 2012. So ...

9 Q. Have you written any articles that have been published
10 and subject to peer review?

11 A. I have. In 2012 I co-authored an article with one of
12 my former professors. And it is about neglect, physical and
13 sexual abuse and PTSD, revolving around that -- around that,
14 which is Posttraumatic Stress Disorder.

15 Q. And do you teach or train others in your field?

16 A. Not necessarily in a formal level, but I am in charge
17 of the interns when they come. And so I'm their supervisor.
18 And so I do clinicals and staff cases with them and help
19 them in the -- in their process of graduating.

20 Q. And have you ever been qualified as an expert in child
21 sexual abuse, dynamics and disclosure?

22 A. Not in criminal court. In family court I know I was
23 deemed a professional or, I'm sorry, an expert at one point
24 in time, but I'm not -- I'm unsure as to what it was.

25 Q. Okay.

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1 **MR. JONES:** Your Honor, that would be the extent of our
2 qualifications for the expert. We'd ask at this time she be
3 qualified as an expert in the field of child sexual abuse,
4 dynamics and disclosure.

5 **THE COURT:** Ms. Aaron, would you like to voir dire the
6 witness today as to her qualifications?

7 **MS. AARON:** Thank you, Your Honor.

8 **Cross Examination by Ms. Aaron:**

9 Q. As I'm listening to your history since 2010, are you in
10 the therapy field?

11 A. Yes.

12 Q. So your job -- describe what you do. What's your job?

13 A. So at the Julie Valentine Center I see clients ranging
14 from age three to adulthood for individual services. They
15 obviously are coming to the Julie Valentine Center because
16 they've been sexually abused or they've disclosed sexual
17 abuse.

18 And so they come and we work on individual processing
19 to heal. And with that there is different techniques that
20 I've been trained in that I utilize to help the child
21 through the therapeutic process.

22 Q. So you're helping them get better?

23 A. I would like to think so, yes.

24 Q. Okay. So the fact that something may have happened to
25 them in the past is not really your concentration. Your

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1 concentration is how to take a child that has been presented
2 to you as a victim and move them forward through the
3 healing.

4 A. Yes. But in doing so I have to understand kind of
5 where they're coming from and maybe why they're going
6 through what they're going through. So there's extensive,
7 you know, obviously, you know, training that we go through
8 that helps us understand kind of the full process in
9 treating them in whole, not just from the day they walk
10 through our doors.

11 Q. Explain that to me.

12 A. So understanding, you know, maybe what that child's
13 been through in the sense of the -- when they come and they
14 see us at our center they are usually in a safe place
15 because someone's bringing them and someone believes them.

16 And so, obviously, before then they -- understanding
17 maybe they might not have been in a safe place or a safe
18 situation. And so understanding the dynamics and everything
19 that they've gone through to help them process through the
20 trauma that they've -- that they've been through.

21 Q. And so do you think you were probably qualified in
22 family court as a therapist?

23 A. Probably.

24 **MS. AARON:** I have no further questions, Your Honor. I
25 do object to her being qualified as an expert in child sex

1 abuse, dynamics and disclosure, however.

2 **THE COURT:** Basis of the objection?

3 **MS. AARON:** Your Honor, she has never been deemed an
4 expert in that field. And her testimony is that she is a
5 therapist. She deals with what the child presents to her
6 and helps them move forward to become whole again.

7 In terms of child sex abuse, dynamics and disclosure,
8 that's all happened. She's a therapist. And if she were to
9 talk about therapeutic techniques that she uses with a
10 child, you know, if that were the reason for qualifying her
11 as expert, we might go a little bit more in depth into that.
12 She has no training ---

13 **THE COURT:** What is your purpose in qualifying her as
14 an expert, solicitor?

15 **MR. JONES:** Your Honor, to explain to the jury the
16 sexual -- how children who have been sexually abused, the
17 process of disclosure that they go into and why sometimes
18 they don't disclose immediately. How in the world can it be
19 that there was six or seven years go by and this child does
20 not tell everything? How could it be that a child might
21 initially say just a little bit -- just a little bit of
22 something minor happened and then throughout the course of
23 time disclose more information? And why some children may
24 recant and say, well, this didn't happen at all and then
25 later come back and say this did happen, Your Honor. The

1 process by which sexual predators groom their victims, how
2 that happens over a course of time. /

3 **THE COURT:** Well, I think you need to voir dire her
4 then ---

5 **MR. JONES:** As to those ---

6 **THE COURT:** --- as to that specific area.

7 **MR. JONES:** And I do have those questions prepared,
8 Your Honor. They're just -- they're in ---

9 **THE COURT:** Well, I mean, I'm talking about as far as
10 her qualifications.

11 **MR. JONES:** Okay.

12 **THE COURT:** I may have missed that.

13 **MR. JONES:** Well, they're in the form of opinion
14 questions. So typically I get them qualified as an expert
15 based on their experience and training and all that, but for
16 these -- are you saying for these purposes ---

17 **THE COURT:** Well, I think I need -- I need more
18 information as to ---

19 **MR. JONES:** What she's ---

20 **THE COURT:** --- her training ---

21 **MR. JONES:** --- testified to?

22 **THE COURT:** --- and spotting and observing those -- and
23 detecting those things you just went through.

24 **MR. JONES:** And I think Ms. -- to be fair, I think Ms.
25 Aaron misstated it a little bit. She is a therapist, but

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1 she is a therapist to children who have been sexually
2 abused. But I'll go ---

3 **THE COURT:** No, I'm not -- I'm just saying -- I'm not
4 saying a therapist can't be qualified as an expert ---

5 **MR. JONES:** Yes, sir.

6 **THE COURT:** --- in this field that you're -- in this
7 area that you're talking about, but I just would like to
8 hear more about what, if any, training she has in that
9 particular area.

10 **MR. JONES:** Okay. Yes, sir, Your Honor.

11 **THE COURT:** In those -- in the areas you mentioned.

12 **MR. JONES:** Okay.

13 **Redirect Examination by Mr. Jones:**

14 Q. We'll go back and explain a little more to the Court
15 the specific training that you've received that applies
16 directly to children who have been sexually abused or how
17 that helps you in your -- in your career.

18 A. As ---

19 **THE COURT:** Not -- and let me just clarify, I guess,
20 for my purposes. Any training, not necessarily in -- once
21 that diagnosis is made, treating them as they work through
22 it, but making that diagnosis, being able to spot those
23 things and being able to address those things.

24 A. Okay.

25 **THE COURT:** Any training regarding those things.

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1 A. So I have been running the safe families' group since
2 2012. And that group is, I guess, a little bit more
3 specifically, that group is for non-offending caregivers,
4 but the reason why they're in that group is because they
5 have at one point in time throughout the process have either
6 been non-believing or non-protective of their children. And
7 so we work through that group and not -- and it's a twelve
8 week group that's mandatory that they come through and they
9 learn about the disclosure process and all of that.

10 And so the trainings that I have been to, any type of
11 -- the Brighter Future Conference that's in the upstate,
12 they talk -- they're known for child maltreatment. And so I
13 go every year to learn more about kind of the effects of
14 child abuse, but then also, you know, signs and symptoms
15 related to that.

16 Anna Salters specifically spoke, I believe, in 2013.
17 And she is an expert or she is a professional in her field
18 that deals with the grooming process and helping to
19 understand -- helping to lead others to understand how
20 offenders do what they do, and how they groom, and how they
21 gain trust, and how they isolate and how they choose their
22 victims.

23 Q. And why is it -- why is it important to know that
24 information in your current position?

25 A. Because when children come to me they haven't

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1 necessarily made the full disclosure process. And so
2 children only -- children will disclose when they feel safe.
3 And so a lot of times they'll test the waters and disclose a
4 little bit to see how it reacts. And that starts an
5 investigation process often.

6 And so they'll come to therapy and then they'll
7 gradually as they're able to work through it and they're
8 able to either feel safe to disclose more or be able to talk
9 about it in more detail. And so ---

10 Q. Tell the Court where you've learned in training or
11 education about the process of sexual abuse disclosure.

12 A. Through my internship at Julie Valentine Center and
13 through, you know, the Brighter Future Conference trainings
14 and then also Project Best is the trauma focused cognitive
15 behavioral therapy. And you have to take an online webinar
16 that helps you train and then go through a rigorous training
17 process with cases to -- and through that there's a lot of
18 education based off of, you know, how children -- what
19 happens to children and what they go through to get them to
20 enter the doors for therapy.

21 Q. And the same thing for grooming and anything else that
22 you believe, or excuse me, that you have knowledge of that
23 would help someone in understanding child sexual abuse in
24 general?

25 A. Can you repeat that?

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1 Q. Any training or education you've received that you use
2 on a regular basis not only treating victims of child sexual
3 abuse, but help you understand child sexual abuse in
4 general?

5 A. Correct. And also helping, you know, non-offending
6 caregivers and others and other individuals out there on
7 kind of the process, and the grooming procedures, and
8 delayed disclosure and, you know, why children don't tell.

9 Q. Is there any other -- your time at Clemson or Ohio
10 State, did you go through and take any courses there that
11 talked about child sexual abuse or where you learned child
12 sexual abuse?

13 A. Not specifically. They're not -- there aren't any
14 offered at Clemson.

15 Q. Okay. So this is mainly through your training, and
16 your experience and your intern position?

17 A. Right. And I did both of my internships at the Julie
18 Valentine Center.

19 Q. Okay.

20 **THE COURT:** And you've been ---

21 Q. Tell the ---

22 **THE COURT:** --- since 2012?

23 A. As a graduate in my masters. I was there starting in
24 January of 2010 ---

25 **THE COURT:** Okay.

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1 A. --- as an intern.

2 THE COURT: Okay.

3 Q. And tell the Court again -- you say you have written an
4 article that's been published and peer reviewed?

5 A. Um-hum (affirmative).

6 Q. What was the title of that article and briefly tell the
7 Judge what that was about.

8 A. Yes. The title of the article was Neglect, Physical
9 and Sexual Abuse: A Look at Posttraumatic Stress Disorder
10 in Children and Adolescents. And that was published in the
11 Michigan Journal of Counseling, Research, Theory and
12 Practice. And that was published in 2012.

13 Q. And when you were qualified as an expert in family
14 court, what were you there to testify about?

15 A. I can't speak to that specifically, but I know it was
16 for a client -- I think it was for an adult, a non-offending
17 caregiver's case. And I wasn't the child's therapist.

18 Q. Was it about criminal or was it about child sexual
19 abuse?

20 A. Yes.

21 Q. Okay. And you just can't remember what they called you
22 when they qualified you as an expert?

23 A. Correct.

24 Q. But you testified as to child sexual abuse?

25 A. Um-hum (affirmative). Yes, sir.

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1 Q. Did you testify in general terms about your knowledge
2 and what you ---

3 A. Yes.

4 Q. --- what you come to find out through your training and
5 experience?

6 A. Yes.

7 MR. JONES: I don't believe, Your Honor, ---

8 THE COURT: All right.

9 MR. JONES: --- I have any other questions.

10 THE COURT: Anything further?

11 MS. AARON: I have no other questions, but I'd still
12 object to her being qualified as an expert in child sexual
13 abuse, dynamics and disclosure. She's never, ever testified
14 in that regard. There's no specific training with regard to
15 dynamics and disclosure. And the one time she was
16 qualified, we don't know what it was for.

17 THE COURT: All right. I'm going to overrule the
18 objection. I'm going to allow her to testify as she's got
19 training in the area, she's published in the area, she's --
20 in the area, specifically in that area. Post master is for
21 the last three years and prior to that for two years.

22 The fact that she has not been qualified as an expert
23 in circuit court to testify under that label of expertise
24 doesn't preclude her. Obviously, every expert has to have
25 their first day in court. But I'm going to allow it.

1 **MR. JONES:** Thank you, Your Honor.

2 **THE COURT:** Now, let me just speak out, and y'all can
3 address this, because my concern is -- I guess, Ms. Aaron,
4 I'm not clear on the reason or the purpose that you want to
5 get into the victim's prior sexual activity. But it may be
6 that you needed to hear this testimony to explain it? I'm
7 trying to understand it.

8 **MS. AARON:** I think I do, Your Honor. Because I think
9 her -- if her -- now that she's been qualified, if her sole
10 purpose is to talk about the dynamics of child sex abuse,
11 then the only person that this jury's going to hear could
12 possibly be responsible for this child's behavior is my
13 client when there are two other people, adults, who have had
14 sex with this child. So there could be two -- both are
15 charged with criminal sexual conduct. Her disclosure, her
16 demeanor, all of the things that this expert is going to
17 testify are attributable to child sex abuse can only be
18 attributable in this jury's mind to my client when there are
19 two other people it could be attributable to.

20 **MR. JONES:** Your Honor, my question is what behavior is
21 Ms. Aaron talking about? The behavior of the victim in this
22 case? That's not -- none of that -- I don't intend to bring
23 any of that in. I'm confused as to what she thinks I'm
24 going to bring out ---

25 **THE COURT:** Well, that might be what she was saying

1 earlier when she said she needed you to proffer this
2 testimony.

3 **MR. JONES:** Right.

4 **THE COURT:** So maybe we should proceed in that way.

5 **MS. AARON:** I don't understand -- if her intent -- I
6 don't understand what she plans to testify to ---

7 **THE COURT:** Right.

8 **MS. AARON:** --- if it's not what children who have been
9 sexually abused do. I don't know the purpose of her
10 testimony if that's not what she's going to testify to. And
11 if her purpose is to testify to what children who are
12 sexually abused do, then this jury can -- needs to hear that
13 there have been more than one individual who sexually abused
14 this child.

15 **MR. JONES:** Your Honor, she's going to testify to
16 delayed disclosure and the pattern of grooming. I -- the
17 State, we do not want to talk about other allegations of the
18 victim and the victim having sex with another twenty-three
19 year old man. And the Rape Shield Statute specifically
20 prevents the Defense from getting into that.

21 **THE COURT:** All right.

22 **MR. JONES:** So I'm certainly not going to bring out any
23 evidence of that. I'm trying -- through the Rape Shield
24 motion that I've served on Defense counsel, I'm trying to
25 prevent all that. And so I'm confused as to what Ms. Aaron

1 wants.

2 **THE COURT:** Well, when I look at the statute, I'm a
3 little confused as well. I mean, I know what you're saying.
4 You're saying depending on what this testimony is that --
5 and I'm just -- I don't know any of the facts of this case.
6 So this may not even be relevant.

7 But for example, if you had a victim who went through
8 this sexual trauma and didn't disclose it and waited a long
9 time before they disclosed it or they disclosed it and then
10 denied it and neither -- and your point is if what she's
11 going to testify to is those types of things are indicative
12 of someone who has been sexually abused, then it seems
13 improper because the only person that the State's going to
14 allege in this trial who abused her is this Defendant.

15 **MS. AARON:** That's correct.

16 **THE COURT:** Even though there may be evidence that
17 others did it as well prior to her interviewing her.

18 **MS. AARON:** That's correct. The mere fact that we're
19 calling her a victim of child sex abuse, you're only
20 allowing the jury one choice. And if they find that she --
21 that this expert is indeed credible and they find that this
22 child is a victim of child sex abuse, then you have withheld
23 two instances that could explain her situation.

24 You've only given the jury one choice, that if they
25 find she's a victim of child sex abuse, we know that she has

1 had sex with two other people, one was a caregiver, but
2 you're not allowing the jury to know that. So if they're
3 going to find that she's a victim, then they'd have to
4 logically find that she's a victim of my client, which is --
5 completely prevents him from presenting an appropriate
6 defense.

7 **THE COURT:** Well, when I look at the Rape Shield
8 Statute, the very thing you want to get into, it precludes
9 that. I mean, I don't think you argue with that. You know
10 what the statute says.

11 **MS. AARON:** Yes, sir, I do.

12 **THE COURT:** It precludes that kind of -- that very kind
13 of testimony. So I understand where you're coming from, but
14 I'm not sure that it's admissible. Solicitor, what's your
15 ---

16 **MS. AARON:** Your Honor, if I could address -- can I
17 just address ---

18 **THE COURT:** Yeah.

19 **MS. AARON:** --- the fact that I did agree with you, but
20 it only precludes it if I'm trying to introduce it from a
21 victim's standpoint. I'm not trying to say that she's out
22 there and doing all this stuff.

23 What I'm wanting the jury to hear is that other people
24 have done it to her. I'm not trying to blame her. There's
25 no one who's blaming her. There's no one who's attacking

1 her morality as a person, which is what the Rape Shield
2 Statute is designed to prevent.

3 What my point is is there are other people who have
4 done to her exactly what my client is alleged to have done.
5 And if the jury doesn't get to hear that and they find that
6 she is indeed a sexual abuse victim, then the only
7 conclusion they can draw is attributable to my client.

8 I am not trying to introduce any peripheral sexual
9 behavior from the victim's standpoint or on her behalf.
10 That's the difference.

11 I'm attempting to let the jury hear the whole story,
12 which is the State says my client did this to her, there are
13 two other people that have done it to her, who have charged
14 probable cause at least to -- to argue that there are two
15 other people that have -- that are charged with criminal
16 sexual conduct.

17 **THE COURT:** Solicitor.

18 **MR. JONES:** Your Honor, again, as you know, the actual
19 statute does carve out a few exceptions, Your Honor, when
20 the defense is trying to prove origin of semen, pregnancy or
21 disease. However, I do acknowledge there are a couple of
22 cases on the Rape Shield Statute that are relevant.

23 I think Ms. Aaron mentioned the Grovenstein case. And
24 my reading of that case, what the state tried to do and what
25 the solicitor did in all of his arguments -- it was, I

1 think, a six or seven year old child who was alleging that
2 the defendant played with the child's anus. And the
3 solicitor argued that how else would this six year old know
4 about these types of sexual acts if this didn't happen?

5 And what the court there said that when the state made
6 that argument the defense should have been allowed to bring
7 up that this child, the six year old, had previously been
8 accused of doing those same exact acts to someone else. So
9 when the state made that argument that how else would this
10 six or seven year old know about these sex acts if this
11 didn't happen, but the trial court did not let the defense
12 bring up how the child might have had other knowledge. But
13 in this particular instance I'm not arguing that.

14 The way I read that case and other cases like it is the
15 defense might be able to get into it to rebut the fact that
16 this innocent child -- there's no other way the child would
17 know about sex but for this particular defendant, but that's
18 only when the state makes that argument. And there's ---

19 **THE COURT:** But am I correct, though, and again, I
20 don't know what this young lady's testimony's going to be,
21 but if it's going to be given to explain why a person has
22 been sexually abused might act a certain way or respond a
23 certain way, then -- and I understand Ms. Aaron's point, is
24 that's all well and good if there's only one person accused
25 of molesting this child.

1 But if there's accusations and proof of two or three
2 folks molesting this child, then should the jury not at
3 least be aware, not that -- not the details of it, not the
4 fact that she may have consented over here or there, but
5 simply the fact that there's two other folks that have
6 allegedly abused her as well or the allegations are there so
7 that -- so that it doesn't appear that if the jury believes
8 this young lady's testimony, believes her, and believes that
9 for this young girl to respond as she did, she must have
10 been or likely was sexually abused, and the only abuser that
11 the State's claiming is this gentleman when you know there's
12 two others out there as well seems inappropriate.

13 **MR. JONES:** Well, Your Honor, then the Rape Shield
14 Statute doesn't apply to CSC with minors. In taking that
15 stance, the Rape Shield Statute would not apply to any
16 criminal sexual conduct with a minor case.

17 **THE COURT:** Well, sure it would. It would apply to
18 every case ---

19 **MR. JONES:** With -- you go ahead.

20 **THE COURT:** No, you go ahead.

21 **MR. JONES:** It would apply to the cases where the State
22 wouldn't need the Rape Shield Statute because there wouldn't
23 be anybody else accused of it. If what I understand you're
24 saying and what Ms. Aaron is arguing is that in a CSC with a
25 minor case, if there is a third party who is accused of also

1 sexually abusing the child, that should come in, but that's
2 exactly what the Rape Shield Statute says should not come
3 in.

4 **THE COURT:** I think the Rape Shield Statute is designed
5 to prevent basically putting the victim on trial for bad
6 conduct or bad reputation. Because it says evidence of
7 specific instances of the victim's sexual conduct, ---

8 **MR. JONES:** Right.

9 **THE COURT:** --- opinion evidence of the victim's sexual
10 conduct and reputation evidence of the victim's sexual
11 conduct is not admissible.

12 **MR. JONES:** And that's exactly what she's trying to get
13 in.

14 **THE COURT:** No. I think what she wants to get in is
15 that ---

16 **MR. JONES:** A specific instance of the victim's sexual
17 conduct.

18 **THE COURT:** I think what she wants to get in is that
19 the State is aware of the fact that there are more than one
20 abuser here. Not saying that -- am I correct, Ms. Aaron?
21 That's your purpose?

22 **MS. AARON:** That is exactly, yes, sir. And ---

23 **THE COURT:** In other words, so that the jury is not
24 left -- if the jury believes she was -- let me see if I can
25 explain it the way you intended it. What I hear Ms. Aaron

1 saying is if I don't allow anything other than this
2 testimony and the only thing the jury's ever going to hear
3 about is this Defendant's -- the allegations against this
4 Defendant when you know that there are two other instances,
5 two other people who have also sexually abused her, then
6 that's -- that's not fair because her testimony may be that
7 -- it may be a result of the other sexual abuse and he
8 didn't even touch her.

9 MR. JONES: Well, ---

10 THE COURT: He's innocent.

11 MR. JONES: What behavior are you talking about?

12 THE COURT: Well, I don't know because I haven't heard
13 it.

14 MR. JONES: And, again, my position is that if you're
15 carving out another exception ---

16 THE COURT: I'm not trying to carve out anything. I'm
17 trying to understand it so that I can make a proper ruling.

18 MR. JONES: I understand. I understand. To start with
19 the actual statute that says the evidence of specific
20 instances of a victim's sexual conduct ---

21 THE COURT: Well, that -- see, that's where I get hung
22 up. When I -- my plain meaning of the term, the victim's
23 sexual conduct, is conduct that the victim participates in
24 willingly, okay? Not if she was abused against her will.

25 MR. JONES: But it ---

1 **THE COURT:** I think the Rape Shield Statute says you
2 can't talk about that the victim's going around

3 **MR. JONES:** Your Honor, but this is statutory. It
4 doesn't matter -- she could have been a willing participant,
5 but because she was thirteen ---

6 **THE COURT:** No, I agree. I agree with you. That's why
7 I'm trying to figure out why we're going through all this
8 anyway.

9 Let's say -- I'm going to give you another example.
10 Let's say -- I don't know this young lady. But let's say
11 she was thirteen years of age and walked in to his -- well,
12 I heard a little bit of the testimony. Walked into his
13 room, pulled his pants down and performed oral sex on him or
14 wanted to. It's no defense that she was the one who
15 initiated it or wanted it or anything. That's no defense
16 and we wouldn't even be talking about this stuff. But it's
17 my understanding is that's not the way you're coming across
18 prosecuting the case.

19 **MR. JONES:** As far -- the other sex acts?

20 **THE COURT:** Yeah. The other sex acts appear to be
21 against her will.

22 **MR. JONES:** Those were -- she was a thirteen year old.
23 So it's statutory. But she's not alleging that they forced
24 her to have sex with her [sic].

25 **THE COURT:** What's the purpose of them then?

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1 **MR. JONES:** That's Ms. Aaron. She's the one who wants
2 to bring those in ---

3 **THE COURT:** No, what's the purpose of you actually
4 putting this young lady on the stand to testify at all?

5 **MR. JONES:** To testify about the grooming that occurred
6 the six or seven years prior to the actual sexual act and to
7 testify to the process of disclosure. Why did she never
8 tell in the six to seven years? Why did she never tell
9 anyone about this? Why did she choose to tell when she was
10 thirteen?

11 **THE COURT:** I tell you what. I think we just need to
12 proffer the testimony.

13 **MR. JONES:** Okay.

14 **THE COURT:** Because I'm not going to understand it and
15 what context she's going to be testifying in unless we hear
16 it.

17 **MR. JONES:** Yes, sir, Your Honor.

18 **THE COURT:** All right.

19 **Direct Examination by Mr. Jones:**

20 Q. Ms. Beals, in your field what does it mean -- what does
21 delayed disclosure mean?

22 A. Delayed disclosure means when children don't
23 immediately report a sexual abuse act or an improper
24 touching act when it -- right after it occurs. Instead
25 there is some time. And that can be varied, but some time

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1 in between the disclosure process and the actual act
2 happening.

3 Q. And how common is delayed disclosure in sexual abuse
4 that you're aware of?

5 A. One of the studies that has, it's Sorenson and Snow,
6 that has six hundred and thirty -- it's client members in
7 the study. And seventy-nine percent of them had delayed
8 disclosure.

9 Q. So seventy-nine percent of the people in that study
10 delayed disclosed?

11 A. Um-hum (affirmative).

12 Q. And why do victims of sexual abuse disclose at a later
13 date?

14 A. For a number of reasons. They can disclose at a later
15 date because they don't feel safe. They can be confused.
16 They can be unsure.

17 A lot of times, I think, individuals assume that sexual
18 abuse is a violent and aggressive act. And usually the
19 grooming process allows, you know, this -- a time for trust
20 to build up and for individuals to gradually desensitize the
21 victim to touch, to experiences, to inappropriate
22 experiences, to kind of test their boundaries. And so it's
23 very confusing for a child.

24 And they can also delay their disclosure because a
25 child's usually not being abused all day, every day. And so.

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1 there's that -- the good elements. And so often they weigh
2 out the pros and cons of, you know, there's a lot of good
3 memories with this person as well.

4 Q. Okay. Describe the process of disclosure in your
5 field.

6 A. The process of disclosure is typically when a child
7 will disclose -- do children disclose everything all at
8 once? It happens. But typically what we see is children
9 disclose little by little. They kind of test the water.
10 They see how everyone reacts.

11 And a lot of times after they disclose a little bit and
12 see how everyone reacts, which is usually not necessarily in
13 the best way, that they kind of close up and they don't feel
14 comfortable or safe to be able to disclose anymore. And so
15 they'll -- they could take back their statement. They
16 could, you know, be in denial. They could pretend that, you
17 know, say that it didn't happen.

18 Q. Okay. Is there -- are there certain phases of
19 disclosure ---

20 A. So ---

21 Q. --- that are normal?

22 A. So there's accidental disclosure and then there's, you
23 know, there's purposeful disclosure. And a lot ---

24 Q. What's the difference in those two?

25 A. So purposeful means that the child's meaning to come

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1 out and disclose the sexual abuse. And accidental
2 disclosure often happens, obviously, by accident. And so
3 when it is by accident, a lot of times it's, you know, it
4 slips out, it -- they say it and then they kind of don't
5 necessarily don't mean to say it in -- in the timing that
6 it's said.

7 And a lot of times there's tentative disclosure, which
8 means like -- like I said, they're testing -- they're
9 testing the waters, they're testing kind of what -- how --
10 trying to see how everyone would react. And then there is
11 -- there's active disclosure, which means that they may feel
12 in a safe place to be able to talk more about it openly.

13 Q. And you might have mentioned this earlier, but I'm
14 going to go back ---

15 A. Okay.

16 Q. --- as far as why they can disclose at a later date.
17 Does -- children being exposed to sex, does that affect them
18 in any way as far as disclosing sexual abuse?

19 A. So a lot of times children -- if they're exposed to sex
20 or introduced to sex in an inappropriate way, they don't
21 know any different. So they may think ---

22 Q. Well, what does it mean to be introduced to sex in an
23 inappropriate way?

24 A. If they are being touched, if they're viewing sexual
25 activity, if they're viewing pornographic material. And

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1 those are just some examples. But if they're exposed to sex
2 in an inappropriate way, then they might not know that it's
3 inappropriate.

4 And so, you know, I think a common example would be
5 when children hear their parents cuss and then they go off
6 to school and they say one of those cuss words. They don't
7 necessarily know what it means. They don't necessarily know
8 that it's bad until they see a negative reaction and they
9 see the teacher calls home and says why would your child say
10 this?

11 And if a child is in an environment where they're not
12 necessarily aware that it's inappropriate, they don't
13 necessarily understand that it's inappropriate outside of --
14 outside of their home. And so, you know, children mimic
15 what they -- what they see and what they hear.

16 Q. And what -- what is meant by the grooming process in
17 your field?

18 A. The grooming process means the way that they -- the way
19 that a perpetrator gets -- builds trust with the client, is
20 able to isolate the client, is able to build a relationship
21 with the client and/or the family members in order to be
22 able to gradually expose this child to sexual abuse, but not
23 necessarily all at once.

24 And so the grooming process might mean spending quality
25 time with that child. There's giving gifts. There's making

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1 threats. And so, you know, the grooming process contributes
2 to why it would be so confusing for a child.

3 Q. Can sexual acts be a part of the grooming process?

4 A. With gradual, you know, with gradual exposure to touch.
5 There might be, you know, a slip of the hand or, you know,
6 touching someone's back in order to, you know, desensitize
7 them to make them feel like it's normal so then they can
8 kind of -- are able to figure out what that child is
9 currently comfortable with.

10 Q. And what about escalating sexual touches?

11 A. Absolutely the grooming process to kind of test their
12 boundaries. And then, you know, again with other grooming
13 processes of -- or other grooming techniques of giving
14 gifts, of spending quality time, of, you know, of giving
15 that child some of the attention that they -- that they may
16 want would be confusing for them because it -- if it's their
17 -- if it's an introduction to sex, they might not
18 necessarily know that it's wrong.

19 Q. And is engaging in sex in front of children -- could
20 that be considered grooming?

21 A. It would be desensitizing to show a child that --
22 especially in a capacity that it was not viewed as abnormal.

23 Q. What are factors that make sex abuse more or less
24 likely to occur?

25 A. Within a home?

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1 Q. Within a home.

2 A. So Darkness To Light, one of the studies that they did
3 is that a child is twenty times more likely to be a victim
4 of childhood sexual abuse if living in a single parent
5 household with a live-in partner. So what that means is
6 that there's a bio parent that's in the home that's their
7 caregiver and then there's a live-in partner. They're
8 twenty times more likely to be sexually abused.

9 Q. Okay. And are there any other factors that you're
10 aware of in your field that make a child more likely to be
11 sexually abused or vulnerable to abuse?

12 A. If the child is, you know, is a loner, is shy. It
13 could really be anything. The offender -- an offender looks
14 for, you know, opportunities for that child to be alone. So
15 anything that would heighten their ability to have the
16 grooming techniques. So if a child needs attention or if a
17 child is available to be alone and have some alone time or
18 one-on-one time.

19 Q. Now what about violence in the home?

20 A. I have never -- I haven't read up on any recent studies
21 about violence in the home. But violence would certainly be
22 a grooming technique that would fall under the threats of if
23 they're scared to tell because of something bad might --
24 happening and then they see something dangerous or violent
25 happening in their home.

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1 Q. What about delayed development of the child?

2 A. I think that that would put them at risk in the sense
3 of that they might not -- they might be at risk in other
4 ways. They might be isolated often, not necessarily, you
5 know, socialized in that manner.

6 Q. Okay.

7 MR. JONES: No further questions, Your Honor.

8 MS. AARON: Your Honor, I don't have any cross
9 examination, but I do continue to object. Her mere, I mean,
10 her first sentence, victim of sexual abuse. This child
11 that's going to be offered to testify is going to be
12 labeled, has just been labeled as a victim of sexual abuse.
13 So if we don't allow the jury to know that this man is not
14 the only person accused of sexually abusing this child, then
15 we're not giving either him or the jury a fair shake.

16 Every -- I'll just reiterate my position that I am not
17 coming from a standpoint of the victim's morality. I am not
18 coming from a standpoint of what the victim did while these
19 other people were abusing her. If she participated, if she
20 didn't participate, I don't care. She liked it, didn't like
21 it, they forced it, I don't -- doesn't matter to me.

22 The point is that she's been labeled as a sexual abuse
23 victim. And if we don't allow the jury to know that she is
24 a sexual abuse victim at the hands of two other people,
25 allegedly, same situation my client's in, all three probable.

1 cause, I don't know whether they've been indicted or not,
2 but that may, you know, that may have elevated his charge
3 just a tish, but all three accused of sexually abusing this
4 child.

5 And if we're going to call her a victim of sexual abuse
6 and we're going to talk about things that happen in a home
7 that make a child prone to sexual abuse, if we're going to
8 talk even just about the fact that she's being labeled a
9 victim of sexual abuse, then we're only telling a third of
10 the story. And we're only giving the jury one way to go.
11 Because if they believe what she's saying, she's an expert,
12 she's going to testify as to what she believes in her field,
13 if they believe that, then he's the only alternative. And
14 that's not the case.

15 I'm not talking about an allegation that I may have
16 known that she had sex with somebody at -- somewhere else.
17 These are people that are actually charged.

18 **MR. JONES:** Your Honor, as far as -- one, Ms. Beals did
19 not meet this victim, doesn't know her. She's talking about
20 child sexual abuse victims in general. And, two, the jury
21 obviously knows that the Defendant is charged with criminal
22 sexual conduct with a minor. And when she testifies,
23 they're going to know that she's making the allegations.

24 She is the victim of criminal sexual conduct according
25 to her allegations. And that's obviously my burden to

1 present all the facts and all that, but to go around saying
2 we can't refer to this child as a victim of criminal sexual
3 conduct, there's no statute, there's no case law that says
4 we can't do that. And there's no case law or no statute
5 with regards to the Rape Shield Statute that allows Ms.
6 Aaron to get into what she wants to get into, Your Honor.

7 **THE COURT:** Well, I don't know because the purpose --
8 the purpose of Ms. Beals' testimony is to, correct me if I'm
9 wrong now, Mr. Jones, is that this is a case, because
10 there's no forensic evidence, of the victim's allegations
11 against this Defendant. Your purpose for using Ms. Beals'
12 testimony is to show that her conduct conforms with that of
13 a person who has been sexually abused.

14 **MR. JONES:** With regard to Mr. Phillips.

15 **THE COURT:** Correct.

16 **MR. JONES:** That he ---

17 **THE COURT:** Correct.

18 **MR. JONES:** --- groomed her.

19 **THE COURT:** But you also have two other guys charged
20 with doing this to her. And so how does Ms. Beals'
21 testimony -- and, you know, and maybe that's the solution to
22 this is to allow Ms. Aaron on cross examination to ask her,
23 do you know if this girl has been abused by more than one
24 perpetrator? And if she says, no, or that wasn't presented
25 to me, then she could ask, well, if that was the case would

1 you still have these findings?

2 Because here's what you -- here's what you're trying to
3 do. And I know you're not trying to do it in an underhanded
4 way or a sneaky way, but when you've got three people
5 charged and alleged to have done this to this girl, and you
6 try them separately so you've got just him facing this jury,
7 and she testifies about the girl's conduct is consistent
8 with someone who's been sexually abused, and if the jury
9 believes that, then the only thing you're leaving the jury
10 is if you believe Ms. Beals, and you believe she was
11 sexually abused, and she says he did it, you have to find
12 him guilty when the truth might be that Ms. Beals' testimony
13 would be the exact same for the second perpetrator and be
14 the exact same for the third perpetrator and at any one time
15 any one of those three guys may not have done it.

16 But you're not giving the jury that information that --
17 because here's the thing. And I think you mentioned it
18 earlier, and I agree a hundred percent. If these other guys
19 did it, that doesn't make it okay that he did it. Or if
20 they didn't do it, it doesn't make it okay that he did.

21 So none of this makes it okay. She's underage. This
22 is statutory. I agree with you a hundred percent. But when
23 you're withholding relevant evidence -- and not
24 intentionally. You're not doing it intentionally. But
25 you're wanting me to withhold, under this Rape Shield

1 Statute, you want me to withhold the fact that there were
2 two other people that allegedly assaulted her, then I think
3 what Ms. Aaron said, you're not giving the jury the full
4 story of the facts.

5 **MR. JONES:** I understand. It sounds like you might
6 have made up your mind ---

7 **THE COURT:** No, I haven't made up my mind. That's what
8 -- I wouldn't be having this -- if I made up my mind, I'd
9 rule and move on.

10 **MR. JONES:** Well, Your Honor, my position is that if
11 that is your understanding of the Rape Shield Statute with
12 regard to criminal sexual conduct with a minor, I can't
13 think of a time where the Rape Shield Statute would keep out
14 other evidence of sexual activity with regard to a minor.
15 And it seems ---

16 **THE COURT:** Yeah, I know what you're saying because ---

17 **MR. JONES:** --- Ms. Aaron is saying anytime a minor is
18 charged with something the defense gets to talk about, hey,
19 she's slept with all kind of other people. And that's
20 exactly what she wants to do.

21 **THE COURT:** Well, no, because here's what you're doing.
22 And, listen, maybe I should just ask. Is the victim in
23 here?

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

25 **THE COURT:** I don't want to offend anyone. But are the

1 allegations in this case that all this was consensual, but
2 she's underage?

3 **MR. JONES:** Well, she was underage -- yes.

4 **THE COURT:** Okay. Then here's the problem ---

5 **MR. JONES:** She ---

6 **THE COURT:** Why do you need -- why do you need this
7 testimony right here at all?

8 **MR. JONES:** Because it shows -- it goes to the grooming
9 that took place over the course of six or seven years.

10 **THE COURT:** But he's not the only one accused of doing
11 that.

12 **MR. JONES:** He's the only one accused of doing it over
13 six or seven years. The other instances are just one or two
14 times when she was thirteen.

15 **MS. AARON:** Well, he's not accused of doing it six or
16 seven years. He's accused of doing it three particular
17 instances. They've kitchen-sinked us with six or seven
18 years. The other warrants are specific dates.

19 But my information is that one of those individuals was
20 a caregiver. And they could kitchen-sink him with however
21 long he was the caregiver. So we're not -- our allegations
22 are not six or seven years. We're defending specific dates.

23 **THE COURT:** Well, here's the thing, Ms. Aaron. Now,
24 you're taking off and assuming a lot. Does she accuse this
25 caregiver of six or seven years with this? She's accusing

1 your client of it.

2 **MS. AARON:** I don't have it in my warrants. And I have
3 no way if she's accusing him because all I've seen is his
4 warrants.

5 **MR. JONES:** It's in the discovery. She's already
6 admitted this ---

7 **MS. AARON:** Not ---

8 **THE COURT:** No, no, not her client, the other ones.

9 **MS. AARON:** The other guy. I don't have his discovery.
10 I have no idea. But he was the caregiver.

11 (Pause)

12 **THE COURT:** Listen, Susan just pointed out to me -- if
13 you look at the language in the State versus Grovenstein, it
14 cites a case Commonwealth of New England. And it says here,
15 it says -- and I think this is directly on point with what
16 we've got here.

17 If a defendant challenges the reliability of a child's
18 testimony about sexual abuse it is unfair to deprive him the
19 right to show that the child has personal knowledge of
20 sexual acts and terminology if the victim had been sexually
21 abused in the past in a manner similar to the abuse in the
22 instant case and such evidence would be admissible at trial
23 because it is relevant on the issue of the victim's
24 knowledge about sexual matters.

25 Now, that's not directly on point because we're not

1 talking about a child, i.e., four year old who wouldn't know
2 about sexual things but for been exposed to it. But your
3 allegations here are based -- are mainly statutorily based,
4 which means there's no -- there's no -- you're not putting
5 up any testimony or you're not questioning whether or not
6 she has knowledge of sexual terminology or sexual things.
7 It's all based upon the fact that she's underage and these
8 -- the allegations are these three men have taken advantage
9 of that, right? That's essentially where we're at as far as
10 -- I'm talking about this case.

11 In this case the allegations are that this Defendant
12 has taken advantage of that fact regardless of her age and
13 had this interaction with her. So my question, again, goes
14 back to the need for this testimony because her testimony --
15 what is the need for her testimony again? You said it. And
16 I apologize ---

17 **MR. JONES:** Your Honor, it goes to, obviously, we'll
18 get into this when we get into Lyle, but the fact that the
19 child is saying that she was touched and forced to perform
20 oral sex for ---

21 **THE COURT:** She can still testify to all that.

22 **MR. JONES:** --- several ---

23 **THE COURT:** For several years.

24 **MR. JONES:** It goes to the jury as to why she did not
25 disclose to anyone as she was being abused for that long of

1 period. And then why did she wait til when she was at --
2 when she was thirteen.

3 And it goes to the fact of being in a single parent
4 home she's more likely to be a victim of sexual abuse. I
5 can't remember all that she testified to, Your Honor, off
6 the top of my head.

7 Why did she delay disclosure, Your Honor? She
8 testified to statistics on that. The process of disclosure.
9 And how engaging in sex is desensitizing. That's a major
10 part of this case.

11 Part of the allegations are the Defendant and his
12 girlfriend, who is the mother of the victim, had sex in the
13 bed while the victim laid there. And how that normalizing
14 sex ---

15 **THE COURT:** Right.

16 **MR. JONES:** --- is a part of grooming a sexual abuse
17 victim and because sexual abuse isn't something that's
18 common knowledge to jurors or to the general public. That's
19 why the State brings in an expert to educate them.

20 (Pause)

21 **THE COURT:** I tell you what, let me -- I'm going to
22 take a short recess. And I'll need to speak with y'all back
23 in chambers. But we're just going to take a little short
24 recess here, okay?

25 **MR. JONES:** You want us to give you a minute or follow

1 you, Your Honor?

2 **THE COURT:** What?

3 **MR. JONES:** You want us to give you a minute or follow
4 you?

5 **THE COURT:** No, you can -- y'all can come on.

6 (Whereupon court was in recess at 2:54 pm)

7 (Whereupon court reconvened at 3:30 pm)

8 **THE COURT:** Thank you, folks. Please have a seat. All
9 right. If we could, let's bring the jury in, please.

10 (Whereupon the jury entered the courtroom at 3:30 pm)

11 **THE COURT:** Ladies and gentlemen, I appreciate your
12 patience. You've been back here almost -- been back here an
13 hour now.

14 The pretrial legal matters that I've been dealing with
15 with the attorneys and I have been here dealing with are
16 taking a little bit longer than I anticipated they would.
17 And that's just -- it's probably a reflection on me just not
18 being as fast as I probably should be at times. But
19 needless to say, I don't want to waste any more of your
20 time.

21 So here's what we're going to do. I'm going to excuse
22 you to be back in the morning. We're going to start --
23 we're going to stay because we've got to finish the legal
24 matters that we're dealing with so that once we start the
25 trial, we can just flow. And so what we're going to do is

1 we're going to start this case first thing in the morning.

2 So when you get back in the morning, I anticipate --
3 I'll give you just a little brief introduction and then
4 we'll let the attorneys turn it over and present the case to
5 you. So I'm going to send you and ask you to be back at
6 9:00 and we'll get started then.

7 Now, it's a little different now because you're about
8 to go home. And if your family, friends and loved ones are
9 anything like mine, they're going to be very curious as to
10 what your day is like and whether or not you've been
11 selected. They may already know you've been selected. And
12 they're going to be curious.

13 I need you just to basically let them know, yes, you
14 were selected, you do have to be back in the morning, but
15 you're not allowed to talk about the case at all. And ask
16 them to please respect that.

17 Saying something as innocent as just simply it involves
18 a man by the name of Mr. Phillips and he was charged with
19 criminal sexual conduct with a minor in the second degree,
20 just simply the charge, the fact that you know about the
21 charge could possibly elicit the response that would somehow
22 affect your ability to remain fair and impartial. And
23 that's the key.

24 The whole key in not talking about it and not letting
25 people talking to you is to keep your ability to be fair and

1 impartial completely inside you so that when you hear the
2 testimony and the evidence, you're not affected by anything
3 outside this courtroom.

4 So if you would, just explain that you're not allowed
5 to discuss the case, you're not allowed to talk about what
6 even -- who the Defendant is, what the charges are or
7 anything, but that if they'll be patient, as soon as it's
8 over, you can tell them everything, and you will. But for
9 right now you just aren't allowed to talk about it and for
10 them to please respect that.

11 Now, when you come back in the morning, I don't know if
12 any of you have ever served on jury duty before as far as
13 actually in a trial, but jury service is physically taxing,
14 not necessarily from a muscular standpoint, but it is from a
15 mental standpoint. So you sit here all day listening to
16 testimony, and lawyers, and judges and stuff. It really --
17 it benefits you if you can come back in here in the morning
18 well rested.

19 So to the extent you can get a good night's rest, we
20 don't always have control over that, but to the extent you
21 can, try to get to bed early and try to get a good night's
22 sleep. Countless studies have shown that our minds work
23 much better when we're well rested. So if you can do that,
24 try to do that.

25 And if you would, be back here at nine in the morning.

1 And when everyone's reconvened, then we'll start the trial.
2 Okay? So everybody please remain seated. And, folks, we'll
3 see you back here at 9:00 in the morning.

4 (Whereupon the jury exited the courtroom at 3:34 pm)

5 **THE COURT:** Are we ready to then proceed with the, I
6 guess, the proffering for the Lyle -- for purposes of Lyle?

7 **MR. JONES:** Yes, Your Honor. Do we need to put a final
8 ruling for ---

9 **THE COURT:** Oh.

10 **MR. JONES:** --- the Rape Shield matter on the record?

11 **THE COURT:** Yeah. After considering everything, here's
12 what the Court has decided. It wasn't an easy decision
13 because I don't want in any way to be outside the rules and
14 the statutes regarding the Rape Shield Statute, but I think
15 there's some support in the case law under this very unique
16 situation, I think is unique.

17 The State is intending to put up testimony from Ms.
18 Beals and have her qualified as an expert and then to have
19 her put up testimony which essentially would state that the
20 -- that it is common -- and I'm not going to quote it
21 verbatim, but basically -- essentially what she's going to
22 be testifying to is that there's certain conduct of a person
23 who has been a victim of sexual abuse and conduct that is
24 consistent with that, such as delayed reporting, other
25 factors that this victim has been exposed to that would all

1 support her conduct, the way she handled the reporting and
2 all that, which would all be signs of someone who has been
3 sexually abused.

4 The -- and under a regular situation where a defendant
5 is accused of being that person who abused that individual,
6 then so be it, that testimony comes in and the jury gives it
7 whatever consideration.

8 In this situation we have more than one abuser. The
9 State has another person that has been indicted for this
10 offense. And so, therefore, I think trying to hold fast to
11 the purpose of the Rape Shield Statute, I think it is -- and
12 yet to allow the Defense to have a fair and open hearing and
13 be able to present a full and fair defense, I'm going to
14 allow testimony that another individual has been arrested
15 and charged with criminal sexual conduct in the second
16 degree against this victim.

17 And it's going to be limited to that scope, simply that
18 another person has been charged with that offense so that
19 the jury doesn't have the only option if they were to, in
20 their consideration of the evidence, were to believe all
21 that Ms. Beals has to say and conclude that the victim was,
22 in fact, sexually abused, but there's not only one
23 individual being accused of doing that.

24 And so I think it appropriate. And so I would allow
25 the testimony of Officer Hamby to the limited extent that

1 another individual has been arrested for this same charge
2 and is facing -- is currently facing those charges.

3 Now, the State, obviously, objects to that ruling and
4 takes exception to that ruling. And I want the record to be
5 clear that that's the case. And if there's anything else
6 you would like to add, Mr. Jones?

7 **MR. JONES:** Your Honor, ---

8 **THE COURT:** Please feel free to do it.

9 **MR. JONES:** Nothing else I want to add, Your Honor. I
10 think I've ---

11 **THE COURT:** Okay.

12 **MR. JONES:** --- said my piece.

13 **THE COURT:** I think so. I mean, I -- and I understand
14 your concern. And, listen, I wrestled -- I wrestled with
15 it, but I think that's appropriate. So having said that, is
16 there anything else we need to take up, though, before we
17 get to the proffering for the Lyle issue?

18 **MR. JONES:** Nothing else as far as Rape Shield, Your
19 Honor.

20 **THE COURT:** Well, let me ask you this. Anything else
21 at all? Is Minor here? Is that her name?

22 **MR. JONES:** Minor.

23 **THE COURT:** Minor

24 **MR. JONES:** Yes, Your Honor.

25 **THE COURT:** She's not here right now, right? I mean,

1 she ---

2 **MR. JONES:** She is here right now. Not in the
3 courtroom. I'm going to call her.

4 **THE COURT:** Right. And I don't want to have to bring
5 her in and out for anything. So is there anything else that
6 we need to take up, pretrial matters?

7 **MS. AARON:** Your Honor, I don't -- I don't know of any.
8 I mean, if we're proffering, I guess, to resolve the issue,
9 the Lyle issue, ---

10 **THE COURT:** Yeah.

11 **MS. AARON:** --- that's all I know with regard to her,
12 but, I mean, I don't know what's going to happen.

13 But I'm certainly -- I would ask Your Honor to -- I'm
14 not going to object during her testimony. I would hope that
15 it doesn't affect my client's rights in the future as far as
16 preservation goes.

17 **THE COURT:** This is just proffer.

18 **MS. AARON:** I'd just as soon hear what she has to say
19 ---

20 **THE COURT:** Yeah, it's just proffer. Once we're back
21 on the record with the jury present, ---

22 **MS. AARON:** I understand.

23 **THE COURT:** --- you'll have all the rights and
24 objections ---

25 **MS. AARON:** I understand.

1 **THE COURT:** Let me say this to those who are here in
2 the courtroom. And I come across, I think, as a fairly laid
3 back guy, and I think I am, but I'm going to tell you where
4 the line gets drawn. When Minor 's in this
5 courtroom, if there's one comment, sound, look toward her,
6 whoever it is, know it now, you will not be going home from
7 here. I'm going to lock you up. That goes for everybody in
8 this courtroom. Don't test me on it or you're going to go
9 to jail. All right. Then you ready to proceed?

10 **MR. JONES:** Yes, sir, Your Honor.

11 **THE COURT:** All right. Let's go.

12 **MR. JONES:** Minor

13 **THE COURT:** Minor , if you'd please come around.

14 Minor : Yes, sir.

15 Minor , being

16 duly sworn testified as follows;

17 **THE CLERK:** If you would, have a seat and state your
18 name for the record, please.

19 Direct Examination by Mr. Jones:

20 Q. Tell us what your name is, please, ma'am.

21 A. Minor

22 Q. And what's your full name?

23 A. Minor

24 Q. Okay. Can you tell us when your birthday is?

25 A.

Minor

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- 1 Q. ? What's your mother's name?
- 2 A. Peggy Robinson.
- 3 Q. And in July of 2013 do you remember where you lived?
- 4 A. Yeah.
- 5 Q. Where was that?
- 6 A. I lived in Easley on
- 7 Q. Do you remember who lived with you there?
- 8 A. Yes.
- 9 Q. Tell me.
- 10 A. It was me, my brother, and Kelly, but like he didn't
- 11 really live -- he -- his clothes were there. Like he stayed
- 12 mostly there.
- 13 Q. Okay. That's fine. And you mentioned your brother.
- 14 What's your brother's name?
- 15 A. Joshua Robinson.
- 16 Q. Okay. And I'm not sure you said, but did your mother
- 17 live with you too?
- 18 A. Yes, ma'am. Yes, sir.
- 19 Q. Okay. That's fine. And was that in Easley or where
- 20 was that?
- 21 A. That was in Easley.
- 22 Q. Okay. And you mentioned Kelly Phillips. How do you
- 23 know Kelly Phillips?
- 24 A. That was my mama's boyfriend at the time.
- 25 Q. Okay. Do you remember how long you knew him? Like how

1 old were you when you met him?

2 A. Well, when they first met, I knew him.

3 Q. Okay. And how old were you when they first met? Do
4 you remember?

5 A. Uh-Uh (negative).

6 Q. Okay. Do you remember on July 30th of 2013 going to
7 see Dr. Carla Richards?

8 A. Yes, sir.

9 Q. And did she work at Easley Pediatric Associates?

10 A. Yes, sir.

11 Q. And was that your doctor, somebody you went to ---

12 A. Yes.

13 Q. --- normally? And who went with you to the doctor's
14 office that day?

15 A. My mama.

16 Q. And did you tell Dr. Richards anything about Kelly
17 Phillips?

18 A. Yes.

19 Q. Tell me just briefly, and then I'll go into more detail
20 about it. What did you tell the doctor?

21 A. I told the doctor that I was being abused by him.

22 Q. Okay. And when you -- when you were at the doctor's
23 office can you tell me what the most recent or the closest
24 sexual abuse event was? Do you remember what that was?

25 A. It was like a week before.

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1 Q. Okay. And was there ever a time where your mother was
2 in the same room when he sexually abused you?

3 A. No.

4 Q. Okay. And was there ever a time when you were in the
5 bed with Kelly Phillips and your mother came into the room?

6 A. Yes, sir.

7 Q. Okay. Why don't you tell the Judge or tell me about
8 that.

9 A. Well, it was nighttime and my brother was asleep. And
10 I was in the room watching a vampire movie. And he came in
11 ---

12 Q. Who's he?

13 A. Kelly Phillips came in.

14 Q. Okay.

15 A. And shut the door and locked it.

16 Q. Okay.

17 A. And then, like it was a while, and then my mama came
18 back there. And she knocked on the door and he got up and
19 let her in.

20 Q. Okay. And then what did your -- what did your mother
21 do? After Kelly got up and let your mother in, do you
22 remember what she did?

23 A. After she got in the room?

24 Q. Yeah.

25 A. Well, they had sex in front of me in my room.

1 Q. Okay. So that same incident, that same night you said
2 you were in your room and you were watching a movie.

3 A. Yes.

4 Q. Okay. And then Kelly came into the room?

5 A. Yes.

6 Q. And did he get in bed with you?

7 A. Yes.

8 Q. Okay. And when he was in bed with you at that time did
9 he touch you in any -- in any way?

10 A. Yes, he did.

11 Q. What did he touch?

12 A. Like he was touching my breasts and like my vaginal
13 area.

14 Q. Okay. And then did your mother come into the room?

15 A. Yes, but she didn't see that.

16 Q. Right. Okay. And then your mother came into the room
17 and you said that they had sex in front of you?

18 A. Yes, sir.

19 Q. Were you asleep?

20 A. No, I was not.

21 Q. Did they -- did you have your eyes closed?

22 A. No, I did not.

23 Q. Okay. Did they think that you were asleep?

24 A. No, they did not.

25 Q. Okay. And how do you know that?

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1 A. Because I was awake. And like before my mama came in
2 the room, he told me that he had already talked to her about
3 it and that she already knew.

4 Q. Okay. He told you that he already talked to her about
5 what?

6 A. Like messing with me and having sex with me, she knew
7 about it.

8 Q. Okay. So before that night had you ever had sex with
9 Kelly Phillips?

10 A. Yes.

11 Q. Okay. Was it close to that date when you had sex with
12 Kelly Phillips?

13 A. Yes, sir.

14 Q. Okay. Do you -- I know it's been a long time. So it's
15 okay if you don't remember. Is there any way you remember
16 the exact date?

17 A. No, sir, I don't.

18 Q. Okay. Was it in the month of July of 2013?

19 A. Yes, sir, it was.

20 Q. And do you remember that because that's close to when
21 you went to the doctor's office?

22 A. Yes, sir.

23 Q. You said that he had had sex with you before and it was
24 in the month of July?

25 A. Yes, sir.

1 Q. Okay. Do you remember -- and again, because it was so
2 long ago you may not be able to remember, but do you
3 remember about how many times he actually inserted his penis
4 inside you?

5 A. Three.

6 Q. Three times? Okay. Before he actually had sex with
7 you, before Kelly Phillips had sex with you was there a time
8 where he just -- where he touched your breasts or touched
9 your vagina?

10 A. Yes, sir.

11 Q. Okay. And you said that they were -- do you remember
12 how long your mom was dating Kelly Phillips?

13 A. I mean, they were together for a long time like.

14 Q. Okay. Would you say you were about six or seven years
15 old when ---

16 **MS. AARON:** Your Honor, I said I wouldn't object, but I
17 would object to the solicitor testifying. She's simply
18 giving yes and no answers and no detail at all. I would
19 object to the solicitor testifying.

20 **THE COURT:** Object to the leading.

21 **MR. JONES:** Given the ---

22 **THE COURT:** Or sustained as to the leading.

23 **MR. JONES:** Your Honor, given the victim's age, do I
24 get a little leeway in leading?

25 **THE COURT:** I'll give you a little bit, but right now

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1 ---

2 MR. JONES: Not that much?

3 THE COURT: --- she's not really testifying.

4 MR. JONES: Yes, sir, Your Honor.

5 Direct Examination by Mr. Jones Continued:

6 Q. So I'll ask the question again. Do you remember about
7 how old you were when your mom and Kelly started dating?

8 A. I was about six or seven.

9 Q. Okay. And when you were six or seven did any sexual
10 abuse occur?

11 MS. AARON: Your Honor, again, I want to object. Did
12 any sexual abuse occur? I think what happened ---

13 THE COURT: Can you rephrase the question?

14 MR. JONES: Yes, sir, Your Honor.

15 Q. Do you remember -- can you tell the Court, describe for
16 the Court at the earliest occasion that you remember being
17 sexually abused? I know we just talked about when you were
18 thirteen in July of 2013. Do you remember anything prior to
19 that?

20 A. Yes.

21 Q. Can you tell -- tell the Court about that?

22 A. When he had sex with me?

23 Q. No, not when he had sex with you or when he -- any type
24 of touching or ---

25 A. Yes, he did touch me inappropriately.

1 Q. Okay. And tell me -- what does that mean to be touched
2 inappropriately?

3 A. Like when you -- like he touched my vaginal area and my
4 breasts.

5 Q. Okay. And how long do you say that he did that?

6 A. For a while.

7 Q. For a while? Can you put any months or years on how
8 long he did that?

9 A. Like -- like, I mean, it started like when they first
10 met.

11 Q. Okay. So you said he started touching you when they
12 first met?

13 A. Yes.

14 Q. Okay. And was there ever a period of time when he
15 stopped and he didn't do it anymore? Do you remember that?

16 A. Yes.

17 Q. Okay. And do you remember when that was?

18 A. Yeah. That was when Denise told him ---

19 Q. You can't -- I'll stop you there. You can't tell what
20 anybody else said or -- you can say what you observed, or
21 what you saw, or what you said, or what somebody else did,
22 but you can't tell me what somebody else said, okay?

23 A. Okay.

24 Q. Did you ever tell anyone about your sexual abuse? And
25 if so, tell me who you told.

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- 1 A. Yes, I did.
- 2 Q. Okay. And who did you tell?
- 3 A. I told my mama.
- 4 Q. When did you tell your mother?
- 5 A. I told her like after he had did it, I told her. And
- 6 she -- she didn't really say anything.
- 7 Q. Okay. And who was the next person you told?
- 8 A. The doctor, Dr. Richards.
- 9 Q. And can you tell the Court about any sexual abuse that
- 10 occurred in McCormick at a lake house?
- 11 A. Yeah, but that was like -- it wasn't -- he didn't
- 12 actually have sex with me. It was like oral.
- 13 Q. That's fine. Tell the Court or tell me about oral sex
- 14 in McCormick.
- 15 A. He asked me to ...
- 16 Q. He asked you to what?
- 17 A. To suck his penis.
- 18 Q. Okay. And did you say anything? Do you remember
- 19 anything about that?
- 20 A. Yes.
- 21 Q. Okay. What did you do after he asked you to do that?
- 22 A. I did it.
- 23 Q. Okay. And did he do anything to you at that time?
- 24 A. Yes.
- 25 Q. Tell me what he did?

1 A. He was touching my breasts and my vaginal area.

2 Q. Okay. Going back to when your mother came into the
3 room with you and Kelly, when they were having sex did he
4 touch you at all?

5 A. No, not when they were having sex, but before they did,
6 he touched me.

7 Q. Okay. At any point did you try to get up and leave
8 while they were having sex?

9 A. Yes.

10 Q. Okay. And what happened when you tried to get up and
11 leave?

12 A. He grabbed me.

13 Q. Where did he grab you?

14 A. He grabbed my shoulder.

15 Q. Okay. Did he say anything to you when he grabbed you?

16 A. He asked me where was I going.

17 Q. Okay. Did your mother -- well, you testified earlier
18 that in July of 2013 Kelly inserted his penis inside you.

19 Do you remember where those events took place? Like what
20 house?

21 A. It was at my house in my room.

22 Q. Do you remember anything specifically about when you
23 had sex with him, who else was in the home?

24 A. My mama and my brother, but they didn't see him do it.

25 Q. They didn't see him do it?

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- 1 A. (Negative nod).
- 2 Q. Do you remember how you and Kelly had sex?
- 3 A. Yeah.
- 4 Q. Can you tell the Court, please?
- 5 A. Like my face was facing like that way.
- 6 Q. Okay. And then what -- and what else?
- 7 A. And my butt was in the air.
- 8 Q. And your butt was in the air?
- 9 A. (Affirmative nod).
- 10 Q. Okay. Is there any other way that you had sex with
- 11 Kelly?
- 12 A. (Affirmative nod).
- 13 Q. Can you tell me ---
- 14 A. When I was laying on my back.
- 15 Q. Okay. Do you remember anything specific about that?
- 16 A. No.
- 17 Q. Okay. Did you notice anything in particular about
- 18 Kelly's penis or his pubic hair?
- 19 A. Yeah.
- 20 Q. Tell the Court what you noticed about it.
- 21 A. It was bald.
- 22 Q. It was bald?
- 23 A. (Affirmative nod).
- 24 Q. In that he -- did you ever ask him about it or talk
- 25 about that?

1 A. Uh-uh (negative).

2 Q. Okay. When you say bald, was that -- how was it bald?

3 A. Like no hair.

4 Q. Okay. And did it look like it had been shaved?

5 A. Yes.

6 Q. Did you ever see Kelly and your mother have sex other
7 than the time you described?

8 A. Yes.

9 Q. How often did you see that?

10 A. Well, they had sex in my mama's room, and like when we
11 went out of town, we was in a motel room, they had sex.

12 **MR. JONES:** Beg the Court's indulgence.

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

14 (Pause)

15 **MR. JONES:** No further questions, Your Honor.

16 **THE COURT:** Cross.

17 **Cross Examination by Ms. Aaron:**

18 Q. Who told you to use the word vaginal area?

19 A. No one.

20 Q. Nobody told you to use that word?

21 A. Nobody.

22 Q. What -- is that the normal word that you would use if
23 you were talking to your friends?

24 A. Yes.

25 Q. You don't use any other words?

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1 A. No.

2 Q. What about breasts, who told you to use the word
3 breasts?

4 A. Nobody. I said that on my own.

5 Q. You indicated to the solicitor that you and -- your
6 testimony is that you and Mr. Phillips had sex three times.
7 Sex meaning -- how do you describe sex?

8 A. Like when he inserts his penis in my vaginal area.

9 Q. Okay. And again, that's your description? Nobody
10 suggested that to you?

11 A. I know.

12 Q. No, I'm asking.

13 A. No. Me, yes. That's my ---

14 Q. So these three times were when?

15 A. When we were in McCormick.

16 Q. When was that?

17 A. I don't remember when we went.

18 Q. Like were you five, or eleven or yesterday? I mean,
19 when?

20 A. I mean, I was like nine.

21 Q. Okay. How many times have you been to McCormick?

22 A. I mean, we went down there a couple of times. I don't
23 remember how many times we've been to McCormick, but like we
24 went fishing and stuff down there.

25 Q. And when it happened at McCormick, where do you --

1 where do you stay when you go there?

2 A. Well, Kelly owns his own camper down there. And we
3 stayed in that camper down there.

4 Q. And so when you say that you and he had sex during that
5 -- one of those visits, where were you?

6 A. We were in the camper.

7 Q. Where was everybody else?

8 A. They were outside.

9 Q. Is this during the day or at night?

10 A. This was during the day.

11 Q. And they're outside, like outside the door?

12 A. Yeah, but like they didn't see.

13 Q. But they were right outside of the door?

14 A. Yes, ma'am.

15 Q. And everybody else being who?

16 A. My mama, his ex-wife was down there with us one time
17 like ---

18 Q. Was that this time?

19 A. Um-hum (affirmative).

20 Q. Is that a yes?

21 A. Yes, ma'am.

22 Q. So -- and what's her name?

23 A. Denise.

24 Q. So your mom and Denise and who else -- who else was
25 down there ---

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- 1 A. My brother.
- 2 Q. --- on this time? That's Josh?
- 3 A. Yes, ma'am.
- 4 Q. And who else?
- 5 A. And me.
- 6 Q. And you, obviously. Okay. So that was one time. When
- 7 were the other two times?
- 8 A. At my house and at his house.
- 9 Q. All right. At your house when?
- 10 A. Like it was in July of 2013.
- 11 Q. At your house?
- 12 A. Yes, ma'am.
- 13 Q. And what about his house?
- 14 A. At his house, like I don't remember the month, but we
- 15 did have sex at his house in his room.
- 16 Q. In July?
- 17 A. Yes, ma'am.
- 18 Q. Okay. Now when you talk about McCormick, you said you
- 19 thought you were nine?
- 20 A. Yes, ma'am.
- 21 Q. Why does that stick out in your mind?
- 22 A. Like why was I nine?
- 23 Q. Why do you think -- why do you think that that -- why
- 24 does that stick out in your mind that you were nine if you
- 25 went there many times?

1 A. I mean, because we went down there a lot, but like I
2 know I was nine.

3 Q. How do you know you were nine?

4 A. Because that's my age. I know my age.

5 Q. So would that have been -- what month would that have
6 been?

7 A. Like -- it was like we went down there for the 4th of
8 July.

9 Q. So this 4th -- it would have been July of 2009?

10 A. No.

11 Q. When would that have been?

12 A. I was nine years old.

13 Q. Okay. But when ---

14 A. I wasn't saying 2009. I was nine years old.

15 Q. Okay. So what year would it have been?

16 A. Like -- in like August.

17 Q. What year?

18 A. What year? 2013.

19 Q. So in 2013 you -- in August of 2013 is when you're
20 alleging this McCormick happened?

21 A. Yes, ma'am.

22 Q. Okay. And you say that you met Kelly Phillips six or
23 seven years ago?

24 A. Yes, ma'am.

25 Q. So that would have been 2010, ---

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- 1 A. Yes, ma'am.
- 2 Q. --- 2009? So you're talking about six or seven years
- 3 from now?
- 4 A. Yes, ma'am.
- 5 Q. The solicitor asked you before, I guess, of July 2013
- 6 ---
- 7 A. Yes, ma'am.
- 8 Q. --- if Mr. Phillips had ever touched -- well, he says
- 9 touched you inappropriately. So you said breasts and
- 10 vaginal area?
- 11 A. Yes, ma'am.
- 12 Q. And when did you say that that happened?
- 13 A. It was in July.
- 14 Q. In July of 2013?
- 15 A. Yes, ma'am.
- 16 Q. Okay. So you met him in 2010 and he touched your
- 17 vaginal area and your breasts in 2013?
- 18 A. Yes.
- 19 Q. Okay. Anytime before then?
- 20 A. Yes.
- 21 Q. All right. When before then?
- 22 A. Like when I was young. I was like seven. Well, I was
- 23 seven.
- 24 Q. How do you remember you were seven?
- 25 A. Because I remember my age..

1 Q. And what happened when you were seven?

2 A. He touched me inappropriately.

3 Q. And that would have been what year?

4 A. Like it was in 2013.

5 Q. It was in 2013 ---

6 A. Yes.

7 Q. --- was the first time that he touched you
8 inappropriately?

9 A. Yes.

10 MS. AARON: I don't have any further questions. Thank
11 you.

12 THE COURT: Anything further?

13 MR. JONES: Nothing further, Your Honor.

14 THE COURT: All right. Thank you very much, ma'am.
15 You may step down.

16 A. You're welcome, sir.

17 THE COURT: All right. Anything else?

18 MR. JONES: Your Honor, I believe this was -- I can't
19 remember whose motion it was, but in any event I intend to
20 elicit the testimony you just heard about the prior sexual
21 contact between the Defendant and the victim. I believe the
22 State -- the case I shared of State versus Kirton is on
23 point and that she alleged touching for several years
24 culminating in a sexual act where he inserted his penis into
25 her vagina.

1 I think it was obvious Minor got confused as to some
2 of the dates, Your Honor. I think that goes to -- Ms. Aaron
3 can argue that as to her credibility of a witness, but on
4 direct examination I think it was clear that she indicated
5 there were several years of touching in a sexual manner,
6 Your Honor. I would ask that pursuant to Lyle and State v.
7 Kirton that those incidents be allowed to come in.

8 **THE COURT:** Ms. Aaron.

9 **MS. AARON:** May it please the Court, Your Honor. I
10 understand that during the solicitor's testimony that he
11 argued that the Defendant touched the victim during that six
12 or seven year period, but her testimony from her mouth is
13 that the first time he touched her inappropriate was in
14 2013.

15 She did get twisted up in one situation where she said
16 she knows she was seven. That would -- she was born in the
17 year 2000. So that would have been in 2007, which was three
18 years prior to them meeting, according to her testimony.
19 The only date that she nailed down at this -- that Mr.
20 Phillips has not been indicted for is an August 2013
21 incident in McCormick.

22 **THE COURT:** She stated that the touching started when
23 he started seeing her mother.

24 **MS. AARON:** And then when I asked her when was the
25 first time he touched you inappropriately, she said July of

1 2013.

2 **THE COURT:** And that goes to her credibility.

3 **MR. JONES:** Your Honor, again, she testified slightly
4 differently when I was asking her questions. I think she
5 did get confused when Ms. Aaron was asking her questions.
6 She's a low -- she's low IQ, she's low functioning, Your
7 Honor.

8 **THE COURT:** Well, I mean, I'm just pointing out that I
9 think there's -- if not, there is -- there's testimony
10 somewhere in this record, because I recall somebody saying
11 it, that he started seeing her mother about six or seven
12 years before this charge came down. And she said that the
13 inappropriate touching began once he -- when he started
14 dating her mother. That was the testimony.

15 **MS. AARON:** I think that was the solicitor's testimony.
16 I don't ---

17 **THE COURT:** No, ma'am, that wasn't the solicitor's
18 testimony.

19 **MS. AARON:** Okay.

20 **THE COURT:** That was her testimony. He asked her when
21 did that begin. And she said when he started dating her
22 mama.

23 I'm going to allow it in. I think it goes to the
24 factors brought forth in Kirton. Obviously, Ms. Aaron will
25 be able to argue any credibility issues that there may be

1 regarding that, but I think it's appropriate. So I'm going
2 to allow it in. What else?

3 **MR. JONES:** Your Honor, that's it from the State.

4 **THE COURT:** Anything from the Defense that we can take
5 up today before we start in the morning?

6 **MS. AARON:** No, sir.

7 **THE COURT:** Okay.

8 **MS. AARON:** My client is on bond.

9 **THE COURT:** I'm going to allow him to remain on ---

10 **MS. AARON:** Okay.

11 **THE COURT:** --- on bond. I'm assuming there have been
12 no issues with Mr. Phillips appearing when he's supposed to
13 appear?

14 **MS. AARON:** No, sir. And the jury's not sworn. And I
15 really ---

16 **THE COURT:** Yeah.

17 **MS. AARON:** But I wanted to make, you know, be candid
18 with the Court that he is on bond and we would hope ---

19 **THE COURT:** Yeah. That's no problem. Let me just say
20 this, though, because I say this in all the cases whenever
21 this issue's brought up. Mr. Phillips, you're on bond and
22 certainly I'm going to allow you to remain under those
23 conditions.

24 What's important to understand, and I don't have any
25 belief that you won't 'cause, I mean, I don't know you, but

OPENING STATEMENTS - MR. JONES

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1 **THE COURT:** Thank you, folks. Ladies and gentlemen,
2 please, if you would, give the attorneys your undivided
3 attention as they address you with their opening remarks.
4 Mr. Jones.

5 **MR. JONES:** Thank you, Your Honor. May it please the
6 Court.

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

8 **MR. JONES:** Ms. Aaron. On July 28th, 2013 fifty-two
9 year old Kelly Phillips got in bed with thirteen year old
10 Minor He touched her vagina. He touched her
11 breasts. And then Peggy Robinson, who is Minor 's mother
12 and Kelly's girlfriend, came into that same room, got in bed
13 and had sex with Kelly Phillips while her thirteen year old
14 daughter laid beside her.

15 Two days later Minor went to her pediatrician. She
16 told her doctor that Kelly Phillips had been abusing her for
17 years. Law enforcement was contacted. And Minor told law
18 enforcement about two times in the month of July when Kelly
19 Phillips had sex with her and also about the incident on
20 July 28th where he touched her vagina and touched her
21 breasts.

22 When Peggy Robinson was questioned, the mother of the
23 victim, girlfriend of the Defendant, she said, yes, I did go
24 into that room where Kelly Phillips was laying in the bed
25 with my daughter and, yes, I had sex with Kelly Phillips

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1 while my thirteen year old daughter laid right beside us.

2 And she also said at some point in 2013 Kelly Phillips
3 told her that Kelly Phillips had sexually abused Minor

4 Those are the basic facts I intend to present.

5 You're going to hear from several witnesses. Minor

6 I mentioned, was the victim at the time. She was
7 thirteen. Now she's sixteen. Peggy Robinson will testify.
8 Detective Jon Hamby from the Easley Police Department and an
9 expert in child sexual abuse will testify as well.

10 That expert hasn't seen our victim, knows nothing about
11 the case. She'll just tell you general characteristics
12 about sexual abuse that you may not be aware of.

13 Now as you listen to everybody testify, in the back of
14 your mind I want you to ask yourself what reason does this
15 person have to lie? Why would this person come in here
16 under oath and lie? And remember that people lie to gain a
17 benefit or avoid some type of punishment.

18 Particularly when Minor testifies, what reason does
19 she have to come in here and lie? Listen to where she lives
20 now. Listen as she tells you about her life, the results,
21 the consequences of these allegations.

22 And as Peggy Robinson testifies, listen to where she
23 tells you she lives right now. Listen how this has affected
24 her life. Has she benefitted from what she told law
25 enforcement?

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1 I mentioned Kelly Robinson, or excuse me, Kelly
2 Phillips is charged with two counts of criminal sexual
3 conduct with a minor, second degree, and one count of
4 criminal sexual conduct with a minor, third degree. And
5 basically that means that I have to prove to you for the
6 criminal sexual conduct with a minor, second degree, that
7 Kelly Phillips committed a sexual battery on someone between
8 the ages of eleven to fourteen.

9 At the end of the trial the Judge is going to go into
10 way more detail about the specifics of each crime, but I
11 want to give you a heads up as to what I have to prove. The
12 sexual battery means that he inserted something into any
13 opening of the child, vaginal, oral or anal.

14 And for criminal sexual conduct with a minor, third
15 degree, I have to show that Kelly Phillips touched someone
16 under the age of sixteen in a lewd and lascivious manner for
17 the purposes of arousing his sexual desires or the child's
18 sexual desires. So essentially that means touching someone
19 for the purpose of arousing your sexual desires who was
20 under sixteen.

21 So those are the basic elements that I have to prove.
22 The burden is on me, who represents the State. And, again,
23 at the end of the trial, the Judge, when he charges you on
24 the law, he will talk about those charges in depth.

25 And I don't want to talk too long. So I want to leave

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1 you with this. When Minor comes in here today,
2 Minor has no support from a mother, she has no support from
3 a father, she has no support of any family. And when she
4 walks in here today she's going to walk all alone. She's
5 going to sit right there. And, ladies and gentlemen, that's
6 exactly how she goes through this world, all alone. Thank
7 you.

8 **THE COURT:** Thank you, Mr. Jones. Ms. Aaron.

9 **MS. AARON:** May it please the Court, Your Honor.

10 **THE COURT:** Yes, ma'am.

11 **MS. AARON:** Good morning, ladies and gentlemen. As I
12 told you early on -- and you won't have any trouble hearing
13 me, I guarantee you. My name is Cheryl Aaron. I practice
14 law in Clemson. I have been practicing law since 1983. I
15 used to be in Pickens. You may or may not have seen my
16 office right across the street years ago.

17 I actually started out in Gaffney. I was the first
18 woman to ever practice law in Cherokee County in 1983. So
19 I've been around a long time. I didn't go gray until last
20 year, but it sort of validates how long I've been doing
21 this.

22 I told you yesterday that it was my pleasure to
23 represent Mr. Phillips. And I really do mean that, not
24 because this is fun, but because I love what I do. My job
25 is to give you the other side of the story that the State

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1 doesn't want you to hear. If it were as easy as Mr. Jones
2 has just presented it to you, then there'd be no reason for
3 us to be here.

4 I liken the State's presentation to the unfortunate way
5 that I may have raised my children in one sense, that if I'm
6 walking with them in a store and we approach an adult and
7 they speak to them, ask them a question, what do I do? I
8 answer for them because I want them to look good. I don't
9 want them to say something silly. That's what kids do. But
10 I want control over the message, my kids growing up.

11 If Mr. Jones could testify, he'd have control of the
12 message. I suggest to you that that's not the way it works.
13 Our system is designed to take twelve people who know
14 absolutely nothing about anybody in this room and we ask you
15 to make the ultimate decision about what happened.

16 Now, that may sound very unusual to you. You'd be like
17 holy mackerel, how am I supposed to do this? Well, the
18 system two hundred and some-odd years ago when it was
19 designed was designed with tools. You will have tools.

20 You will have evidence, which is what you hear from
21 this chair. This is evidence. Evidence is not what I say.
22 Evidence is not what Mr. Jones says. Evidence is not what
23 the Judge says. Evidence is what you hear from this chair.

24 There's no basket at the door for you to leave your
25 common sense. You come in here with it fully intact. You

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1 make your decision in this case like you do in your life.
2 You've got kids running around your house, your kids,
3 somebody else's kids, you hear a crash in the bathroom,
4 you're not in the room, they both come running in, might
5 tell you different stories. How do you resolve that? You
6 weren't there. You have no idea. You listen. You use your
7 common sense.

8 And the only difference between that scenario and this
9 scenario is the Judge is going to tell you what the rules
10 are. You don't -- just like you were to decide who broke
11 this vase. You don't get to decide today who you believe a
12 little bit more than who you don't believe. That's not
13 where we are.

14 If you were in here on a wreck case on what we call a
15 civil case, he ran into me, no, he ran into me, who do you
16 believe more? We're done.

17 Two hundred and some-odd years ago when our system was
18 designed, that's not enough when you're going to call
19 someone a criminal, when you're going to call them a
20 criminal, you're going to type up a warrant, you're going to
21 arrest them, then you must prove every element of that
22 charge beyond any other reasonable explanation.

23 That's not an unreasonable threshold. That threshold
24 protects any person in our community who sits in that chair.
25 If the State's going to bring them in here and they're going

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1 to say you committed a crime, then they must be prepared
2 from this chair to prove that to you beyond any other
3 reasonable explanation.

4 The Judge will define reasonable doubt to you. Books
5 have been written about reasonable doubt. Very simply, the
6 State is going to put a pen in your hand figuratively or
7 literally at the end of this trial, and they're going to ask
8 you to write guilty on these indictments.

9 And if you've heard anything during this trial from
10 this chair that causes you to hesitate, then that's a
11 reasonable doubt. That's not a loophole. That's a
12 protection. Because if I don't like somebody and I want to
13 say something about them, or I'm confused, or I really do
14 believe what I'm saying, it's just simply not true, then the
15 person who's sitting in that chair deserves that protection.

16 When we're here with you today we don't ask you to do
17 anything other than be the kind of juror that you would want
18 to have when your loved one, your community member, your
19 neighbor is sitting in that chair. That's all we can ask of
20 you.

21 And that's very important. It was very important in
22 1983 when I started doing this, and I think it's even more
23 important now because our society wants to Google an answer.
24 I do it all the time. I need an answer, I don't go back to
25 what I learned. I want to Google it. I want immediate

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1 answers. This system was designed before that was around.

2 This is human thought. It is human thought.

3 What the Judge is going to ask you to do and what our
4 system asks you to do is two things. First thing, you have
5 to decide what happened. What are the facts? If we agreed
6 on the facts, it would be very easy. We do not. So you
7 first have to decide what are the facts. What happened?
8 Use what you hear from here to make that decision.

9 And then the Judge is going to tell you what the law
10 is. The law is not what you want it to be. It isn't what
11 you think it should be. It's what the Judge tells you it
12 is. It is a list of requirements that you must find beyond
13 any other explanation as you go down the list based on your
14 decision on the facts. And all of this must be unanimous.
15 Now, that may sound like a pretty difficult task for you,
16 but again, it's exactly what we do as human beings within
17 the rules that we sit here with today.

18 There are several kinds of evidence that you'll hear.
19 You'll hear -- you could hear, I don't know what you'll
20 hear, you could hear direct evidence, which is if you go
21 outside and it's raining and it's raining on you, that's
22 direct evidence. Somebody saw it, it happened. Somebody --
23 this is what they say happened.

24 You might also hear about circumstantial evidence. If
25 you see somebody walk in that door who's wet with an

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1 umbrella, you didn't see it rain, but you could conclude
2 that it's raining. But I'm going to tell you to be very,
3 very careful about either of those types of evidence because
4 you must be able to reach that conclusion beyond any other
5 reasonable explanation. And if the sprinkler system's on
6 outside and that's what got that person wet, that logical
7 conclusion that you were asked to reach, you can't reach
8 because there's another reasonable explanation.

9 People -- you may want to believe that people,
10 children, parents, we want to believe they tell the truth.
11 I suggest to you that lie is a big word. Lie is a powerful
12 word. People can say things that they really believe that
13 aren't true. For whatever reason they really believe it.

14 Does it make them feel better? Does it make them look
15 better? I don't know. But they can say things that they
16 really believe, but when you look at all the facts, they're
17 just simply not true.

18 I'm going to close with this, two things I want to tell
19 you. I'm not wearing a giant shirt that says free child
20 molesters. That's not -- that's not my job. I'm not
21 telling you that it's okay to molest a child.

22 What I'm telling you is if the State brings somebody in
23 and puts them in that chair and says we think you did this,
24 you're here to hear all the facts. If I were wearing a
25 shirt it'd say evidence. Evidence.

OPENING STATEMENTS - MS. AARON

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1 I have a lawyer friend, big man, giant guy, a little
2 bit older than me, big head, big shoulders, commanding
3 presence, does a lot of trials, stands in front of a jury
4 and they're just mesmerized with him. He wears a big ring
5 because he can. It looks good on him. During an opening
6 statement he'll turn that ring around so all you see is a
7 gold band on the side. And he puts it in his hand and he
8 talks. And people are just -- they're just mesmerized.

9 And when they hear him, they listen to him. And what
10 he tells them when he's finished is please listen to
11 everything that goes on today because it's very important.
12 That's axiomatic. The Judge tells you that. But it is
13 important.

14 And the way he makes that point is that he says because
15 you never know when you might hear the gem. And he opens
16 his hand and there's this ring. They've been talking to him
17 for twenty minutes, they've never seen it. Listen to
18 everything.

19 Kelly Phillips appreciates your service today. This is
20 the first day since July of 2013 that somebody can right
21 this wrong. Somebody can do something about this. And
22 that's you.

23 I appreciate your service because you make the system
24 work. If you weren't here, this wouldn't get resolved. And
25 I appreciate you because you will listen, and I know you

1 will. You'll listen from beginning to end. You'll listen
2 to what the Judge tells you. And you will be the kind of
3 juror that you would want for anybody in that chair. Thank
4 you.

5 **THE COURT:** Thank you, Ms. Aaron. Mr. Jones, you may
6 call your first witness.

7 **MR. JONES:** Thank you, Your Honor. The State calls
8 Minor to the stand.

9 **THE COURT:** All right. Minor, come around,
10 please.

11 **THE CLERK:** If you would, place your left hand on the
12 Bible and raise your right.

13 Minor, being
14 duly sworn testified as follows;

15 **THE CLERK:** Thank you. If you would, have a seat and
16 state your name for the record, please.

17 Minor: My name's Minor.

18 **Direct Examination by Mr. Jones:**

19 Q. Minor I'm going to stand right here so the jury can
20 see you and so you can hear me, okay?

21 A. Okay.

22 Q. You just told them what your name was. Can you tell us
23 when your birthday is?

24 A.

25 Q. Okay. And what's your mother's name?

Minor

- DIRECT EXAMINATION BY MR. JONES

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- 1 A. Peggy Ann Robinson.
- 2 Q. And do you remember in July of 2013 where you lived?
- 3 A. Yes.
- 4 Q. What was that address?
- 5 A.
- 6 Q. Do you remember who lived with you there?
- 7 A. Yes.
- 8 Q. Can you tell me who lived with you?
- 9 A. It was my mama, my brother, Josh, and Kelly. But he
- 10 didn't really live there, but he was there a lot.
- 11 Q. He was there a lot. Did Kelly have his own house?
- 12 A. Yes, he did.
- 13 Q. Okay. Well, how do you know Kelly Phillips?
- 14 A. That is my mama's ex-boyfriend.
- 15 Q. Okay. Do you remember how old you were when you first
- 16 met him?
- 17 A. No.
- 18 Q. Okay. Do you know about how long your mother and him
- 19 dated?
- 20 A. I mean, not really.
- 21 Q. Okay. Tell the jury -- where do you live right now?
- 22 A. Crossroads.
- 23 Q. And what is that?
- 24 A. It's a level 3 behavioral management lock-down
- 25 facility.

1 Q. Okay. And how long have you been there?

2 A. Six months.

3 Q. Okay. Where were you before that?

4 A. Southeastern Children's Home.

5 Q. Okay. Do you remember on July 30th, 2013 going to see

6 Dr. Carla Richards?

7 A. Yes, sir.

8 Q. And who is Carla Richards?

9 A. That was the doctor that I had been seeing.

10 Q. Do you remember who went with you when you saw Dr.

11 Richards that day?

12 A. Yes, sir.

13 Q. Who was that?

14 A. My mama.

15 Q. Okay. Tell the jury what you told Dr. Richards about

16 Kelly Phillips.

17 A. Well, I got in there and she kept looking at me funny.

18 And she asked me what was wrong. And I told her that I was

19 being sexual abused.

20 Q. Okay. Did you tell 'em about how long you'd been

21 sexually abused?

22 A. No, I did not.

23 Q. Okay. Did you tell the doctor anything about the most

24 recent sexual abuse that occurred when you saw the doctor

25 that day?

Minor

- DIRECT EXAMINATION BY MR. JONES

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- 1 A. Yes, sir.
- 2 Q. Tell the jury about that.
- 3 A. Like, it was like a couple of weeks before I went to
- 4 Dr. Richards for the Depo.
- 5 Q. Okay. And tell the jury about that. What happened?
- 6 A. When I went to the doctor?
- 7 Q. No, about the sexual -- the most recent sexual abuse,
- 8 if you -- the best you can remember.
- 9 A. Oh, yes. I was abused. Like, it was in my room.
- 10 Q. Okay. And tell the jury more about that abuse. Who
- 11 else was in the room?
- 12 A. My mama.
- 13 Q. Okay. And tell the jury what happened when your mother
- 14 came in the room and as she got into the room.
- 15 A. Well, my mama, she came and knocked on the door. And
- 16 he, Kelly, let her in.
- 17 Q. Did Kelly say anything to you as he was walking up to
- 18 the door?
- 19 A. Yes.
- 20 Q. What did he say?
- 21 A. He told me that she had already knew that he was
- 22 messing with me and stuff.
- 23 Q. Okay. And after he said that what happened?
- 24 A. He let her in.
- 25 Q. Okay. And tell the jury what happened after he let

1 your mother into the room.

2 A. When he let her in the room, they were having sexual
3 intercourse in front of me. And, yes, I was awake.

4 Q. Okay. So you were awake. Did you try to or did Kelly
5 touch you at all while you were in the room or while your
6 mother was in the room?

7 A. No, he did not.

8 Q. Okay. Did you ever try to leave?

9 A. Yes.

10 Q. What happened when you tried to leave?

11 A. He grabbed me.

12 Q. And did he say anything to you then?

13 A. No.

14 Q. Okay. Can you tell the jury that same night, that same
15 evening, can you tell the jury about any -- were you touched
16 -- did Kelly touch you at all before your mother got into
17 the room?

18 A. Yes.

19 Q. Okay. Tell the jury about that.

20 A. He was touching my breasts and my -- my vaginal area.

21 Q. Okay. Now you mentioned something happened a few weeks
22 earlier. Can you tell the jury about anything that happened
23 a few weeks earlier ---

24 A. Yes.

25 Q. --- with regard to Mr. Phillips?

Minor

- DIRECT EXAMINATION BY MR. JONES

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1 A. Yes. Well, I was in my room and he came in there and
2 he had sex with me.

3 Q. And can you tell them anymore about that? What was --
4 did he say anything to you that you remember?

5 A. Yes. He told me not to tell anybody.

6 Q. Do you remember how -- how you had sex with him?

7 A. Yes.

8 Q. Can you tell the jury about that?

9 A. Like, my face was facing that way. And, like, my
10 bottom was in the air.

11 Q. Okay. Now, do you remember how old you were -- I think
12 I asked you this earlier and you said you didn't remember.

13 Do you remember how old you were when you met Kelly
14 Phillips?

15 A. No, I do not.

16 Q. Okay. If I showed you your statement would that help
17 you remember?

18 A. Yes, sir.

19 Q. Okay.

20 **MR. JONES:** May I approach the witness, Your Honor?

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

22 Q. Just take a minute and read through that statement,
23 okay? Just take your time.

24 (Pause)

25 A. Yes, sir.

1 Q. Okay. So tell the jury about how -- how old you were
2 when you met him. Do you remember now?

3 A. Yes.

4 Q. Okay.

5 A. I was seven.

6 Q. Okay. You were seven. Okay. And is that about --
7 that was when your mother started dating him, is that right?

8 A. Yes, sir.

9 Q. And on how many occasions -- you mentioned that you had
10 sex with him before in your room. How many occasions did
11 you have sex with Mr. Phillips?

12 A. Three.

13 Q. Three. Okay. And with regard to when you went to the
14 doctor's office in July of 2013 do you remember about where
15 in time those incidents were?

16 A. I don't remember.

17 Q. Okay. Were they -- were they close to that time when
18 you saw the doctor or were they far away?

19 A. They were close.

20 Q. Was there any other time that Mr. Phillips sexually
21 abused you?

22 A. Other than those three times?

23 Q. Um-hum (affirmative).

24 A. No, sir.

25 Q. Okay. Did anything happen other than you having sex

Minor

- DIRECT EXAMINATION BY MR. JONES

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- 1 with him at any other time?
- 2 A. Other than he was touching me?
- 3 Q. Right.
- 4 A. That's it. He ...
- 5 Q. What's it?
- 6 A. That he just touched me after that. He didn't have sex
- 7 with me anymore.
- 8 Q. Okay. So he just touched you other than that?
- 9 A. Yes.
- 10 Q. Okay. And how long did that -- how long of a period of
- 11 time did that occur?
- 12 A. Seven.
- 13 Q. Seven what?
- 14 A. Years.
- 15 Q. Seven years?
- 16 A. (Affirmative nod).
- 17 Q. Do you remember any specific incident that occurred in
- 18 McCormick?
- 19 A. Yes, sir.
- 20 Q. Can you tell the jury about that.
- 21 A. Well, they were outside and he ...
- 22 Q. Who were outside?
- 23 A. My mom.
- 24 Q. Okay.
- 25 A. And he didn't ...

1 Q. It's fine. You can just say whatever you -- whatever
2 you want to say.

3 A. Okay. Well, like, he was touching me.

4 Q. And where did that occur?

5 A. In McCormick.

6 Q. Okay. And why were you in McCormick?

7 A. Because we were going down there, hunting season, to
8 hunt. Kelly was going to hunt. And my mom was going to
9 hunt. And ---

10 Q. That's fine. And what happened when you were in
11 McCormick with Mr. Phillips?

12 A. In regards to him touching me?

13 Q. Anything -- yes, with regards to him touching you.

14 A. He was touching me.

15 Q. Did you -- did you do anything to him?

16 A. Yes.

17 Q. Tell the jury what that was. You don't have to look at
18 -- look at your statement for everything. If you can just
19 remember, you can tell the jury ---

20 A. Yeah.

21 Q. That's fine.

22 A. Well, he asked me to -- to suck his private area, and I
23 did.

24 Q. Well, tell the jury what he actually said. Did he say
25 private area or do you remember?

Minor

- DIRECT EXAMINATION BY MR. JONES

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- 1 A. No.
- 2 Q. No what?
- 3 A. He did not say private area.
- 4 Q. What did he say? You can say it.
- 5 A. Okay. He said dick.
- 6 Q. Okay. And did he do anything to you?
- 7 A. He touched me inappropriately.
- 8 Q. Okay. Did he do anything else to you at that time?
- 9 A. No, sir.
- 10 Q. Okay. Do you remember anything specific about Mr.
- 11 Phillips' private area?
- 12 A. Yes, I do.
- 13 Q. Tell the jury what you remember.
- 14 A. He had shaved his private area.
- 15 Q. And was that every time you saw his private area?
- 16 A. Yes, sir.
- 17 Q. In the month of July when you indicated that you had
- 18 sex with Mr. Phillips do you remember him saying anything to
- 19 you during -- while he was having sex with you?
- 20 A. He told me don't tell.
- 21 Q. He told you don't tell. And you described a time when
- 22 you saw your mother have sex with Mr. Phillips in the bed
- 23 with you.
- 24 A. Yes, sir.
- 25 Q. Were there any other times that you saw your mother and

1 Mr. Phillips have sex?

2 A. Yes. When we were at the motel Mr. Phillips and my
3 mama were having sex in front of me and my brother.

4 Q. Okay.

5 A. There were two beds in the motel. And me and my
6 brother were on one and them two were on the other.

7 Q. Let's be clear. When you -- when we say he had sex
8 with you, what do you mean? Can you describe what that is?

9 A. When he inserted his private area in my vaginal area.

10 Q. Okay.

11 **MR. JONES:** I beg the Court's indulgence, Your Honor.

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

13 (Pause)

14 Q. Minor do you ever remember a time where Mr. Phillips
15 performed oral sex on you?

16 A. Yes, sir.

17 Q. Do you remember when that happened or did it happen
18 more than once?

19 (Pause)

20 A. Yes. This occurred at my mom's house.

21 Q. Okay.

22 A. And it happened in the woods, too.

23 Q. And, Minor do you have a hard time remembering the
24 exact dates ---

25 **MS. AARON:** Objection to that type of question, Your

Minor

- DIRECT EXAMINATION BY MR. JONES

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1 Honor. He's trying to rehabilitate. And I would object to
2 that question. It's up to the jury to determine what she
3 can and cannot remember.

4 **THE COURT:** Overruled.

5 Q. Do you have a hard time remembering exact dates when
6 something happened?

7 A. Yes, sir, I do.

8 Q. Okay. And how long ago -- well, it's 2016 right now,
9 right?

10 A. Yes, sir.

11 Q. And you told the doctor in 2013?

12 A. Yes, sir.

13 Q. Okay. And the sexual abuse that you described, was
14 that over a long period?

15 A. Yes, sir.

16 Q. Okay.

17 **MR. JONES:** No further questions, Your Honor.

18 **THE COURT:** Cross.

19 **MS. AARON:** Your Honor, may we approach?

20 **THE COURT:** Yes, ma'am.

21 (Whereupon a bench conference was held off the record
22 in the presence of the jury, but out of their hearing)

23 (Whereupon the bench conference was ended)

24 **MS. AARON:** I have no questions, Your Honor.

25 **THE COURT:** All right. Thank you very much, ma'am.

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

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1 You may step down.

2 A. You're welcome.

3 **THE COURT:** Thank you. Call your ---

4 **MR. JONES:** Your Honor, at this time the State calls
5 Peggy Robinson to the stand.

6 **THE COURT:** All right. Please bring Ms. Robinson in.

7 **THE CLERK:** If you would, place your left hand on the
8 Bible and raise your right the best you can.

9 **Peggy Robinson,** being
10 duly sworn testified as follows;

11 **THE CLERK:** Thank you, ma'am. If you would, have a
12 seat and state your name for the record, please.

13 **MS. ROBINSON:** Peggy Robinson.

14 **Direct Examination by Mr. Jones:**

15 Q. Ms. Robinson, what's your daughter's name?

16 A.

17 Q. what?

18 A.

19 Q. How do you know Kelly Phillips?

20 A. I dated him.

21 Q. How long did you date him?

22 A. I don't remember.

23 Q. Do you remember what year it was when you met him?

24 A. No.

25 Q. What address did you live at in Easley, South Carolina?

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

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1 A.

2 Q. And who lived with you there?

3 A. Me, Minor and Josh.

4 Q. Okay. On July 30th, 2013 did you take Minor to her
5 pediatrician?

6 A. Yeah.

7 Q. And after that did you meet with Detective Hamby with
8 the Easley Police Department?

9 A. Yeah.

10 Q. Do you remember an incident that occurred on July 28th
11 of 2013 in Minor 's bedroom?

12 A. Yeah.

13 Q. Tell the jury about that incident.

14 (Pause)

15 A. Minor was in her bedroom watching TV.

16 Q. Who was in the bedroom with her?

17 A. Kelly was sitting on the bed talking to her. We was
18 watching a movie.

19 Q. Say that again, please, ma'am.

20 A. Minor was in her -- Minor was in there watching a
21 movie.

22 Q. Okay.

23 A. And Kelly was sitting there watching the movie with
24 her.

25 Q. Did you go into that bedroom?

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

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1 A. Yeah.

2 Q. Tell the jury what happened when you entered the
3 bedroom.

4 A. I don't remember.

5 Q. You wrote a statement to Detective Hamby. If ---

6 A. I don't remember.

7 Q. --- I showed you that statement would that help you
8 remember?

9 A. Yeah, 'cause I don't remember.

10 **MR. JONES:** May I approach, Your Honor?

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

12 Q. If you'd look at that statement, please, ma'am.

13 A. I can't see it. You're going to have to bring it
14 closer. Minor was in -- Minor was in the bed ---

15 Q. Don't -- don't read the statement out loud, ma'am, ---

16 **THE COURT:** I need -- I don't need you to read it out
17 loud.

18 A. Okay.

19 **THE COURT:** If you would, you can read it to yourself
20 to help refresh your memory.

21 A. Okay. The only way I'm going to remember it is to read
22 it out loud because the only way I remember is to read it
23 out loud. That's the only way I'll remember it.

24 **MR. JONES:** Your Honor, at this point I'd -- she's
25 being hostile. And I'd like to ---

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

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1 A. I mean, I don't remember.

2 MR. JONES: --- treat her as a hostile witness.

3 THE COURT: Granted.

4 A. 'Cause I don't remember.

5 Q. Ms. Robinson, in the statement to Detective Hamby did
6 you say Minor was in bed with Kelly, but I was not in
7 there?

8 A. Yes, sir.

9 Q. Did you say when I got in there in the bed with them,
10 first we talked, and then we had sex? Did you say that?

11 A. Yes, sir.

12 Q. Did you say we had sex in front of her and she laid
13 there and watch us? Is that what you said in your
14 statement?

15 A. Yes, sir.

16 Q. Say that so the jury can hear you, please, ma'am.

17 A. I said yes, sir.

18 Q. And did you say around April or May we was talking
19 about being truthful?

20 A. Yes, sir.

21 Q. And Kelly told me what happened 4th of July of 2012?
22 Did you say that?

23 A. Yes, sir.

24 Q. Did you say that he told me that he let Minor play
25 with his dick? Is that what you said in your statement?

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

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1 A. I believe so.

2 Q. You believe so or yes?

3 A. Yes, sir.

4 Q. And did you say that he fingered her and asked her did
5 she like that and she said yes?

6 A. Yeah.

7 Q. And did you say it went a little further? She sucked
8 his dick, and then he eat her and he asked her did she like
9 it. Did you write that in your statement?

10 A. Yeah, I wrote that in the statement.

11 Q. Ms. Robinson, do you know anyone named Steve or Steven?

12 A. Yeah.

13 Q. Who is that?

14 A. It's a nephew.

15 Q. Who is that?

16 A. I said his nephew.

17 Q. And after you were arrested did you spend some time in
18 the LEC, the Pickens County Detention Center?

19 A. Yeah.

20 Q. And while you were in there did you ever make a jail
21 phone call to Steven? Did you talk to him over the phone?

22 A. I made a jail phone call to my mama and he answered the
23 phone.

24 Q. Okay. And when he asked you why didn't you tell
25 anybody did you say I didn't want to get Kelly in trouble?

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1 A. Yeah.

2 Q. Did you say Kelly is my world?

3 A. Sure did.

4 Q. And did you say I told Detective Hamby what Kelly told
5 me about McCormick last 4th of July?

6 A. Yeah.

7 Q. And as to the incident in your room with Kelly and
8 Minor did you say we was all in it together? We was laying
9 in bed beside her and it just happened?

10 A. Yeah, but it wasn't like we done it on purpose.

11 Q. Okay. And did you say to Steven, he ate her and she
12 sucked him at McCormick last 4th of July?

13 A. I believe so. I don't remember everything I said on
14 the phone.

15 Q. Okay. And did you say to Steven, what am I supposed to
16 do, tell them it didn't happen?

17 A. I reckon so, yeah.

18 Q. And did you tell Steven you told Detective Hamby what
19 you know?

20 A. I think so. I guess so, yeah.

21 Q. Did you make another jail phone call and talk to
22 someone named Denise? Do you remember talking to her on the
23 phone when you were in jail?

24 A. No, I don't. I mean, I don't remember talking to her.

25 I mean, I guess, yeah, I did.

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1 Q. Did you talk to Denise or not?

2 A. Yes.

3 Q. Did you tell Denise that you didn't want Kelly to get
4 in trouble?

5 A. I don't remember the conversation. I remember talking
6 to her, but I don't remember the conversation. Do you know
7 how much has happened since 2013 and now? I don't remember.

8 MR. JONES: Your Honor, at this point I think I need to
9 play the jail call for the witness, allow her to remember,
10 outside the presence of the jury.

11 THE COURT: All right. Let me take up this matter of
12 law, ladies and gentlemen. If you would, please, if you
13 need anything while you're back there, just let the bailiffs
14 know, if you need something to drink or whatever. Please
15 have no conversation about the case, and I'll bring you back
16 out shortly. Okay.

17 (Whereupon the jury exited the courtroom at 10:13 am)

18 MS. AARON: Your Honor, before ...

19 THE COURT: Okay.

20 MS. AARON: Before we do anything I need to put an
21 objection on the record to the solicitor's statement in
22 front of the jury. He just stated in front of the jury that
23 we have a phone -- taped phone conversation from the jail,
24 which I don't know if it's admissible or not. I don't know
25 who's going to authenticate it. I don't know that it would

1 be even allowed to be played to the jury until the Court
2 determines that it can.

3 He just announced that to the jury and then asked that
4 you consider it outside their presence. And they know
5 exactly or they think they know what we're doing in here.
6 So I would object to the solicitor's statement in front of
7 the jury talking about that jail -- recorded jail call.

8 She says she didn't remember. Then he needs to present
9 competent evidence. And he's allowed to do that. But he
10 can't just tell the jury we have a recorded call.

11 **MR. JONES:** Your Honor, this is just like if there was
12 a written statement. I would go to her and hand her the
13 statement. I would not move it into evidence like I've done
14 earlier.

15 However, in this case it is a recorded statement that
16 we have to have -- she admitted that she was in the
17 detention center for a time after she was arrested. She --
18 we had just talked about another jail phone call. Honestly,
19 if she had just -- if she would admit, that, yes, I did talk
20 to this person on the phone, there would be no need to do
21 this.

22 **THE COURT:** I'm going to overrule the objection.
23 Here's the situation. And it's unusual. With a statement,
24 a written statement, if a witness can't remember, can't
25 recollect, you can hand them the statement just as he did

1 with Ms. Robinson and asked her to read it.

2 She tried -- she attempted or she thought, initially,
3 she was supposed to read it out loud. And I explained to
4 her that she needs to read it to herself to recollect her
5 memory. We can't do that with a jury in place with a
6 recording.

7 So the jury needed to go out to -- it's no different
8 than handing somebody a piece of paper alleging this is
9 their statement asking them to review it and then asking
10 them did you make that statement? Yes, I made that
11 statement. And is it true that you said this? There's ---

12 **MS. AARON:** Your Honor, I know -- I'm sorry.

13 **THE COURT:** No, I'm sorry.

14 **MS. AARON:** I know you've ruled. And I'm not trying to
15 argue. I just would like to respond on the record to your
16 explanation.

17 I fully understood that that statement that he was
18 going to give her was admissible. And I had absolutely no
19 objection to it and no question at all that it would be
20 competent evidence for the jury to see.

21 That is different with this phone call. So that's my
22 objection is that I understand she can be impeached with her
23 written statement. She made it.

24 But now the jury knows there's a -- or thinks there
25 might be a recorded phone call. And that was my objection

1 is that that is not in evidence and has not been
2 authenticated.

3 **THE COURT:** All right. How do you propose to do this?

4 **MR. JONES:** I have a -- I apologize, Your Honor. I
5 wasn't planning on playing jail phone calls. I was planning
6 on her admitting that she did make these calls. I have --
7 the equipment is coming up. Just a laptop just for her to
8 hear. Obviously, the whole courtroom doesn't need to hear.
9 Just for her to hear the statement. And it's about a five
10 to seven minute long conversation.

11 **THE COURT:** With this individual?

12 **MR. JONES:** Yes, with this ---

13 **THE COURT:** No, I'm talking about the individual you
14 ---

15 **MR. JONES:** Yes, sir, Your Honor.

16 **THE COURT:** --- were questioning her about.

17 **MR. JONES:** So it's not a long ---

18 **THE COURT:** You're not playing all the jail
19 conversations?

20 **MR. JONES:** Oh, no, no, no, no, no. It's just with the
21 one individual.

22 **THE COURT:** The one ---

23 **MR. JONES:** It's about a five to seven minute long
24 conversation.

25 **THE COURT:** All right. Well, we'll be at ease while

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1 that's coming up.

2 **MR. JONES:** Yes, sir, Your Honor.

3 **THE COURT:** Folks, we're going -- why don't we just --
4 I say we're going to be at ease. We're basically going to
5 be at recess. If anyone needs to use the restroom or
6 whatever, go ahead. We'll be in recess for about five or
7 ten minutes.

8 **MS. AARON:** Thank you, Your Honor.

9 (Whereupon court was in recess at 10:17 am)

10 (Whereupon court reconvened at 10:40 am)

11 **THE COURT:** All right. Let's bring the jury back.

12 (Whereupon the jury entered the courtroom at 10:41 am)

13 **THE COURT:** All right. You may proceed.

14 **MR. JONES:** Thank you, Your Honor.

15 **Direct Examination by Mr. Jones Continued:**

16 Q. Okay. Ms. Robinson, after listening to the telephone
17 call do you now remember speaking to Denise on the jail --
18 on a jail phone call?

19 A. Yes.

20 Q. Did you tell her you didn't want to get Kelly in
21 trouble?

22 A. Yeah. Yes. I said yes.

23 Q. And was that in response to when she asked you why
24 didn't you tell anybody?

25 **MS. AARON:** Objection to hearsay, Your Honor. She can

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1 certainly testify to what she said.

2 **THE COURT:** Sustained.

3 Q. Did you tell Denise that I went in there and laid with
4 him?

5 A. Yeah.

6 Q. Did you say Minor was laying in with Kelly, and I was
7 laying behind him, and Kelly and I made out, and Minor was
8 laying in bed beside us? Did you say that?

9 A. Yeah.

10 Q. And did you tell Denise about a time after a Kid Rock
11 concert?

12 A. Yes.

13 Q. Did you tell Denise that after the Kid Rock concert
14 Kelly Phillips told you about 4th of July in McCormick the
15 year before?

16 (Pause)

17 Q. Ms. Robinson?

18 A. Yes.

19 Q. And did you tell Denise that's when Kelly Phillips told
20 you about sexually abusing Minor in McCormick?

21 A. Yeah.

22 Q. And did you say, when you took her to the pediatrician,
23 you didn't know Minor was going to up and run her mouth?

24 A. I think so, yeah. Yes. Yeah.

25 Q. Did you say Kelly told you, he told me he fondled her

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1 and he let Minor fondle him and then he put his mouth on
2 her?

3 A. I guess so, yeah. I believe so. I guess, yeah.

4 Q. And on May 25th of 2016 did you plead guilty to two
5 counts of unlawful neglect of a child?

6 A. Yep. Not because I wanted to, though.

7 Q. Okay. And in that guilty plea in front of a judge did
8 you swear to tell the truth under oath?

9 A. Yeah.

10 Q. And did you tell that judge that Kelly Phillips
11 admitted to you that he sexually abused your child?

12 A. Yeah.

13 Q. And did you admit to that judge that you had sex with
14 Kelly Phillips while your child was in the bed with you?

15 A. Yes. But again, it's not like we done it on purpose.

16 Q. Okay.

17 **MR. JONES:** No further questions, Your Honor.

18 **THE COURT:** Ms. Aaron.

19 **MS. AARON:** I have no questions.

20 **THE COURT:** Thank you, Ms. Robinson. You may step
21 down. All right. You may call your next witness.

22 **MR. JONES:** Your Honor, I beg the Court's indulgence.

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

24 (Pause)

25 **MR. JONES:** Your Honor, at this time the State calls

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1 Detective Jon Hamby.

2 **THE COURT:** Detective Hamby, if you'd, please, come
3 around to be sworn, sir.

4 **Jonathan Hamby,** being
5 duly sworn testified as follows;

6 **THE CLERK:** Thank you, sir. If you would, have a seat
7 and state your name for the record.

8 **MR. HAMBY:** Jonathan Hamby.

9 **Direct Examination by Mr. Jones:**

10 Q. Mr. Hamby, where do you work?

11 A. I work for the Easley Police Department.

12 Q. And what's your current position there?

13 A. Currently I'm assigned to our Narcotics and Vice Unit
14 in our Investigations Division.

15 Q. And how long have you been working for the Easley
16 Police Department?

17 A. Eighteen years.

18 Q. In 2013 do you remember what your position was?

19 A. Yes.

20 Q. What was that?

21 A. I was assigned to our Criminal Investigations Division,
22 which is a detective. And we handle a variety of cases
23 except for narcotics.

24 Q. And tell the jury a little bit more about your
25 responsibilities and what you did in 2013 as a detective.

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1 A. I was one of four in that division. Officers in
2 uniform go out commonly and take reports about various
3 things, whatever somebody's reporting.

4 If they do not have a suspect or if it's a major crime,
5 then those cases get referred back to our Detective
6 Division. And then the captain over that division assigns
7 those cases out to the detectives under him and we
8 investigate them.

9 Q. On July 30th of 2013 were you called out to Easley
10 Pediatric Associates?

11 A. I was.

12 Q. Was there another officer that got there before you?

13 A. Yes.

14 Q. And who was that?

15 A. Officer Reese.

16 Q. And what's his position?

17 A. He was a road officer at the time.

18 Q. Okay. What did you do when you first arrived at Easley
19 Pediatric?

20 A. I was notified of the report. And I met with Officer
21 Reese there, Dr. Richards, Peggy Robinson and Minor

22

23 Q. Do you know if Officer Reese -- did he talk to anybody
24 you didn't talk to?

25 A. No.

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1 Q. Do you remember about what time you got there, morning
2 or afternoon?

3 A. It was almost 5:00, almost their closing time.

4 Q. And after you talked to everybody as a result of that
5 initial investigation what was your understanding of the
6 allegations?

7 A. That a thirteen year old had disclosed to the doctor

8 ---

9 MS. AARON: Objection to hearsay, Your Honor.

10 MR. JONES: Your Honor, he can talk about his
11 understanding of the investigation, what he learned from his
12 investigation.

13 MS. AARON: No, sir. I would say -- and I have a case
14 on point if we want to take that up.

15 THE COURT: Not necessary. Overruled. You can ask him
16 what he did as a result of his investigation.

17 MR. JONES: Yes, sir, Your Honor.

18 Q. So after you talked to everybody at the Easley
19 Pediatrics, what was your next step in your investigation?

20 A. Due to the doctor's office about to close and to get
21 out of that facility, I transported Ms. Peggy Robinson and
22 Minor in different vehicles to the police
23 department to continue the investigation there.

24 Q. Okay. So who did you talk with -- say again who you
25 brought back to the police station.

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1 A. Peggy Robinson, the mother, and Minor , the
2 thirteen year old.

3 Q. Okay. And did you call anyone or get anybody else to
4 come back there with you?

5 A. Notified DSS of the situation and they met me at the
6 police department.

7 Q. Okay. And did you talk to Minor both at the
8 Pediatrics and at the police station?

9 A. I did.

10 Q. And as to the date and time of the sexual abuse
11 allegations did she tell you anything?

12 A. Yes.

13 Q. What were the date and place of the allegations that
14 she told you?

15 A. After speaking the date -- we were there on a Tuesday.
16 The 30th of July is when she went to the doctor and the
17 investigation started. The date that we were focused on was
18 the Sunday just before that Tuesday, two days prior. And
19 then the Friday before that, so we had the 28th and the
20 26th, was two incidences that she had details about.

21 And then about a week before that she named another
22 incident. Didn't have the exact date because of the time-
23 frame. And then it spread over a course of years of
24 different variety of abuse.

25 Q. Okay. Did you make contact with Kelly Phillips on that

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1 day?

2 A. I did.

3 Q. Tell the jury how you did that.

4 A. In between dealing with DSS, the purpose of DSS, you --
5 in that situation, had to notify to take the children out of
6 the home officially and turn them over to DSS custody. So
7 that's what they were called for.

8 I was interviewing Minor and also Ms. Peggy Robinson
9 at the police department. During that time I had a cell
10 phone number for Mr. Phillips. I contacted him on that cell
11 phone number, requested that he meet me at the police
12 department to discuss the investigation. He agreed. And I,
13 later that evening, met him at the police department.

14 Q. And did you also question Peggy Robinson?

15 A. I did.

16 Q. And when Mr. Phillips came to the police station did
17 you have a chance to discuss with him the allegations?

18 A. I did.

19 Q. And did he appear to be under the influence of
20 anything?

21 A. No, he did not.

22 Q. Did he appear to have some sort of physical or mental
23 disability where he couldn't understand what was going on?

24 A. No.

25 Q. Did you ever deny him access to the bathroom, water or

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1 anything like that?

2 A. No.

3 Q. Did he appear to be under any distress when you talked
4 to him?

5 A. No.

6 Q. Did he appear to be coherent?

7 A. Yes. He was able to answer any questions I asked him.

8 Q. Did he give you any reason to question whether he
9 understood what you were asking him?

10 A. No.

11 Q. Did you ever threaten or coerce him in any way?

12 A. No.

13 Q. Did you read him his Miranda warnings?

14 A. I did.

15 Q. And when did you read those Miranda warnings?

16 A. The time given was 10:06 pm.

17 **MR. JONES:** Your Honor, may I approach the witness?

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

19 Q. I'm handing you State's exhibit 1. Do you recognize
20 that?

21 A. Yes.

22 Q. What is it?

23 A. It's the standard notification of waiver of rights form
24 that the police department uses to document us reading
25 someone their rights and then waiving the same rights.

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1 Q. And is that the form you read to Mr. Phillips?

2 A. It is.

3 Q. Is his name anywhere on there?

4 A. His name's on it several times along with his signature
5 and five lines that he initialed.

6 Q. Does that appear to be the same form that you gave to
7 Mr. Phillips?

8 A. Yes.

9 Q. Is it altered in any way?

10 A. No.

11 MR. JONES: And, Your Honor, I can't remember if we
12 actually moved this in earlier, but at this time if it's not
13 in evidence I would ask that State's exhibit 1 be moved into
14 evidence.

15 THE COURT: Any objection?

16 MS. AARON: I have no objection.

17 THE COURT: All right. Without objection, it's in
18 evidence.

19 MR. JONES: Thank you, Your Honor.

20 (Whereupon State's exhibit 1 was admitted into
21 evidence)

22 Q. All right. Now, tell the jury about the conversation
23 you had with Mr. Phillips when he was at the police station
24 after you had him sign his Miranda warnings.

25 A. I spoke with him. And at first he -- he denied --

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1 well, I started off the conversation by asking him if
2 anything had happened out of the ordinary that Sunday
3 before, two days prior. And he said, no, nothing out of the
4 ordinary had happened, nothing stuck out in his mind.

5 So I asked him where he stayed that night. And he
6 stayed -- he said they -- he stayed at Ms. Robinson's house,
7 which is the address that was given earlier,
8 which is in the City limits of Easley.

9 And then he said that Saturday night before that they
10 had stayed at his house, which is in Liberty. And then the
11 Friday, which was the other date in question, the 26th,
12 they'd also stayed at Ms. Robinson's house that night.

13 And when I asked if anything out of the ordinary had
14 happened, he said no. I asked him on Sunday night, well,
15 where did you sleep? And at that point he said, oh, you
16 mean by Minor waking up and seeing me and Peggy having sex.

17 And I asked him a little more about that incident. And
18 at that time he said that he had went into Minor 's room,
19 they were watching movies and/a short time later Peggy come
20 in. And he said that he had thought Minor was asleep. Him
21 and Peggy started having sex in the same bed with Minor A
22 short time after that they realized that Minor had woke up,
23 and they stopped having sex.

24 I confronted him and asked him had he ever touched her
25 in a sexual manner, Minor And he said no. I asked him if

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1 Minor had ever touched him in a sexual manner. And he said
2 no.

3 We kept talking and kept talking. And then he changed
4 his statement after that. And he said that Minor had tried
5 to touch him before. And I asked him about that incident.
6 And he said it happened about a year prior to the time I was
7 talking to him.

8 He said that he was at their house laying on the couch
9 and that she came in there and laid down beside him, was
10 trying to touch him in the privates and that he told her to
11 stop and go back to bed, and she left.

12 I asked him if she ever -- if he ever told her mother
13 about that incident. And he stated no, that -- I asked him
14 why not? And he said, well, I thought it was just good
15 enough to tell her to go back to bed and it was over with.
16 And that's kind of where it would start out interview-wise.

17 But since Peggy Robinson was giving me a different
18 story and she was wanting -- she was saying that he wasn't
19 telling the truth.

20 **MS. AARON:** Objection to hearsay, Your Honor.

21 **THE COURT:** Sustained as to hearsay.

22 A. So at that point I arranged for Ms. Robinson to come
23 down the hallway outside the room where I was in with Mr.
24 Phillips and they was able to see each other. At that point
25 she left. And he changed his story again after that

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1 interaction of seeing her.

2 Q. Let me stop you right there. When they had -- when Ms.
3 Robinson, Peggy Robinson, saw Kelly Phillips at the police
4 station did they ever have a private time, a private
5 conversation without you being aware of it?

6 A. No.

7 Q. Did you have your eyes on them the whole time?

8 A. Yes. He was in the room with me and she was outside
9 the room.

10 Q. What do you mean she was outside the room?

11 A. The room I had him in, it's an interview room, standard
12 -- like an eight by eight, nine by nine little area.
13 There's a desk, couple of chairs, nothing else in there
14 except telephone. And she come down the main hallway
15 outside that room when the door was just propped open.

16 Q. She was in the doorway?

17 A. Yes.

18 Q. Okay. So continue on with what the conversation moved
19 to after he spoke with Peggy Robinson.

20 A. After that he changed his story again. And at this
21 point he -- he stated that he did remember a couple of
22 times, he said three or four, to where Minor did touch him
23 in a sexual manner. And I asked him to describe that, those
24 encounters.

25 He said it happened three or four times, that she would

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1 come crawl on him and rubbing him in his private areas. And
2 he spoke of one incident in particular that he could
3 remember. And he stated that he was asleep on the couch in
4 their house and he woke up with her hands down his pants.
5 He made Minor stop and go back to bed at that point. And I
6 asked him if he'd ever told Peggy, the mother, about that.
7 And he said he did.

8 I asked him why the conflict of his stories and why his
9 story kept changing, pointed out that he was giving me
10 different stories and they were not consistent with each
11 other. And at that point he got mad and stopped cooperating
12 in the interview. That's how the interview ended.

13 Q. Okay. And was that conversation recorded in any way?

14 A. The interview with Mr. Phillips?

15 Q. Yes.

16 A. No. I took notes as I was talking to him.

17 Q. Okay. And that conversation occurred in 2013?

18 A. Yes.

19 Q. And why did you not have a video recording of that
20 conversation?

21 A. At the time the police department was not outfitted for
22 those capabilities. Within the last year we've -- we have
23 that now, but at the time we didn't have it.

24 Q. And as a result of your investigation of Minor and
25 Peggy, and Mr. Phillips and everything else you did, tell

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1 the jury who you sought warrants on, please, and warrants
2 you sought.

3 A. I sought warrants on Mr. Phillips for the incidences on
4 that Sunday that was just prior to the doctor's visit. The
5 doctor's visit was on the 30th. So the Sunday the 28th for
6 the touching of her in the bedroom. That Friday before
7 that, which was the 26th, where he inserted his penis into
8 her.

9 And about a week before that she gave the date of the
10 20th, but when I looked it up on the calendar it was a
11 Saturday. And she said I know it wasn't a Saturday, it was
12 a weekday, but just before that. So it was the time-frame
13 of the 19th, he inserted her [sic] penis there. So he got
14 three charges out of those three incidences.

15 Q. And what about for Ms. Robinson?

16 A. Ms. Robinson was charged with unlawful neglect of her
17 children for, one, knowing about the allegations, knowing
18 about the abuse and not doing anything to it. And then for
19 the actual act on Sunday night of being in the bed having
20 sex with a daughter in the bed with her.

21 Q. And as a result of talking with Minor did you seek
22 warrants on anyone else? And you don't have to say his
23 name, but just tell me what the warrant was and if there was
24 anyone else you sought a warrant out for.

25 A. Yes. There was another incident where she had sex with

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1 another adult male. And I got -- pulled a warrant on him.

2 Q. Okay.

3 MR. JONES: No further questions, Your Honor.

4 THE COURT: Cross.

5 **Cross Examination by Ms. Aaron:**

6 Q. Detective, do you have your report?

7 A. I do.

8 Q. Up there?

9 A. Yes.

10 Q. I want to direct you to the bottom of page 3. In
11 specific response to the solicitor's question you said that
12 Mr. Phillips said that, oh, yes, he remembered three or four
13 times where she touched his privates, rubbed on his
14 privates. Is that what you told the solicitor just now?

15 A. I may have. I'm not sure.

16 Q. Okay.

17 A. I just told him ---

18 Q. Does your report say something different?

19 A. Let me find out where you're talking about.

20 Q. Very bottom, last paragraph, the second sentence, which
21 begins Mr. Phillips.

22 A. I got you. And your question specifically?

23 Q. Does your report say something different than she
24 rubbed on his privates several times?

25 A. It says rubbing on him.

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1 Q. So your report says Mr. Phillips then stated Minor had
2 come on to him three or four times, crawling on him and
3 rubbing on him, period?

4 A. Yes.

5 Q. No mention of rubbing on his privates three or four
6 times?

7 A. Correct.

8 Q. Is that something you just assumed?

9 A. No.

10 Q. Why would you say that?

11 A. That's what he told me.

12 Q. He told you privates? And ---

13 A. Yes.

14 Q. --- you didn't write it down?

15 A. Yes.

16 Q. Is there anything else he told you you didn't write
17 down?

18 A. I mean, I'm typing a report and just a little error I
19 looked over.

20 Q. So your testimony to this jury today is three years
21 later you wrote -- when did you write this report?

22 A. I wrote it that evening and into the next day because
23 it was a long report.

24 Q. So the latest could have been July 31st ---

25 A. Correct.

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1 Q. --- of 2013?

2 A. (Affirmative nod).

3 Q. So you're telling this jury that your memory now is
4 that he meant privates three years later, but your
5 recollection when you wrote this report from your notes
6 don't say privates?

7 A. No. He said privates to me then, too. When I was
8 typing, if I just left it out, I left it out. But, I mean,
9 that's what -- we were talking in the conversation and he
10 said it more than one time.

11 Q. Yet it wasn't important enough within twenty-four hours
12 for you to put it in your report?

13 A. To me it's in the report.

14 Q. So rubbing on him and rubbing his privates are the same
15 thing?

16 A. I left that part out, ---

17 Q. No, answer ---

18 A. --- but in my ---

19 Q. --- my question. You can explain all you want ---

20 A. It can be, yes.

21 Q. I'm asking you, rubbing on him and rubbing on his
22 privates are the same thing?

23 A. It can be, yes.

24 Q. I understand it can be. I'm asking you if it is.

25 A. In my intentions in this report, yes.

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1 Q. Again, I will ask you is there anything else he told
2 you that's not in your report?

3 A. No. I mean, according to me that is in the report
4 also. So ...

5 Q. So because you're assuming that when someone talks
6 about rubbing, they mean sexual?

7 A. No.

8 Q. In this context he means sexually?

9 A. He told me.

10 Q. Well, in your training as a law enforcement officer is
11 it important to write down exactly what you're told?

12 A. If I'm quoting someone, yes.

13 Q. But if you're not quoting them you can make
14 assumptions?

15 A. I didn't say assumptions. But word for word, I mean, I
16 can't quote the entire interview.

17 Q. Where are your notes?

18 A. They were entered -- used in the report.

19 Q. They were -- I'm sorry?

20 A. They were used when I entered the information into the
21 report.

22 Q. So you had a -- your testimony is you had a report and
23 you typed from that report, your handwritten report, into
24 this writing?

25 A. I took notes from the interview and used that to base

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1 my report on, yes.

2 Q. And your sentence crawling on him and rubbing on him,
3 period, says nothing about privates in your report.

4 A. Correct. It's also -- it's not in quotation marks. I
5 mean, it's not a quote from him. It's just what he told me.

6 Q. Is there anything in this report that is a quote from
7 him?

8 A. Sure.

9 Q. Anything that's got quotation marks on it?

10 A. Yes.

11 Q. Where?

12 A. Towards the same page that you were referring to. It
13 says, oh, you mean Minor woke up and saw me and Peggy
14 having sex? That's in quotation marks.

15 Q. Okay. What else? Anything about this rubbing or
16 touching ---

17 A. No.

18 Q. --- in quotation marks?

19 A. No.

20 Q. And, in fact, that quote is the only one in here?

21 A. It may be.

22 Q. So my understanding your testimony is that you spoke
23 with this man on July 30th and you took handwritten notes?

24 A. Correct.

25 Q. And you used those notes to make your report?

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1 A. Correct.

2 Q. And your report is what you gave everybody concerned
3 with the prosecution of this case?

4 A. Correct.

5 Q. And your report is different than your handwritten
6 notes?

7 A. No.

8 Q. No?

9 MR. JONES: Your Honor, I'm going to object. This has
10 been asked and answered several times.

11 THE COURT: I'm going to give you just a tad more
12 leeway, but then you need to move on.

13 Q. Your testimony is that your report is not -- your
14 handwritten notes are not different than this report.

15 A. My notes were used to base this report on. Of course,
16 they're not -- they're going to be different because I --
17 the report is in a report form. My notes were in note form.
18 If that's not -- they can't be the exact same -- they would
19 be the same. Notes or from the interview, the report covers
20 the entire investigation.

21 Q. I understand.

22 MS. AARON: I don't have any further questions. Thank
23 you.

24 THE COURT: Anything on redirect?

25 MR. JONES: No further questions, Your Honor.

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1 **THE COURT:** Thank you very much, sir. You may step
2 down.

3 A. Thank you.

4 **THE COURT:** If you would, put that up here with the
5 court reporter. Thank you. You may call your next witness.

6 **MR. JONES:** Your Honor, the State would call Kelsey
7 Beals.

8 THE COURT: All right. Ms. Beals.

9 **MR. JONES:** Your Honor, I might need to check and see
10 if she's here, Your Honor. She's supposed to be here at
11 eleven, which is right now. But ...

12 **THE COURT:** I think someone's coming in. I don't know
13 if it's her or not.

14 **MR. JONES:** All right. Very good.

15 Kelsey Beals, being duly
16 sworn testified as follows;

17 **THE CLERK:** Thank you, ma'am. If you would, have a
18 seat and state your name for the record, please.

19 MS. BEALS: Kelsey Beals.

20 Direct Examination by Mr. Jones:

21 Q. Ms. Beals, where do you currently work?

22 A. The Julie Valentine Center in Greenville, South
23 Carolina.

24 Q. And what's your -- what's your job title there?

25 A. I'm a therapist for children and adolescents. And I

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1 run the Safe Families group for non-offending caregivers.

2 Q. So you said you work for the Julie Valentine Center.

3 Do you have any other jobs that you ---

4 A. I am an owner in my own therapy practice, Gift
5 Counseling Center for Wellness.

6 Q. Okay. And in your job at the Julie Valentine Center
7 what are your current duties?

8 A. To see individual clients aging in the adolescent and
9 child range from three to eighteen. And then I also am
10 responsible for seeing young adults as well.

11 Q. And that might be the same answer to this, but what
12 services do you provide?

13 A. Therapeutic individual services for children who come
14 to the Julie Valentine Center who have been sexually abused.
15 And with the Safe Families group, it's for non-offending
16 caregivers who -- to help provide education and support
17 around kind of what -- what happened with their children.

18 Q. And you say non-offending caregivers, can you explain
19 that ---

20 A. So non-offending caregivers is a caregiver of a child
21 who's been sexually abused who is not named as an offender
22 but may have not done the -- in the eyes of DSS or law
23 enforcement the appropriate reaction or actions after the
24 disclosure of sexual abuse.

25 Q. Tell the jury about your basic education background,

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1 please.

2 A. I got my undergrad in psychology, my Bachelor of
3 Science in psychology at the Ohio State University. And
4 then I received my Master's in education at Clemson
5 University in clinical mental health counseling in 2012.

6 Q. And tell the jury about any specialized training you
7 have beyond your official education at Ohio State and
8 Clemson.

9 A. So after I received my Master's in education I was -- I
10 took the licensing board. And I'm now a licensed
11 professional counselor in the State of South Carolina. I'm
12 also a Nationally Certified Counselor. I am a State -- a
13 South Carolina victim service provider for working for a
14 non-profit and for victim's of trauma.

15 And then I'm also trained in EMDR, which is Eye
16 Movement Desensitization and Reprocessing. And that is a
17 standardized therapeutic technique that's utilized in
18 therapy to help a child process through their traumatic
19 event.

20 I'm also trained in trauma focused cognitive behavioral
21 therapy. And that is also a standardized researched
22 therapeutic technique that is utilized for children that
23 have experienced trauma.

24 Q. And do you hold any professional licenses?

25 A. In the State of South Carolina I'm a licensed

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1 professional counselor. And I'm also a Nationally Certified
2 Counselor through ACA, which is the American Counseling
3 Association.

4 Q. How many clients would you say you've served throughout
5 your career?

6 A. So I -- between individual clients and groups, I
7 probably serve about a hundred, hundred and fifty a year.
8 And I've been at the Julie Valentine Center full-time
9 practicing as a therapist since 2012.

10 Q. Do you teach or train others in any capacity?

11 A. My role as a therapist at the Julie Valentine Center is
12 to also take on clinical interns specifically at Clemson
13 University when they are going through their Master's in
14 education in clinical mental health counseling to help them
15 carry a caseload and to process cases and to provide
16 guidance throughout their Master's.

17 Q. Have you written any articles that have been published
18 and peer reviewed?

19 A. Yes. In 2012 I co-authored an article. And the
20 specific title is Neglect, Physical and Sexual Abuse: A Look
21 at Posttraumatic Stress Disorder in Children and
22 Adolescents. And that was published in the Michigan Journal
23 of Counseling, Research, Theory and Practice in 2012.

24 Q. Have you previously been qualified as an expert?

25 A. In general sessions, no. In family court, I have once

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1 before. It was probably in 2013. So I'm unfamiliar with
2 exactly what I was qualified as.

3 Q. Okay.

4 **MR. JONES:** Your Honor, at this point I'd request that
5 Ms. Beals be qualified as an expert in the area of child
6 sexual abuse, dynamics and disclosure.

7 **THE COURT:** Any voir dire questions for this witness?

8 **MS. AARON:** Other than a repeat of yesterday, I can
9 certainly do that.

10 **THE COURT:** Well, I mean, if you'd like to, I mean, I
11 think you object to her ---

12 **MS. AARON:** I do.

13 **THE COURT:** --- being qualified as an expert in that
14 field.

15 **MS. AARON:** I do.

16 **THE COURT:** All right. I'm going to overrule the
17 objection and allow her to testify as an expert for that
18 field of study.

19 Ladies and gentlemen, let me explain -- and I'll
20 explain in more detail when I give you the charge on the
21 law. When a person is qualified as an expert witness, what
22 that means is that because of their training, education and
23 experience they are allowed to testify as to their opinions
24 based upon findings which they have gathered through their
25 -- in this case through their counseling or through their

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1 experience in this field. They're allowed to give opinion
2 testimony.

3 The important thing to understand is this, is that when
4 someone is qualified as an expert witness, you give their
5 testimony the weight that you think it deserves. An expert
6 is not entitled to any greater weight than that of a lay
7 witness simply because they're an expert. You judge all the
8 testimony as you think appropriate. But for purposes of
9 this line of questioning and for this testimony, she is
10 qualified as an expert in the field that Mr. Jones has
11 suggested. All right.

12 **MR. JONES:** Thank you, Your Honor.

13 Q. Ms. Beals, how is your position funded at the Julie
14 Valentine Center?

15 A. We are a national non-profit. And so my specific
16 position is funded by the VOCA grant, which is Violence
17 Against Children Act. So it's a federally funded program.

18 Q. So is your salary or compensation contingent upon what
19 you testify to or how you testify today?

20 A. Absolutely not.

21 Q. Have you had any contact with the victim in this case?

22 A. No.

23 Q. Did you read any of the reports from law enforcement on
24 this case?

25 A. No.

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1 Q. Have you read any statements or seen any other evidence

2 ---

3 A. No.

4 Q. --- in this particular case?

5 A. No.

6 Q. In your field what does delayed disclosure mean?

7 A. Delayed disclosure -- well, disclosure in and of itself
8 is the process in which a child reports or tells what has
9 happened to them. And so delayed disclosure is just that.
10 It is a process. It is not necessarily a single event.

11 And I think that that's really hard for some people to
12 kind of understand because if something happens, then we
13 expect them to say all of it at once. And so delayed
14 disclosure is the act in which children kind of maybe say a
15 little bit, test the waters, see how people react and then
16 if they ever do feel safe, then they're able to continue
17 that process and work as they're -- as they're healing and
18 as they feel safe.

19 Q. How common is delayed disclosure in a sexual abuse
20 case?

21 A. Yeah. So because delayed disclosure is a process, it's
22 actually very common. In a study in Sorenson of Snow -- and
23 Snow, approximately seventy-nine percent of children -- and
24 I believe the study was with six hundred and thirty victims.
25 And seventy-nine percent of them disclosed at a later date.

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1 Q. And why do victims disclose at a later date?

2 A. They can disclose at a later date for a number of
3 reasons. In my experience in my field many of the reasons
4 kind of fall under the same scope of children can be
5 concerned for their safety, they can fear for their safety.
6 That doesn't necessarily mean just physical safety. It
7 could also be contributing to the family dynamics or the
8 family system, how the family's going to be affected.

9 Children are natural protectors of their parents and
10 the people that they love. And so often when they do
11 disclose a little bit and they see kind of their lives be
12 flipped upside down, then they're hesitant to disclose
13 anymore because they don't want to see something bad happen
14 to their family.

15 They could also, you know, they also delay disclose or
16 it takes time for them to disclose because sexual abuse is a
17 very confusing situation. The dynamics between an offender
18 and a victim, there's that power. There's a power struggle.

19 There's often a previous relationship that may have
20 been healthy. And the child is -- so, if a child is with an
21 adult and there is -- and there's sexual abuse that's going
22 on, there's often the ability for children to not
23 necessarily understand what's going on. If this is the
24 first time that they have been introduced to sex and it's
25 been in an inappropriate way, it's often very confusing for

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1 them.

2 And I think that also goes because we think of sexual
3 abuse often as a violent or aggressive act. And very much
4 so it's not. It's very -- the grooming process and the
5 grooming techniques that take place naturally make that
6 child feel more comfortable and break down these child's
7 defenses physically, emotionally and mentally.

8 Q. Still on to disclosing at a later date, does
9 normalization of sexual activity affect that at all?

10 A. So if a child is introduced to sex in an inappropriate
11 way and it's never been introduced to them before, then they
12 don't necessarily know that it's inappropriate.

13 And so, you know, an example that I always give my
14 clients is if parents are speaking in the home and one of
15 them cusses and they never address it with the child, they
16 never say that it's wrong, they never, you know, correct the
17 child, the child might go into school thinking that cussing
18 is absolutely appropriate.

19 Now, when they get in trouble for cussing and then the
20 child -- the teacher calls the parents, you know, that child
21 has no awareness of what is appropriate or what's not.
22 Caregivers' roles are to show what is appropriate and what's
23 not.

24 Q. Can you describe the process of disclosure? I think
25 you touched on it a little bit, but ---

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1 A. Yeah.

2 Q. --- in your field what is the process ---

3 A. Absolutely.

4 Q. --- of disclosure?

5 A. So initially very commonly is denial. It is very
6 common for children to deny that anything has happened
7 because it's our body's natural way of protecting ourselves.
8 And moving forward, once there is a disclosure, there's the
9 tentative phase and the active phase.

10 The tentative phase is when a child may be ambiguous or
11 uncertain or kind of vacillating between, you know, it did
12 happen, it didn't happen. And this is, again, them testing
13 the boundaries, testing the waters of, you know, am I going
14 to be believed? That's one of the reasons why children
15 don't tell.

16 It's been instilled in them that, you know, you won't
17 be believed. No one will believe you. This will be your --
18 this will be your fault. You're responsible for what
19 happened. And so this is their way of kind of testing those
20 waters and seeing -- seeing who would be appropriate and
21 supportive.

22 And then it -- it can move into the active phase, which
23 is they're able to describe in detail certain instances or
24 situations or events that have happened. And this happens
25 when they have -- when the child feels that they have a safe

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1 caregiver or a safe adult to be able to speak to about this.

2 And then going into kind of the second phase of delayed
3 disclosure, there's often what's called recanting, which
4 means that the child might take back what they said. And
5 that is simply, you know, that can be due to, you know, the
6 circumstances that arise after they've disclosed. They see
7 chaos ensue, and so they want to take it back.

8 And then the next phase is reaffirmation. So
9 reaffirming that it did, in fact, happen, that they do feel
10 safe to be able to talk about.

11 Q. Why do victims go into a gradual phase or a tentative
12 phase?

13 A. A tentative phase? To naturally test the waters to see
14 if people do believe them. There's a lot of hesitancies as
15 to why children don't tell. They -- they may feel, again,
16 at risk. They may feel unsafe. They may fear. They may
17 feel shame and guilt.

18 And one of the main reasons also is because our bodies
19 are meant to react to stimuli. And so if it felt good or if
20 it didn't hurt, a lot of times children are confused and
21 don't necessarily understand that what happened to them was
22 wrong.

23 And so if they're being introduced in an inappropriate
24 way, then there's an ability, you know, there's a reason
25 that they don't understand it. And it's because it's never

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1 been introduced to them in an appropriate way before.

2 Q. What does the term grooming mean in your field?

3 A. Grooming is a word that is used to describe the
4 process, or the techniques or the dynamics that an offender
5 uses to gain trust and access to the victim. And, you know,
6 more specifically the way grooming -- grooming is a process.
7 It takes time. And it is strategic. A lot of it seems
8 harmless at first, but it's done with ill intention.

9 So the -- in grooming techniques the offender would --
10 an individual would gain access to the child. And that
11 would mean gaining trust between the victim and their
12 families in that person. It would mean that they -- they
13 play a role. They play a role in the child's life. And
14 usually that's an active role.

15 And, you know, and then -- and then from there, once
16 they gain the trust, then they move on to being able to
17 isolate the victim. And I know that that is a serious word,
18 but it's really just being able to potentially spend time
19 alone with the child, being able to take the child places,
20 being able to spend time alone with just one-on-one contact
21 where the child feels comfortable to be able to do so.

22 And then from there then, you know, establishing the
23 sense of secrecy in the relationship. And that doesn't
24 necessarily mean that the entire relationship is a secret.
25 It could mean that instances in the relationship are

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1 secretive.

2 So, for instance, if they go to the grocery store
3 together and the child usually is not allowed to drink soda,
4 and the offender buys the child soda and says, you know,
5 don't tell, you know, your caregivers about what we -- what
6 we did here because that's just between you and me. Well,
7 that's instilling secrecy in the relationship.

8 Now, that sitting by itself is absolutely harmless, but
9 it's done with ill intention. And once the child is holding
10 those secrets, then there's -- there's an element of
11 confusion in the sense of if I keep this secret what other
12 secrets do I need to keep?

13 And once the secrecy is established into the
14 relationship, then the next phase is to introducing the
15 child to sexual activity. And it could be desensitizing the
16 child and using their power role and their power dynamic to
17 introduce different sexualized aspects into a child's life.
18 That could be desensitizing physical touch barriers. That
19 could be exposing them to something that's inappropriate and
20 testing the child's boundaries and what they are or are not
21 comfortable with and continuing that until the actual sexual
22 acts ensue.

23 Q. So what about escalating sexual acts going from just
24 touching of certain areas to the actual sex act? Would that
25 be part of grooming?

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1 A. Correct. And so that's kind of the desensitizing to
2 gradual touch, you know, desensitizing to exposure,
3 desensitizing to -- and that's -- and that's just once a
4 child doesn't tell about one thing, then if you escalate,
5 then they might not be able -- they might not be telling
6 about another thing.

7 Q. What about engaging in sex in front of children? How
8 does that fit in with grooming and with sexual abuse in
9 general?

10 A. So again, if a child is introduced to sexualized
11 behavior or sex in an inappropriate way, and if that's their
12 first introduction to it, then they don't necessarily know
13 that it's bad or good.

14 And kind of like the cussing example that I used
15 earlier, if parents are cussing in front of their child and
16 they never discuss that it's bad words, those are just words
17 to a child and their parents used them. So they may feel
18 like it's okay that they use them in school. And so
19 exposing a child to sexualized behavior or exposing them to
20 sex in an inappropriate way can absolutely lower their
21 inhibitions and show -- and show them that that is
22 appropriate at the time.

23 Q. What about children in mimicking tells you more about
24 sexual abuse?

25 A. So children -- children naturally, you know, mimic what

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1 they hear. Again, if mom drops a cuss word, then child may
2 drop -- may talk to you about it. And, you know, and might
3 -- and might say that cuss word. And so, you know, once
4 they see sexualized acts they might -- it might be normal to
5 them. It might seem normal to them, you know.

6 If -- if you take out the trash every day and you don't
7 like taking out the trash, but you take it out because your
8 parents say so or your -- you see your parents do it. They
9 don't necessarily -- and the only people that they take out
10 the trash with are their parents.

11 Now, what if someone came up to you and told you that
12 taking out the trash was really bad, it was inappropriate
13 and it was against the law? That would be quite a shock
14 because you grew up seeing mom and dad take out the trash.
15 You even had to take out the trash sometimes.

16 And so, you know, children aren't necessarily able to
17 determine what's appropriate and what's not. It's
18 caregivers and whoever's in a position of power to show that
19 child what is appropriate.

20 Q. What are some factors that make sexual abuse more
21 likely to occur?

22 A. There's quite a few. One that comes to mind is if a
23 child is living in a single ---

24 **MS. AARON:** Your Honor, I'm going to object to this
25 questioning. She's been asked what are the factors in a

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1 home that make sex abuse more likely to occur? I submit to
2 Your Honor that that is the very definition of vouching,
3 which is what we discussed yesterday.

4 **THE COURT:** Let me get y'all to step over here real
5 quick.

6 (Whereupon a bench conference was held off the record
7 in the presence of the jury, but out of their hearing)

8 (Whereupon the bench conference was ended)

9 **THE COURT:** Folks, let me get you to step back in the
10 jury room. Let me deal with this issue of law, and I'll
11 bring you back out. It won't take very long.

12 (Whereupon the jury exited the courtroom at 11:31 am)

13 **THE COURT:** All right. I think they're -- I think the
14 jury's out. Yes, ma'am, Ms. Aaron.

15 **MS. AARON:** Your Honor, I object to the question that
16 the solicitor asked of this witness basically saying "what
17 are factors that the child may present with that would lead
18 you to believe that the abuse likely occurred?" And I'll
19 put that in quotation marks.

20 Your Honor, I submit that that is improper vouching for
21 -- and what it's saying is if the child says anything that's
22 on this list, then child abuse, sexual abuse has likely
23 occurred. And that is absolutely prohibited with an expert
24 witness. It's prohibited with the forensic examiner, but
25 also with an expert witness.

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1 State versus Portillo, P-o-r-t-i-l-l-o, 2014 case, 757
2 S.E. 2d 721, 757 S.E. 2d 721, expert can testify so long
3 that it does not constitute vouching. In this case what the
4 witness did was talk about hand gestures that the child did.
5 And clearly the witness says the child knew what she was
6 doing or he was doing by exhibiting these hand gestures.

7 And the court said that's vouching. That's saying that
8 if the child is doing these hand gestures, they know what
9 they're doing, so they must have been abused. And the court
10 considered that vouching.

11 The witness also ---

12 **THE COURT:** How can she vouch for a witness or for a
13 victim who she's never talked to and she knows nothing
14 about? She's testifying, if I understand the testimony
15 correctly, to these general factors that they look for in
16 their investigation or in their analysis of a situation.

17 **MS. AARON:** I understand the Court's position. Her
18 experience is not in analyzing a situation. Her experience
19 and which one of the reasons I objected to her as an expert
20 in child sexual abuse dynamics is that her training and
21 experience is therapy, taking a child as they present
22 themselves to her and ---

23 **THE COURT:** Well, she also has training in the other
24 area as well.

25 **MS. AARON:** I understand. And I understand -- I'm not

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1 arguing with the Court. I just ---

2 **THE COURT:** Yeah.

3 **MS. AARON:** I'm trying to make my argument clear. It's
4 my position that her training is therapy. And she takes the
5 child as the child presents themselves and moves them
6 forward to heal, making no determination of whether the
7 abuse actually did happen or not. It's not her concern that
8 it did happen.

9 She may see certain characteristics in certain
10 children, which helps her in her therapy, but we're going to
11 the ultimate issue of whether it happened or not, not
12 whether this child benefitted from therapy. And when we go
13 to the ultimate issue of whether it actually happened or
14 not, she's getting ready to give a list of factors that can
15 happen in any home ---

16 **THE COURT:** How is this any different from her previous
17 testimony?

18 **MS. AARON:** Because her previous testimony has talked
19 about -- about things that -- and I want to be heard on the
20 issue -- the word disclosure as well. But of things that
21 she has done with someone who presents themselves as a child
22 abuse victim. Why a child ---

23 **THE COURT:** She's explaining why ---

24 **MS. AARON:** --- abuse victim may -- may do certain
25 things.

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1 **THE COURT:** Correct.

2 **MS. AARON:** They may. They may not.

3 **THE COURT:** Correct.

4 **MS. AARON:** But if you start making a list of what
5 makes it likely that it's happened ---

6 **THE COURT:** Well, maybe it's a poorly worded question.

7 I don't know if that's what her testimony is. Not ---

8 **MS. AARON:** Well, ---

9 **THE COURT:** --- knowing her testimony.

10 **MS. AARON:** --- I think that's exactly what he wants.

11 He wants a list because apparently there's some study
12 somewhere that says that if a single parent lives with a
13 live-in person, then there's an escalated percentage, based
14 on her testimony yesterday, an escalated percentage of sex
15 abuse.

16 I believe -- my position is that that is improper
17 vouching and that is not the purpose -- certainly not within
18 her expert purview, but that's -- I've been overruled on
19 that issue. But that -- for the jury to hear -- they need
20 -- they've heard from the victim, they've heard from some
21 other people with regard to what may or may not have
22 happened, for them to hear that there is some esoteric list
23 out there of potential things going on in this home that
24 make what this child says more or less likely to have
25 occurred is improper.

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1 **THE COURT:** Well, I mean, you characterize it as some
2 esoteric list. She or I think the testimony is that these
3 are factors that they look for in her field.

4 **MS. AARON:** Her field is therapy. These are not
5 factors she looks ---

6 **THE COURT:** We're not ---

7 **MS. AARON:** --- for.

8 **THE COURT:** --- going to keep beating ---

9 **MS. AARON:** I understand.

10 **THE COURT:** --- that up, Ms. Aaron. I've ruled on
11 that.

12 **MS. AARON:** I understand.

13 **THE COURT:** And so she's qualified to testify to her
14 opinion in the field that I've ruled that she's an expert
15 in.

16 **MS. AARON:** She does not use that list in her work.

17 **THE COURT:** She may not use it in her therapy with
18 people, but she may -- I don't know if she uses it as a tool
19 in dealing with these folks. I don't know. That probably
20 needs -- can be asked. Solicitor.

21 **MR. JONES:** Your Honor, one, as to vouching, the
22 Supreme Court's ruled in State v. Brown that the testimony
23 that she's about to testify to or that has been testified to
24 is absolutely not vouching, it's not bolstering mainly
25 because she did not interview this victim. She's not

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1 commenting on what the victim said. She knows nothing about
2 this victim. So she -- because she doesn't know what she
3 said, she can't bolster or vouch for that particular
4 witness.

5 In State v. Brown the expert witness was asked the
6 exact same question that I just asked her about factors that
7 make sexual abuse -- make victims, make children more
8 vulnerable to sexual abuse. And the Supreme Court said that
9 that is acceptable.

10 **MS. AARON:** That is not the same question he asked. I
11 still object to that question. But his -- his assertion now
12 is that he's wanting to ask her what makes children more
13 vulnerable to sexual abuse. That may be a perfectly valid
14 question, I'm not going to admit it is, but I think it's
15 totally different than what makes it more likely to have
16 occurred?

17 **MR. JONES:** I did not ask what made it more likely to
18 have occurred.

19 **THE COURT:** I sustain your objection as to the form of
20 that question.

21 **MS. AARON:** I think his exact question was what are
22 factors in the home that may make sexual abuse more likely
23 to occur?

24 **THE COURT:** And I sustain your objection to that.

25 **MR. JONES:** And that wasn't my question. I understand

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1 ---

2 THE COURT: Well, ---

3 MR. JONES: My question ---

4 THE COURT: Then don't ask it because I've sustained
5 her objection.

6 MR. JONES: Yes, sir. What factors make sexual abuse
7 -- make a child more vulnerable to sexual abuse?

8 THE COURT: And I know you object ---

9 MS. AARON: Same objection.

10 THE COURT: The same objection ---

11 MS. AARON: Yes, sir.

12 THE COURT: --- because you object to this whole line
13 of questioning.

14 MS. AARON: Brown also states, Your Honor, that this
15 testimony may be an attempt to corroborate what the victim
16 is saying. And if all you have is the victim's testimony,
17 that attempting to corroborate the victim's testimony is not
18 harmless and it piles on and it is improper.

19 So I would like to state -- I understand I'm -- that
20 I'm posing this as part of my objection. I understand your
21 ruling.

22 THE COURT: Well, I'm not done with my ruling yet. I'm
23 thinking.

24 MR. JONES: Your Honor, if you'd like to read State
25 versus Brown, I have it here for you.

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1 **THE COURT:** Yeah, I would like to have a copy, please.

2 (Pause)

3 **THE COURT:** Mr. Jones, you've gone through all of the
4 testimony that explains various situations on why children
5 delay response, the factors involved in that, all of those
6 things which go to explain or at least lay a foundation of
7 explaining the conduct in this case.

8 And now we seem to be taking -- now a step further to
9 go beyond the conduct in this case and to have the testimony
10 go to the central issue in the case, and that is whether or
11 not she was sexually abused. In reading State v. Brown it
12 just appears that you're taking this a little bit further
13 than the case went in State v. Brown. I'm going to sustain
14 the objection ---

15 **MR. JONES:** Your Honor, ---

16 **THE COURT:** --- to that question.

17 **MR. JONES:** Yes, sir. I understand that, but I'd like
18 ---

19 **THE COURT:** Go ahead.

20 **MR. JONES:** I understand your ruling, but those are the
21 exact questions that were used in State versus Brown.

22 **THE COURT:** Which you went through. You've been
23 through them all.

24 **MR. JONES:** No, Your Honor. The question was asked
25 what factors make children more vulnerable to abuse in State

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1 versus Brown?

2 **THE COURT:** Where is that in here?

3 **MR. JONES:** Well, Your Honor, ---

4 **THE COURT:** Is that in the bolstering section over
5 here?

6 **MR. JONES:** I think it's in the bolstering section.

7 But to be completely honest with you, that case was tried in
8 this circuit. And the solicitor still works for our office
9 who tried the case. And these questions that were used were
10 from that particular case. So in all candor, that's how I
11 know that it was asked in that particular case.

12 **THE COURT:** All right.

13 (Pause)

14 **MR. JONES:** Your Honor, not to talk while you're
15 reading, but Kromah is also a case about vouching for a
16 child's credibility. And before Brown, a lot of these CSC
17 cases, Your Honor, were tried with the actual forensic
18 interviewer that interviewed the child. And the problem
19 with that the court found was that it appeared that the
20 interviewer was some sort of human lie detector test.

21 So after Brown the State typically uses a blind expert
22 that does not know the child, never talked to the child and
23 cannot vouch for the child's credibility. And that's
24 exactly what Kromah talked about, Your Honor, where it
25 talked about how the forensic interviewer should avoid

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1 stating the child was told to be truthful, providing opinion
2 as to the child's veracity or vouching for the child's
3 believability or suggesting the interviewer believed the
4 child's allegations. And that's not what she's doing right
5 here, Your Honor.

6 If these factors that she's about to testify to
7 shouldn't come in, then the rest of her testimony could be
8 subject to the same objection.

9 (Pause)

10 **THE COURT:** Well, the testimony you're eliciting from
11 this witness in looking at the factors, it is beyond the
12 ordinary knowledge of the jury. And through my earlier
13 ruling I believe that Ms. Beals is qualified through her
14 experience and education to be an expert in this field.

15 A concern that I'm having is -- and I don't know
16 anything about the other case that was tried here or where
17 that question came out of. That's certainly not a question
18 that's in State v. Brown. At least I haven't seen it in
19 there.

20 And you went from presenting this testimony that
21 explained the conduct of folks who have possibly suffered
22 sexual abuse and we're taking it now further -- a step
23 further to say that if these factors are present, I mean,
24 now you're going to use this testimony to prove that the
25 abuse did occur.

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1 Give me your question ---

2 **MR. JONES:** Your Honor, ---

3 **THE COURT:** --- again. I don't even -- give me your
4 question again.

5 **MR. JONES:** Yes, sir, Your Honor.

6 **THE COURT:** 'Cause I'm -- I'm stuck on the question
7 that Ms. Aaron objected to. What is -- what is going to be
8 your question to this witness?

9 **MR. JONES:** What factors make children more vulnerable
10 to child abuse? And, Your Honor, I mean, we'll go straight
11 to Rule 702 with experts of scientific, technical or other
12 specialized knowledge to assist the trier of fact to
13 understand the evidence or determine -- or to determine a
14 fact in issue. A witness qualified as an expert by
15 knowledge, skill, or experience, training, or education may
16 testify in the form of opinion or otherwise. And that's
17 exactly what this is, Your Honor.

18 And, Your Honor, if I could continue the three-prong
19 test that you alluded to as to whether the expert testimony
20 is admissible. It's, first, whether the subject-matter is
21 beyond the ordinary knowledge of the jury, which I'd argue
22 ---

23 **THE COURT:** It is.

24 **MR. JONES:** --- this is.

25 And next, while the expert doesn't need to be a

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1 specialist in that range of field to find that he is -- that
2 the proffered expert had, indeed, acquired the requisite
3 knowledge and skills to qualify as an expert.

4 **THE COURT:** She did.

5 **MR. JONES:** You said that she did.

6 And, finally, you must evaluate the substance of the
7 testimony and determine whether it is reliable. So the only
8 issue are those three.

9 **MS. AARON:** Your Honor, I'm going to resist the
10 temptation to be quiet because you ruled three quarters of a
11 page of notes ago, and I have not stood up because you
12 didn't ask me, but if I were to I would say that Brown says
13 that expert's testimony is relevant. I understand Mr. Jones
14 talking about the three-prong test. The testimony is
15 relevant to help the jury understand various aspects of
16 victim's behavior and provide it insight into the often
17 strange demeanors of sexually abused children. That is
18 straight out of Brown.

19 What he's going into has nothing to do with the
20 victim's behavior or the child's demeanor. It has to --
21 it's going to environmental factors that make it more likely
22 to have occurred.

23 **THE COURT:** All right.

24 **MS. AARON:** Which is why I objected.

25 **THE COURT:** All right. I'm going to note your

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1 exception, but I'm going to sustain the objection.

2 **MR. JONES:** Yes, sir, Your Honor.

3 **THE COURT:** All right. Let's bring the jury in.

4 (Whereupon the jury entered the courtroom at 12:00 pm)

5 **THE COURT:** I'm sorry. Go ahead, Mr. Jones. You may
6 proceed.

7 **MR. JONES:** Yes, sir, Your Honor.

8 **Direct Examination by Mr. Jones Continued:**

9 Q. Ms. Beals, tell the jury, what are some common
10 characteristics of victims of sexual abuse as they go
11 through adolescents?

12 A. As children who have been sexually abused as they go
13 through adolescents there is often -- there could be
14 promiscuity, acting out in a way to gain or meet their needs
15 of affection, potentially the only way that they know how or
16 that they've been introduced to. It could also be fear of
17 adults or people in power or rebellion against people in
18 power or adults and just mistrust in general in adults.

19 Q. And are children, from statistics that you're aware of,
20 are children more likely to be abused by strangers or by a
21 loved one?

22 A. So according to Darkness to Light approximately ninety
23 percent of children who have been abused are abused by
24 someone that's known not only to the child, but also to the
25 family, which, obviously, creates an environment for it to

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1 be easier to gain trust and create a relationship with that
2 child. So this idea of stranger/danger is very rare.

3 **MR. JONES:** I beg the Court's indulgence.

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

5 (Pause)

6 **MR. JONES:** No further questions, Your Honor.

7 **THE COURT:** Cross.

8 **MS. AARON:** I have no questions, Your Honor.

9 **THE COURT:** Thank you very much, ma'am.

10 A. Thank you.

11 **THE COURT:** You may step down. Any objections to this
12 witness being excused?

13 **MS. AARON:** Oh, I have none. No, sir.

14 **MR. JONES:** Nothing from the State, Your Honor.

15 **THE COURT:** Thank you very much, ma'am. You're free to
16 go. Mr. Jones.

17 **MR. JONES:** I'm sorry, Your Honor. I beg the Court's
18 indulgence for a moment.

19 **THE COURT:** Sure.

20 (Pause)

21 **MR. JONES:** Your Honor, we'd like to briefly recall
22 Detective Hamby. And that'll be my last witness, Your
23 Honor.

24 **THE COURT:** All right. You're still under oath, sir.

25 **Jonathan Hamby,** having

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1 been previously sworn testified as follows;

2 Direct Examination by Mr. Jones:

3 Q. Detective Hamby, on July 30th, 2013, you testified
4 earlier about that day. You testified that you interviewed
5 Kelly Phillips?

6 A. Correct.

7 Q. What's his full name?

8 A. Douglas Kelly Phillips.

9 Q. Okay. And do you know his date of birth?

10 A. June 22nd, 1961.

11 Q. Okay. And do you see the man that you questioned on
12 that day in the courtroom?

13 A. Yes.

14 Q. Could you point to him, please.

15 (Whereupon the witness pointed to the Defendant)

16 A. In the striped shirt.

17 **MR. JONES:** Your Honor, let the record reflect that the
18 detective pointed to the Defendant.

19 **THE COURT:** So it does.

20 Q. Is that the same man that admitted that he dated Peggy
21 Robinson?

22 A. Yes.

23 Q. And that made statements about Minor ?

24 A. Yes.

25 Q. And that all those events you testified to with regard

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1 to Minor and Kelly Phillips occurred in Pickens
2 County?

3 A. Yes.

4 **MR. JONES:** No further questions, Your Honor.

5 **MS. AARON:** Nothing on redirect.

6 **THE COURT:** Thank you, sir. You may step down. Is
7 that the State's case?

8 **MR. JONES:** Your Honor, at this time the State rests.

9 **THE COURT:** All right. Thank you, Mr. Jones.

10 Ladies and gentlemen, the State has rested their case,
11 but we are not yet done. And so the law requires -- and we
12 do this, this is for all -- both criminal and civil cases,
13 that at the close of the State's case in a criminal case or
14 the close of the plaintiff's case in a civil case, then I
15 have to take up matters of law with the attorneys before we
16 proceed.

17 And so it's noontime. We're going to stay and do that,
18 but there's no reason for you to sit back there while we do
19 that. I'm going to go ahead and let you take off for lunch.

20 What I'm going to ask you to do is to be back at 1:30.
21 It's -- that gives you a little -- just shy of an hour and a
22 half for lunch. I'll tell you what, let's do this. Yeah,
23 1:30. That'd be good.

24 And always as you've done, maintain your ability to
25 remain fair and impartial. Don't let anyone talk to you.

1 Don't talk with anybody about the case. Just kind of relax
2 and have a good lunch. I'd ask you to be back in here at
3 1:30 and we'll get started once everyone's returned.
4 Everyone else, please remain seated while the members of the
5 jury are excused.

6 (Whereupon the jury exited the courtroom at 12:06 pm)

7 **THE COURT:** All right. At this time I'll take up
8 motions at the close of the State's case.

9 **MS. AARON:** May it please the Court, Your Honor.

10 **THE COURT:** Yes, ma'am.

11 **MS. AARON:** I would move at this time for the Court to
12 issue or to direct a verdict in favor of my client, that the
13 State has not produced sufficient and/or reliable evidence
14 in order to prove the allegations contained in the
15 indictments.

16 **THE COURT:** All right. I'm going to respectfully deny
17 that motion, Ms. Aaron. There's evidence in the record
18 depending on how the jury views it. I think it's a factual
19 question for the jury. And I think there is evidence in the
20 record depending on how the jury weighs that evidence
21 whereby they could find. And so I'm going to respectfully
22 deny that motion.

23 Have you -- anything further with regards to any
24 motion?

25 **MS. AARON:** No, sir.

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1 trial. Those items you'll have with you in the jury room.

2 But the evidence is closed.

3 The same thing I told you as it regarded the lawyers'
4 opening statements, that is that it's not evidence, is the
5 same thing I'm going to tell you with regards to their
6 closing arguments. Their closing arguments is not evidence,
7 but it is their opportunity to argue to you what they
8 believe the evidence in this case has shown. And so it's
9 important just as with their opening statements that you
10 give them your close and undivided attention as they address
11 you with their closing arguments.

12 Once they've concluded arguments I will then give you
13 the law, that applies to this case. And you will then be in
14 a position to go back into the jury room and begin your
15 deliberations. So at this time I would recognize Mr. Jones
16 on behalf of the State.

17 **MR. JONES:** Thank you, Your Honor.

18 If we're lucky enough we come into this world with a
19 supportive mother, supportive father who try to teach us
20 right from wrong as we're a young child and go into our
21 teenage years. And they definitely make mistakes sometimes,
22 but they always try to have our best interest at heart,
23 right? That's what your mother and your father are supposed
24 to do.

25 Minor is in the complete custody and care of

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1 the State of South Carolina. Doesn't have anybody to look
2 out for her best interest. As she walked in here today she
3 got on that stand, she talked about her sexual experience
4 with Kelly Phillips as a thirteen year old and younger.
5 Think about the courage that it took for her to get up there
6 and talk about that.

7 It's very uncomfortable to talk about your sexual
8 experiences. Adults don't do that. People in polite
9 conversation don't talk about those sorts of things. This
10 was very, very uncomfortable for Minor to get up
11 there and testify just as uncomfortable as it was when she
12 told her doctor and just as uncomfortable as it was when she
13 told Detective Hamby.

14 Remember what I said in my opening about why people
15 lie? Why do people lie? They want to avoid punishment or
16 they want to gain some type of reward. So a child might lie
17 and say, yeah, I did my chores when they really didn't
18 because they know that because they didn't do their chores
19 they're going to get punished. Or sometimes maybe an adult
20 might lie on their resume to get a job. They want to get
21 some benefit. Because sometimes the truth has consequences,
22 has harsh consequences.

23 So what have been the consequences for Minor after she
24 made these allegations, after she told her doctor, after she
25 told Detective Hamby? For three years she's been in DSS

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1 custody living in group homes, living in a child facility in
2 Greenville.

3 And all she had to say was never mind, this didn't
4 happen, this didn't happen. These consequences have been
5 too harsh. Let's go back to where I was. Let's go back to
6 living with my mother. Let's go back to living with my
7 brother in the same home. But she won't do that because the
8 story she's telling is the truth, even with these harsh
9 consequences that she's had to go through.

10 I'm sorry I have to refer to my notes. I have a lot I
11 want to talk about in my closing. As she testified -- I
12 mentioned how uncomfortable and horrible it had to be to
13 come talk about a sexual experience in front of people that
14 you don't know. Did this look fun to that child? Did she
15 look like she had a good time when she did this?

16 And let me go to Peggy Robinson's testimony, the mother
17 of the child. Let's think about the options, the possible
18 stories she could have told law enforcement when she was
19 confronted.

20 Option one is what she did. She told law enforcement,
21 yes, I had sex with Kelly Phillips in the bed with my
22 daughter. Yes, Kelly Phillips told me earlier in that year
23 about a time when he performed oral sex on my daughter and
24 my daughter performed oral sex on him, and I didn't tell
25 anybody.

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1 What have been the consequences for her? Lost custody
2 of her children, charged with a crime, sent to prison. Why
3 in the world would she lie about that? Look at the
4 consequences -- look what happened to her after she told law
5 enforcement all of this. So why did she tell law
6 enforcement about what happened? Because it's the truth.

7 She said the same story to Detective Hamby. She said
8 the same story on telephone calls to people that she knows.
9 And she said the same story when she came in this courtroom
10 and swore under oath and pled guilty to unlawful neglect.

11 What other option did she have at the time when talking
12 to Detective Hamby? She could have said, whoa, Minor 's
13 saying what she's saying, I don't know anything about it. I
14 don't know anything about what Kelly did to her or what she
15 did to Kelly. I don't know anything.

16 No, I've never had sex in the bed where my thirteen
17 year old daughter was laying right beside me in that bed.
18 What would have been the consequences then? Would she still
19 have been charged? Would she still be in prison? Losing
20 custody of her children? That was the incentive to lie.
21 She told the truth.

22 And what did she say in those phone calls when I was
23 questioning her? Someone that she knows asked her, well, if
24 you knew about this why didn't you tell anybody? I didn't
25 want to get Kelly in trouble. I loved him.

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1 That's why she didn't tell anybody up until she got --
2 til the child disclosed to the doctor and law enforcement
3 got involved. It was the first time Peggy Robinson told
4 anybody and actually told the truth. But before that she
5 was trying to protect Kelly Phillips because she loved him.

6 You heard from the expert that testified about the
7 process of disclosure for her child sexual abuse victims and
8 why sometimes it takes a little bit of time for the child to
9 tell anyone about it. What were those reasons? You might
10 love that person. Other than the sexual abuse, you might
11 have a good relationship. He dated her mother for six or
12 seven years, acted as a father figure, supported them
13 financially. And he bought her things. It was clear her
14 mother loved him.

15 But a very important point she made was having sex in
16 front of the children normalizing sex where a child doesn't
17 even know that what's happening to them is wrong. What was
18 the example she gave about cursing? A child's in the home,
19 six, seven, eight years old, everybody around them curses
20 all the time, they don't know anything different.

21 And they go to school when they're in first or second
22 grade and say a curse word. The teacher tells them, no, you
23 can't say that. That's the first time in that child's life
24 they've ever heard somebody say you can't say that
25 particular word. Think about it.

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1 And the cursing example's also a good example of
2 mimicking. The expert testified that when children see sex
3 on a regular basis they think that's normal. They mimic
4 that behavior. Well, he and mom have sex. I've seen them
5 have sex. Now he and I are having sex. This is the normal
6 thing. It's what people do.

7 The expert also testified as to grooming. Over the
8 course of several years the sexual acts escalate. This
9 touching, eventually touching them on their private parts,
10 touching them on their breasts, touching them on their
11 vagina.

12 And then when they get a little bit older, past
13 pubescent, they're used to me touching them, they see the
14 mother and I having sex all the time, this is just a normal
15 thing, it's no big deal, we're having sex. And it's no big
16 deal because the child sees the mother and him have sex all
17 the time.

18 Who was the first person that she disclosed to?
19 Remember that? It was the doctor. It was her pediatrician.
20 The first person in this story with any credibility,
21 responsible adult is talking to this child. And finally the
22 child feels comfortable enough to tell them what's been
23 going on.

24 Detective Hamby testified what Kelly Phillips told him
25 when he came -- when Kelly Phillips came to the police

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1 station. At first he was blatant, no, I don't know what --
2 I don't know what in the world you're talking about.

3 Then it was well, Minor did touch me one time, but I
4 didn't tell anybody about it. I told her to stop and that's
5 all that needed to happen. She stopped.

6 And then he said, well, actually, Minor touched me
7 three or four times. I caught her one time with her
8 reaching her hand down my pants. And then I did tell her
9 mother. Why in the world did it take a little of time for
10 that story to come out? Because it's not the truth.

11 Kelly Phillips tried to blame Minor Well, she's
12 thirteen. She's coming on to me. She couldn't keep her
13 hands off of me.

14 I want to briefly go over the offense that Mr. Phillips
15 is charged with. I mentioned it earlier, criminal sexual
16 conduct with a minor, second degree. The Judge, like I
17 said, is going to go into more detail about it, but I wanted
18 to discuss it with you briefly.

19 The law says a person is guilty of criminal sexual
20 conduct with a minor in the second degree if the actor
21 engages in a sexual battery with a victim who is fourteen
22 years of age or less, but who was at least eleven years of
23 age. Okay.

24 There's no dispute, Minor said she was thirteen.
25 Y'all heard her date of birth. The Detective told you what

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1 date he questioned the Defendant and questioned the victim.
2 The victim was thirteen years of age when she disclosed.
3 And the time on the indictments is for that particular age.
4 So that's what we're talking about.

5 The detective also testified to what the -- how old the
6 Defendant was. He was fifty-two years of age at the time.
7 I think you can look at him right now and detect that he is
8 over the age the statute requires.

9 And the other charge that he's charged with is criminal
10 sexual conduct with a minor, third degree. And this one is
11 a little wordier, sounds a little more complicated. A
12 person is guilty of criminal sexual conduct with a minor in
13 the third degree if the actor is over the age of -- is over
14 fourteen years of age and the actor wilfully and lewdly
15 commits or attempts to commit a lewd or lascivious act upon
16 the body or its parts of a child under the ages of sixteen
17 with the intent of arousing or appealing to or gratifying
18 the lusts, passions, sexual desires of the actor or the
19 child.

20 So that was saying a lot to say that he has to be over
21 fourteen and the victim has to be under sixteen. And he
22 touches her body for the purpose of arousing his sexual
23 desires.

24 So that would be for the touching of her body that
25 Minor described on the night of the time when her mother

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1 came into the bedroom and had sex with him while she was in
2 the bed. Before that occurred Minor testified that he did
3 touch her vagina and touched her breasts.

4 So that is -- those facts go to the CSC with a minor,
5 third, and the other instances where Minor testified as to
6 the actual sex that occurred or when the criminal sexual
7 conduct with a minor in the second degree.

8 I briefly want to talk about reasonable doubt. The
9 Judge is going to explain that to you as well. I as the
10 State have to convince you beyond a reasonable doubt that
11 the Defendant is guilty. And the Judge is going to go into
12 detail, again, about what reasonable doubt is.

13 But let me just say this on reasonable doubt. When you
14 took your oath, when the clerk asked you to stand up and
15 raise your right hand, you didn't swear to look for
16 reasonable doubt, you swore to look for truth.

17 And if reasonable doubt were here, you wouldn't have to
18 look for it.

19 **MS. AARON:** Object, Your Honor, to this argument. I
20 very rarely object, but he just told the jury that it's not
21 their responsibility to look for reasonable doubt. And I
22 believe that's contrary to what you're going to charge them.

23 **THE COURT:** I sustain that objection.

24 **MR. JONES:** Your Honor, I did not advise them that it
25 was not their -- okay, Your Honor. I apologize.

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1 The Judge is going to tell you about reasonable doubt.
2 There are very few things in this world that we know with
3 absolute certainty and that criminal cases does not require
4 proof to overcome every possible doubt. Listen to the Judge
5 as he tells you about reasonable doubt. And if he tells you
6 anything different than what I just said, listen to what he
7 says, okay?

8 Peggy Robinson failed to protect her daughter. Not
9 only failed to protect her daughter, she allowed Kelly
10 Phillips to have access to her daughter because she loved
11 Kelly Phillips. She was desperate for love. And she was
12 willing to sacrifice her child even though he told her that
13 he was sexually abusing her. She cared for him more than
14 her own child.

15 Peggy Robinson used Minor for her purpose, to
16 have a man that was in her life. And Kelly Phillips used
17 Minor for his purpose, essentially as a sex toy.
18 Was there for his use whenever he wanted it. Where Peggy
19 Robinson failed to protect her child it's up to you to find
20 justice for Minor and protect her even though her
21 mother has failed.

22 And I want to leave you with this. When I was younger
23 I used to go fishing with my grandfather all the time. And
24 he would always like to tell me life lessons and really
25 serious stuff even though I just wanted to go fishing at

CLOSING ARGUMENTS - MS. AARON

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1 this pond.

2 And I don't remember all of what he said,
3 unfortunately. I wished I -- I wished I did, but one thing
4 he told me stuck out. He said, Christopher, you remember
5 this. In life if you can't discipline yourself, one day
6 somebody's going to do it for you. And today's the day for
7 Kelly Phillips. Thank you.

8 **THE COURT:** Thank you very much, Mr. Jones. Ms. Aaron.

9 **MS. AARON:** May it please the Court, Your Honor.

10 Ladies and gentlemen, thank you very much for paying
11 attention. I'm going to need my glasses. Thank you for
12 your service. I told you before that this was a very
13 important day for Mr. Phillips.

14 I think it's Abraham Lincoln that once told us that
15 jury service is the single most important service that you
16 can provide to your community in peacetime. And I believe
17 that you now know why that's important.

18 The solicitor has brought a case to you today. And he
19 has just asked you, put a pen in your hand and find Mr.
20 Phillips guilty for all three of these charges. The Judge
21 is going to tell you when you get ready to consider what
22 you've heard that you must be firmly convinced of his guilt
23 beyond any other explanation, beyond any other reasonable
24 doubt.

25 I'm going to ask the bailiff to -- well, actually, I

CLOSING ARGUMENTS - MS. AARON

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1 might be able to do this because you've got it set up.

2 We've talked about the tools that our system gives you to
3 determine guilt.

4 Your first job is to find the facts. With any luck, it
5 won't fall. Your first job is to find the facts. Now, how
6 do you do that? You do that with evidence from this chair.

7 So what do we know? We know that this child and this
8 mom went to the doctor's office. We know that after they
9 spoke with the doctor the police were called. We know that
10 based on what was told to the police three people were
11 arrested.

12 You heard what Mr. Phillips was arrested for. You
13 heard what Ms. Robinson was arrested for. And you heard
14 that there's a third person arrested for criminal sexual
15 conduct, second degree, with this child.

16 You heard from Kelsey Beals. Works with the Julie
17 Valentine Center. Thank goodness for people in the world
18 like her because this horrible thing happens to children.
19 It happens in our community. It happens in a lot of places.
20 Thank goodness she is trained as a licensed therapist to
21 help these children, to help them move on.

22 You don't -- she testified she didn't have any
23 interaction with the child that testified, but she could
24 tell you about children she had worked with and common
25 characteristics. She's a therapist. It's not an

CLOSING ARGUMENTS - MS. AARON

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1 investigator.

2 She's not concerned with that tracking to find out if
3 it really happened. She's going to work with this child
4 that she's counseling with at that moment or all of these
5 children based on what she's told.

6 Absolutely nothing, I submit to you, that she told you
7 is evidence in this case. She may have described to you the
8 characteristics of a child who'd been abused sexually. She
9 did describe the characteristics of a child that's been
10 abused sexually.

11 So if you find that this child has, if she possesses
12 these characteristics, you have -- let's put up here what
13 evidence you have, but is Mr. Phillips to blame? Who's this
14 other guy charged with the same thing? Is this child
15 exhibiting characteristics of a sexual abuse victim because
16 of this guy or because of Mr. Phillips?

17 If I'm going to put a pen in your hand right now and
18 ask you to make that determination, you can't. Thank
19 goodness for Kelsey Beals and her life's work, but it
20 provided you zero to help the solicitor convict Mr.
21 Phillips.

22 So what else is there? Officer, after he listens to
23 what he's heard in the doctor's office, what does he do? He
24 talks to Ms. Robinson, he talks to this child, he talks to
25 Mr. Phillips. And what is he told? We understand from the

CLOSING ARGUMENTS - MS. AARON

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1 child that he is told that she and Mr. Phillips had sex. So
2 on our evidence list we can put that Minor testified they
3 had sex. He inserted his private part into her vaginal
4 area.

5 I wish that everybody in the world talked like that.
6 And I wish that teenager or sixteen year olds talked like
7 that, but I suggest to you that that is a -- that is not a
8 normal choice of words for a sixteen year old. And that is
9 probably not the first time that she has talked about
10 someone inserting their private part ---

11 MR. JONES: Objection, Your Honor. She's slandering
12 the victim.

13 MS. AARON: I said talked about. I didn't say ---

14 THE COURT: She said ---

15 MS. AARON: --- any activity.

16 THE COURT: --- there was probably ---

17 MS. AARON: Not the first time ---

18 THE COURT: Sustained.

19 MS. AARON: --- that she has talked about. No, that's
20 what I said. I had no intention of slandering the victim's
21 -- I understand your -- Court's ruling. I said not the
22 first time she had talked about. I'm talking about her
23 choice of words.

24 THE COURT: All right.

25 MR. JONES: She said it's not the first time she's

CLOSING ARGUMENTS - MS. AARON

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1 talked about someone inserting their private part into her
2 private part.

3 **THE COURT:** Clarify your comment.

4 **MS. AARON:** I understand ---

5 **THE COURT:** For other people.

6 **MS. AARON:** I understand.

7 **THE COURT:** Go ahead.

8 **MS. AARON:** I certainly am not trying to cast
9 dispersions on this child. My point to you is insert my
10 private -- their private part into my vaginal area is not
11 natural language. You be the judge of where that came from.

12 So this detective hears on July the 30th at 7:00, a
13 little bit before five, 16:44, a little bit before five,
14 that this child alleges that she has had sex with Kelly
15 Phillips at her home, in her room. What do you do as a law
16 enforcement officer?

17 Well, what is there out in the world? There's
18 underwear, semen on it. There's sheets, there's pillows,
19 there's carpet, there's comforters, there's black lights on
20 the carpet, there's the car, there's her clothes, there's a
21 medical exam. Let's make a list of all of those pieces of
22 evidence that this investigator gathered when he heard what
23 she told you, that she'd had sex with Kelly Phillips.

24 He's a law enforcement investigator. They're going to
25 bring this case to you and they're going to want you to

CLOSING ARGUMENTS - MS. AARON

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1 believe that this law enforcement officer was told that they
2 had sex, yet there's nothing. So if somebody else says it,
3 what do you do? Do you want to see some evidence?

4 We can put Minor 's name up here. She testified. I'm
5 aghast. You heard three dates. I don't pick these dates,
6 the State picks the dates. Minor testified a few weeks
7 before the doctor's visit she and Kelly Phillips had sex,
8 inserted his private part into her vaginal area, three weeks
9 before. Well, the doctor's office visit is 7:30. Listen to
10 the dates the Court gives you.

11 I understand sixteen, thirteen years old may not be
12 able to remember dates. But every time the solicitor asked
13 her a question about what this man did to her she couldn't
14 answer it unless she read her statement that she wrote on
15 July the 30th of 2013.

16 This was presented as a fairly significant series of
17 events, yet, yeah, yeah, yes, he did that. Why? Why? I
18 suggest to you, and this is my suggestion, if this is not
19 what you think, you disregard it, I suggest to you that
20 there was a disclosure, clearly about criminal sexual
21 conduct with another person because he was charged in that
22 doctor's office that day with that mama present ---

23 **MR. JONES:** Objection, Your Honor. She's speaking --
24 she's mischaracterizing the facts and she knows it. That's
25 absolutely not true.

CLOSING ARGUMENTS - MS. AARON

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1 **THE COURT:** The testimony was the mother was asked to
2 leave the room. Is that your point?

3 **MR. JONES:** She just said that the mother was in the
4 room when the disclosure occurred.

5 **THE COURT:** The jury will decide the facts ---

6 **MS. AARON:** That's -- I understand.

7 **THE COURT:** --- of the case. All right.

8 **MS. AARON:** Trying to remember where I was. If you
9 remember it differently, you remember it differently. I
10 suggest to you that there was a incident described involving
11 another individual who is now charged with criminal sexual
12 conduct degree -- in the second degree. Same situation,
13 same charge.

14 Is mama worried about her parenting decisions? Does
15 mom think she's going to get in trouble? Does Minor think
16 she's going to get in trouble? Why, if it's the truth, do
17 you have to read what you wrote on July 30th of 2013?

18 Because you wrote it out to save your skin on that day.
19 Because you're going to get in trouble. Your mama's going
20 to get in trouble. And you might get kicked out of the
21 house. Her testimony was he doesn't live there. He's not a
22 parent.

23 But, boy, something has happened. We'd better figure
24 out how to fix it. That's why we write it out on July 30th
25 of 2013, and we can't say a word in detail about it to the

CLOSING ARGUMENTS - MS. AARON

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1 solicitor without looking at the paper. I suggest to you
2 that is exactly why.

3 You are asked to find this man guilty of criminal
4 sexual conduct in the second and third degree because of
5 characteristics, which may or may not be attributable to
6 him. 50/50 chance, 20/30, 20/80, you don't know.

7 You're being asked to convict him of criminal sexual
8 conduct in the second degree with zero physical evidence
9 that is in the world. I'm not making this stuff up.

10 Why do we record defendant's confessions now but we
11 didn't then? So that we can write on our report she was
12 rubbing on him, but we can testify that she was rubbing on
13 his private parts. I submit to you that that's pretty
14 significant difference.

15 Don't rub on me. Don't rub on my private parts.
16 That's pretty significant difference. This report was
17 written on July the 30th. No mention of private parts, yet
18 we testified to it here.

19 I am not telling you that getting amorous with your
20 girlfriend in a bed with a child in bed with you is a good
21 decision. But thank goodness good decisions aren't crimes
22 or they'd be building on to this courthouse. I'm not
23 telling you that's a good decision.

24 That is not proof of criminal sexual conduct in the
25 second degree. That is not proof of criminal sexual conduct

CLOSING ARGUMENTS - MS. AARON

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1 in the third degree. And if you believe that this child was
2 a victim of sexual abuse at the hands of an adult, you only
3 have half the story.

4 That's what this day is all about. Because when you
5 listen to the whole story -- the solicitor doesn't have
6 control over it anymore.

7 When the Judge reads you the law he's going to tell you
8 that you must be firmly convinced beyond any other
9 explanation, beyond any reasonable doubt that the State has
10 proven their case of criminal sexual conduct in the second
11 and third degree. And if you need to recap and review the
12 evidence in order to do that, it's going to be pretty quick.

13 I am not wearing a t-shirt that says free child
14 molesters. I'm wearing a t-shirt that says evidence. You
15 going to bring a case, you need to have the evidence. You
16 can't just say it. Because any person sitting in that chair
17 has the right to know the evidence against them. And it
18 better be more than just somebody saying it. And that's all
19 it is.

20 In the beginning I asked you to be the jury that you
21 would want for any person sitting in that chair. And that's
22 what I'm asking you to do now.

23 My very large friend with the ring used to tell me that
24 you should end on a dramatic note when you do your closing
25 argument. I don't -- I'm not going to end on a dramatic

CHARGE OF THE COURT

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1 note, but I'm going to tell you what I want you to do
2 because it's important.

3 The State has brought this case to you today and asked
4 you to find this Defendant guilty beyond any reasonable
5 doubt. I had suggested to you that more than a little
6 reasonable doubt exists. And I am going to ask you to find
7 him not guilty.

8 And by finding him not guilty you are saying that the
9 State has a high burden of proof and they have failed to
10 bring you the evidence. Be the kind of jury that you would
11 want for anybody in that chair. Thank you.

12 **THE COURT:** Ladies and gentlemen, when we started this
13 case I told you that you were the judges of the facts and
14 I'm the judge of the law. So during the course of the trial
15 while the attorneys have been presenting to you the facts in
16 the case, it's been appropriate for me to be up on the
17 bench, out of the way and let that occur.

18 Well, we've now reached the portion of this trial when
19 you and I are in this together. You as the judges of the
20 facts and me as the judge of the law. So I think it
21 appropriate that I come down and be with you as I give you
22 the law that is applicable to this case. And I'm going to
23 read this verbatim so that I don't misquote anything or
24 leave anything out.

25 Mr. Foreman and members of the jury, you've heard the

VERDICT OF THE JURY

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1 **THE COURT:** Is the Defense ready?

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

3 **THE COURT:** Okay. Bring them in, please.

4 (Whereupon the jury entered the courtroom at 5:02 pm)

5 **THE COURT:** Mr. Foreman, has the jury reached a
6 unanimous verdict, sir?

7 **MR. FOREMAN:** Yes, sir, it has.

8 **THE COURT:** If you don't mind, if you could pass the
9 verdict form up to the -- Mr. Clerk, please. Thank you,
10 sir.

11 (Pause)

12 **THE COURT:** Mr. Clerk, if you would, please, sir,
13 publish the verdicts of the jury.

14 **THE CLERK:** Yes, sir. This is the State of South
15 Carolina versus Douglas Kelly Phillips, indictment -- it's
16 indictment number 2013-GS-39-2327, second degree criminal
17 sexual conduct with a minor, we, the jury, find the
18 Defendant guilty.

19 Indictment number 2013-GS-39-2328, second degree
20 criminal sexual conduct with a minor, we, the jury, find the
21 Defendant, Douglas Kelly Phillips, guilty.

22 Indictment number 2013-GS-39-2329, we, the -- as to the
23 third degree criminal sexual conduct with a minor, we, the
24 jury, find the Defendant, Douglas Kelly Phillips, guilty.

25 Is this your verdict and still your verdict so say you

SENTENCE OF THE COURT

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1 **MS. AARON:** That's okay. I can calculate it.

2 Actually, it's probably going to be -- it's almost August of
3 2016. So that's three years. So I would say a thousand,
4 ninety-five days give or take. And that gives him actually
5 being in jail a month. I don't think he was in jail a total
6 month. So ...

7 (Pause)

8 **THE COURT:** On indictment 2327 the sentence of the
9 Court is that you be committed to the State Department of
10 Corrections for a period of twenty years. You're to be
11 given credit for a thousand, eighty-five days time served.

12 On indictment 2013-2328 the sentence of the Court is
13 that you are to be committed to the State Department of
14 Corrections for a period of twenty years, given credit for
15 that thousand, eighty-five days.

16 And 2013-GS-39-2329 the sentence of the Court is that
17 you be committed to the State Department of Corrections for
18 a period of fifteen years, giving you credit for the
19 thousand, eighty-five days.

20 Those sentences are going to run concurrent with each
21 other. And you're to be placed in any type of -- and I
22 don't know all what's available within the Department of
23 Corrections, but any type of sex offender treatment that is
24 available through the Department of Corrections, you're to
25 be placed in. And you also are required to register as a

SENTENCE OF THE COURT

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1 sex offender for the remainder of your life. Good luck to
2 you, sir.

3 **MR. JONES:** Thank you, Your Honor.

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

5 (Hearing Ended at 5:42 pm)

6 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 25th - 26th day of July 2016.

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

December 31, 2016

S/Susan W. Hudgins

Circuit Court Reporter.

WITNESSES

Jonathan C Hamby

Easley Police Department

7/30/2013

ARREST WARRANT NUMBER

2013A3920400817

ACTION OF GRAND JURY

TRUE BILL

Date FEB 18 2014

Christopher Byers
Foreperson of Grand Jury

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 7-26-16

DOCKET NO. 2013-GS-39-^{BBH} 2329

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 18 2014

TERM 2013

THE STATE

vs.

DOUGLAS KELLY PHILLIPS

Indictment for

3661

CRIMINAL SEXUAL CONDUCT WITH A MINOR
3RD DEGREE

VIOLATION § 16-03-0655(C)

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 3RD DEGREE

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That DOUGLAS KELLY PHILLIPS did in Pickens County, on or about the 28th day of July 2013, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of Minor ., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-03-0655(C) of the South Carolina Code of Laws (1976) as amended.

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

Brian Hunter
SOLICITOR

WITNESSES

Jon Hamby

Easley Police Department

7/31/2013

ARREST WARRANT NUMBER

2013A3920400821

ACTION OF GRAND JURY

TRUE BILL

Date FEB 18 2014

Christopher Byers
Foreperson of Grand Jury

VERDICT

GUILTY

John Hamby
Foreperson of Petit Jury

Date: 7-26-16

DOCKET NO. 2013-GS-39-^{BBH} 2328

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 18 2014

TERM 2013

THE STATE

vs.

DOUGLAS KELLY PHILLIPS

Indictment for

0396

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

VIOLATION § 16-03-0655(1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

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

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That DOUGLAS KELLY PHILLIPS did in Pickens County, on or about the 19th day of July, 2013,
commit a sexual battery on Minor , who was fourteen years of age or less but who was at least eleven
years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South Carolina
Code of Laws (1976) as amended.

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

Brenda Hunter
SOLICITOR

WITNESSES

Jon Hamby

Easley Police Department

7/31/2013

ARREST WARRANT NUMBER

2013A3920400822

ACTION OF GRAND JURY

TRUE BILL

Date FEB 18 2014

Christopher Byers
Foreperson of Grand Jury

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 7-26-16

DOCKET NO. 2013-GS-39-2327
BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 18 2014 TERM 2013

THE STATE

vs.

DOUGLAS KELLY PHILLIPS

Indictment for

0396

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

VIOLATION § 16-03-0655(B)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

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

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That DOUGLAS KELLY PHILLIPS did in Pickens County, on or about the 26th day of July, 2013, commit a sexual battery on Minor .., who was fourteen years of age or less but who was at least eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South Carolina Code of Laws (1976) as amended.

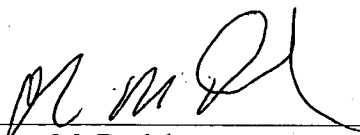
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Brenda Hunter
SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 18th day of December, 2017.

RECEIVED
DEC 18 2017
SC Court of Appeals