

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Diane Schafer Goodstein, Circuit Court Judge

JAMES WHALEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001610

APPENDIX

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1 STATE OF SOUTH CAROLINA

CIRCUIT COURT

2 COUNTY OF AIKEN

3 2011-GS-02-1642 thru 1648
4 2013-GS-02-1271 & 1273

5 STATE OF SOUTH CAROLINA,

6 -vs-

TRANSCRIPT OF RECORD

7 JAMES C. WHALEY,
8 Defendant.

9
10 Heard on Tuesday, September 10, 2013

11 Wednesday, September 11, 2013

12 & Thursday, September 12, 2013

13 Aiken, South Carolina

14 BEFORE:

15 THE HONORABLE DOYET A. EARLY, III

16
17 APPEARANCES:

18 Counsel on Behalf of the State:
19 Ashley Agnew, Esq.
20 J. William Weeks, Esq.

21 Counsel on Behalf of the Defendant:
22 Brian Katonak, Esq.

23 Cheri L. Young, RPR
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1 ON TUESDAY, SEPTEMBER 10, 2013, AT 2:01 P.M.:

2 THE COURT: State ready to proceed?

3 MR. WEEKS: State's ready, Your Honor.

4 THE COURT: Call the case.

5 MR. WEEKS: Your Honor, this is in reference
6 to the State of South Carolina versus James
7 C. Whaley. There are 10 indictments that the State
8 is proceeding on. Two of --

9 THE COURT: Hold on one second. Y'all ready?

10 MR. KATONAK: Yes, sir, we're ready.

11 THE COURT: Mr. Whaley, I suggest you pay
12 close attention and listen to what all you're
13 charged with.

14 Mr. Weeks?

15 MR. WEEKS: Thank you, Your Honor.

16 Two of the indictments, Your Honor, have a
17 typographical error on the name on the outside or
18 with his name. His name is James C. Whaley. We
19 have two indictments as James R. Whaley. Before
20 the proceeding begins we would move to amend those
21 indictments to correct that scrivener's error.

22 THE COURT: That's Indictment 13-GS-2-1271?

23 MR. WEEKS: And 1272, Your Honor.

24 THE COURT: Any objection, Mr. Katonak?

25 MR. KATONAK: No, sir. We're aware that

1 Mr. Whaley's seated here and is the correct Whaley,
2 so we have no objection to that.

3 THE COURT: Mr. Weeks, if you would, please,
4 for me, as you call each indictment, please tell me
5 what the potential sentence on each one is.

6 MR. WEEKS: Yes, sir.

7 With regard to Indictment 13-GS-02-1272,
8 indictment for indecent exposure, a maximum
9 sentence of 15 years.

10 2013-1271 for contributing to the delinquency
11 of a minor, a maximum sentence of three years.

12 Indictment 2011-1649, criminal sexual conduct
13 with a minor in the first degree, it's zero to 30,
14 Your Honor.

15 Indictment 2011-1648 for lewd act upon a
16 child, zero to 15.

17 Indictment 2011-GS-02-1647, indictment for
18 kidnapping, zero to 30.

19 Indictment 2011-1646, indictment for criminal
20 sexual conduct first degree, zero to 30.

21 2011-1645, indictment for criminal sexual
22 conduct second degree, zero to 20.

23 Indictment 2011-1644, indictment for criminal
24 sexual conduct with a minor in the first degree,
25 zero to 30.

1 Indictment 2011-1643, dissemination of
2 harmful material to a minor, zero to 10.

3 And 2011-1642, lewd act upon a child, 15.

4 THE COURT: All right. Mr. Whaley, do you
5 understand each of these charges?

6 THE DEFENDANT: I do, Your Honor.

7 THE COURT: And do you understand that you
8 are looking at a potential of -- well, I don't know
9 if I can count that high -- three, six, nine, 12 --
10 if my math is correct, 178 years?

11 THE DEFENDANT: I understand that, Your
12 Honor.

13 THE COURT: And I understand that the State
14 has made one last offer to try to resolve this.
15 Are you aware of that offer?

16 THE DEFENDANT: I'm aware.

17 THE COURT: Are you ready to proceed?

18 THE DEFENDANT: I'm ready to proceed.

19 THE COURT: Thank you.

20 Mr. Weeks, you may proceed.

21 Do you need an opening statement? We're
22 trying it non-jury. Obviously I don't need any
23 opening statement on the law or constitutional
24 issues, but do you want to tell me --

25 MR. WEEKS: Your Honor, I just wanted to

Minor 1

- DIRECT BY AGNEW

1 reveal a little bit for you, not an opening
2 statement in the strict sense of word, but these
3 indictments range from 1996 until 2010. They
4 involve three separate victims. The State is
5 prepared to call the primary victim, for lack of a
6 better word, for most of the indictments as our
7 first witness and we would proceed in that fashion.

8 THE COURT: You may call your first witness.

9 MS. AGNEW: The State calls Minor 1 .

10 THE COURT: Ms. Minor 1 , ma'am, if you would
11 come right up here for me and place your left hand
12 on the Bible and raise your right and the clerk
13 will swear you in.

14 Minor 1 , having been duly sworn,
15 was examined and testified as follows:

16 THE CLERK: Please have a seat in the witness
17 box. State your full name for the Court and spell
18 your last.

19 THE WITNESS: My name is Minor 1
20 Minor 1 .

21 DIRECT EXAMINATION

22 BY MS. AGNEW:

23 Q. And, Minor 1, I'm going to ask you to talk loud
24 enough so the judge can hear you on everything.
25 Okay?

Minor 1

- DIRECT BY AGNEW

1 A. Yes, ma'am.

2 Q. When's your birthday?

3 A. , 1991.

4 THE COURT: Say it again.

5 THE WITNESS: , 1991.

6 THE COURT: ?

7 THE WITNESS: . . -91.

8 MS. AGNEW: And it may help if you pick that
9 microphone up and put it near your mouth.

10 THE COURT: . What year, ma'am?

11 THE WITNESS: 1991.

12 THE COURT: So you are how old now?

13 THE WITNESS: I'm 22, sir.

14 THE COURT: How old?

15 THE WITNESS: 22.

16 BY MS. AGNEW:

17 Q. And, Minor 1, where do you live?

18 A. I live in Warrenville.

19 Q. Is that here in Aiken County?

20 A. Yes, ma'am.

21 Q. Are you from Aiken County?

22 A. Yes, ma'am.

23 Q. How long have you lived in Aiken?

24 A. All my life.

25 Q. Tell me, Minor 1, are you related to the

Minor 1

- DIRECT BY AGNEW

1 Defendant in this case?

2 A. Yes, ma'am.

3 Q. How are you related to him?

4 A. He's my half-brother from my father and his
5 ex.

6 Q. Okay.

7 THE COURT: I'm sorry?

8 BY MS. AGNEW:

9 Q. You have to speak up really loud for me and
10 clearly for me. Okay?

11 A. He's my half-brother.

12 Q. And which parent do y'all share?

13 A. My father.

14 Q. Are you related to any of the other people in
15 this case?

16 A. Yes, ma'am.

17 Q. How are you related to them?

18 A. Minor 2 and Minor 3 are my nieces.

19 Q. Okay. How long have you known the Defendant?

20 A. All my life.

21 Q. Did y'all live together growing up?

22 A. Sometimes.

23 Q. Okay. When you weren't living together, how
24 often did you see him?

25 A. He still came over a good bit.

Minor 1

- DIRECT BY AGNEW

1 Q. Okay. Did you see him once a month?

2 A. Probably a good bit more than that.

3 Q. Okay. Keep speaking up loud for me. Okay?

4 A. Sorry.

5 Q. Tell me this, Minor 1. What's the age
6 difference between you and the Defendant?

7 A. I'm not sure.

8 Q. Is he your age?

9 A. He's a good bit older than me. I'm just not
10 sure how much.

11 Q. Okay. Did y'all ever go to the same school?

12 A. No, ma'am.

13 Q. Was he too old to go to the same school with
14 you?

15 A. I was home schooled. I'm sure he was way too
16 old to go to the same school as me.

17 Q. Okay. Well, Minor 1, you talked about how you
18 were around the Defendant a lot growing up, y'all
19 were related and saw each other. Did the Defendant
20 ever do anything inappropriate with you?

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

22 Q. Okay. I need you to talk loud and clear for
23 me. Okay?

24 A. Yes, ma'am.

25 Q. Do you remember the first time something

Minor 1

- DIRECT BY AGNEW

1 happened?
2 A. Yes, ma'am.
3 Q. How old were you?
4 A. I was five.
5 Q. Okay. So if you were born in 1991 and the
6 first time something happened you were five, what
7 year would that have been?
8 A. 1996.
9 Q. Okay.
10 A. Maybe '97.
11 Q. Okay. And where were you when something
12 happened?
13 A. I was at our old house in Graniteville.
14 Q. Do you remember the address of your old house?
15 A. I don't. I'm sorry.
16 Q. Okay. Was it in Aiken County?
17 A. Yes, ma'am. It was in Aiken County.
18 Q. Okay. Can you tell me what happened?
19 A. Yeah. I was playing in a room of our house
20 we called the classroom.
21 Q. Okay. Speak up for me so the Judge can hear
22 you. Okay?
23 A. We were at our house in our classroom where
24 we would do our schoolwork and I was playing. I
25 had borrowed a skirt from my niece and it was,

Minor 1

- DIRECT BY AGNEW

1 like, fun to twirl in.

2 Q. What kind of skirt was it?

3 A. It was a black skirt with white polka dots
4 and it had lace on it.

5 Q. Okay. Was anybody else playing with you?

6 A. No, ma'am. I was playing by myself.

7 Q. Okay. Well, what happened while you were
8 playing?

9 A. Well, I was just spinning around listening to
10 music playing with a disco ball I had got from
11 Chuckie Cheese and the Defendant come in the
12 classroom and closed the door behind him. And he
13 asked me what I was doing. And I said, I'm
14 spinning. I'm playing. And we had said a few more
15 things. I really don't remember what all was said,
16 but I got scared and he said, your mama's not
17 here --

18 Q. You got to speak up for me. Okay? He can't
19 hear you.

20 A. The one thing I remember he did, definitely
21 saying, he said, Mommie's not here.

22 Q. Okay. And what happened after he said that?

23 A. There was a table, like, a really short,
24 like, a kids play table for, like, playing with
25 blocks and he leaned me against it and he raped me.

Minor 1

- DIRECT BY AGNEW

1 Q. Okay. Now Minor 1 when you say raped, what part
2 of his body touched you?

3 A. His penis.

4 Q. And where did his penis touch you?

5 A. My vagina.

6 Q. Okay. Was it on top of your vagina or inside
7 of your vagina?

8 A. Inside.

9 Q. Okay. Did he say anything to you?

10 A. He, he was saying some stuff. I don't
11 remember all of it. When he was done he said that
12 that was all I'd ever need, I'd be his forever.

13 Q. Did he say anything to you about telling
14 anybody?

15 A. He told me if I told anybody about what
16 happened that he would kill my family and me.

17 Q. Did you tell anybody?

18 A. No, ma'am, not for a long time.

19 Q. Okay. After that happened, did he ever do
20 anything inappropriate with you again?

21 A. Yes, ma'am. Multiple times.

22 THE COURT: I'm sorry. What?

23 THE WITNESS: Yes, he did. Multiple times.

24 BY MS. AGNEW:

25 Q. Do you remember how often it would happen?

Minor 1

- DIRECT BY AGNEW

1 A. It was a good bit. I'm not 100 percent sure
2 of how often. It was just when he was over and had
3 the opportunity.

4 Q. Okay. Did it happen when you were six years
5 old?

6 A. Something happened around when I was little,
7 but yes, ma'am, something did happen.

8 Q. Okay. What about when you were seven? Eight?
9 Nine?

10 A. Yeah.

11 Q. Did the behavior continue?

12 A. It did. It continued for most of my life.

13 THE COURT: I'm sorry. Continued for, when?

14 THE WITNESS: For most of my life, sir.

15 BY MS. AGNEW:

16 Q. And when the Defendant would do things to you,
17 was it always the same as that first time when you
18 were five?

19 A. No, ma'am.

20 Q. What other things would he do?

21 A. He would -- he -- I'm not sure exactly the
22 words I should be using.

23 Q. Okay. You got to talk up really loud for me.

24 A. Uh.

25 Q. Would he -- was there any body contact?

Minor 1

- DIRECT BY AGNEW

1 A. Definitely. Definitely.

2 Q. What part of his body would touch you?

3 A. His penis.

4 Q. And where would his penis touch you?

5 A. I want to say, butt.

6 THE COURT: You can say whatever you want to,
7 young lady.

8 THE WITNESS: All right. He would put it
9 inside my butt, in my mouth.

10 BY MS. AGNEW:

11 Q. Did he ever say anything to you about it?

12 A. He pretty much always said sort of the same
13 thing; it was always that I didn't need anybody
14 else, I didn't need anything else, you know. He
15 one time specifically said his penis was all I'd
16 ever need after showing it to me and he'd always
17 tell me that he was going to be inside me forever.

18 Q. Did he ever ask permission?

19 A. No.

20 Q. And each time that this would happen over the
21 years growing up, where would it happen?

22 A. Until we moved it happened in Graniteville in
23 our old house, then it happened at, where my
24 parents are now living where I lived with them, and
25 it also happened at his house.

Minor 1

- DIRECT BY AGNEW

1 Q. Okay. Well, let's talk about where your
2 parents are now living. Do you know where they now
3 live?

4 A. Yes, ma'am.

5 Q. Where is that at?

6 A. Off of Road.

7 Q. Is that in Aiken County?

8 A. Yes, ma'am.

9 Q. And how long did y'all live there? Well, let
10 me ask you. Do you remember when you moved there?

11 A. It was around Thanksgiving of, maybe, 2001, I
12 think.

13 Q. Okay. And did that behavior continue at that
14 address?

15 A. Not as much but it did still continue.

16 Q. Okay. The year before y'all moved, 2000, did
17 these things happen during the year 2000?

18 A. Probably. I'm not sure of the dates.

19 Q. Okay. But you would say that during your
20 elementary school childhood at your first house that
21 it happened?

22 A. Definitely did.

23 Q. Okay. Now tell me this, Minor 1. You mentioned
24 at his house. Let's talk about that incident. When
25 you say his house, was he living with you at the

Minor 1

- DIRECT BY AGNEW

1 time?

2 A. No, ma'am.

3 Q. Do you know where he was living?

4 A. He was living off of Yellow Ribbon Road in
5 Aiken.

6 Q. Okay. And when would this have been?

7 A. I believe I was 16.

8 Q. Okay. So, if you were born in 1991 -- I know
9 I'm making you do math. If you were born in 1991
10 and you were 16, what year would that have been?

11 A. 2007, I believe.

12 Q. Okay. Now tell, tell the judge how that
13 started that day.

14 A. That day I had gone to the library in Aiken
15 to find some books for a report on the Irish famine
16 ships. And I found a book earlier than I thought I
17 would, and so I was going to -- I was going to
18 leave. I was going to go home. I would be getting
19 home early.

20 And I walked outside. As I was walking down
21 the steps I saw his car, an '88 Oldsmobile, parked
22 off. I didn't see him but I saw the car and I was
23 like, okay, Well, I'm just going to get to my car
24 before, you know, he sees me. So, I, I go to my
25 car. And he come up to me and he's, like, Why

Minor 1

- DIRECT BY AGNEW

1 don't you come over and I'm, like, Well, my mom's
2 expecting me back, you know. I don't have time to
3 come over. I got to go home. My mom's expecting
4 me. We got dinner. We got stuff we got to do.

5 And he said, no, you're coming with me. And
6 at that point he held his hand down. His -- I
7 think it was his right hand, he held down real low
8 and he had a black bladed, silver-hilted knife.

9 Q. Let me stop you right there, Minor 1. I'm
10 sorry. Can you explain to me what does silver
11 hilted mean?

12 A. Just, like, the color, like, the handle.

13 Q. Okay. About how big was that knife?

14 A. Maybe about, like, that long (indicating).

15 THE COURT: About how long?

16 BY MS. AGNEW:

17 Q. Can you let the judge see?

18 A. About like that long (indicating).

19 Q. Okay. Was it, like, a knife that folded into
20 the handle or was it just a separate handle and
21 blade? How did it look?

22 A. I don't even know it was -- if it closed. It
23 was open when he was showing it to me.

24 Q. Okay. And after he showed you that knife and
25 said you're coming with me, what happened?

Minor 1

- DIRECT BY AGNEW

1 A. I went with him.
2 Q. Okay.
3 THE COURT: I'm sorry. What?
4 THE WITNESS: I went with him.
5 BY MS. AGNEW:
6 Q. About what time of day was that?
7 A. Maybe afternoon. I'm not 100 percent sure on
8 the time.
9 Q. Okay.
10 A. I mean, I know I was supposed to be home for
11 dinner but it was actually still a few hours away.
12 So.
13 Q. And who was driving the car when y'all left?
14 A. The Defendant.
15 Q. Okay. And tell the judge where y'all went.
16 A. We went to his house on Yellow Ribbon Road.
17 Q. Is that in Aiken County?
18 A. Yes, ma'am.
19 Q. Okay. Did you want to go with him?
20 A. No, ma'am. I did not.
21 Q. Okay. In your mind did he make you go with
22 him?
23 A. Yes, by fear.
24 Q. Once you got to his house on Yellow Ribbon
25 Road, tell the judge what happened next.

Minor 1

- DIRECT BY AGNEW

1 A. We went inside. And he made me wear an apron
2 and wash his dishes. I dropped a glass while I was
3 washing them and I thought he was going to kill me
4 for dropping the glass. But when I finished being
5 his housewife he got some stuff out of his fridge
6 and he got some ice out of his freezer and he mixed
7 what I think was supposed to be a pina colada.

8 Q. And, Minor 1, let me stop you.. Do you know what
9 he got out of the freezer?

10 A. Not -- I think it was ice out of the freezer.

11 Q. Okay. Do you know what liquids he poured in
12 the drink?

13 A. No, ma'am.

14 Q. Do you know if there was alcohol in the drink?

15 A. Yes, ma'am.

16 Q. Okay. Keep telling the judge now what
17 happened about the drinks he made you.

18 A. He made me this drink and told me to drink
19 it. And I was too scared to just say no. So I
20 started sipping on it real slow. A few minutes
21 passed and he said, you drink up, you know, mine --
22 I'm already on my second one, you know, drink up.
23 I took a few more sips and I just -- I was I was
24 dizzy. I felt like I was going to black out. I
25 think there was something besides just alcohol in

Minor 1

- DIRECT BY AGNEW

1 that drink because I don't think that I should have
2 been feeling that way just from a few sips of a
3 drink.

4 Q. Minor 1, after you had that drink and you
5 started feeling dizzy, what did the Defendant do
6 next?

7 A. He told me to take off my shirt and sit in
8 front of him while he sat on the couch and I sat on
9 the floor. He started playing with my hair,
10 rubbing my shoulders. He used his fingers to play
11 with me, and he told me I needed to do that for
12 myself.

13 Q. When you say play with me, where was he
14 touching you?

15 A. My vagina.

16 Q. Was he touching you over the clothes or under
17 the clothes?

18 A. Over the clothes.

19 Q. Okay. Then what happened?

20 A. I'm not -- I can't remember all of it because
21 I passed out. But I, I do know for a fact that he
22 had had sex with me.

23 Q. If you passed out, how do you know that he had
24 sex with you?

25 A. I got pregnant.

Minor 1

- DIRECT BY AGNEW

1 Q. I know this seems like a stupid question, but
2 how do you know you were pregnant?

3 A. I passed three pregnancy tests.

4 Q. How did that pregnancy go?

5 A. It didn't. I had a miscarriage. I'm not
6 sure how far along I was. It was only a couple of
7 months after that I found out so, and it was just
8 maybe a week.

9 THE COURT: Speak up. I can't hear you.

10 THE WITNESS: It was maybe a week after I had
11 taken a pregnancy test that I miscarried.

12 BY MS. AGNEW:

13 Q. Did you have to go to the doctor for that?

14 A. I probably should have. I did not.

15 Q. Okay. After you passed out and this happened,
16 what happened once you woke up? Where were you when
17 you woke up?

18 A. I was on his floor.

19 Q. Okay.

20 A. It was -- I wasn't awake. I was having --
21 like, when you blink your eyes open really slow, it
22 was like that. I remember I was on the floor. And
23 I was just in his car.

24 Q. Were you able to leave on your own?

25 A. No.

Minor 1

- DIRECT BY AGNEW

1 Q. What happened once y'all got back in his car?

2 Well, tell me -- I'm sorry. Let me ask you this
3 first. How did you get in his car?

4 A. I guess he must have carried me or either I
5 was walking and didn't know I was.

6 Q. Okay. What happened once he put you in his
7 car?

8 A. He put me in the middle seat right besides
9 where he was sitting in the driver's seat, and he
10 drove me back to my mom's car at the library.

11 Q. Okay. Do you remember what time of year this
12 was in 2007?

13 A. I'm not 100 percent sure, no.

14 Q. Okay. After that happened did you tell
15 anybody?

16 A. Not at that point.

17 Q. How come?

18 A. I was scared.

19 Q. Was he violent towards you?

20 A. Mildly, and sometimes a little bit more
21 violently.

22 Q. Okay. Did he ever threaten you?

23 A. He did. Many times.

24 Q. Did he ever threaten you about if you told
25 somebody?

Minor 1

- DIRECT BY AGNEW

1 A. Always.

2 Q. Okay. Is that the last time something
3 happened between you and the Defendant?

4 A. No, ma'am.

5 Q. When was the next time?

6 A. I believe I was 17.

7 Q. Okay. I'm going to ask you to do a little bit
8 more math. Okay?

9 A. Okay.

10 Q. If you were born in 1991 and you were 17, what
11 year would that be?

12 A. 2008.

13 Q. Okay. And what happened in 2008?

14 A. I, I was in my room on the phone and he come
15 in my room and closed the door. I don't think he
16 locked it but he come in my room. And while I was
17 on the phone he leaned over and he kissed me on the
18 lips and I got mad and I hung up the phone. And I
19 said, what the hell. And he told me to get down on
20 my knees and he pulled out his penis out of his
21 pants and he told me to suck it.

22 Q. Okay. Did you do it?

23 A. Yes, ma'am.

24 Q. Did you do it willingly?

25 A. No, ma'am.

Minor 1

- DIRECT BY AGNEW

1 Q. Why did you do it?

2 A. I was scared not to.

3 Q. What were you scared of?

4 A. I was scared he was going to hurt my family.

5 THE COURT: Speak up, please, ma'am.

6 THE WITNESS: I was scared he was going to
7 hurt my family and I was scared he was going to
8 hurt me.

9 BY MS. AGNEW:

10 Q. Had he told you he was going to do that?

11 A. He had.

12 Q. Was he supposed to be in your room that day?

13 A. No, ma'am.

14 Q. Okay. Had you done anything to make sure he
15 wouldn't be in your room?

16 A. I didn't know he was there. Normally when he
17 would come over I would, I would see him at my
18 window or I'd see him drive up and I'd go in my
19 room and I'd lock my door, I'm -- I'd go in my
20 bathroom and sit in the tub and lock my door until
21 he left.

22 Q. Which house was this at?

23 A. This was the house on Road.

24 Q. In Aiken County?

25 A. Yes, ma'am.

Minor 1

- DIRECT BY AGNEW

1 Q. What happened after he made you do that?

2 A. My mom had come up the stairs and we were
3 leaving out of my room. And my mom's, like, what
4 are you doing up here. You're not supposed to be
5 up here. Get out.

6 Q. You can't talk about what other people say.
7 Okay?

8 A. Okay.

9 Q. I guess -- what did he do after that?

10 A. He left.

11 Q. Did he say anything to you?

12 A. Not to me.

13 Q. Okay. Did you see him after that?

14 A. Occasionally, just seeing him around town.

15 Q. Okay. Did anything else happen after that?

16 A. No, ma'am.

17 Q. Okay. Give me one second. Okay? Beg the
18 Court's indulgence.

19 (Pause.)

20 Minor 1, I got just a couple more questions for
21 you. Okay?

22 A. Okay.

23 Q. And I need you to talk real loud and clear
24 into that microphone.

25 A. Yes, ma'am.

Minor 1

- DIRECT BY AGNEW

1 Q. When the Defendant would do things to you,
2 would he ever do things that weren't full-blown sex?

3 A. Yes, ma'am.

4 Q. What kind of stuff would he do?

5 A. Like, with touching. Mostly different
6 variations of touching.

7 Q. Okay. What would he touch you with?

8 A. His fingers, his mouth.

9 Q. And where would he touch you?

10 A. My vagina, my butt, my chest.

11 Q. Did that happen at the Graniteville address?

12 A. Yes, ma'am.

13 Q. So that would have been before you moved in
14 2001?

15 A. Yes, ma'am.

16 Q. Okay. Did it happen at the
17 address?

18 A. Occasionally. Yes, ma'am.

19 Q. So that would have been after you moved in
20 2001?

21 A. Yes, ma'am.

22 Q. Okay. I know that we have called him the
23 Defendant this whole time.

24 A. (Nods head.)

25 Q. Can you tell me the Defendant's name?

Minor 1

- CROSS BY KATONAK

1 A. James Whaley.

2 Q. Do you know his middle name?

3 A. Carl.

4 MS. AGNEW: I need you to answer any
5 questions that the defense attorney might have for
6 you. Okay?

7 CROSS-EXAMINATION

8 BY MR. KATONAK:

9 Q. What's your marital status?

10 A. I'm married.

11 Q. Do you still use the name **Minor 1** or do you use
12 your married name?

13 A. I use my married name.

14 Q. And what is that married name?

15 A. **Minor 1** .

16 Q. It's what?

17 A. **Minor 1** .

18 Q. **Minor 1** ?

19 A. Yes, sir.

20 Q. Okay. And do you have any criminal record?

21 A. Yes, sir.

22 Q. And what's that criminal record for?

23 A. Filing a false police report.

24 Q. Okay. And have you been convicted of that
25 crime?

Minor 1

- CROSS BY KATONAK

1 A. No, sir.

2 Q. When were those charges filed?

3 A. Maybe around March or April. I don't really
4 remember the exact day.

5 THE COURT: What year?

6 THE WITNESS: This year.

7 BY MR. KATONAK:

8 Q. And, again, what's the nature of the crime
9 you're accused with?

10 A. CDV first.

11 Q. And so, law enforcement is claiming that you
12 made up a false CDV against somebody?

13 A. Sir?

14 Q. Law enforcement is claiming that you have
15 potentially claimed a criminal domestic violence
16 against someone else?

17 A. Yes, sir.

18 Q. And who's the person you made a claim against?

19 A. My husband.

20 Q. What's his name?

21 A. Kit Gunter.

22 Q. I'm sorry?

23 A. Kit Gunter.

24 Q. K-I-T or K-I-P?

25 A. K-I-T.

Minor 1

- CROSS BY KATONAK

1 Q. And what's the status of that charge?

2 A. I'm going through PTI.

3 Q. Do you acknowledge that you did file a false
4 police report?

5 A. I'm sorry?

6 Q. Do you acknowledge that you did file a false
7 police report?

8 A. Well, I'm going through PTI.

9 THE COURT: Answer the question, please.

10 BY MR. KATONAK:

11 Q. Did you in fact make false statements of
12 filing a report with law enforcement?

13 A. According to them, yes, sir, I did.

14 Q. Ma'am, that's not what I'm asking you. Do you
15 admit that you did this?

16 A. Sure.

17 Q. So you're admitting that your husband
18 committed a crime against you -- strike that. So
19 you're admitting that you told police your husband
20 committed a crime against you when in fact that was
21 false?

22 A. Yes, sir.

23 Q. When you filed that false police report, were
24 you on any drugs at that time?

25 A. No, sir.

Minor 1

- CROSS BY KATONAK

1 Q. And truth be known, you do have a drug
2 history; do you not?

3 A. I'm sorry?

4 Q. You do have a drug history; do you not?

5 A. No, sir; I do not.

6 Q. Have you ever told law enforcement that you
7 had a drug history?

8 A. No, sir; I have not.

9 Q. Well, ma'am, remember that you're under oath.
10 You are denying that you've ever told law
11 enforcement that you've experimented with such drugs
12 as marijuana, cocaine, ecstasy and over-the-counter
13 medication?

14 A. Over the counter.

15 Q. Okay. As far as any of those others, you deny
16 you never told law enforcement you experimented with
17 those type of drugs?

18 A. No, I have not.

19 Q. Now, ma'am, will you agree with me that
20 typically memory fades as time goes by?

21 A. Yes, sir; I would.

22 Q. So what happens today you're going to remember
23 better tomorrow versus a year from now?

24 A. Yes, sir.

25 Q. And based upon your history with my client, no

Minor 1

- CROSS BY KATONAK

1 one would deny that you must have a great fear of
2 him?

3 A. I do.

4 Q. And in bringing or reporting this case to law
5 enforcement, is one of your hopes that he would be
6 punished and therefore you wouldn't have to live in
7 the same fear of him?

8 A. Yes, sir.

9 Q. And you made most recently these claims
10 against Mr. Whaley in 2011; do you recall that?

11 A. What exactly were those claims?

12 Q. Well, the claims you just testified to.

13 A. Is that when I did it? I guess so.

14 Q. Truth be known, ma'am, you originally made
15 these claims two years prior to that; is that right?

16 A. Yes, sir; that is correct.

17 Q. And law enforcement was pursuing an
18 investigation of that case, correct?

19 A. Yes, sir; they were.

20 Q. And at that time, would it be fair to say that
21 you were very fearful of Mr. Whaley?

22 A. Yes, sir.

23 Q. Okay. You didn't want to have him as a threat
24 in your life anymore?

25 A. No, I did not.

Minor 1

- CROSS BY KATONAK

1 Q. And if law enforcement brought charges on him
2 that may help take care of your fear, correct?

3 A. Yes, sir.

4 Q. But what did you ultimately tell law
5 enforcement you wanted them to do?

6 A. I dropped the charges.

7 Q. Okay. Were you not fearful of him anymore?

8 A. I was. I dropped the charges because my
9 father told me that if I did not he was going to
10 divorce my mom.

11 Q. Okay. Is that Mr. Whaley's father?

12 A. Yes, sir.

13 Q. Okay. So it's your testimony that though you
14 have this great fear of Mr. Whaley, you decided to
15 drop these charges because you were afraid of your
16 parents being divorced?

17 A. And us being left with nothing. Yes, sir.

18 Q. Now you just testified -- let's talk about the
19 incident that occurred when you claim he took you
20 from the library. All right? I think you said you
21 were 16 years of age when that happened, correct?

22 A. Yes, sir.

23 Q. And did you previously tell law enforcement
24 this occurred in October of 2007?

25 A. I'm not sure of the exact dates. I was

Minor 1

- CROSS BY KATONAK

1 guessing as far as that goes. I told them I didn't
2 know for sure.

3 Q. But you would concur it was sometime in 2007?

4 A. It was somewhere around there.

5 Q. And it's your testimony that you drove to the
6 library yourself?

7 A. Yes, sir. I did.

8 Q. Did you even have a valid driver's license to
9 drive by yourself at that time?

10 A. Yes, sir. I did.

11 Q. Okay. When did you get your driver's license?

12 A. I'm not sure.

13 Q. Okay. Did you get it when you were 15? 16?

14 A. It's probably when I was 16.

15 Q. Okay. But you don't know exactly when?

16 A. No, I don't.

17 Q. And so it's your testimony that you are
18 walking out of the library -- what time of day or
19 night was this?

20 A. It was maybe -- early afternoon, maybe.

21 Q. Okay. Daylight hours?

22 A. It was daylight.

23 Q. And you're walking out and Mr. Whaley's car
24 just happens to be there?

25 A. Yes, sir.

Minor 1

- CROSS BY KATONAK

1 Q. And you haven't telephoned him to say, hey, I
2 will be at the library later on today?

3 A. He had called me the day before.

4 Q. He had called you the day before?

5 A. He did.

6 Q. Was it common for the two of you to speak on
7 the phone?

8 A. No, sir. It was not.

9 Q. And what did he call you on the phone and ask
10 you?

11 A. He asked me did I have plans for the next
12 day.

13 Q. Okay. What did you tell him?

14 A. I told him I had to go to the library to find
15 books for a report I had to do.

16 Q. Previous to that call, when's the last time
17 that he talked to you on the phone?

18 A. I'm not 100 percent sure.

19 Q. Well, can you give us a guesstimate? Was it a
20 week before? A month before?

21 A. I don't remember. I can't give you a
22 guesstimate.

23 Q. Okay. So you tell him, again, this man you're
24 fearful of you, that you got to go to the library
25 the next day?

Minor 1

- CROSS BY KATONAK

1 A. Yeah. I guess it wasn't the smartest idea.

2 Q. All right. What was he calling to ask you?

3 A. He was asking me did I have plans for the
4 next day.

5 Q. Okay. Well, was he saying that he wanted to
6 do something with you?

7 A. I suppose that was what he was wanting to do.
8 He asked me did I have plans. I said I -- what I
9 had to do, and I hung up the phone.

10 Q. What -- you said you suppose. Did he say,
11 Hey, if you don't have plans, we'll go to the
12 movies, we'll go to the park, or?

13 A. Well, he didn't say anything specific but
14 that's obviously what he was getting at.

15 Q. So -- and what day of the week was this?

16 A. I'm not sure.

17 Q. Okay. Was it a school day?

18 A. I'm not sure if it was a school day or if it
19 was, like, a Saturday. I'm not sure.

20 Q. All right. Do you know how long you were at
21 the library?

22 A. Maybe 40 minutes, maybe an hour. I really
23 don't remember.

24 Q. Okay. So is it your belief he basically came
25 out there and staked out the library because he knew

Minor 1

- CROSS BY KATONAK

1 you were going to be there?

2 A. That was the only thing that I could possibly
3 believe.

4 Q. Okay. And you say you walked out of the
5 library. All right. The library has the big
6 stairs. So you're coming down the stairs. When do
7 you see his car?

8 A. When I was maybe a quarter of the way down
9 the stairs, maybe.

10 Q. All right. And where was it parked in
11 relationship to where the stairs are?

12 A. It was maybe seven or eight car lengths over
13 to the right, possibly. I'm not really sure how
14 far away he was parked.

15 Q. Where was it in relationship to your car?

16 A. To my car? Well, he was parked on -- from
17 where I was standing, he was parked to the right
18 and I was parked to the left.

19 Q. Okay. And then where were you when you first
20 saw him?

21 A. About a quarter of the way down the stairs.

22 Q. All right. So you're a quarter of the way
23 down the stairs. Any guesstimate how many stairs
24 there are at the library?

25 A. I'm not sure. I haven't been there in a very

Minor 1

- CROSS BY KATONAK

1 long time.

2 Q. Okay. My recollection there's a fair many, 15
3 or 20 stairs. Would that be a fair assessment; do
4 you think?

5 A. I guess.

6 Q. And so you see him. This is the same man that
7 you're fearful of because of other sexual assaults
8 he's done to you in the past, correct?

9 A. Yes, sir.

10 Q. All right. So you're a quarter of the way
11 down the stairs. And where is he exactly?

12 A. I did not see him.

13 Q. Okay. Well -- okay. I thought you said you
14 were a quarter of the way down the stairs and you
15 saw him?

16 A. I saw the car.

17 Q. Okay. Where were you when you first saw him?

18 A. I was next to my car. My mom's car.

19 Q. How did he appear to be there?

20 A. He -- I'm not sure. He was behind me. He --
21 he -- he talked to me.

22 Q. Okay.

23 A. And that's when I noticed he was there.

24 Q. When you saw your car, did you think, hey,
25 maybe I should call my mom?

Minor 1

- CROSS BY KATONAK

1 A. I was planning on it when I got in the car.

2 Q. Did you think, oh, there's his car, maybe I
3 should go back in the library?

4 A. I was thinking to get the hell out of there.

5 Q. And it's your testimony that he showed you
6 a -- do you have -- a knife with a black handle?
7 Tell me about the knife again.

8 A. It was a black blade and, like, a silver-
9 colored handle.

10 Q. And where exactly was that knife?

11 A. I think it was his right hand. He was
12 holding it down low.

13 Q. Now I'm still trying to figure out where your
14 car is to his car. What kind of distance are we
15 talking about?

16 A. It was a good distance. It was a good -- it
17 was a good distance. Maybe -- he was maybe parked,
18 almost maybe, almost at the end to the right and I
19 was almost at the end to the left.

20 Q. Okay. So, would it be from, say, this desk to
21 the back of the room? Would that be more or less
22 approximate?

23 A. Probably a little bit more.

24 Q. A little bit more. Okay. So he comes up to
25 you and has this blade. And tell me again. What

Minor 1

- CROSS BY KATONAK

1 exactly did he say?

2 A. He said, come over to my house.

3 Q. All right. And what did you say?

4 A. I said, I can't. I'm on -- my mom's
5 expecting me. I got to be home. We got dinner. I
6 can't today.

7 Q. And then, what did he say then?

8 A. He said, no, you're coming with me and that's
9 when he showed me the knife.

10 Q. All right. And if this is the knife, is the
11 knife down like this (indicating)?

12 A. Yes, sir.

13 Q. And so you saw the knife. What did you do at
14 that point?

15 A. My heart stopped beating for a couple
16 seconds.

17 Q. Okay. What did you do after that?

18 A. I walked with him to his car.

19 Q. Did he ever say, I'm going to stab you if you
20 don't come?

21 A. It was implied.

22 Q. The question was, did he ever say that?

23 A. No, sir; he did not.

24 Q. So, you had to walk then a distance, you said,
25 longer from that wall to here, correct?

Minor 1

- CROSS BY KATONAK

1 A. Yes, sir. Somewhere around there.

2 Q. And is he walking behind you the whole time?

3 A. No, sir.

4 Q. Where is he walking?

5 A. Beside and a little ahead of me.

6 Q. Were there other people out there? You said

7 it was during the daytime hours at the library.

8 A. I didn't see any people.

9 Q. Okay. And that library is right -- Whiskey

10 Road, I think it's actually Chesterfield. It's a

11 fairly busy road right beside the library; is that

12 correct?

13 A. I'm not sure how busy it is but it's beside

14 the library.

15 Q. Did you ever think about screaming out?

16 A. No, sir.

17 Q. And you're parked over here of the stairs and

18 he's parked on that side. When you came to walk

19 back you had to pass by the stairs of the library

20 again, right?

21 A. Yes, sir.

22 Q. Did you ever think about running up the

23 stairs?

24 A. No, sir.

25 Q. So, you never thought about calling your mom

Minor 1

- CROSS BY KATONAK

1 when you saw his car, correct?

2 A. I was going to call her when I got in the
3 car.

4 Q. You never thought about screaming out?

5 A. No, sir.

6 Q. And you never attempted to run or flee,
7 correct?

8 A. Right.

9 Q. How long did it take to get from the library
10 to his home?

11 A. I'm not really sure. I really don't remember
12 how long it took.

13 Q. Well, is it -- whereabouts is his home or his
14 home at that time?

15 A. I know the name of the road. I'm not exact
16 to where it's at.

17 Q. Can you give me an estimation? Was it a
18 five-minute drive? A 15-minute drive?

19 A. Could have been anywhere between five and 15
20 minutes, I suppose.

21 Q. And he drove his car and you sat in the
22 passenger seat?

23 A. I did. He had stopped at the gas station
24 before we got to his house though so it took a few
25 extra minutes, I suppose.

Minor 1

- CROSS BY KATONAK

1 Q. What did he stop at the gas station for?

2 A. I think he got a soda and a candy bar.

3 Q. What did you do while he got the soda and the
4 candy bar?

5 A. He told me to stay put so I stayed put.

6 Q. All right. So it's your testimony he stops at
7 a store, he goes in and gets a soda and candy bar
8 and you stay outside in the car?

9 A. Yes, sir.

10 Q. He hasn't thrown his knife away now, has he?

11 A. No, sir.

12 Q. Okay. Did he have any other kind of weapon
13 with him, a gun or any other sort of weapon?

14 A. I don't know.

15 Q. Why -- and do you know what gas station it
16 was?

17 A. I'm not sure of the name, but it's the one
18 right across the street from McDonald's on Whiskey
19 Road.

20 Q. Okay. I believe that's a, maybe a BP station?

21 A. That sounds right.

22 Q. All right. And that's -- I'm not a traffic
23 expert. That may be the busiest intersection in
24 Aiken. Would you say that is an extremely busy
25 intersection?

Minor 1

- CROSS BY KATONAK

1 A. Yes, sir. It's extremely busy.

2 Q. All right. And in the afternoon there's cars
3 going in all directions at all times, correct?

4 A. Yes, sir.

5 Q. Do you think if you would have gotten out of
6 the car when he's getting his candy bar and Coke, do
7 you think you could have ran and flagged somebody
8 down to help you?

9 A. Yes. Well, now that I'm safe I can think
10 about things like that. At the time I was
11 terrified out of my mind.

12 Q. And, so how long was he in the store?

13 A. Just a few minutes.

14 Q. Just two minutes? Three minutes?

15 A. Maybe two or three.

16 Q. He evidently wasn't worried about you running
17 away, was he?

18 A. No, sir. He was not.

19 Q. Is that -- would you say his actions were such
20 as he thought you were voluntarily going with him?

21 A. No, sir.

22 Q. Okay. You say he then took you to his house.

23 How many times had you been to his house before?

24 A. That was the first and only time.

25 Q. And you said when you got to the house he had

Minor 1

- CROSS BY KATONAK

1 you put on an apron?

2 A. Yes, sir.

3 Q. And then he had you clean the house?

4 A. Yes, sir.

5 Q. So, tell me about that one, what that means.

6 You said clean the house. What did you to do?

7 A. I washed dishes, wiped off his counters.

8 Q. And what was he doing while you were cleaning

9 the house?

10 A. I'm not sure.

11 Q. Was he cleaning as well?

12 A. I don't think so.

13 Q. Okay.

14 A. He went his room to do something.

15 Q. Okay. So how big is the house?

16 A. It was a mobile home so it wasn't very big.

17 I didn't get farther than the living room and the

18 kitchen area.

19 Q. So would it be fair to say that you were in

20 the kitchen and living room cleaning and while you

21 were doing that he was not even in those rooms most

22 of the time?

23 A. That's correct.

24 Q. So if you wanted to run out the front door and

25 go run for help you probably could have done that?

Minor 1

- CROSS BY KATONAK

1 A. I probably could have if I had thought about
2 it, yes, sir.

3 Q. Okay. So you could have gone back in the
4 library when you saw his car, you could have called
5 your mother, you could have ran when you walked back
6 to his car, you could have got out of the car at the
7 gas station, and you could have ran out of the house
8 when you were cleaning but it's your testimony you
9 didn't attempt any of those means of escape?

10 A. No, sir. As I said earlier, I did not know
11 if he had any other weapons. I was terrified. He
12 could have had a gun and shot me long distance.

13 Q. My question, again, was: Did you try any of
14 those means of escape?

15 A. No, sir. I did not.

16 Q. When you met with law enforcement in '09 about
17 this incident, isn't it true you never told them
18 that he had performed sex with you?

19 A. No, I didn't want to tell them. I actually
20 slipped up.

21 Q. That you actually what?

22 THE COURT: Hold on. I'm sorry. What was
23 the answer?

24 THE WITNESS: I slipped -- it slipped out.

25 THE COURT: What slipped out?

Minor 1

- CROSS BY KATONAK

1 THE WITNESS: I was staying in Aurora for
2 depression and my regular doctor wasn't there
3 because I believe it was a weekend. And his name
4 was Dr. Steiner at Aurora, and he asked me had I
5 ever been physically, sexually or emotionally
6 abused. And I said, kind of. And then he asked me
7 to elaborate.

8 BY MR. KATONAK:

9 Q. Well, my question was: When you met with law
10 enforcement, you never told law enforcement in '09
11 that he had actual sexual intercourse with you, did
12 you?

13 A. I'm not sure. I'm not sure what I told them.
14 I remember the officer came in. I remember I was
15 absolutely terrified because now he's going to know
16 I've told somebody, is my family going to be alive
17 when I get out of here.

18 Q. So you can't recall whether or not you told
19 them that you had sexual relations or he had sexual
20 relations with you in '09?

21 A. No, I can't recall.

22 Q. Now you mentioned that you became pregnant
23 from that incident?

24 A. Yes, sir.

25 Q. And you testified that there were three

Minor 1

- CROSS BY KATONAK

1 separate pregnancy tests that you failed?

2 A. They showed positive.

3 Q. Okay. Tested positive. Were these done
4 through doctor's offices?

5 A. They were at-home pregnancy tests.

6 Q. And who purchased these home pregnancy tests?

7 A. I did.

8 Q. And after the alleged incident, how much, how
9 long was it until you took these tests?

10 A. It was maybe, maybe like a month or a couple
11 months. It wasn't too long but, you know, it
12 wasn't like a long, long time.

13 Q. And did you take all these three tests in a
14 very short period of time? Within a day or so? Or
15 did you take one, one month and another month later?
16 What are we talking about time wise?

17 A. I did them all in, like, two or three days.

18 Q. Two or three days?

19 A. I think two.

20 Q. And you never told anyone at that time that
21 you were pregnant, correct?

22 A. No, sir. I did not.

23 Q. And you never went to a doctor in regards to
24 that pregnancy?

25 A. No, sir. I had not time yet.

Minor 1

- CROSS BY KATONAK

1 THE COURT: Had not what?

2 THE WITNESS: I had not had time yet.

3 THE COURT: Had not had time to do what?

4 THE WITNESS: To go to the doctor. I wasn't
5 planning on going. Like, I didn't want to tell
6 anybody, so I wasn't going to tell my mom, get her
7 to drive me. So I had to make sure I had a time
8 where I could be by myself and nobody would ask
9 questions. I was not planning on keeping that
10 child if it had lived.

11 BY MR. KATONAK:

12 Q. And I believe in 2011 you told law enforcement
13 that you miscarried that child?

14 A. Yes, sir.

15 Q. How long was it or approximately when was it
16 that you had the miscarriage?

17 A. I'm sorry?

18 Q. Approximately when was it that you had the
19 miscarriage?

20 A. It was, like, maybe about a week after I had
21 taken the pregnancy tests.

22 Q. Being pregnant from this incident with my
23 client, that's a fairly important part of this case;
24 correct?

25 A. Yes, sir.

Minor 1

- CROSS BY KATONAK

1 Q. Though it is so important you never mentioned
2 this fact when you met with law enforcement in 2009?

3 A. No, sir. I did not.

4 Q. Right. So, you told them that he forced you
5 to go from the library to his home. And you told
6 them that he touched and kissed your breasts, and
7 that he forced you to perform oral sex on him;
8 correct?

9 A. Uh-huh.

10 Q. Having sexual intercourse with you and you
11 getting pregnant is probably bigger than all of
12 those, isn't it?

13 A. Yes, sir.

14 Q. And even though that is the biggest detail of
15 this case, somehow this didn't get mentioned to the
16 investigators, did it?

17 A. I answered their questions.

18 THE COURT: I'm sorry. What was your answer?

19 THE WITNESS: I only answered the questions
20 they asked me.

21 BY MR. KATONAK:

22 Q. So, the investigators did not say, Ms. Whaley,
23 tell me exactly what Mr. Whaley did to you? That
24 was not a former question?

25 A. That was the first question they asked. I

Minor 1

- CROSS BY KATONAK

1 was having trouble answering that question. It was
2 a very vague question. I asked them to be more
3 specific.

4 Q. All right. So it's your testimony that since
5 they never asked you whether he had sex with you you
6 never brought it up?

7 A. I was still terrified.

8 Q. Well, why are you terrified? You're sitting
9 at the police station, aren't you?

10 A. Yes, sir.

11 Q. Do you not think if you say, hey, this guy
12 raped me and I became pregnant from it, don't you
13 think that would be a pretty big detail law
14 enforcement would want to know?

15 A. It probably would be.

16 Q. Were you on drugs at the time that you met
17 with law enforcement?

18 A. Prescribed.

19 Q. What kind of prescription drugs were you on?

20 A. They were trying me on a bunch of different
21 drugs so I don't remember exactly what. I think
22 they tried me on Zoloft, Risperdal, both of which I
23 had adverse reactions to.

24 Q. Do you believe you were mentally competent at
25 the time you spoke to law enforcement?

Minor 1

- CROSS BY KATONAK

1 A. My mind would have been a little fuzzy from
2 the drugs but other than that.

3 Q. And at the time you spoke with law
4 enforcement, were you still at Aurora Pavilion?

5 A. Yes, sir. I was.

6 Q. Approximately how long did you spend at Aurora
7 Pavilion?

8 A. Two or three weeks.

9 Q. Then you meet with law enforcement in March
10 2009. Does that sound correct?

11 A. Maybe.

12 Q. Now in looking at the police report it states
13 nothing about you passing out. Did you tell law
14 enforcement you passed out?

15 A. I don't remember if I told them that day or
16 not. It's a lot to keep track of.

17 Q. Is it your testimony today that after --
18 taking you from the library, stopping to get a Coke
19 and a candy bar, coming home, being in his room
20 while you cleaned his house, that he gave you drinks
21 and you passed out and he had sex with you?

22 A. Yes, sir.

23 Q. Did you ever tell law enforcement about him
24 stopping at the store to get a Coke and a candy bar?

25 A. I think it had been mentioned a couple

Minor 1

- CROSS BY KATONAK

1 different times. I'm not sure exactly which times.

2 It's a lot to keep track of as far as...

3 Q. What's the age difference between you and
4 Mr. Whaley?

5 A. As I stated earlier, I'm not 100 percent
6 sure.

7 Q. You mentioned the first time that an alleged
8 assault occurred you were approximately five years
9 of age?

10 A. Yes, sir.

11 Q. And was he living in the home at that time?

12 A. Maybe. I really don't remember. He was
13 kicked out a few different times. It was hard to
14 keep track.

15 Q. And you're stating that on that incident that
16 he put his penis in your vagina?

17 A. I'm sorry?

18 Q. You're stating on that first incident at age
19 of five he put his penis in your vagina?

20 A. Yes, sir.

21 Q. And you remember that well; correct?

22 A. Yes, sir.

23 Q. Did you remember that fact in 2009?

24 A. I'm sorry.

25 Q. Did you still remember that fact in 2009 when

Minor 1

- CROSS BY KATONAK

1 you first met with law enforcement?

2 A. I didn't think about it.

3 THE COURT: I'm sorry. You didn't think
4 about it?

5 THE WITNESS: Yes, sir. I didn't think.
6 Like I said, I was answering the questions they
7 asked. I was having a good bit of trouble.

8 BY MR. KATONAK:

9 Q. Then from your testimony, essentially sexual
10 acts occurred numerous times over the subsequent
11 years; is that correct?

12 A. Yes, sir.

13 Q. And again in 2009 when you're sitting there at
14 the police station and investigators are talking to
15 you, you never mentioned any of these other events,
16 do you?

17 A. I'm sorry?

18 Q. You never mentioned any of these other events
19 in 2009?

20 A. No, sir. They wanted specific dates and
21 things. I, I couldn't give them those, so I didn't
22 tell them about it.

23 Q. You testified a few minutes ago that at one
24 point he had put his penis in your butt; is that
25 right?

Minor 1

- CROSS BY KATONAK

1 A. Yes, sir.

2 Q. Have you ever told law enforcement about that?

3 A. Yes, sir. At some point I have.

4 Q. Okay. So it's your belief that you told law

5 enforcement about him having anal sex with you?

6 A. Yes, sir.

7 Q. Though not in 2009. We've already established

8 you didn't tell them anything else in 2009?

9 A. Right.

10 Q. And when you met with law enforcement in '09

11 and 2011, you weren't lying to them at those times,

12 were you?

13 A. I'm sorry? No, sir.

14 Q. You weren't lying to law enforcement, right?

15 A. No, sir.

16 Q. You wouldn't do that, would you?

17 A. No, sir.

18 Q. Okay. Though you did acknowledge you have

19 filed a false police report against your husband?

20 A. Yes, sir.

21 Q. Okay. You mentioned at the very first

22 incident that you borrowed, I believe I'm right, a

23 skirt from a niece?

24 A. Yes, sir.

25 Q. Who was the niece?

Minor 1

- CROSS BY KATONAK

1 A. I'm not sure who it actually belonged to. It
2 was either Minor 2 or Minor 3 .

3 THE COURT: I'm sorry. Not sure who it
4 belonged to, what?

5 THE WITNESS: It was either my niece,
6 Minor 2 , or my niece, Minor 3 . They shared the same
7 dresser at the time.

8 BY MR. KATONAK:

9 Q. And Minor 2 is how old?

10 A. I'm not sure. Maybe 18, 19.

11 Q. And Minor 3 is how old?

12 A. I think she just turned 18.

13 Q. So is it fair to say that they were -- you're
14 how old? 22?

15 A. Yes, sir.

16 Q. So they are six, five and six years younger
17 than you?

18 A. Somewhere around there, I guess.

19 Q. All right.

20 A. Maybe four.

21 Q. Let me make sure this is right. You were five
22 when the first incident happened?

23 A. Yes, sir.

24 Q. Okay. And you borrowed a skirt or had a skirt
25 of either Minor 3 or Minor 2 , right?

Minor 1

- CROSS BY KATONAK

1 A. Yes, sir.

2 Q. If you were five-years-old, one of them is not
3 even born and one of them is an infant at best?

4 A. The skirt was too small.

5 Q. I imagine it was.

6 THE COURT: Well, what kind of skirt was it,
7 ma'am?

8 THE WITNESS: It was a black skirt with white
9 polka dots and some lace.

10 THE COURT: And what?

11 THE WITNESS: Some lace.

12 THE COURT: And you could put it on and you
13 could twirl and it would flare out?

14 THE WITNESS: Yes, sir. I think it was more
15 of a dress-up kind of.

16 THE COURT: I understand, but it was big
17 enough for you to put on?

18 THE WITNESS: Yes, sir.

19 THE COURT: And if you twirled it would flare
20 out?

21 THE WITNESS: Uh-huh.

22 THE COURT: And it was either -- well, it had
23 to be one of them because the other one wasn't born
24 and she was an infant, right?

25 THE WITNESS: She was young.

Minor 1

- REDIRECT BY AGNEW

1 THE COURT: Well, she was one years old.

2 THE WITNESS: Maybe one or two.

3 THE COURT: Ma'am?

4 THE WITNESS: Maybe one or two.

5 THE COURT: Okay.

6 MR. KATONAK: That was all the questions I
7 have.

8 THE COURT: Redirect?

9 MS. AGNEW: Thank you, Your Honor.

10 THE COURT: Mr. Whittle, let her in, please.

11 REDIRECT EXAMINATION

12 BY MS. AGNEW:

13 Q. I got just a few more questions for you.

14 Okay, Minor 1?

15 Now, Mr. Katonak just asked you a whole bunch
16 of questions. I want to start going back to the
17 whole thing in 2007 at the Defendant's house. He
18 made a big deal about the fact that you didn't
19 scream or run. Why didn't you scream when your
20 half-brother was standing right next to you with a
21 knife by his side?

22 A. Because if I screamed I thought he was going
23 to stab me.

24 Q. Why didn't you run away from somebody that was
25 holding a knife right by your side?

Minor 1

- REDIRECT BY AGNEW

1 A. Because he was saying as long as I came with
2 him he wasn't going to.

3 Q. And the defense attorney made a big deal about
4 stopping at the gas station and he said that that
5 intersection was probably the busiest intersection
6 in Aiken. Why didn't you run out into traffic in
7 the busiest intersection in Aiken?

8 A. Because as long as I stayed put he wasn't
9 going to kill me.

10 THE COURT: Say that again. Answer it again.

11 THE WITNESS: As long as I stayed put where
12 he told me to stay he wasn't going to kill me.

13 BY MS. AGNEW:

14 Q. Now, Minor 1, you said that when you went to his
15 house that day that it was the first and only time
16 you'd been to his house. Were you familiar with
17 that area?

18 A. I had been in the car with my mom and stuff
19 around that area a little bit. I had never noticed
20 that road or anything before that day.

21 Q. Okay.

22 A. We never went down it.

23 Q. You said you didn't know how to get there from
24 the library?

25 A. No.

Minor 1

- REDIRECT BY AGNEW

1 Q. Okay. Do you know who lived right next to the
2 Defendant?

3 A. I'm not sure who lived next to him. I mean,
4 I know the people that own those trailers.

5 Q. Okay.

6 A. We used to go to church with them.

7 Q. Okay. Tell me this. When you were in the
8 house and the defense attorney was asking you about
9 the apron and cleaning the house and all of that,
10 did the Defendant try to hypnotize you?

11 A. Yes, ma'am.

12 Q. How did that happen?

13 A. I played along so, you know, so I wouldn't
14 get in trouble. But he would be, like, he was
15 saying things like, you know, if I touch my elbow
16 your knee will itch and you'll scratch. It was
17 just weird stuff like that. I don't remember exact
18 thing, the exact things he said but it was, it was
19 things just like that. He's saying if-I-touch-my-
20 something-you'll-touch-your-something.

21 Q. Okay. Now, you said that you didn't scream,
22 you didn't try to run. By the time we get to 2007
23 and this is happening, how long had the Defendant
24 been sexually abusing you?

25 A. Ever since I was very little.

Minor 1

- REDIRECT BY AGNEW

1 Q. How long had he been threatening you?

2 A. Threatening me since I was five.

3 Q. Okay. You were talking about getting pregnant
4 and the miscarriage and the defense attorney asked
5 you a lot about those pregnancy tests. I'm going to
6 ask you a really personal question. Had you had sex
7 with anybody else then?

8 A. No, ma'am.

9 Q. In your whole life up until that point, had
10 you ever had sex with anybody else?

11 A. No, ma'am. I didn't want to.

12 Q. Now I want to ask you a little bit about the
13 2009 investigation that Mr. Katonak asked you about.

14 You said that you didn't want to tell, that it
15 slipped out. Why didn't you want to tell?

16 A. Because if I told he would, he would find out
17 that I had told. And, I mean, like I said, I
18 didn't know if I was going to get out of that
19 hospital and my whole family was going to be dead
20 or what.

21 Q. And the defense attorney asked you this
22 question. I don't think you got a chance to answer
23 it. He asked you why you would be terrified when
24 you were sitting at a police station. Why were you
25 terrified?

Minor 1

- REDIRECT BY AGNEW

1 A. He, he, he still terrifies me to this day.
2 Every single day of my life I am terrified of him.

3 Q. In 2009 when you were sitting in that police
4 station and they were asking you questions about the
5 Defendant, how long had he been sexually abusing you
6 until that point?

7 A. Almost my entire life.

8 Q. In 2009 you said that you weren't the one that
9 initiated the contact with law enforcement. Did you
10 initiate the contact with law enforcement this time?

11 A. I don't think it counts as initiating. My
12 parents had sat me down and asked me, you know,
13 like, we didn't want to hear about it on the news
14 he had been arrested or something and they're,
15 like, do you want to start the charges back and I
16 said, yes.

17 Q. Okay. So you didn't call law enforcement up
18 trying to get him in trouble?

19 A. No, ma'am.

20 Q. Did you ever tell Minor 2 or Minor 3 what
21 happened to you?

22 A. I think I told them a little bit. I don't
23 remember exactly what I may have told them.

24 Q. Did you tell them before all of this whole
25 case got involved?

Minor 2

- DIRECT BY AGNEW

1 A. I may have mentioned something at some point.
2 I'm not 100 percent sure.

3 Q. Okay. Give me one second. Okay? (Pause.)
4 No further questions.

5 THE COURT: You may step down. Let's take
6 about a five-minute break. We'll run until five or
7 a little after since we don't have a jury. You may
8 step down.

9 (Break taken at 3:44 p.m. At 3:56 p.m., the
10 trial resumed:)

11 THE COURT: Ms. Agnew, you may call your next
12 witness.

13 MS. AGNEW: State calls Minor 2 .

14 THE COURT: Ms. Minor 2 please come around.

15 Minor 2 , having been duly
16 sworn, was examined and testified as follows:

17 THE CLERK: Have a seat in the witness box.
18 State your full name for the Court and spell your
19 last.

20 THE WITNESS: Minor 2 , Minor 2 .

21 THE COURT: Ma'am, you're going to have to
22 speak up.

23 THE WITNESS: Minor 2 , Minor 2 .

24 THE COURT. Are you Minor 2 ?

25 THE WITNESS: That's my maiden name.

Minor 2

- DIRECT BY AGNEW

1 THE COURT: And your new name, your married
2 name?

3 THE WITNESS: Minor 2.

4 THE COURT: Minor 2 . Thank you.

5 DIRECT EXAMINATION

6 BY MS. AGNEW:

7 Q. And, Minor 2 , I'm going to ask you to do me a
8 favor. If you'll hold that microphone up to you,
9 that way you'll be a little bit louder. Okay?

10 Minor 2 , can you tell me how old you are?

11 A. 19.

12 Q. Okay. And when's your birthday?

13 A. , 1994.

14 Q. Okay. So, if you were born in -- in
15 of 1994 and Minor 1 was born in of
16 '91, how much difference is there really between the
17 two of y'all, age wise?

18 A. One and a half, two years at the most.

19 THE COURT: How much?

20 THE WITNESS: One and a half, two years.

21 THE COURT: Speak up.

22 BY MS. AGNEW:

23 Q. You have to speak really loud for me. Okay?

24 Now tell me, where are you living at?

25 A. In Vaucluse.

Minor 2

- DIRECT BY AGNEW

1 Q. Okay. Where were you born? What city were
2 you born in?
3 A. Augusta, Georgia.
4 Q. Okay. How long have you lived in Aiken?
5 A. Ever since I was a baby.
6 Q. Okay. Are you working anywhere?
7 A. Yes.
8 Q. Where do you work?
9 A. At the Bridgestone Plant in Graniteville.
10 Q. Tell me this, Minor 2 . Are you related to the
11 Defendant?
12 A. Yes.
13 Q. Okay. How are you related to him?
14 A. He's my uncle.
15 Q. Okay. Now, the other people involved in this
16 case, can you tell me how you're related to them?
17 A. Minor 3 is my sister and Minor 1's my aunt.
18 Q. Okay. So she's your aunt even though y'all
19 are just a couple years apart?
20 A. Yes.
21 Q. Okay. Do you know how old the Defendant is?
22 A. In his late 30s, maybe.
23 Q. Okay. So what's the age difference between
24 you and him? More than a couple years?
25 A. Yeah.

Minor 2

- DIRECT BY AGNEW

1 Q. Okay. Tell me this. Growing up, did you live
2 with the Defendant?

3 A. I think he lived with us for a short time.

4 Q. Okay. When you weren't living with him, did
5 you see him often?

6 A. Yes.

7 Q. How -- how much is often?

8 A. Like, once or twice a week.

9 Q. Okay. Now, Minor 2, growing up, did the
10 Defendant ever do anything inappropriate to you?

11 A. Yes.

12 Q. Do you remember the first time something
13 happened?

14 A. Yes.

15 Q. Do you remember how old you were?

16 A. It was, like, five or six.

17 Q. Okay.

18 A. I think.

19 Q. Okay. Tell me what happened.

20 A. I was at my grandmother -- great
21 grandmother's house and my mom had just started
22 working at Bridgestone so we were staying over
23 there at night for school.

24 Q. Okay. Can you tell me real loud now where
25 your grandmother's house was?

Minor 2

- DIRECT BY AGNEW

1 A. On Wire Road.

2 Q. Okay. Is that here in Aiken County?

3 A. Yes, ma'am.

4 Q. So you were staying at your grandmother's

5 house and what happened?

6 A. I was laying on their couch in one of their

7 bedrooms and everyone was asleep and he came in

8 and --

9 Q. I got to stop you just a second. When you say

10 "he", who are you talking about?

11 A. James.

12 Q. Was anybody else in the room?

13 A. I think **Minor 3** was on the bed.

14 Q. Okay. Do you know if she was awake?

15 A. She was asleep.

16 Q. Okay. So if everybody was asleep, what time

17 of day was it?

18 A. It was nighttime. It was a school night.

19 Q. Okay. And what happened when he came in the

20 room?

21 A. He woke me up and told me to be quiet. And

22 he eventually got on top of me and started touching

23 me and humping me.

24 Q. When you said that he was touching you, what

25 part of your body was he touching?

Minor 2

- DIRECT BY AGNEW

1 A. My whole body.

2 THE COURT: Your whole, what?

3 THE WITNESS: My whole body.

4 BY MS. AGNEW:

5 Q. I need you to talk real loud for me. I know
6 it's hard, but I need you to talk as loud as you
7 can. Okay?

8 What part of his body was he touching you
9 with?

10 A. His hands.

11 Q. Okay. Do you know how long he was touching
12 you and humping you?

13 A. It felt like forever. I'm sure it wasn't as
14 long as I think it was, but.

15 Q. Do you -- I know that was a while ago, but do
16 you remember what you were wearing?

17 A. One of those, like, really long T-shirts that
18 you use to sleep in.

19 Q. Okay. Were you wearing anything underneath
20 the T-shirt?

21 A. Panties.

22 Q. Okay. When he was touching you and humping
23 you, was it over your clothes or under your clothes?

24 A. Over.

25 Q. Do you have any idea what he was wearing then?

Minor 2

- DIRECT BY AGNEW

1 A. I want to say he was wearing sleeping pants,
2 maybe.

3 Q. Okay.

4 A. I'm not real positive.

5 Q. Do you remember if he was wearing a shirt?

6 A. I don't think he was.

7 Q. Okay. Did he say anything to you afterwards?

8 A. I think he just smiled at me.

9 THE COURT: He just, what?

10 THE WITNESS: Smiled at me.

11 BY MS. AGNEW:

12 Q. Did he say anything to you about telling
13 anybody?

14 A. He told me not to tell, and I didn't.

15 Q. Okay. Was that the only time something ever
16 happened?

17 A. No.

18 Q. When did it happen the next time?

19 A. The next major thing?

20 Q. Well, let's talk about this. Were there minor
21 things?

22 A. Yeah, yes.

23 Q. What kind of minor things would happen?

24 A. If I was around him he'd touch my butt and
25 grab on me and kiss me when nobody was looking.

Minor 2

- DIRECT BY AGNEW

1 Q. Would he ever tell you he was going to do
2 that?

3 A. No, he'd just do it.

4 Q. Did he ever ask your permission if he could do
5 that?

6 A. No.

7 Q. Did he ever say anything to you when he would
8 do it or after he would do it?

9 A. He'd sometimes told me to be quiet and
10 sometimes he'd just smile and laugh.

11 Q. Okay. When these touchings that you're
12 talking about would happen, where would they happen
13 at?

14 A. Wherever we were at.

15 Q. Did it ever happen at your house?

16 A. Yeah.

17 Q. And where were you living at the time?

18 A. Vaucluse.

19 Q. Is that in Aiken County?

20 A. Yes, ma'am.

21 Q. Where else would it happen at?

22 A. My grandparents' house.

23 Q. The one where the first time happened off of
24 Wire Road?

25 A. Yes, ma'am.

Minor 2

- DIRECT BY AGNEW

1 Q. Okay. How often did it happen? I know you
2 said whenever you would see him, but could you put a
3 number on it?

4 A. Well, as I got older it started happening
5 less because I would kind of not go to as many
6 family gatherings just to stay away from him.

7 Q. Okay. You said the first time you were five
8 or six when it happened. Did it happen when you
9 were seven years old?

10 A. Yes.

11 Q. Eight years old?

12 A. Yes.

13 Q. Nine years old?

14 A. Yes, ma'am.

15 Q. And on up as you grew up?

16 A. Yes, ma'am.

17 Q. Did the Defendant ever make you touch him?

18 A. Once or twice.

19 Q. What would he make you touch?

20 A. His penis through his clothes.

21 Q. Okay. What part of his body would he make you
22 touch him with?

23 A. My hand.

24 Q. Would he ever say anything then?

25 A. He just smiled.

Minor 2

- DIRECT BY AGNEW

1 Q. He never said anything about it?

2 A. No. I guess he thought I was funny.

3 Q. Did he ever threaten you?

4 A. He never threatened me to the point where he
5 said he was going to do something but growing up
6 around him I knew, you know.

7 Q. Okay. Well, tell me this. You were talking
8 about minor things and then you asked if I wanted
9 you to talk about a major thing. When's the next
10 time a major thing happened?

11 A. I guess that would be --

12 THE COURT: Speak up loud, please.

13 THE WITNESS: -- right, maybe right after he
14 got married.

15 BY MS. AGNEW:

16 Q. Okay. Do you remember when he got married?

17 A. I don't know exactly.

18 Q. Okay. Were you a little kid?

19 A. I mean, I think I was older. 12, 13, 14.

20 Q. Okay.

21 A. Couldn't drive yet.

22 Q. Okay. What happened right after he got
23 married?

24 A. His wife got sent back to the Philippines.

25 And we were all having Thanksgiving dinner and he

Minor 2

- DIRECT BY AGNEW

1 was flipping through some photos of the beach on
2 his new phone, and he got to a video and he started
3 playing the video.

4 Q. Okay. Let me stop you just a second. You
5 said he started playing the video. Was it a video
6 that just started playing when you flipped to, or
7 how did that work? How did he start playing the
8 video?

9 A. You have to press play.

10 THE COURT: You have to, what?

11 THE WITNESS: You have to press play for it
12 to start.

13 BY MS. AGNEW:

14 Q. And who pressed play?

15 A. James.

16 Q. Okay. What was on that video?

17 A. Of someone sucking his dick.

18 Q. Okay. Did you see that?

19 A. Yes.

20 Q. And you said you were about 14 when it
21 happened?

22 THE COURT: It was a video of the Defendant
23 or some actor, or what?

24 THE WITNESS: No. It was a video of him
25 holding the camera.

Minor 2

- DIRECT BY AGNEW

1 BY MS. AGNEW:

2 Q. What kind of angle was the view from?

3 A. Like, I guess, if you were holding the phone
4 pointing downwards where you could see it.

5 Q. Can you do that where the judge can see you?

6 A. (Complying.) Holding the camera down like at
7 an angle.

8 Q. Okay. Did he say anything when he showed you
9 that video?

10 A. No. He laughed because my sister saw it and
11 she asked what it was and I kind of just snatched
12 the phone away.

13 Q. When you say your sister, who are you talking
14 about?

15 A. **Minor 3** .

16 Q. Was there anybody right there with you all
17 other than you, **Minor 3** and James?

18 A. I think there was other people in the room
19 but there wasn't anyone looking at the phone but
20 us.

21 Q. Okay. Tell me this. You said that he touched
22 you inappropriately for the first time when you were
23 five or six, and that that continued as you grew up
24 and then this happened with the phone. Did you ever
25 tell anybody?

Minor 2

- DIRECT BY AGNEW

1 A. No, ma'am.

2 Q. How come?

3 A. I was scared what people might think because
4 it was my family.

5 Q. Okay. Now, did law enforcement ever come talk
6 to you about this?

7 A. After I told.

8 Q. Okay. What made you tell?

9 A. My mom picked me up from school the day for
10 my 16th birthday and we were looking -- we saw that
11 James was on the news and she asked me what had
12 happened because I guess she knew something
13 happened, she just didn't want to ask.

14 Q. Did you tell her then?

15 A. Yes, ma'am.

16 Q. Okay. Did law enforcement get involved after
17 that?

18 A. Yes, ma'am.

19 Q. Before that had you talked to **Minor 3** or **Minor 1**
20 about what the Defendant did to you?

21 A. No, ma'am.

22 Q. Okay. Now once all of this started with law
23 enforcement and all, did the Defendant try to
24 contact you?

25 A. As in?

Minor 2

- DIRECT BY AGNEW

1 Q. Did he ever message you?

2 A. Before he was in jail?

3 Q. At any point.

4 A. Yeah.

5 Q. Okay. How did he message you?

6 A. Facebook message.

7 Q. Okay.

8 MR. KATONAK: Judge, we're going to object to
9 the introduction of the Facebook message. Of
10 course, it's not signed to any Facebook. There's
11 no foundation of proof that it actually came from
12 my client's computer. Anyone could have gone on
13 his Facebook account and sent this so we're going
14 to object to that.

15 THE COURT: I'll allow it.

16 BY MS. AGNEW:

17 Q. **Minor 2** , I'm showing you what's been marked as
18 State's Exhibit One. Do you recognize that?

19 A. Yes, ma'am.

20 Q. How do you recognize it?

21 A. James sent it to me.

22 Q. Okay. How do you know it's from James?

23 A. It came from his Facebook.

24 Q. Okay. Does it -- I guess, does it say on
25 there -- some of us aren't as familiar with

Minor 2

- DIRECT BY AGNEW

1 Facebook. Does it say who it comes from?

2 A. Yes, ma'am.

3 Q. Okay. And does it say on there who it came

4 from?

5 A. Yes, ma'am.

6 Q. Well, who does it say it came from?

7 A. James Whaley.

8 Q. To send messages on Facebook do you have to

9 have a login with a password?

10 A. Yes, ma'am.

11 Q. And who is this message sent to?

12 A. Me.

13 Q. Okay. Do you have a Facebook account?

14 A. Yes, ma'am.

15 Q. Okay. And does it have a date on there when

16 that was sent?

17 A. Yes, ma'am.

18 Q. What's that date?

19 A. February 20th.

20 Q. Okay. Was that --

21 THE COURT: What year? Does it show what

22 year?

23 THE WITNESS: It doesn't show. Just shows

24 the time.

25 BY MS. AGNEW:

Minor 2

- DIRECT BY AGNEW

1 Q. Do you remember if that was from --

2 A. Wait. It's printed out on my birthday of
3 2011.

4 MS. AGNEW: Your Honor, at this time we would
5 enter State's Exhibit One into evidence.

6 THE COURT: Subject to his objections.

7 MR. KATONAK: Judge, I'm sorry. She just
8 said it was printed out on her birthday. It's the
9 testimony that that's when it was sent or that's
10 simply when she printed the message out on that
11 date?

12 THE COURT: You can ask her on cross-
13 examination.

14 MR. KATONAK: Thank you.

15 (State's Exhibit No. 1, Facebook message,
16 received into evidence.)

17 BY MS. AGNEW:

18 Q. Isn't --

19 THE COURT: Let me ask you a question, ma'am.
20 Exhibit One, is that a picture of Mr. Whaley on the
21 left-hand side?

22 THE WITNESS: Yes, sir.

23 BY MS. AGNEW:

24 Q. And, Minor 2 , when you send something on
25 Facebook, does it always attach your name and your

Minor 2

- CROSS BY KATONAK

1 picture to things that you send?

2 A. Yes, ma'am.

3 Q. Is that how you recognized that it was from
4 the Defendant?

5 A. Yes, ma'am.

6 Q. Now, Minor 2 , we've been talking a lot and
7 using the name James and using the name the
8 Defendant here today. When you say James is the
9 person who did these things to you, what -- which
10 James are you talking about? What's his last name?

11 A. Whaley.

12 Q. Okay. Do you see him here in the courtroom
13 today?

14 A. Yes, ma'am.

15 Q. Can you tell me where he's sitting?

16 A. Right there (indicating).

17 MS. AGNEW: Okay. Your Honor, let the record
18 reflect that she's identified the Defendant.

19 THE COURT: Thank you.

20 BY MS. AGNEW:

21 Q. Give me just a second, Minor 2 . Beg the
22 Court's indulgence. (Pause.)

23 No further questions, Minor 2 . Answer the
24 questions that Mr. Katonak has for you. Okay?

25

Minor 2

- CROSS BY KATONAK

CROSS-EXAMINATION

BY MR. KATONAK:

Q. Ms. Minor 2 now?

A. Yes, sir.

Q. Ms. Minor 2, on that Facebook -- just so I can make sure I'm clear -- it says James Whaley, I take it, sent February 20th, 8:10. Does not show a year. Now at the bottom here there's a date of February 26, 2011?

A. Uh-huh.

Q. So, was it printed out six days after it was sent?

A. Yes, sir. We printed it out when ...

Q. Okay. Did you respond to him when he sent you that Facebook message?

A. No, sir.

Q. And was he a Facebook friend of yours?

A. I don't think he was really a friend but you can send messages whether you're a friend or not.

Q. Okay. Now your testimony is that the first incident occurred when you were five or six years old?

A. Yes.

Q. And you were born , 1991?

A. '94.

Minor 2

- CROSS BY KATONAK

1 Q. '94. And so if you're five or six, then it
2 would have been approximately 1999 to 2000 when the
3 first incident occurred?

4 A. Somewhere around then.

5 Q. Okay. Could it have been after that?

6 A. It could have been, you know, my parents had
7 just married and my brother was born.

8 Q. And why I asked you that, ma'am, is that the
9 indictment says the event happened between February
10 26, 2001, and February 25th, 2006. Thus you would
11 have been between the age of seven and -- started at
12 the age of seven. Could that have been the case?

13 A. It could have been. I know my parents had
14 just married and my brother was just born.

15 Q. Okay. And your testimony was that you hadn't
16 mentioned this to anyone prior to it coming out that
17 James was charged with a case against your aunt?
18 Let me rephrase that.

19 You testified that you saw him on TV?

20 A. Yes.

21 Q. And what was it you saw him on TV in regards
22 to?

23 A. To the two little girls.

24 Q. Okay. And that would be something not
25 involved that we've heard any testimony about today?

Minor 2

- CROSS BY KATONAK

1 A. It's not involved in this case.

2 Q. Okay. At that time -- and I believe that was
3 in 2011?

4 A. Yeah.

5 Q. Okay. At that time are you aware that your
6 Aunt Minor 1 had made an allegation in 2009?

7 A. Yes.

8 Q. Okay. And so, though, she made an allegation
9 in 2009 you hadn't told anyone about what he had
10 done to you at that time, had you?

11 A. No.

12 Q. Okay. Between 2009 and when you made
13 allegation in 2011, how many times did you see him?
14 Him being Mr. Whaley.

15 A. Not that many times. Not a lot.

16 Q. Okay. When you say not that many, are we
17 talking three times or 23 times?

18 A. I'm saying I didn't see him every week.

19 Q. Again, ma'am, I don't know what that means.
20 Does that mean you saw him every two weeks?

21 A. I'm not sure. I didn't see him as much as I
22 did when I was younger.

23 Q. The indictments states again these occurred
24 between February 26, 2001, and February 25th, 2006.

25 So, am I to assume after February of 2006 he never

Minor 2

- CROSS BY KATONAK

1 did anything illicit to you again?

2 A. No. It means it was nothing serious, out of
3 the ordinary. As in he didn't get on top of me
4 again. He just touched me and kissed me.

5 Q. Okay. Since you knew your Aunt Minor 1 was
6 reporting it back in 2009, you didn't think maybe
7 you needed to speak up to really put this guy away?

8 A. I thought about it.

9 Q. Thought about it?

10 A. Yeah.

11 Q. Did you talk to any of your friends about it?

12 A. No.

13 Q. Okay. Did you talk to any counselor at school
14 about it?

15 A. No.

16 Q. Did you talk to your little sister about it?

17 A. No.

18 Q. Had you ever asked -- before you reported it,
19 did you ever ask your sister if anything had
20 happened to her?

21 A. No.

22 Q. I'm sure you love your sister, right?

23 A. Yes.

24 Q. You're concerned about her well being?

25 A. Yes.

Minor 2

- CROSS BY KATONAK

1 Q. Yes?

2 A. Yes.

3 Q. Okay. Were you concerned that he may have
4 done something to her?

5 A. I was, but he didn't go around her like he
6 came around me.

7 Q. Were you around your sister all the time?

8 A. Not all the time.

9 Q. Now as big sister, wouldn't you want to look
10 out for your sister and say, hey, watch out for
11 James, he might do things, Uncle James is bad news.
12 Wouldn't you say something to your sister like that?

13 A. I do look out for my sister but I wasn't
14 going to come out and let everybody know.

15 Q. Well, truth be known, you never once warned
16 your little sister that Uncle James might do things,
17 did you?

18 A. That doesn't mean I didn't look out for her.

19 Q. Now in regards to this video, I believe you
20 were at the family Thanksgiving?

21 A. Yes.

22 Q. And where was the Thanksgiving taking place?

23 A. It was at his dad's house on .

24 Q. And who all was there on that day?

25 A. Our whole family except for his ex-wife.

Minor 2

- CROSS BY KATONAK

1 Q. And when we say whole family, are we talking
2 10 people or are we talking 25 people?

3 A. Maybe 15.

4 Q. 15. And you said you were in a room. Was it
5 a dining room?

6 A. It was a room beside the kitchen.

7 Q. Beside the kitchen. And everyone else was --
8 was it before you had the turkey dinner or after you
9 had the turkey dinner?

10 A. It was more like during dessert.

11 Q. During dessert. Okay. So people are still,
12 like, milling around at that time, right?

13 A. Yeah.

14 Q. And do you go over and sit down by him, or
15 does he come sit by you?

16 A. He came and sat at me and my sister's table.

17 Q. Okay. And who else was at that table?

18 A. Just us.

19 Q. And when you say your table, do we have, like,
20 the adults' table and the kids' table? What do we
21 have here?

22 A. No. It was really people were eating in the
23 living room, in the kitchen and that room.
24 Everybody was spread out.

25 Q. Everybody was spread out. All right. So he

Minor 2

- CROSS BY KATONAK

1 comes over and sits down beside you, and what does
2 he say?

3 A. He asks if he wanted to see some pictures.
4 We know he just got back from vacation.

5 Q. And what kind of pictures does he show you?

6 A. Like the beach, different pictures of him,
7 regular beach stuff.

8 Q. Okay. And are -- these are all on his phone?

9 A. Yes.

10 Q. And is this a i-Phone or a Droid? What kind
11 of phone is this?

12 A. I don't know. It was a phone. It wasn't,
13 like, any kind of special phone.

14 Q. Kind of like a little flip phone, small little
15 screen?

16 A. It was a regular phone.

17 Q. Would it have been a screen size about like
18 that screen size (indicating)?

19 A. Might have been a little smaller.

20 Q. All right. So you're flipping through
21 pictures, and then he flips through and a video
22 comes up?

23 A. Yeah.

24 Q. Does he say, Hey, girls, watch this, you're
25 going to enjoy this?

Minor 2

- CROSS BY KATONAK

1 A. No. He didn't say anything. He pressed
2 play.
3 Q. He pushed play?
4 A. Yes.
5 Q. And how long was that video on for?
6 A. It wasn't on that long. Once I realized what
7 it was I pushed the phone away.
8 Q. Was your grandmother there in the house?
9 A. Not my -- my nana was there.
10 Q. So your nana was there. Your mom was there?
11 A. Yeah.
12 Q. Other adults there?
13 A. Yes.
14 Q. All right. And so how long would you say you
15 watched this video?
16 A. Long enough to realize what it was.
17 Q. And you said it was him in the video and
18 someone performing oral sex on him; is that right?
19 A. Yes.
20 Q. And you said the angle was from basically here
21 showing going down?
22 A. Side.
23 Q. All right. Did it ever show his face?
24 A. No.
25 Q. So, actually you don't know if it's him or

Minor 2

- CROSS BY KATONAK

1 not, do you?

2 A. I can't say that it was him for sure but I'm
3 pretty sure it was his wife in it.

4 Q. Well, was it him or was it not on the video
5 from what you saw? You saw the video. Was it
6 Mr. Whaley or not?

7 A. Well, if you have your wife sucking someone's
8 dick I suppose it's yours if it's on your phone.

9 Q. Would you agree with me that's pretty bold
10 behavior to be showing two nieces a video of your
11 wife giving you oral sex with the whole family there
12 for, waiting for dessert to come out?

13 A. It's normal for him.

14 Q. How many other times has he ever shown you
15 videos?

16 A. This is the only time he's ever actually
17 showed me a video.

18 Q. Okay. So in fact it's not normal since he's
19 never done that before?

20 A. It's normal for him to do stupid things
21 around a lot of people.

22 Q. Did you tell anyone of the family, Hey, Uncle
23 James just showed us a nasty video, gross Uncle
24 James. Did you say anything to anyone?

25 A. No.

Minor 2

- REDIRECT BY AGNEW

1 Q. In fact, you never even said anything until
2 after he was on TV, right?

3 A. In the newspaper, yeah.

4 Q. And this family Thanksgiving, was this at
5 Road house?

6 A. Yes.

7 Q. And whose home was that?

8 A. His dad and his stepmom's.

9 MR. KATONAK: That's all the questions I
10 have.

11 THE COURT: Redirect?

12 MS. AGNEW: Very briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. AGNEW:

15 Q. **Minor 2** , Mr. Katonak asked you a bunch of
16 questions about dates. And he was talking about how
17 the indictment says from the time you were seven
18 from the time you were 12 or 13. Did the Defendant
19 touch you inappropriately when you were seven?

20 A. Yes.

21 Q. Did he touch your body with his body
22 inappropriately when you were seven?

23 A. Yes.

24 Q. How about when you were eight?

25 A. Yes, ma'am.

Minor 3 - DIRECT BY AGNEW

1 Q. How about when you were nine?

2 A. Yes.

3 Q. How about when you were 10?

4 A. Yes.

5 Q. 11?

6 A. Yes.

7 Q. 12?

8 A. Yes.

9 Q. 13?

10 A. Yes ma'am.

11 Q. Each time he did that, did that happen in
12 Aiken County?

13 A. Yes, ma'am.

14 Q. He also asked you about not telling everybody
15 when Minor 1 told in 2009. How come you didn't tell
16 everybody after Minor 1 told?

17 A. Because of how my family basically shunned
18 her and called her a liar because she told.

19 MS. AGNEW: No further questions.

20 THE COURT: You may step down. Next witness,
21 please.

22 MS. AGNEW: State calls Minor 3 .

23 Minor 3 , having been duly sworn, was
24 examined and testified as follows:

25 THE CLERK: Please have a seat in the witness

Minor 3 - DIRECT BY AGNEW

1 box. State your full name for the Court and spell
2 your last.

3 THE WITNESS: Minor 3 , Minor 3 .

4 DIRECT EXAMINATION

5 BY MS. AGNEW:

6 Q. Minor 3 , can you tell me how old you are?

7 A. 18.

8 Q. Okay. When's your birthday?

9 A. , 1995.

10 Q. All right. I'm going to ask you the same
11 thing I asked your sister. Will you hold that
12 microphone and talk into it real loud so the judge
13 can hear you?

14 A. Yes, ma'am.

15 Q. Louder than that. Okay?

16 Where do you live right now?

17 A. Off of Road.

18 Q. Is that in Aiken County?

19 A. Yes, ma'am.

20 Q. Will you talk a little bit louder for me? You
21 said -- and I'm sorry. You said you were 18?

22 A. Yes, ma'am.

23 Q. Are you still in school?

24 A. Yes, ma'am.

25 Q. Where do you go to school?

Minor 3

- DIRECT BY AGNEW

1 A. High.

2 Q. And what year are you?

3 A. I'm a senior.

4 Q. Are you going to graduate in May?

5 A. Yes, ma'am.

6 Q. Are you related to the Defendant?

7 A. Yes, ma'am.

8 Q. How are you related to him?

9 A. He's my uncle.

10 Q. Your uncle. Do you know the age difference

11 between you and the Defendant?

12 A. No, ma'am.

13 Q. Is he your age?

14 A. No, ma'am.

15 Q. Is he a couple years older than you?

16 A. Many years older.

17 Q. Okay. Did you see him a lot growing up?

18 A. Yes, ma'am.

19 Q. Where would you see him?

20 A. Family gatherings.

21 Q. Okay. All the times that you saw him growing

22 up, did he ever do anything inappropriate to you?

23 A. Yes, ma'am.

24 Q. When was the first time something bad

25 happened?

Minor 3

- DIRECT BY AGNEW

1 A. When I was about six.

2 Q. Okay. Where did it happen?

3 A. At my house.

4 Q. Okay. If you were born in 1995 and something
5 happened when you were six, what year would that be?

6 A. 2001.

7 Q. Okay. And at that house -- was that in Aiken
8 County?

9 A. Yes, ma'am.

10 Q. Okay. Can you tell the judge what happened
11 that time?

12 A. James was baby sitting me and I believe
13 Minor 2 was there.

14 Q. Talk a little bit louder. Okay?

15 A. Yes, ma'am. But when he was baby sitting me
16 he showed me his penis.

17 THE COURT: I'm sorry. You're going to have
18 to speak louder.

19 THE WITNESS: When he was baby sitting me he
20 showed me his penis.

21 BY MS. AGNEW:

22 Q. Okay. You said you were about six. Do you
23 remember what you were wearing?

24 A. No, ma'am.

25 Q. Okay. Do you remember what he was wearing?

Minor 3

- DIRECT BY AGNEW

1 A. No, ma'am.

2 Q. Okay. And when you say he showed you his
3 penis, was that outside of his clothes?

4 A. Yes, ma'am.

5 Q. Did he say anything to you when he did it?

6 A. He told me -- he told me to look down.

7 Q. Okay. To look down at his penis?

8 A. Yes, ma'am.

9 Q. Okay. Did he touch you with it?

10 A. No, ma'am.

11 Q. Did he make you touch it?

12 A. No, ma'am.

13 Q. Okay. How long did he have his penis out
14 there?

15 A. For a couple of seconds, then I ran away.

16 Q. Okay. Did you tell anybody what happened?

17 A. Yes, ma'am.

18 Q. Who did you tell?

19 A. My mom.

20 Q. Did anything happen after you told your mom?

21 A. What do you mean?

22 Q. Did he get in trouble?

23 A. I'm not sure. I told my mama and -- is
24 whenever he had left and we was in Augusta and she
25 called him and said, I'm going to kill you.

Minor 3

- DIRECT BY AGNEW

1 THE COURT: Ma'am, you're going to have to
2 speak up.

3 THE WITNESS: He --

4 BY MS. AGNEW:

5 Q. Just talk loud and tell the judge what you
6 just said.

7 A. My mom called, called him and said, I'm going
8 to kill you.

9 MR. KATONAK: Objection to what her mother
10 may have said.

11 THE COURT: Don't tell me what your mama
12 said.

13 MS. AGNEW: It's not for the truth of the
14 matter, Judge.

15 THE COURT: Well, just go ahead.

16 BY MS. AGNEW:

17 Q. You said that was in Augusta. But he showed
18 you his penis. Was that in Aiken County where he
19 did that?

20 A. Yes, ma'am.

21 Q. After he showed you his penis did he ever do
22 anything inappropriate towards you after that?

23 A. Yes, ma'am.

24 Q. Okay. What happened after that?

25 A. He would just touch my legs and touch me and

Minor 3 - DIRECT BY AGNEW

1 then he showed me a video.

2 Q. Okay. When he would touch you did you want
3 him to touch you?

4 A. No, ma'am.

5 Q. Would he ask permission to touch you?

6 A. No, ma'am.

7 Q. Okay. What would he touch you with?

8 A. His hands.

9 MR. KATONAK: And, Your Honor, we are going to
10 object to anything -- he's not indicted with this
11 witness for any improper touching. The indictments
12 of her are indecent exposure and the disseminating
13 materials.

14 THE COURT: That's correct. He's only
15 indicted for indecent exposure to **Minor 3** and
16 disseminating harmful materials.

17 MS. AGNEW: We'll move on.

18 THE COURT: Thank you.

19 BY MS. AGNEW:

20 Q. **Minor 3** , you just said something about showing
21 you a video. Do you remember when that was?

22 A. It was, I was out of fifth grade. I was in
23 middle school.

24 THE COURT: **Minor 3** , please speak up. I don't
25 think I'm that hard of hearing but you're talking

Minor 3

- DIRECT BY AGNEW

1 awfully quiet.

2 THE WITNESS: I'm sorry. I was in middle
3 school.

4 BY MS. AGNEW:

5 Q. And you can put that microphone right up to
6 your mouth. Okay? So if you were just out of fifth
7 grade, were you 11 or 12?

8 A. I think I was 12.

9 Q. Okay. And I know we're going to do some more
10 math, but if you were born in 1995 and you were 12,
11 what years would that span?

12 A. 2007.

13 Q. Okay. And you would turn -- you wouldn't turn
14 13 until 2008; is that right?

15 A. (Nods head.) Yes.

16 Q. Okay. So you said you were in middle school.
17 Where were you at?

18 A. I was home schooled.

19 Q. Now where were you at when you saw the video?

20 A. I was at my Papa Larry's house.

21 Q. Where is that at?

22 A. Off .

23 Q. Is that in Aiken County?

24 A. Yes, ma'am.

25 Q. And what was going on that day?

Minor 3

- DIRECT BY AGNEW

1 A. We was having Thanksgiving.

2 Q. Okay. And who was around when you saw this

3 video?

4 A. My sister and James was standing there.

5 Q. Talk loud and into the microphone.

6 A. And the family was around.

7 Q. And what was the video on?

8 A. It was on a cell phone.

9 Q. Okay. And how did he show it to you?

10 A. He was holding it and pressed play.

11 Q. What was on that video?

12 A. Someone giving oral sex.

13 Q. Okay. Did you know either of the people on

14 the video or could you tell?

15 A. You could tell the girl.

16 Q. Okay. Who was the girl?

17 A. His wife, Joy.

18 Q. Okay. Did he say anything to you when he

19 showed y'all that video?

20 A. No, ma'am.

21 Q. Okay. Did you tell anybody about that?

22 A. No, ma'am.

23 Q. Did you ever have to talk to law enforcement

24 about this?

25 A. Yes, ma'am.

Minor 3 - DIRECT BY AGNEW

1 Q. Okay. Did you call the police?

2 A. No, ma'am.

3 Q. Okay. How did the police come to you?

4 A. Whenever my mom took me to the place.

5 Q. Okay. When you said the place, are you

6 talking about the Child Advocacy Center?

7 A. Yeah.

8 Q. Okay. Now, when all of this was going on did

9 the Defendant ever try to contact you?

10 A. He sent me a Facebook message.

11 Q. Okay.

12 MR. KATONAK: Judge, we'd have the same

13 objection to this picture.

14 THE COURT: Same ruling.

15 BY MS. AGNEW:

16 Q. Now, Minor 3 , I'm going to show you what's been

17 marked as State's Exhibit Two. Do you recognize

18 that?

19 A. Yes, ma'am.

20 Q. What is it?

21 A. A message James sent me.

22 Q. How do you know James sent it to you?

23 A. Because it's off his Facebook.

24 Q. Does it got his name on there?

25 A. Yes, ma'am.

Minor 3 - DIRECT BY AGNEW

1 Q. Got his picture on there?

2 A. Yes, ma'am.

3 Q. And do you have a -- have to have your own
4 password to use a Facebook account?

5 A. Yes, ma'am.

6 Q. Whose Facebook account was that message sent
7 to?

8 A. Mine.

9 Q. Okay. And how do you know it was sent to
10 yours?

11 A. Because it's my picture and my name.

12 Q. Okay. Does it say when that was sent?

13 A. February 20th.

14 Q. Okay. Is that 2011?

15 A. Yes, ma'am.

16 Q. Okay.

17 Your Honor, at this time the State would offer
18 State's Exhibit Two into evidence.

19 THE COURT: All right. Subject to his
20 objections.

21 MS. AGNEW: Will you do me a favor and hand
22 that up?

23 THE WITNESS: Yes, ma'am.

24 (State's Exhibit No. 2, Facebook message,
25 received into evidence.)

Minor 3

- DIRECT BY AGNEW

1 BY MS. AGNEW:

2 Q. Did you respond to that Facebook message?

3 A. No, ma'am.

4 Q. Okay. You got to keep talking loud for me.

5 We're almost done. Okay?

6 A. Okay.

7 Q. Did you ever talk to Minor 2 or Minor 1 about
8 what happened?

9 A. No, ma'am -- well, yes, ma'am.

10 Q. Did you talk to them before all of this came
11 out?

12 A. No, ma'am.

13 Q. Okay. Tell me this, Minor 3. When you talk
14 about the James that did these things to you, what
15 James is that? Does he have a last name?

16 A. Yes, ma'am.

17 Q. What is it?

18 A. Whaley.

19 Q. Do you see him in the courtroom today?

20 A. Yes, ma'am.

21 Q. Can you tell me where he's sitting?

22 A. Right there (indicating).

23 MS. AGNEW: Your Honor, let the record
24 reflect that the witness has identified the
25 Defendant.

Minor 3 - CROSS BY KATONAK

1 Minor 3 , give me two seconds. Okay.

2 (Pause.)

3 MS. AGNEW: I have no further questions.

4 Answer any questions Mr. Katonak has for you.

5 Okay?

6 THE COURT: Mr. Katonak.

7 MR. KATONAK: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. KATONAK:

10 Q. Now, Minor 3 , you stated you were probably six

11 years old when the incident occurred where

12 Mr. Whaley showed you his penis?

13 A. Yes, sir.

14 Q. Okay. And you said that he was baby sitting

15 you?

16 A. Yes, sir.

17 Q. And then you stated that after it happened you

18 told your mom about it?

19 A. Yes, sir.

20 Q. To your knowledge did your mom call law

21 enforcement at that time?

22 A. No, sir.

23 Q. And if I'm correct, you stated that you saw

24 it. It was a couple seconds?

25 A. Yes, sir.

Minor 3

- CROSS BY KATONAK

1 Q. I have no other indictment for indecent
2 exposure. So is that -- is that the only time he's
3 ever exposed himself like that to you?

4 A. Yes, sir.

5 THE COURT: And when did that happen again,
6 ma'am?

7 THE WITNESS: When I was six.

8 THE COURT: When you were six?

9 THE WITNESS: Yes, sir.

10 BY MR. KATONAK:

11 Q. And then you didn't tell the police about it
12 till 2011, correct?

13 A. Yes, sir.

14 Q. And it wasn't until these other cases came out
15 that that's when you met with law enforcement and
16 told them about that incident, right?

17 A. Yes, sir.

18 Q. If it wasn't for these other allegations
19 coming out you would have never brought it up to the
20 police, right? Correct?

21 A. Yes, sir.

22 Q. Did you even -- how many years later was it --
23 11 years later, did you even remember by yourself or
24 did your mom have to tell you about it?

25 A. I remembered.

Minor 3 - CROSS BY KATONAK

1 Q. So 11 years -- when you were five or six you
2 remembered it 11 years later?

3 A. Yes, sir.

4 Q. What grade of school were you in at that time?

5 A. I wasn't in school yet.

6 Q. Where were you living at at that time?

7 A. Road.

8 Q. And who was living there with you?

9 A. My mom, dad, sister and little brother.

10 Q. Since that incident occurred, how many times
11 did you say you'd been around Mr. Whaley?

12 A. Couple times a month.

13 Q. Couple times a month?

14 A. (Nods head.)

15 Q. And would your mom bring you around or would
16 he come over? How would that work out?

17 A. We'd usually go to where he was, to family
18 things.

19 Q. Family functions?

20 A. Yeah.

21 Q. So, your -- and your mom would take you around
22 him?

23 A. Yes, ma'am -- yes, sir, I mean.

24 Q. Okay. So even though your mom knew that you
25 had seen his penis she continued to take you around

Minor 3

- CROSS BY KATONAK

1 him?

2 A. Yes, sir.

3 Q. Again, you said to your knowledge she never
4 called law enforcement back in 2001, correct?

5 A. No, sir.

6 Q. Now with the video, again, I asked your sister
7 about it. Now if I'm right this is at the family
8 Thanksgiving?

9 A. Yes, sir.

10 Q. And so we got memaws and grandmas and uncles
11 and aunts and everyone there?

12 A. Yes, sir.

13 Q. And you and your sister are at one table?

14 A. Yes, sir.

15 Q. And would it be correct to say that it was
16 after you ate the turkey but I guess you were
17 waiting on dessert to come about?

18 A. Yes, sir.

19 Q. And he sat down with the two of you?

20 A. Uh-huh. Yes, sir.

21 Q. And, again, the phone, was it like the size of
22 an i-Phone? You're in high school so I know that
23 every one of your friends has an i-Phone or a Droid.
24 Was it a screen like that size or was it like a
25 small screen?

Minor 3

- CROSS BY KATONAK

1 A. It wasn't as big as a i-Phone screen but it
2 wasn't as small as a flip phone screen either.

3 Q. It's my understanding he just got back from a
4 vacation.

5 A. Yes, sir.

6 Q. So he was flipping through showing you
7 pictures?

8 A. Yes, sir.

9 Q. If he did show you a video do you think maybe
10 it was accidental as he was going through pictures
11 of a video there?

12 A. No, sir.

13 Q. How long did the video play for?

14 A. About 30 seconds.

15 Q. Okay. And did you say anything?

16 A. Yes, sir. I watched it.

17 Q. Did you say, oh, that's gross, or, shut that
18 off or --

19 A. No, I didn't realize what it was.

20 Q. And while it's being shown, the whole family's
21 milling around waiting for peach cobbler?

22 A. Yes, sir.

23 Q. Looking at the Facebook message --

24 THE COURT: Right here.

25 MR. KATONAK: Thank you.

Minor 3 - CROSS BY KATONAK

1 BY MR. KATONAK:

2 Q. Can you look at State Exhibit Two? It shows
3 the page of Minor 3 . That's you, correct?

4 A. Yes, sir.

5 Q. Can you look at that and then Exhibit One
6 shows Minor 2 . That's your sister,
7 right?

8 A. Yes, sir.

9 Q. If you can read the messages in both for me
10 real quickly? Okay? Not out loud but just to
11 yourself.

12 A. (Complying.)

13 Q. Tell me when you're finished.

14 A. I'm done.

15 Q. Ma'am, would you agree with me that except for
16 who it's addressed to, either you or your sister,
17 the entire remainder of that paragraph for each of
18 you is identical, correct?

19 A. There's a few changes, yes.

20 Q. Okay. Does it look almost like someone cut
21 and pasted on one and then sent it to the other?

22 A. Not really.

23 Q. No? Okay. So you don't believe they're
24 almost identical messages?

25 A. No.

Minor 3

- CROSS BY KATONAK

1 Q. And it's fair to say that he doesn't say he's
2 sorry for exposing himself to you or sorry for
3 beating you at a game of horse shoes, right?

4 A. Could you repeat that, please?

5 Q. He's not saying what he's sorry for, correct?

6 A. No, sir.

7 Q. He may have been mean to you six months
8 earlier or yelled at you. He's apologizing for
9 that, right?

10 A. I guess. I don't understand what you just
11 asked me.

12 Q. We don't know what he's apologizing for, do
13 we?

14 A. Not on certain things, no, sir.

15 Q. Okay. Which Thanksgiving did this occur at,
16 ma'am? The indictment states between February 26,
17 '08, and February 25th, 2010. Since we know it's
18 Thanksgiving it has to be either Thanksgiving of --
19 well, it has to be Thanksgiving of '09. Was it
20 2009?

21 A. It's when I was 12 years old.

22 THE COURT: When you were, what?

23 THE WITNESS: When I was 12.

24 THE COURT: Well, what year would that be?

25 BY MR. KATONAK:

ALECIA DIANE POWELL - DIRECT BY AGNEW

1 Q. What year were you born?

2 A. 1995.

3 THE COURT: So that would be --

4 BY MR. KATONAK:

5 Q. What's your exact birthday again?

6 A. .

7 THE COURT: 1995. And how old were you when
8 this happened?

9 THE WITNESS: 12.

10 THE COURT: So what year would that have
11 been? Add 12 to '95. 2000, what, seven maybe?

12 THE WITNESS: Yes, sir.

13 MR. KATONAK: No other questions, Your Honor.

14 THE COURT: Redirect?

15 MS. AGNEW: No, Your Honor.

16 THE COURT: Ma'am, all right, you may step
17 down. You got a 10-minute witness?

18 MS. AGNEW: Yes, Your Honor. State calls
19 Alecia Powell.

20 ALECIA DIANE POWELL, having been duly sworn,
21 was examined and testified as follows:

22 THE CLERK: Please have a seat in the witness
23 box. State your full name for the Court and spell
24 your last.

25 THE WITNESS: Alecia Diane Powell,

ALECIA DIANE POWELL - DIRECT BY AGNEW

1 P-O-W-E-L-L.

2 DIRECT EXAMINATION

3 BY MS. AGNEW:

4 Q. Alecia, this is going to seem kind of like a
5 weird question. Who are you in relationship to this
6 case?

7 A. I am Minor 2 and Minor 3 's mother and James'
8 sister.

9 Q. And how old are you?

10 A. I'm 39.

11 THE COURT: 39?

12 THE WITNESS: Yes, sir.

13 THE COURT: So you're the sister of the first
14 lady that testified; is that correct?

15 THE WITNESS: I'm the half-sister of Minor 1.

16 THE COURT: Half-sister Minor 1 and the mother
17 of the two young girls?

18 THE WITNESS: Yes, sir.

19 MS. AGNEW: Is James your biological brother?

20 THE WITNESS: Yes, he is.

21 MS. AGNEW: And which parent do you share
22 with Minor 1?

23 THE WITNESS: Our father, same person.

24 BY MS. AGNEW:

25 Q. Do you have any other brothers and sisters?

ALECIA DIANE POWELL - DIRECT BY AGNEW

1 A. I have one half-sister, Minor 1, one
2 half-brother, Robbie, and a biological whole
3 brother, William, and a whole brother, James.

4 Q. Out of all those kids, who's the oldest?

5 A. I am.

6 Q. Who's next oldest?

7 A. James is.

8 Q. Do you know how old he is?

9 A. I believe he's 35.

10 Q. Okay.

11 THE COURT: As of today? He's 35 as of
12 today?

13 THE WITNESS: Yes, sir.

14 BY MS. AGNEW:

15 Q. So he's just a few years younger than you?

16 A. I believe he's four years younger than me,
17 yes.

18 Q. Okay. Now tell me, Alecia, where do you live?

19 A. Road.

20 Q. That's here in Aiken?

21 A. Yes, ma'am.

22 Q. Is that the same Road we've been
23 talking a lot about today?

24 A. Yes, ma'am.

25 Q. Tell me this. When all of this was going on,

ALECIA DIANE POWELL - DIRECT BY AGNEW

1 did the Defendant ever try to contact you?

2 A. Once he was arrested and went to jail, yes.
3 He sent me message through my brother and then he
4 sent me some letters, and he sent me a Facebook
5 message.

6 Q. Okay.

7 MR. KATONAK: Same objection.

8 THE COURT: Same ruling.

9 BY MS. AGNEW:

10 Q. Alecia, I'm showing you what's been marked as
11 State's Exhibit Three. Do you recognize that?

12 A. Yes, ma'am.

13 Q. What is it?

14 A. It's a Facebook message from James Whaley to
15 me.

16 Q. How do you know it's from James?

17 A. It has his name and profile picture.

18 Q. How do you know it's to you?

19 A. It has my name and my profile picture.

20 Q. Did you receive it at your computer?

21 A. Yes, I did.

22 Q. Okay. Do you know when that message was sent?

23 A. It was sent on February the 20th.

24 Q. Is that 2011?

25 A. It was printed out February 26, 2011.

ALECIA DIANE POWELL - DIRECT BY AGNEW

1 Q. Did you print it out just a couple days after
2 it was sent?

3 A. Yes, I printed all three of them out.

4 MS. AGNEW: Your Honor, at this time the
5 State would move State's Exhibit Three into
6 evidence.

7 THE COURT: Subject to the objections by the
8 Defendant.

9 (State's Exhibit No. 3, Facebook message,
10 received into evidence.)

11 BY MS. AGNEW:

12 Q. Will you hand that up to the judge?

13 A. (Complying.)

14 Q. Now you said you printed all three of them
15 out. What other two messages are you talking about?

16 A. I printed out the message that **Minor 2**
17 received and the message that **Minor 3** received.

18 Q. And what did you do with those messages?

19 A. I turned them in to the Child Advocacy
20 Center.

21 Q. Okay. And just to clarify, you said that you
22 were the oldest child?

23 A. Yes, ma'am.

24 Q. And James is four years younger than you?

25 A. Yes, ma'am.

ALECIA DIANE POWELL - CROSS BY KATONAK

1 Q. So he would be 35 today?

2 A. As of today, yes.

3 Q. Okay.

4 MS. AGNEW: I don't have any further questions.

5 THE COURT: Cross?

6 MR. KATONAK: If I could have one second,
7 Your Honor, to discuss something with my client.

8 (Pause.)

9 CROSS-EXAMINATION

10 BY MR. KATONAK:

11 Q. Ms. Powell, your younger daughter testified in
12 regards to the indecent exposure charge. And she
13 states in 2001 that James showed her his penis. Do
14 you recall that event?

15 A. Yes, I do.

16 Q. And he was baby sitting her at that time?

17 A. He was -- yes, he was watching her until I
18 got home from work.

19 Q. And so when you got home she had mentioned
20 that she saw Uncle James' penis?

21 A. When I got home from work she said, Mama,
22 don't ever let James watch me again. He's gross.

23 Q. And, what did law enforcement say when you
24 called them about it at that time?

25 A. I didn't call law enforcement. I called him.

ALECIA DIANE POWELL - CROSS BY KATONAK

1 Q. Okay. So until 2011 this was never reported
2 to law enforcement?

3 A. No, it wasn't.

4 Q. And I have no doubt you love your daughters,
5 correct?

6 A. Yes, I do.

7 Q. And you want to protect them in case something
8 did happen to them, correct?

9 A. Yes, I do.

10 Q. In regards to the video incident that occurred
11 at the family Thanksgiving, were you at that
12 Thanksgiving?

13 A. Yes, I was.

14 Q. And as they testified, were there 15 or so
15 family members there at that Thanksgiving?

16 A. Probably that many.

17 Q. Okay. Did either of the girls at that time
18 mention that Uncle James had showed them an obscene
19 video on his phone?

20 A. They told me they were ready to leave.

21 Q. Okay. The question was: Did either of them
22 say that Uncle James had showed them an obscene
23 video on his phone?

24 A. They said he showed a video but didn't say
25 what it was.

ALECIA DIANE POWELL - CROSS BY KATONAK

1 Q. They said he showed a video but didn't mention
2 what it was?

3 A. No.

4 Q. And in fact, they didn't report this to the
5 police until all these other allegations came out in
6 2011, correct?

7 A. That's correct.

8 Q. Exhibit Three, Your Honor.

9 Your response to Mr. Whaley's Facebook message
10 is: James, I love you so very much. And ends with,
11 I hope we can be close soon. I do want a
12 relationship. I want us to be able to hang out and
13 be a family.

14 A. Correct.

15 THE COURT: And when was that sent now?
16 2011? Ma'am?

17 THE WITNESS: Yes, sir. That was sent before
18 he went to jail. Before I knew what was going on.

19 BY MR. KATONAK:

20 Q. The date -- her response dated February 21st,
21 2011, I assume.

22 A. It's not dated 2011. It was sent on the same
23 day that I received it, February the 20th. And I
24 didn't know about anything until the 26th.

25 Q. Evidently you weren't worried about the

ALECIA DIANE POWELL - CROSS BY KATONAK

1 indecent exposure if you wanted the family to do
2 things with him in the future, correct?

3 A. That's not correct. I was very worried about
4 the indecent exposure. That's why I threw him out
5 of my house and called my dad and he said, James --

6 THE COURT: Ma'am, you can't testify to what
7 your dad said.

8 THE WITNESS: Okay. James Whaley told me
9 that it was an accident, he stood up and his pants
10 fell down. And I didn't feel like that was a
11 reason to call law enforcement.

12 BY MR. KATONAK:

13 Q. Okay. And in fact is that what could have
14 happened? Could he have stood up, his pants fell
15 down and your daughter sees his penis?

16 A. That's not what my daughter stated happened,
17 but that's what he stated happened.

18 Q. So basically based on the fact he said that
19 you didn't call law enforcement, right?

20 A. I didn't call law enforcement because I
21 didn't know if a six-year-old understood what
22 happened compared to a 20-some-year-old.

23 Q. The truth of the matter, no one until your
24 half-sister comes out with these allegations in
25 2011, that's the time you say, hey, let's go and

1 charge James with everything we can and pile on the
2 case?

3 A. Wrong. I didn't charge him with that until
4 after **Minor 2** came out and I realized it was an
5 ongoing problem and it wasn't a one-time thing.

6 Q. And you knew your sister had made these
7 allegations against him in 2009 originally, right?

8 A. Yes, I did.

9 Q. You knew about the indecent exposure at that
10 time, right?

11 A. Yes, I did.

12 Q. But you remained silent. You never went to
13 the police, right?

14 A. Wrong. I went to my family and they knew
15 about it.

16 Q. You never went to the police, did you?

17 A. No, I didn't go to the police.

18 Q. Is anyone in your family in law enforcement?

19 A. No, they're not.

20 MR. KATONAK: No other questions.

21 THE COURT: You may step down, Ms. Powell.

22 Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Any additional witnesses?

25 MS. AGNEW: The State intends to call two

1 more witnesses, Judge.

2 THE COURT: Who are they?

3 MS. AGNEW: Renee Whaley and the
4 investigating officer.

5 THE COURT: How long will they be?

6 MS. AGNEW: Ms. Whaley should be relatively
7 short. The investigating officer shouldn't be too
8 lengthy but probably more than five minutes.

9 THE COURT: Has anyone seen David Hayes? Is
10 he around? Know anything about that situation?

11 THE OFFICER: Ms. Alves was in the back.

12 MR. WEEKS: Last we heard it's still a trial,
13 Judge.

14 MR. KATONAK: Judge, my cross-examination of
15 the investigator may take a while.

16 THE COURT: I'm trying to get a handle on
17 things. All right. Let's break for the day. The
18 Defendant's obviously in custody. Let me see the
19 lawyers in chambers. Mr. Solicitor, are you still
20 over there? Let me see you. If you'd get David
21 Hayes for me. Ms. Alves, is David Hayes around?

22 MS. ALVES: I know he was out working on his
23 trial. I can find him.

24 THE COURT: How about see if he's in the
25 building? Ask him to run up here.

1 MS. ALVES: Yes, sir.

2 THE COURT: Mr. Katonak, how many witnesses
3 will you have? I'm not holding you to anything at
4 all. Just don't know yet?

5 MR. KATONAK: I think probably only my client
6 if he does testify.

7 THE COURT: All right. Jury ladies, clerks,
8 don't leave until I talk to somebody about my jury
9 in the morning.

10 END OF DAY: 5:02 P.M.

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SUSAN RENEE WHALEY - DIRECT BY AGNEW

1 ON WEDNESDAY, SEPTEMBER 11, 2013 AT 9:33 A.M.:

2 THE COURT: You may call your next witness.

3 TOP LEFT: The State calls Renee Whaley.

4 SUSAN RENEE WHALEY, having been duly sworn,
5 was examined and testified as follows:

6 THE CLERK: Please have a seat in the witness
7 box. State your full name for the Court and spell
8 your last.

9 THE WITNESS: My name is Susan Renee Whaley,
10 W-H-A-L-E-Y.

11 DIRECT EXAMINATION

12 BY MS. AGNEW:

13 Q. And, Renee, you've already started picking up
14 the microphone, but I'm going to ask you to hold it
15 close to your mouth so we can all hear you. Okay?

16 A. Okay.

17 Q. First of all, let's go through everybody's
18 family relationship.

19 A. Okay.

20 Q. How are you related to the girls in this case?

21 A. I am their step-grandmother.

22 Q. Okay.

23 THE COURT: Well, there's three girls now.
24 All three girls you're the step-grandmother of?

25 THE WITNESS: No, I'm the mother of Minor 1.

SUSAN RENEE WHALEY - DIRECT BY AGNEW

1 THE COURT: Minor 1's mother, step-grandmother
2 of the other two?

3 THE WITNESS: Correct.

4 THE COURT: Thank you.

5 BY MS. AGNEW:

6 Q. So how are you related to the Defendant?

7 A. He is my stepson.

8 Q. And when you say stepson, you're not his
9 biological mother?

10 A. That is correct.

11 Q. But your husband is his biological father?

12 A. Correct.

13 Q. Okay.

14 THE COURT: Your husband now?

15 THE WITNESS: Yes.

16 BY MS. AGNEW:

17 Q. All right. Renee, tell me, was there a time
18 when James and Minor 1 were living under the same
19 roof?

20 A. There was.

21 Q. About how long was that?

22 A. For a few years.

23 Q. Do you remember how old Minor 1 was when this
24 happened?

25 A. The first incident?

SUSAN RENEE WHALEY - DIRECT BY AGNEW

- 1 Q. No. When they were living in the same house.
- 2 A. Probably up to three or four, something like
- 3 that.
- 4 Q. And what house was that?
- 5 A. In Graniteville, in Aiken County.
- 6 Q. Okay. Tell me, did Minor 1 deal with any
- 7 developmental setbacks growing up?
- 8 A. Not that I know of.
- 9 Q. Okay. Did she have an issue with wetting the
- 10 bed?
- 11 A. For a short while.
- 12 Q. What happened with that?
- 13 A. When she was five or six she just started
- 14 peeing on herself every night.
- 15 Q. Had she previously been potty trained?
- 16 A. Yeah, she had been potty trained for years.
- 17 Q. Did you seek any medical attention for that?
- 18 A. Yes, I did.
- 19 Q. Okay. Let's move forward to 2007. Do you
- 20 remember an incident with Minor 1 involving the
- 21 library?
- 22 A. Yes, I do.
- 23 Q. Why was Minor 1 going to the library?
- 24 A. She was going to do a book report for school.
- 25 Q. Okay. Was she in public school or where was

SUSAN RENEE WHALEY - DIRECT BY AGNEW

1 she in school at that time?

2 A. She was home schooled.

3 Q. So is that a book report that you had
4 assigned?

5 A. It was.

6 Q. Okay. So she had gone to the library. Did
7 you receive an interesting phone call while she was
8 at the library?

9 A. Yes, I did.

10 Q. Who did you receive a phone call from?

11 A. From James Carl Whaley.

12 Q. Did you talk to him on the phone often?

13 A. No.

14 Q. Was it out of the ordinary for him to call?

15 A. Yes, it was.

16 Q. What did he ask about when he called?

17 A. He wanted to know where each family member
18 was that lived in the house and what they were
19 doing.

20 Q. Did he ask about Minor 1?

21 A. Yes, he did.

22 Q. What did he ask about Minor 1?

23 A. He wanted to know where she was at.

24 Q. Did you tell him?

25 A. Yes, I did.

SUSAN RENEE WHALEY - DIRECT BY AGNEW

1 Q. Tell me this. Growing up, what was Minor 1's
2 reaction towards the Defendant?

3 A. She was always scared of him.

4 Q. Okay. I want to move forward to 2009. Were
5 you aware that allegations were made in 2009?

6 A. Yes, I was.

7 Q. Okay. Were you a part of that investigation?

8 A. Yes, I was.

9 Q. Did you take Minor 1 to talk to law enforcement?

10 A. I had went with Minor 1 to law enforcement,
11 yes.

12 Q. Okay. What kind of reaction did the family
13 have to Minor 1's allegations at that time?

14 A. I would say most of the family didn't believe
15 her.

16 Q. Okay. What about your husband, the
17 Defendant's father?

18 A. No, it was too hard for him to believe so he
19 didn't believe it.

20 Q. Okay. Did he support Minor 1 in talking to law
21 enforcement?

22 A. He did not talk to law enforcement.

23 Q. Okay. And what was the result of that
24 investigation?

25 A. She talked to the police department and told

SUSAN RENEE WHALEY - DIRECT BY AGNEW

1 them that she didn't want to proceed with it at the
2 time.

3 Q. Okay. Did you take her to go do that?

4 A. Yes, I did.

5 Q. Okay. Now let's move forward to 2010. Was
6 there an incident in 2010 involving **Minor 1** and the
7 Defendant?

8 A. I believe it was.

9 Q. Okay.

10 THE COURT: Well, do you know or not, ma'am?
11 You can't speculate.

12 THE WITNESS: I believe it was in 2010, yes.

13 BY MS. AGNEW:

14 Q. Okay. Did **Minor 1** want the Defendant at the
15 house that day?

16 A. No. She never wanted him at the house.

17 Q. To your knowledge, did she want him in her
18 room?

19 A. Absolutely not.

20 Q. How did **Minor 1** react towards you after he was
21 in a room?

22 A. He -- she was very mad at me.

23 Q. Why was she mad at you?

24 A. Because I did not let her know that he was
25 there.

SUSAN RENEE WHALEY - DIRECT BY AGNEW

1 Q. Okay. Now, after this current investigation
2 began, did you receive any correspondence from the
3 Defendant?

4 A. Yes, I did.

5 Q. Okay. What kind of correspondence was that?

6 A. I had a letter given to me that was from him
7 to give to Minor 1.

8 Q. Okay.

9 MS. AGNEW: (Document handed to defense
10 counsel.)

11 MR. KATONAK: No objection.

12 BY MS. AGNEW:

13 Q. Renee, I'm showing you what's been pre-marked
14 as State's Exhibit Four. Do you recognize that?

15 A. Yes, I do.

16 Q. What is it?

17 A. To me it's a apology letter to Minor 1 for what
18 he did. It actually says he apologizes.

19 Q. All right. Well, but you recognize it?

20 A. Yes, I do.

21 Q. How do you recognize it?

22 A. I recognize it because he has signed it and
23 he has put Dear Minor 1 on it.

24 Q. Is that the letter that you received in the
25 mail?

SUSAN RENEE WHALEY - DIRECT BY AGNEW

1 A. I didn't receive it in the mail but I
2 received it, yes.

3 THE COURT: Who did you receive it from?

4 THE WITNESS: His dad handed it to me.

5 BY MS. AGNEW:

6 Q. And how do you know it's from James?

7 A. Because he signed it.

8 Q. Do you recognize his handwriting?

9 A. Yes, I do.

10 MS. AGNEW: Your Honor, at this time we would
11 move State's Exhibit Four into evidence.

12 THE COURT: Without objection.

13 (State's Exhibit No. 4, letter, received into
14 evidence.)

15 BY MS. AGNEW:

16 Q. Hand that up to the judge.

17 A. (Complying.)

18 Q. Did you give that letter to Minor 1?

19 A. No, I did not.

20 Q. Why?

21 A. Me and her dad felt she didn't need to have
22 it.

23 Q. Who did you give that letter to?

24 A. The investigator.

25 Q. Give me just a second, Your Honor. (Pause.)

SUSAN RENEE WHALEY - CROSS BY KATONAK

1 Renee, when the 2009 allegations came out, was
2 there any trouble with your relationship to your
3 husband?

4 A. Not until the incident.

5 Q. Was there a possibility of divorce because of
6 these allegations?

7 A. He had mentioned it to Minor 1.

8 Q. Okay. And you said that Minor 1 was scared of
9 the Defendant growing up. Did she make any efforts
10 to avoid him?

11 A. Every chance she got.

12 Q. What would she do?

13 A. She would ask me to let her know when he was
14 coming so she could lock the door or things like
15 that. I mean, she would just try to avoid him in
16 all circumstances.

17 MS. AGNEW: Thank you. Answer any questions
18 Mr. Katonak has for you.

19 THE COURT: Mr. Katonak?

20 THE WITNESS: Uh-huh.

21 CROSS-EXAMINATION

22 BY MR. KATONAK:

23 Q. Ms. Whaley, what's your marital status right
24 now?

25 A. I'm still married to the same man.

SUSAN RENEE WHALEY - CROSS BY KATONAK

1 Q. And are y'all still living together?

2 A. Yes, we are.

3 Q. Now, you testified that Minor 1 and James lived
4 under the same roof till about the age that Minor 1
5 was three or four?

6 A. Correct.

7 Q. And that Minor 1 was always scared of him,
8 correct?

9 A. Correct.

10 Q. And I have no doubt that you love your
11 daughter?

12 A. Yeah, true.

13 Q. Okay. You'd do anything to protect your
14 daughter?

15 A. Yes, I would.

16 Q. You would never let your daughter be in harm's
17 way?

18 A. Correct.

19 Q. But the truth of the matter is, throughout the
20 course of his life James has always come over to
21 your house?

22 A. Correct.

23 Q. Okay. He'd come over multiple times when
24 Minor 1 was there?

25 A. Correct.

SUSAN RENEE WHALEY - CROSS BY KATONAK

1 Q. In '09, Minor 1 was in Aurora and made these
2 allegations?

3 A. Correct.

4 Q. Was she there for drug abuse?

5 A. No, she was not.

6 THE COURT: Why was she there?

7 THE WITNESS: She was there for mental
8 problems.

9 THE COURT: What kind of mental problems?

10 THE WITNESS: Traumatic stress.

11 THE COURT: From what?

12 THE WITNESS: From what James did to her.

13 MR. KATONAK: Judge, we'll object to that
14 statement. There's no basis for that.

15 THE COURT: Go ahead.

16 BY MR. KATONAK:

17 Q. Ma'am, do you know, has Minor 1 experimented
18 with drugs?

19 A. I don't know that she had experimented with
20 any drugs.

21 Q. Has she ever told you whether she's
22 experimented with drugs?

23 A. No, she did not.

24 Q. Do you know, did she ever tell law enforcement
25 that?

SUSAN RENEE WHALEY - CROSS BY KATONAK

1 A. I do not know.

2 Q. And back in '09, did she tell you the story
3 about being picked up at the library and being taken
4 to his house?

5 A. No, she did not.

6 Q. She did not tell you that?

7 A. Not immediately.

8 Q. Were you present when she told that to law
9 enforcement?

10 A. I was -- found that out from the law
11 enforcement.

12 Q. Okay. So you've never been -- your daughter
13 has never told you the incident about being picked
14 up at the library and taken to James' house?

15 A. Not at that time.

16 Q. Okay. Well, has she ever told you that story?

17 A. Since -- not the whole story.

18 Q. Well, what do you mean the whole story?

19 A. I didn't find it out until all of this came
20 up.

21 Q. Well, I'm trying to figure out when. When
22 have you heard -- when did she ever tell you what
23 you call the whole story?

24 A. She didn't tell me the whole story. She just
25 said that she was kidnapped and taken to his house.

SUSAN RENEE WHALEY - CROSS BY KATONAK

1 Q. Okay. So, did she ever tell you what happened
2 at the house?

3 A. She did not.

4 Q. So you don't know if he just touched her, if
5 he -- if there's oral sex, if there's sexual
6 intercourse?

7 A. Of course not.

8 Q. And she, she's never told you that?

9 A. No.

10 Q. But in '09, you knew that James had done
11 something to your daughter?

12 A. Correct.

13 Q. And she is the one who told law enforcement, I
14 don't want to -- this case to be pursued?

15 A. That's correct.

16 Q. And you backed her decision on that?

17 A. Correct.

18 Q. And so at that point you knew that James
19 Whaley was truly a menace to your daughter?

20 A. Yes.

21 Q. But then you allowed him to keep coming over
22 to your house?

23 A. I didn't.

24 Q. Well, he came to your house.

25 A. My husband let him.

SUSAN RENEE WHALEY - CROSS BY KATONAK

1 Q. And, in fact, he came to your house in 2010
2 when Minor 1 was there and another thing allegedly
3 occurred, correct?

4 A. That's correct.

5 Q. Were you in the house?

6 A. I was.

7 Q. And you're not there protecting your daughter,
8 are you?

9 A. No.

10 Q. And James would come to family functions,
11 Thanksgiving or Christmas or whatever family
12 functions, correct?

13 A. He did.

14 Q. And truth be known, the family supported James
15 on this whole thing, didn't they?

16 A. Some of them did.

17 Q. In 2007, was Minor 1 even old enough to drive at
18 that point?

19 A. I believe she was.

20 Q. And, you knew -- from the day of the library
21 incident you knew that your daughter was scared of
22 James?

23 A. Yes.

24 Q. Didn't want to be around James?

25 A. Correct.

SUSAN RENEE WHALEY - CROSS BY KATONAK

1 Q. But James called you and you said that's
2 unusual for him to call you, right?

3 A. That is correct.

4 Q. And then you felt the need for him to start
5 asking where family members were?

6 A. Correct.

7 Q. And then he says, Where's Minor 1. And you say,
8 Well, she's gone to the library?

9 A. Correct.

10 Q. So even though your daughter is scared to
11 death of my client you tell him, "Yeah, my
12 daughter's at the library"?

13 A. That is correct.

14 Q. In hindsight, that wasn't the best idea, was
15 it?

16 A. Absolutely not.

17 Q. In regards to the State Exhibit Four, could
18 you read out loud the entire statement, please?

19 A. Yes, I will.

20 Dear Minor 1. I have owed you this apology for
21 a long time. I am so sorry for things I have done
22 in the past. Please forgive me. I forgive you for
23 the things you said about me. Please tell the
24 truth. Don't let lies ruin Joy's life because what
25 happens to me is to her as well. I love her with

SUSAN RENEE WHALEY - CROSS BY KATONAK

1 all my heart. She is the reason I tried talking to
2 you and trying to repair our relationship. I don't
3 understand why you said those things and right now
4 I don't care. Just tell the truth. They already
5 told you they won't charge you. I will keep
6 praying for you to get better and grow in the love
7 of God. James Whaley.

8 Q. So while he's apologizing for -- to her for
9 something, it indicates he's asking for her to tell
10 the truth about something. Do you know what it is
11 that he may be asking her to tell the truth about?

12 A. I do not.

13 Q. And when he states they -- or says, They won't
14 charge you, do you know who he's referring to that
15 they won't charge you?

16 A. I do not.

17 Q. Law enforcement, are they typically the group
18 that charges people with things?

19 A. Correct.

20 Q. Do you think maybe he was referring to law
21 enforcement won't charge you for saying things?

22 A. I don't know what he was referring to.

23 Q. Okay. And as far as what he's apologizing
24 for, he could be apologizing for pushing her down
25 when she was 10-years-old, right?

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 A. That is correct.

2 MR. KATONAK: That's all the questions I
3 have.

4 THE COURT: Redirect, if any?

5 MS. AGNEW: Very briefly, Judge.

6 REDIRECT EXAMINATION

7 BY MS. AGNEW:

8 Q. Renee, this letter to Minor 1, where did it come
9 from?

10 A. It come from James.

11 Q. From James' house?

12 A. From -- his dad got it from, from his
13 grandmother, I believe.

14 Q. Where was James at at the time?

15 A. James was in jail.

16 Q. So this was after he had already been charged?

17 A. That is correct.

18 MS. AGNEW: No further questions.

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

20 Next witness.

21 MS. AGNEW: State calls Investigator Kim
22 Sievers.

23 KIMBERLY SIEVERS, having been duly sworn was
24 examined and testified as follows:

25 THE CLERK: Please have a seat in the witness

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 box. State your full name for the Court and spell
2 your last.

3 THE WITNESS: I'm Investigator Kimberly
4 Sievers, S-I-E-V as in Victor -E-R-S.

5 DIRECT EXAMINATION

6 BY MS. AGNEW:

7 Q. And, Investigator Sievers, where do you work?

8 A. I work at the Aiken County Sheriff's Office.

9 Q. How long have you been doing that?

10 A. About 15 years.

11 Q. And how long have you been an investigator?

12 A. Approximately eight years.

13 Q. What do you do as an investigator there?

14 A. I'm a juvenile investigator. I investigate
15 child abuse, sexual abuse, crimes committed by
16 juveniles.

17 Q. Did you have a chance to become involved in
18 this case?

19 A. I did.

20 Q. How did you first get involved in this case?

21 A. I got a phone call from Alecia Powell on
22 March the 7th, 2011.

23 Q. And just to stop you. Alecia Powell is
24 Minor 2 and Minor 3 's mom?

25 A. Yes. She contacted me because she saw in the

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 news where I had charged James for two other little
2 girls.

3 Q. Let's not get into those.

4 THE COURT: Please make the appropriate
5 objection.

6 MR. KATONAK: Your Honor --

7 THE COURT: Thank you.

8 MR. KATONAK: -- we object to any reference
9 to any other charges.

10 THE COURT: Just don't tell me what other
11 people said, please.

12 THE WITNESS: I had talked with Alecia.

13 BY MS. AGNEW:

14 Q. And what did you do after you spoke with
15 Alecia?

16 A. I contacted -- I think immediately after that
17 I contacted Ms. Renee Whaley.

18 Q. Okay. And after you spoke with Renee Whaley,
19 what did you do then?

20 A. I talked with her -- now, I'm stumbling
21 because I don't know what I can't say.

22 Q. Who did you talk to as a consequence of
23 your conversation with Renee Whaley?

24 A. I talked with Minor 1 in reference to
25 seeing if -- because in light of the new

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 information to see if she would be willing to come
2 forward again.

3 Q. Okay. So did Minor 1 initiate contact with
4 you --

5 A. No.

6 Q. -- or did you have to go find her?

7 A. I -- after some digging I was finally able to
8 locate her to see if she would be willing to go
9 forward after Renee's phone call.

10 Q. Okay.

11 A. Or, not Renee. I'm sorry. Alecia.

12 Q. Okay. After you spoke with Renee, did she
13 give you anything? During the course of your
14 investigation, did you receive anything from Renee?

15 A. I did. She gave me a letter.

16 Q. Okay. I'm referring you to what's already
17 been entered as State's Exhibit Four. What is that?

18 A. That is the letter that Renee gave me that
19 Minor 1 received from James. To my understanding
20 James Whaley, the father, had received a letter
21 from James Whaley from the detention center, and
22 inside that letter to the father was this little
23 piece of paper that he wanted them to give to
24 Minor 1.

25 Q. Okay. Now, during the course of your

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 investigation did you receive anything from Alecia
2 Powell?

3 A. I did. That's kind of what started
4 everything. Well, in reference to Alecia, she gave
5 me three messages on Facebook that were marked. I
6 think the date was 2-20.

7 Q. Okay. I'm showing you what's already been
8 entered into evidence as State's Exhibits One, Two
9 and Three.

10 Are those the Facebook messages you received
11 from Alecia?

12 A. They are. They -- and I feel like that's
13 kind of where everything started. Alecia became
14 suspicious.

15 Q. Okay. You can't talk about what somebody else
16 was feeling or doing.

17 A. Right. Okay.

18 Q. What did you do with the Facebook messages in
19 this letter? Did you retain them?

20 A. I did.

21 THE COURT: Well, is the Facebook messages
22 what piqued your attention, what got you going?

23 THE WITNESS: What got my attention was the
24 fact that she contacted me on 3-7-2011.

25 THE COURT: She being who?

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 THE WITNESS: Alecia. And that's when all of
2 this started, but she had gotten these messages on
3 the 20th. And that made her begin questioning for
4 him -- for James in the letter to have said, I'm
5 sorry. I've been thinking about you and
6 apologizing for the way I've treated you, it
7 prompted Alecia to then ask her girls, why is he
8 apologizing to what happened.

9 MR. KATONAK: Objection to what -

10 THE COURT: Alecia. Sustained.

11 MR. KATONAK: -- she said to her girls.

12 THE COURT: Alecia's their mom, right, the
13 girls' mom?

14 THE WITNESS: Yes. I'm sorry. Yeah.
15 Alecia's the girls' mom.

16 THE COURT: And she brought you the Facebook
17 pages?

18 THE WITNESS: She did, because that's --

19 THE COURT: Where -- do you know where she
20 got them from?

21 THE WITNESS: From Facebook. From the
22 individual Facebook accounts.

23 THE COURT: She's on her children's Facebook
24 accounts?

25 THE WITNESS: I don't know the exact -- I

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 know one of them was to her, so I don't know if
2 they all came through the same Facebook page or
3 whether they were individual.

4 But that prompted -- that's why she asked the
5 girls if anything had happened to them and that's
6 kind of what started the whole case because she
7 wanted to know, you know -- she had seen where he
8 had been --

9 THE COURT: No, ma'am. Don't get into what
10 she had seen, unless she's here to testify herself.

11 THE WITNESS: She had a suspicion.

12 MR. KATONAK: Well, objection to that.

13 BY MS. AGNEW:

14 Q. All right. Investigator Sievers, let's talk
15 about something else for a little bit.

16 A. Okay.

17 Q. Did you get a chance to speak with the
18 Defendant as part of your investigation?

19 A. I did.

20 Q. Okay. When did you speak with the Defendant?

21 A. He contacted me. I received the inmate
22 request form on January the 6th, 2012. The jail
23 sent it to me and said that James Whaley wanted to
24 discuss face-to-face, no glass, as the issue cannot
25 be resolved in any other manner, 10 to 15 minutes

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 should be enough. And he asked to meet with me.

2 Q. What did you do when you received that inmate
3 request?

4 A. I contacted Brian Katonak's office.

5 Q. And why did you contact Brian Katonak's
6 office?

7 A. Because he was the attorney involved in the
8 case.

9 Q. Okay. Was he the Defendant's attorney at that
10 time?

11 A. Yes.

12 Q. Okay. And did you then subsequently schedule
13 a meeting with the Defendant?

14 A. I did.

15 Q. Who was present at that meeting?

16 A. Mr. Brian Katonak, James Whaley and myself.

17 Q. Where did you meet with the Defendant?

18 A. At the Aiken County Detention Center.

19 Q. So he was in custody at that time?

20 A. Yes.

21 Q. What day did you meet with the Defendant?

22 A. I -- when I talked with Mr. Katonak's office
23 we scheduled on January the 17th. We agreed to
24 meet here and we would meet all together.

25 Q. Okay. What year was that?

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 A. 2012.

2 Q. Okay. When you went and talked to the
3 Defendant, did you advise him of his Miranda rights
4 before you spoke with him?

5 A. Yes, I did.

6 Q. How did you advise him of those rights?

7 A. We've got the Miranda form that we use and I
8 read his Miranda form to him with Mr. Katonak
9 present. And I had Mr. Whaley sign the form as
10 well as his attorney, Mr. Katonak.

11 MR. KATONAK: No objection to the
12 introduction of this form.

13 BY MS. AGNEW:

14 Q. Investigator Sievers, I'm showing you what's
15 been pre-marked as State's Exhibit Five. Do you
16 recognize that?

17 A. Yes. That's the form that we completed that
18 day that I read to him.

19 Q. Okay. Whose initials are those by each of
20 those Miranda rights?

21 A. JCW, James Carl Whaley.

22 Q. Whose signature is that about half-way down
23 the page?

24 A. James Carl Whaley.

25 Q. Whose signature is that at the bottom of that

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 page witnessing it?

2 A. The witnessing? My signature as well as
3 Brian 'Katonak's.

4 MS. AGNEW: Your Honor, at this time we would
5 move State's Exhibit Five into evidence.

6 THE COURT: Without objection.

7 (State's Exhibit No. 5, Miranda form,
8 received into evidence.)

9 BY MS. AGNEW:

10 Q. Now, Investigator Sievers, when you were
11 explaining the Defendant's rights to him, did he
12 appear to understand what you told him?

13 A. Yes.

14 Q. Did he ask any questions about them?

15 A. No.

16 Q. Did he appear to be under the influence of
17 drugs or alcohol?

18 A. No.

19 Q. Did he waive his rights at that time?

20 A. He did.

21 Q. How did he waive those rights?

22 A. He agreed to talk with me.

23 Q. By signing that form, was that him waiving his
24 Miranda rights?

25 A. Yes.

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 Q. Did he appear to understand the consequences
2 of signing that form?

3 A. Yes.

4 Q. All right. At any time did he indicate that
5 he was unsure or did not want to waive his rights?

6 A. No, he did not.

7 Q. Did you threaten him to get him to waive his
8 Miranda rights?

9 A. I did not.

10 Q. Did you promise him anything?

11 A. I did not.

12 Q. Okay. Was his attorney there the whole time
13 you went over his rights with him?

14 A. Yes.

15 Q. Okay. After the Defendant waived his Miranda
16 rights, what happened?

17 A. I just kind of asked him, you know, well,
18 what was it that you wanted to meet about.

19 Q. Did you specifically ask him a list of
20 questions or did you allow him to talk freely?

21 A. No. I just allowed him to talk because he
22 requested to meet with me and I really didn't know
23 exactly why.

24 Q. What did he tell you?

25 A. He told me that he wanted to talk with me in

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 reference to the case involving Minor 1 . He
2 stated that he and Minor 1 never had sexual
3 intercourse and that nothing sexual ever happened.
4 He stated that he and Minor 1 were not close for a
5 while and that he was trying to make up for that,
6 and Minor 1 started confiding in him about her life
7 and things going on. James stated that Minor 1
8 talked about doing a lot of sexual stuff with
9 different people and he didn't think it was safe
10 for her. And he told her that she needed to get
11 away and call him, not some stranger.

12 James stated that he couldn't remember for
13 sure what year but that one October he did meet
14 Minor 1 at the Aiken County Library. James stated
15 that Minor 1 called him and asked him to meet her
16 there. James stated he pulled up and she got in
17 his car and they went back to his house at 585
18 Yellow Ribbon Road located in Aiken County, and
19 they were going to hang out for a little while.
20 James stated that nothing happened sexually. James
21 stated that while at the house that he had a cool
22 knife that had a flashlight on it and he had showed
23 it to Minor 1. James stated that he never threatened
24 her with it, that he was just showing it to her
25 because he like it.

KIMBERLY SIEVERS - DIRECT BY AGNEW

1 James stated that while he was at the house
2 he tried to hypnotize Minor 1 to make her think of
3 him like a boyfriend. James stated it didn't work
4 so they just talked for a while. James stated that
5 Minor 1 put on an apron and did his dishes. James
6 stated that nothing else happened. James stated a
7 little while later he took Minor 1 back to the
8 library to her car.

9 And he also stated that there was one time
10 that he was at her house that he had come to see
11 her. James stated that he went upstairs to her
12 bedroom and her mom was downstairs. James stated
13 that he went to check on her and that he just
14 walked into her room. James stated that he tried
15 to hypnotize her again but she asked him what he
16 was doing so he stopped. And he stated that he was
17 just trying to hypnotize her to see if he could.

18 Q. Was his attorney present the whole time he was
19 telling you this?

20 A. Yes, he was.

21 Q. Investigator Sievers, what year was the
22 Defendant born?

23 A. His date of birth is of 1978.

24 Q. Give me just a second. No further questions.

25 THE COURT: Mr. Katonak?

KIMBERLY SIEVERS - CROSS BY KATONAK

CROSS-EXAMINATION

BY MR. KATONAK:

Q. Investigator Sievers, let me show you a copy of this warrant.

THE COURT: Which warrant?

BY MR. KATONAK:

Q. I'm sorry. Let me show it to you. This is the warrant for the lewd act against Minor 1. Let me let you look at that.

A. Uh-huh.

Q. What's -- over on the side, what's the caption of the case? Who brought the case?

A. The State of South Carolina. I don't know what you're asking. I'm sorry. Just point to what you want me to --

Q. The State of South Carolina?

A. Right, right.

Q. So isn't it true that all criminal cases are brought by the State through law enforcement, correct?

A. Correct.

Q. So, this case for this warrant, for all these warrants you have represented the State brought these cases, right?

A. Yes.

KIMBERLY SIEVERS - CROSS BY KATONAK

1 Q. And truth be known, whether a victim wants to
2 go forward or not the State can still bring any case
3 if they feel like a crime has been committed?

4 A. Correct.

5 Q. And you've had cases in the past, whether it
6 be a CSC or CDV or whatever it may be, where a
7 victim did not want criminal prosecution but you
8 still proceeded with getting a warrant on that case?

9 A. Yes.

10 Q. And in 2009, I know you were not the
11 investigator on that case?

12 A. Correct.

13 Q. I believe it was Investigator Mark Patterson?

14 A. I think so.

15 Q. And in your investigation from 2011, did you
16 review his investigation from 2009?

17 A. I did some. When I reviewed the interview
18 with her, with **Minor 1** before I contacted her,
19 I always kind of review that because I just want to
20 see -- when I do these interviews especially with a
21 two-year lapse, I felt really confident that when
22 she came in in 2011 she would not be able to tell
23 me the same details as back in 2009. So I reviewed
24 her interview to begin with so that when she did
25 come in in 2011, I really felt like if there was

KIMBERLY SIEVERS - CROSS BY KATONAK

1 some inconsistencies or something, I would be able
2 to really pick up on that.

3 Q. Okay. So it is important for you to make sure
4 that there's consistency between the victim's
5 statement at one point and their later statements to
6 you, correct?

7 A. Right. Uh-huh.

8 Q. And the truth be known, Investigator Patterson
9 decided not to seek --

10 MS. AGNEW: Objection, Your Honor. She can't
11 testify as to what a different officer decided or
12 sought to do.

13 THE COURT: You can ask her whether or not he
14 prosecuted her.

15 BY MR. KATONAK:

16 Q. Did Investigator Patterson bring a case in
17 2009?

18 A. Yes, he did. He obtained warrants. Warrants
19 were obtained and that once Minor 1 had
20 contacted him, she had advised him of all the
21 emotional and family problems they were having and
22 asked that they be recalled. And so Investigator
23 Patterson did recall the warrants back in 2009

24 THE COURT: Emotional and family problems?

25 THE WITNESS: Yes.

KIMBERLY SIEVERS - CROSS BY KATONAK

1 BY MR. KATONAK:

2 Q. So in this particular case even though a
3 warrant had been issued -- and I'm not worried they
4 were ever served on my client -- Investigator
5 Patterson decided not to -- or, the case was not
6 pursued by the State?

7 A. Correct. If you don't have a cooperative
8 victim it's kind of hard to have a case.

9 Q. Okay. Well, ma'am, that's not true, is it?
10 You've had many cases before where a victim didn't
11 want to cooperate with the State, a crime has been
12 committed and the State still went forward with the
13 crime?

14 A. They do, but you don't have a successful case
15 is what I'm saying. You don't have a successful
16 case when you don't have a cooperative victim.

17 Q. In regards to Minor1's statement in '09 and
18 what she gave you in 2011, there are certain
19 inconsistencies in those statements, aren't there?

20 A. When -- in 2009, I don't -- I don't call them
21 inconsistencies. She reported things back in 2009.
22 Do you want me to go ahead?

23 Q. Sure.

24 A. In reference to, like, the oral sex and that
25 type of thing that she disclosed to me later in

KIMBERLY SIEVERS - CROSS BY KATONAK

1 reference to the sex and that kind of stuff. She
2 just talked about the oral sex back in 2009.

3 Q. In a sexual assault, if actual sexual
4 intercourse occurred and the victim became pregnant
5 from that, do you think that would be a major thing
6 they'd probably tell law enforcement?

7 A. I do.

8 Q. And isn't it true she did not report that in
9 2009?

10 A. I don't remember that being in, brought up in
11 2009.

12 Q. Okay. In your investigation did Ms. Whaley
13 tell you that after being kidnapped from the library
14 that he stopped at a gas station, went and got a
15 Coke and a candy bar and she sat in the car?

16 A. Did she tell me that?

17 Q. Did she tell you that?

18 A. I don't recall her telling me that during the
19 interview, and I don't recall it being in my report
20 but I don't think that that would be an
21 important -- Minor 1 was very difficult to interview
22 through this. She did not -- she obviously did not
23 want to be there, did not want to go into a lot of
24 detail and was very quiet was very difficult to
25 interview. I had to pull everything out of her.

KIMBERLY SIEVERS - CROSS BY KATONAK

1 Q. From the course of your investigation did you
2 determine whether in 2009 her family did not believe
3 her story?

4 A. I'm sorry. Could you repeat that one again?
5 Did I --

6 Q. Well, through your investigation did she tell
7 you whether or not her family believed her or not?

8 A. No, I don't think that was the case about
9 believing. I know that she talked about family and
10 that it was, you know, she had a lot of family
11 problems. I don't think she went into any details
12 about the family problems. She talked about going
13 into Aurora because of the emotional.

14 And she talked about the biggest thing to her
15 was when her father told her that if she did not
16 drop these charges that he would divorce the
17 mother. And that at that point she pretty much
18 immediately just -- that's when she made the phone
19 call and dropped the charges. She was very
20 distraught over the fact that her father would kind
21 of say that or do that to her.

22 Q. Okay. In the course of your investigation and
23 reviewing what happened in 2009, did you have any
24 concerns about Minor 1's drug use or alleged drug use
25 and how that might have affected her statements?

KIMBERLY SIEVERS - CROSS BY KATONAK

1 A. I don't know how I would know that there was
2 any drug use or --

3 Q. Did you review Investigator Patterson's report
4 to see if there was any drug use?

5 A. I did back in 2011. I did at the beginning
6 of the case.

7 Q. And does it refer to any drug use?

8 A. I'd have to review it. I mean, like I said,
9 I mainly looked at her interview and was looking at
10 the differences in those.

11 Where are you referring to? And I can review
12 it. That might be quicker.

13 Q. Juvenile Supplementary Report.

14 MS. AGNEW: Your Honor --

15 THE COURT: Yes, ma'am.

16 MS. AGNEW: -- I'm going to object. He's
17 asking her to testify to something in that original
18 report that she didn't write. It's outside of her
19 personal knowledge.

20 THE COURT: Well, that's part of the
21 investigative file; is that correct, ma'am?

22 THE WITNESS: It is.

23 THE COURT: Are you aware of it? Did you
24 review it?

25 THE WITNESS: At some point; yes, sir.

KIMBERLY SIEVERS - CROSS BY KATONAK

1 THE COURT: Did you use that document as part
2 of your decision to proceed in this case?

3 THE WITNESS: Yes.

4 THE COURT: You may ask the question.

5 BY MR. KATONAK:

6 Q. I can assist you.

7 A. That was on three of four of his report.

8 Yes.

9 Q. Okay.

10 A. She -- follow up was -- he conducted a
11 follow-up interview, and she stated that she had
12 experimented with marijuana, cocaine, ecstasy and
13 over-the-counter medicines.

14 Q. Would that cause you concerns in her
15 statement, her statements either to you or what she
16 made in 2009 that she was experimenting with these
17 very serious drugs?

18 A. Back in 2009, yeah, it would have concerned
19 me.

20 THE COURT: How old was she in 2009? She was
21 born in '91.

22 MR. KATONAK: I believe she would have been
23 18.

24 THE COURT: 18, 17, 18.

25 THE WITNESS: I think 18.

KIMBERLY SIEVERS - CROSS BY KATONAK

1 THE COURT: Yes, ma'am.

2 THE WITNESS: You know my main, my main issue
3 was I just wanted to make sure that the difference
4 in the 2009 and 2011, I didn't feel when I
5 interviewed her in 2011 that she was on any of that
6 or strung out. And when she came in and, you know,
7 she disclosed the same information, I didn't have
8 hesitations. If that's what you are looking for.

9 BY MR. KATONAK:

10 Q. Investigator, from that same page you were
11 just looking at, from the very first paragraph it
12 refers to checking to see if she in fact would have
13 had a valid driver's license in October, 2007?

14 A. Uh-huh.

15 Q. And looking at that first sentence, does it
16 appear that she would have had a valid driver's
17 license at that point?

18 A. It says something about she may have not
19 gotten her driver's license until January of 2008,
20 but -- which didn't concern me when the Defendant
21 -- I'm not sure of the relevancy.

22 Q. It states did not get a driver's license in
23 January of 2008 which IO confirmed. What's IO mean?

24 A. Okay. Investigating officer. So he
25 confirmed that.

KIMBERLY SIEVERS - CROSS BY KATONAK

1 Q. He confirmed. So she would not have had a
2 valid driver's license in October of 2007?

3 A. Right. But the Defendant admitted to being
4 at the library with her.

5 Q. In talking -- also I believe you interviewed
6 Renee Whaley in the course of your investigation?

7 A. I did. I did.

8 Q. And were you informed that despite Minor 1's
9 lifelong fear of James that James continued to come
10 to the house and the family functions throughout the
11 course of Minor 1's life span?

12 A. She did. She had talked about the last
13 incident that happened in 2010, that she didn't
14 know that, you know, he was coming to the house.
15 Minor 1 was upstairs in her room, you know. She was
16 in the kitchen. I don't remember the complete
17 conversation, but she was in the kitchen, he came.
18 I'm not sure why he came to the house but that she
19 thought he had left.

20 And that she said something about going
21 upstairs and that's when she knew that he had went
22 upstairs because he found her in her room.

23 Q. In the course of your investigation in 2011,
24 did it appear that, I'll just say the Whaley family
25 as a whole, whatever you call that, the Whaley

KIMBERLY SIEVERS - CROSS BY KATONAK

1 family was aware of the allegations back in 2009?

2 A. Yes.

3 Q. Okay. Does it appear that both **Minor 2** and
4 Alecia were aware of those allegations in 2009?

5 A. I don't know that.

6 Q. Did you ever ask them if they were aware of
7 that fact?

8 A. I don't believe that I -- I don't believe
9 that I --

10 Q. Do you think that would have been an important
11 thing when they came forward in 2011 to say, hey,
12 did you know your aunt, I guess it was, that your
13 aunt made allegations in 2009 and you didn't come
14 forward until two years later?

15 A. I don't think that was bothering me. I think
16 that at the point when they came forward in 2011 I
17 did know that they were aware of it, but I don't
18 know at what point they became aware of it.

19 Q. Okay. Did you think that that would have been
20 important to ask them, hey, did you know that your
21 aunt made allegations in 2009, if they said yes or
22 no, if they said yes, would you not have asked,
23 well, why didn't you come forward then?

24 A. No, because I can fully understand delayed
25 disclosure and the psychology behind delayed

KIMBERLY SIEVERS - CROSS BY KATONAK

1 disclosure. So I don't hold a lot of weight to the
2 whole delayed disclosure issue.

3 Q. You mentioned Mr. Whaley told you about the
4 attempted hypnosis. Minor 1 has never told you about
5 that, has she?

6 A. She did, through the process of the
7 investigation. I mean, she had mentioned it.

8 Q. All right. I don't see that anywhere in your
9 report. Did you ever do a report stating that fact?

10 A. If it's not in the report I didn't write it
11 down, but she would have told me through some of
12 the things that really didn't seem like a major
13 part of the case.

14 Q. Okay. So you didn't really think that was
15 that pertinent to the case?

16 A. Right. And it really wasn't until, you know,
17 I went and met with James and he had talked about
18 that, you know. You know, it just corroborated
19 what Minor 1 had said.

20 Q. When she was kidnapped -- again, going back to
21 Mr. Whaley stopping at the store and going in and
22 getting a Coke and a candy bar while Minor 1 sat in
23 the car. You're familiar with that intersection
24 there at Pine Log and Whiskey?

25 A. Yes.

KIMBERLY SIEVERS - CROSS BY KATONAK

1 Q. Okay. Do you not feel it would be unusual
2 that the --

3 MS. AGNEW: Objection, Your Honor.

4 THE COURT: That calls for speculation.

5 BY MR. KATONAK:

6 Q. Okay. Did she, again, tell you whether she
7 sat in the car while he's in there for a minute or
8 two or whether she made any attempts to flee?

9 A. I don't remember that being discussed at all.

10 Q. Okay.

11 A. Like I said a minute ago, I don't remember
12 her telling me that, that they stopped at the store
13 on the way. I mean, it may be. If I documented it
14 then she did but I don't remember that.

15 Q. Okay. And both Renee and Minor 1 told you that
16 they had told Mr. Whaley that they were going to be
17 -- that she was going to be at the library that day?

18 A. Yes.

19 Q. Even though they both knew that Minor 1 was
20 scared of James?

21 A. Yes.

22 Q. If there's someone you were scared of being
23 around, would you tell them where you were going to
24 be?

25 MS. AGNEW: Objection, Your Honor. He's

KIMBERLY SIEVERS - CROSS BY KATONAK

1 trying to get her to say what she would do in that
2 position.

3 THE COURT: Sustained.

4 BY MR. KATONAK:

5 Q. Have you ever confirmed that in 2007
6 Mr. Whaley actually lived at the residence she
7 claimed she went to?

8 A. No, I didn't because everybody -- even the
9 Defendant himself said they went back to his place.
10 So, no, I did not.

11 Q. Well, did he ever specifically state it was in
12 October 2007?

13 A. No. He said it was in October. He didn't
14 know what year.

15 Q. Okay. And you already stated that
16 Investigator Patterson stated Minor 1 did not have a
17 valid driver's license in October of 2007?

18 A. Right.

19 Q. And are you aware that Minor 1 was charged with
20 giving false information to police earlier this
21 year?

22 A. Not until it just, you know -- until you -- I
23 think you had mentioned it yesterday. I didn't
24 know.

25 Q. Okay.

KIMBERLY SIEVERS - REDIRECT BY AGNEW

1 THE COURT: Anything else?

2 MR. KATONAK: No, sir.

3 THE COURT: Redirect, if any?

4 MS. AGNEW: Very briefly.

5 REDIRECT EXAMINATION

6 BY MS. AGNEW:

7 Q. Since we're going to talk about this 2009
8 incident in this report, let's talk about what else
9 you reviewed from 2009.

10 Were you able to determine the exact date that
11 Minor 1 checked out a book from the library based on
12 the 2009 report that you reviewed?

13 THE COURT: Just refer her to what she's --

14 THE WITNESS: Yes, please. Where is that?
15 On the first page?

16 BY MS. AGNEW:

17 Q. It's on the first page of the Juvenile
18 Supplemental Report by Mark Patterson.

19 A. On 3-4-2009, Investigator Patterson
20 made contact --

21 Q. No, the next paragraph.

22 A. Okay. 2009 made contact with Renee Whaley
23 who stated that on October the 15th, 2007, Minor 1
24 had checked out a book called Irish Famine Ships
25 and owed money because it had been past due.

1 MS. AGNEW: Thank you, Investigator. No
2 further questions.

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

4 MS. AGNEW: The State rests, Your Honor.

5 THE COURT: All right. Call your next
6 witness. You may call your first witness.

7 MR. KATONAK: If I can just have a couple
8 minutes' break to discuss with my client. We're
9 not going to have any other witnesses beside my
10 client. I'd just like to discuss with him in more
11 detail what --

12 THE COURT: Let me talk to him a second.

13 MR. KATONAK: Okay.

14 THE COURT: Mr. Whaley, raise your right
15 hand, please.

16 (Defendant placed under oath.)

17 THE COURT: Mr. Whaley, we've reached the
18 stage of the trial -- and we'll let you make any
19 motions.

20 MR. KATONAK: (Nods head.)

21 THE COURT: -- for the defense. We've
22 reached the stage of the trial now where obviously
23 you can present your side of the case or present
24 your defense is what we call it. In doing so you
25 can obviously call witnesses to testify on your

1 behalf and in your defense. You can introduce
2 relevant exhibits. And you may also testify in
3 your own defense.

4 If you testify you will be subjected to the
5 same rules that all other witnesses are, i.e.,
6 you'll be cross-examined on any relevant subject in
7 the case.

8 Does he have a record to be subject to
9 impeachment?

10 MS. AGNEW: Your Honor, he does have one
11 conviction that carries over a year in the past 10
12 years.

13 THE COURT: You have a conviction that may
14 could be used against you for impeachment purposes
15 or to be used against you for your credibility, but
16 it can only be used for that. It can't be used for
17 any other purpose, if I determine that the
18 probative value outweighs the prejudicial effect.

19 On the other hand, you, like anyone else who
20 is accused of a crime, have the constitutional
21 protections provided by the Fifth Amendment to the
22 United States Constitution which simply means that
23 no one can be compelled to offer testimony in a
24 trial where they're on trial for a charge. You
25 have the right to remain silent is what I'm saying.

1 And if you do not testify obviously I'm the
2 finder of fact in this case. I can't use the fact
3 that you didn't testify in any way against you in
4 determining your guilt or innocence in this case.
5 I'll have to leave that out of the whole equation
6 and testify -- strike that -- and make my rulings
7 on whether or not the State's been able to prove
8 beyond a reasonable doubt whether or not what the
9 witnesses have said proves you guilty beyond a
10 reasonable doubt. In other words, I have to be
11 firmly convinced of your guilt. And I cannot use
12 the fact that you did not testify when I make that
13 decision as to whether or not I am firmly
14 convinced. That means the State has proven their
15 case beyond a reasonable doubt.

16 So if you don't testify, I won't consider it.
17 I won't infer anything from it. I base my case
18 simply -- base my decision simply on what the
19 witnesses have testified here for, and whether or
20 not they have proven to me beyond a reasonable
21 doubt, in other words, am I firmly convinced that
22 these acts took place.

23 So, do you understand your rights to remain
24 silent?

25 THE DEFENDANT: I understand, Your Honor.

1 THE COURT: And obviously you have to make
2 that decision. You can talk to Mr. Katonak about
3 it or obviously it's your decision though. I'll
4 give you a few minutes to make that decision. We
5 need to move forward though, so is five minutes
6 enough?

7 MR. KATONAK: More than enough.

8 THE COURT: We'll stand at ease for a brief
9 period.

10 (Break taken at 10:25 a.m., until 10:34 a.m.,
11 when the trial continued:)

12 MR. KATONAK: Your Honor, at this point the
13 State rests.

14 THE COURT: How about the defense?

15 MR. KATONAK: Excuse me. The defense rests.

16 THE COURT: Anything in -- well, nothing in
17 reply? All right.

18 MR. KATONAK: Judge, we do have a directed
19 verdict motion to make.

20 THE COURT: Why don't you go ahead and do
21 that for the record, please?

22 MR. KATONAK: Your Honor, at this point we'd
23 like to move for the Court to issue a directed
24 verdict motion in favor of the defense. We feel
25 that the State's failed to meet their burden they

1 have. I'm not going to rehash all the facts. I
2 know the Court's been very well studiously
3 following the case, but we feel there are so many
4 contradictions in the case from the primary victim
5 as well as the family members.

6 THE COURT: Well, isn't that the case in a
7 lot of cases?

8 MR. KATONAK: Yes, sir, it is.

9 THE COURT: And don't we have -- I mean, if
10 I -- not necessarily if I believe the victims, I
11 mean, there's evidence in the case that if we were
12 trying this with a jury, I would send it to the
13 jury because there's existence of evidence that
14 would support --

15 MR. KATONAK: Yes, sir.

16 THE COURT: -- the various allegations in the
17 various indictments. Then it would be for the jury
18 to determine whether or not, when they weigh that
19 evidence whether or not it firmly convinces them --

20 MR. KATONAK: Yes, sir.

21 THE COURT: -- that the State has proven
22 their case beyond a reasonable doubt and so forth
23 and so on. That's where I'm left with the case
24 now.

25 MR. KATONAK: Yes, sir.

1 THE COURT: I mean, there is in existence
2 evidence that if we were trying it with a jury it
3 would go to the jury. So I assume if I'm trying it
4 non-jury it goes to me. It's not a case for a
5 directed verdict.

6 MR. KATONAK: Thank you.

7 THE COURT: But I don't want to preclude you
8 from addressing any of the indictments specifically
9 or -- but, you know, there is evidence in the
10 record that -- I'm not going to say if I believe,
11 but I can believe it and still not be firmly
12 convinced.

13 MR. KATONAK: Yes, sir.

14 THE COURT: I don't know what I'm going to do
15 with it.

16 MR. KATONAK: Thank you.

17 THE COURT: Any other -- I didn't mean to cut
18 you off.

19 MR. KATONAK: And, Judge, it is kind of
20 unusual for us to have a bench trial on the case.
21 I didn't know if the State -- I don't know whether
22 I wanted to make a closing at this point either but
23 the State would go first.

24 THE COURT: They would, but I don't know if
25 you all want to do closing arguments. I mean,

1 obviously I know the law. I know reasonable doubt.
2 I know the facts, but you're certainly welcome to
3 make a summation if you'd like, but your directed
4 verdict is denied.

5 MR. KATONAK: Thank you.

6 MR. WEEKS: Judge, on behalf of the State
7 there are a couple of things I would like to say
8 about the case.

9 THE COURT: Certainly. Absolutely. And I
10 assume y'all are ready to do that?

11 MR. KATONAK: Yes, sir.

12 THE COURT: Mr. Weeks?

13 MR. WEEKS: Thank you, Your Honor.

14 In 32 years of experience in front of juries
15 and in front of judges, these are the hardest
16 cases. Invariably it boils down to, in delayed
17 disclosure-type cases, a lot of historical data,
18 some events.

19 And the State, myself and Ms. Agnew, the
20 various investigators that work on a case, seek to
21 put before a jury, in this case you, corroboration
22 sufficient to convince the jury and convince you
23 that these acts happened.

24 As I've told hundreds of jurors through the
25 years: I don't have a video camera; I don't have a

1 license to direct witnesses how to testify or what
2 to testify to; and I don't make the facts.

3 But when we put together a case to bring
4 before a jury or Your Honor, we look at everything
5 that we can gather, including, and not limited to,
6 statements from the Defendant's mouth that
7 corroborate a lot of details that when you first
8 hear them you think, oh, well, that sounds kind of
9 wild. But then by the end of the case you've heard
10 that the Defendant himself has testified to
11 everything but the sexual acts about some of these
12 cases.

13 Now, we have the advantage of knowing all of
14 that before we put the case up. You, of course,
15 did not have the advantage of knowing what facts we
16 had. So when you hear a witness's testimony just
17 completely out of context as to what's coming, it's
18 a natural tendency, I believe, to say, well, gosh,
19 she ought to be able to remember something better
20 than that; gosh, you know, this happened repeatedly
21 through her whole childhood, why can't they
22 remember better.

23 Well, what I tell jurors in that box over
24 there is you're brought into this courtroom with
25 your common sense. But the way we get our common

1 sense is through our experience. The way you got
2 your common sense is through your experience, not
3 necessarily as a juror but as a lawyer, as a judge,
4 as a father.

5 But some of these areas when it deals with
6 child abuse are things that fortunately aren't in
7 our common sense experience. But we've heard
8 enough, you've heard enough through the years from
9 expert witnesses to know what delayed disclosure
10 is. You know the problems that it causes with the
11 children that it affects and not just the problems
12 with the law.

13 That's why years ago, I'm certain, that
14 victim's testimony, the law was passed that
15 victim's testimony need not be corroborated because
16 there are no witnesses when the defendants do these
17 type of things to these young children.

18 But do we just write it off, okay, you're 18
19 now, everything that happened before you were 18
20 we're not going to pay any attention to because
21 there wasn't anybody there, or because you've given
22 statement where you didn't tell the whole thing to
23 start with. Well, we know that the science or the
24 studies have shown that those type things are
25 characteristics of abused children of dysfunctional

1 families, those bad family dynamics, the bad family
2 settings, but it don't mean that these crimes have
3 not occurred.

4 So how do I, how do we on the State's side,
5 convince a jury or convince a judge that, that
6 people are capable of doing this type of thing to
7 other people when it's occurred? If I try to
8 convince you what I did when I was six years old,
9 how would I do that? Or what happened to me when I
10 was six years old? My credibility would be the
11 only thing that would stand between somebody
12 saying, Well, that's crazy, Bill, or somebody
13 saying, I'm sorry that that happened to you.

14 So, when victims are recanting stuff that
15 causes issues in the family dynamics, I think in 37
16 years of practicing law you saw that happen
17 constantly. I think that jurors with their
18 interactions with their own family members know
19 that finances, know that divorces, know that the
20 inner dynamics of a dysfunctional family are
21 horrible at best some days, and why they discount
22 or why they would recant all of that. You've heard
23 all the experts but you've lived it, you know it.

24 We can't measure, I can't measure, the State
25 can't measure the standard of proving, or whether

1 we prosecute these cases based on my experience as
2 a child because it's not going to be the same.

3 But I would venture to say there are people
4 in this room that have had this happen to them that
5 have never admitted it. That's a common-sense
6 thing. That's what I'm talking to when I'm talking
7 to 12 jurors who stood up in voir dire and said
8 they've never been a victim of a crime, the statics
9 would tell me, tell you, tell anybody that, yeah,
10 they were. They just ain't admitting it.

11 Now these, these cases are difficult. But to
12 think we've done -- to be here today, I believe
13 everything is in the record. That was one of the
14 benefits of being able to try this case in front of
15 you, the Jackson v. Denno, all of that, you know,
16 is in front of you. And you can legally bifurcate
17 it all you want.

18 But as I've heard you tell a jury a thousand
19 times, you can't prove anything in an absolute
20 certainty. But I suggest to you that when you are
21 evaluating the strength of the State's case that
22 you look at the fact that there were three victims
23 in this case. And the same thing I would tell the
24 jury, if they're going to make up a lie, make up a
25 really, really good one. Make up a brutal one.

1 Make up a horrible rape. Don't say that he showed
2 me video on a cell phone. Say that he had 14 TV
3 cameras and called us in his room and he was naked
4 as a jay bird. It's the same kind of credibility
5 that you backdoor into witnesses everyday is, okay,
6 yeah, this is a dysfunctional family at best.

7 But did it happen? Can I believe it
8 happened? I think the evidence is there.

9 THE COURT: Thank you.

10 MR. KATONAK: To believe the State's case the
11 term dysfunctional family would have to be the
12 understatement of the year.

13 Because to believe their case, the two
14 mothers of the girls stated that they knew the
15 girls were scared of him, knew that things had
16 happened at a young age, knew that in '09 Minor 1 had
17 made these allegations that then were not pursued,
18 and yet still continued my client to be around
19 these girls all the time and the girls to be around
20 him all the time.

21 I know you're a father. We're all fathers.
22 There's no way that we would let our daughters
23 around a guy that we knew was a pedophile, that we
24 knew was a danger, that we knew our daughter was
25 scared of.

1 If they did know this and I have had say they
2 should be called and should be brought allegations
3 against them for not protecting these kids. That
4 would be a travesty that they did not protect their
5 daughters from this. To say that, yeah, '09, I
6 believe she was taken, I believe that he abused
7 her. We then dropped it. James would come by the
8 house all the time. He's at the family
9 Thanksgiving. And he's doing this. I don't know
10 of anyone in the world that would allow their kids
11 to be anywhere around a person that they believed
12 that was going on.

13 And Mr. Weeks mentioned credibility. Minor 1's
14 case, she was at Aurora at the time this was made.
15 Investigator Sievers stated that she told
16 Investigator Patterson she was on, experimenting
17 with drugs but she herself testified she had never
18 done any of these drugs; that apparently
19 Investigator Sievers didn't know anything about him
20 stopping to get a Coke and a candy bar on the way
21 back from raping her at the house; and that she
22 never told Investigator Patterson about him having
23 sexual relations with her and becoming pregnant in
24 '09.

25 When people disclose they're usually

1 disclosing pretty big facts. I agree there are
2 small facts, I can understand that. But here in
3 2011 we hear, oh, yeah, by the way he must've had
4 sex with me because I became pregnant. That's a
5 pretty big fact to leave out from 2009.

6 Whatever issue was going on with this family,
7 again, the family from their own testimony didn't
8 believe **Minor 1** in 2009.

9 We just feel they haven't met their burden to
10 have my client found guilty in this case. So we'd
11 ask the judge to carefully consider and we know the
12 Court will and come back with a verdict of not
13 guilty.

14 THE COURT: Thank you.

15 All right. I'm going to deliberate. I'll
16 have a decision for you tomorrow morning. All
17 right?

18 MR. KATONAK: Thank you.

19 END OF DAY'S PROCEEDINGS: 10:47 A.M.

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1 ON THURSDAY, SEPTEMBER 12, 2013 AT 12:14 P.M.:

2 THE COURT: State ready to receive the
3 verdict?

4 MR. WEEKS: State's ready, Your Honor.

5 THE COURT: Defense ready?

6 MR. KATONAK: Yes, sir.

7 THE COURT: All right. For those members in
8 the audience, if you are unable to control your
9 emotions I ask that you leave now. I will not
10 tolerate any untoward behavior. You must maintain
11 decorum. I'm not suggesting that you would, but if
12 you feel like you can't, I need you to please leave
13 now. If there's any outbursts or any unacceptable
14 behavior you'll be subject to being held in
15 contempt of court.

16 All right. I'm going to go through each
17 indictment since I served as finder of fact,
18 determining whether or not the State has proven
19 their case as to each indictment beyond a
20 reasonable doubt, whether or not I was firmly
21 convinced of the Defendant's guilt.

22 As to Indictment 11-GS-2-1644, an indictment
23 for criminal sexual conduct with a minor, first
24 degree; verdict, not guilty.

25 As to Indictment 11-GS-2-1645, an indictment

1 for criminal sexual conduct, second degree;
2 verdict, not guilty.

3 As to Indictment 11-GS-02-1646, an indictment
4 for criminal sexual conduct, first degree; verdict,
5 not guilty.

6 Indictment 11-GS-2-1647, an indictment for
7 kidnapping; verdict, not guilty.

8 Indictment 11-GS-2-1648, an indictment for
9 lewd act upon a child; verdict, not guilty.

10 Indictment 13-GS-2-1271, an indictment for
11 contributing to the delinquency of a minor;
12 verdict, not guilty.

13 As to Indictment 11-GS-2-1649, an indictment
14 for criminal sexual conduct with a minor, first
15 degree; verdict, not guilty.

16 As to Indictment 13-GS-2-1272, an indictment
17 for indecent exposure; verdict, guilty.

18 As to Indictment 11-GS-2-1643, an indictment
19 for disseminating harmful material to minors;
20 verdict, guilty.

21 As to Indictment 11-GS-2-1642, an indictment
22 for lewd act upon a child; verdict, guilty.

23 Anything else from the State before we
24 proceed?

25 MR. WEEKS: No, Your Honor.

1 THE COURT: By the Defendant?

2 MR. KATONAK: No, sir.

3 THE COURT: Thank you. All right. If you
4 would get me some sentence sheets. Here are the
5 three indictments that were guilty pleas on -- I
6 mean, guilty verdicts on, I will pass sentence.

7 (Pause.)

8 (Defendant placed under oath.)

9 THE COURT: Mr. Weeks, anything else we need
10 to add?

11 MR. WEEKS: Your Honor, I don't know that we
12 actually went through his prior record.

13 THE COURT: We have not. Let me ask you a
14 couple questions before you do that. Lewd act is
15 15 years requiring sex offender registry; is that
16 correct?

17 MR. WEEKS: It is correct, Your Honor.

18 THE COURT: Dissemination of material, that's
19 a 10 year?

20 MR. WEEKS: That's correct.

21 THE COURT: And the indecent exposure is
22 three?

23 MR. WEEKS: Three. Yes, sir.

24 THE COURT: Prior record, please?

25 MR. WEEKS: Your Honor, he has a contributing

1 to the delinquency of a minor in 2008 that was
2 originally charged as a lewd act. He pled,
3 received three years suspended upon two years
4 probation at that time.

5 He has a simple battery in 1997, and another
6 contributing to the delinquency of a minor in
7 Georgia in 2001.

8 THE COURT: Do you know what the allegations
9 of those contributings were? What was that -- in
10 Georgia, what year?

11 MR. WEEKS: He was charged -- 2008. It was a
12 lewd act charge. We accepted a plea to
13 contributing to the delinquency of a minor, and I
14 do not know -- I think we probably have the file
15 here.

16 THE COURT: That's okay. And the one in
17 Georgia was what?

18 MR. WEEKS: I don't have a clue as to what
19 that was.

20 THE COURT: No, when? W-H-E-N.

21 MR. WEEKS: Sir?

22 THE COURT: When?

23 MR. WEEKS: Oh, I'm sorry. 2001.

24 MR. KATONAK: Your Honor, my client indicates
25 that one was pled down to a disorderly conduct

1 charge.

2 THE COURT: Anybody from the family want to
3 speak?

4 MR. WEEKS: Your Honor, yes, Alecia Powell.
5 I believe one of the victim's mother would like to
6 speak.

7 THE COURT: Yes, ma'am?

8 MS. POWELL: Your Honor, I just wanted to say
9 that this whole entire case is not only just based
10 on the things that he actually physically done to
11 people, but a lot of it's based on the fact that he
12 terrorizes people. He scares people. He does
13 things, says things to try and mess with their
14 minds, I guess is what I would say.

15 And my daughter was sent to counseling when
16 she was in the third grade because she started
17 acting out and I didn't know why. I had to stand
18 at the bathroom door until she was probably 12 so
19 that she could use the bathroom because she was
20 terrified. We had to sit on the toilet in the
21 bathroom while she took a shower because she was
22 terrified.

23 And thankfully as she's gotten a little older
24 she's gotten a little stronger. But the things
25 that he said and the things that he's done to my

1 family tore us apart and we didn't know why. We
2 didn't realize what was going on at the time.

3 You know, it's not against the law for
4 somebody to be mean to you. It's not against the
5 law for my child to be scared of somebody but that
6 doesn't make me a negligent parent.

7 And I just would like you to take into
8 consideration that the things that he was accused
9 of, it isn't the first time that he's walked
10 through the courtroom because of them. And if he
11 leaves without being punished and figuring out how
12 to not do those things again it won't be the last
13 time he comes through the courtroom for those
14 things.

15 And that's all.

16 THE COURT: Anyone else, Mr. Weeks?

17 MR. WEEKS: No, Your Honor. That's all.

18 THE COURT: Mr. Katonak?

19 MR. KATONAK: Do you want to address the
20 Court?

21 THE COURT: I'm going to let you. I'll give
22 him a chance.

23 MR. KATONAK: Judge, my client's 35 years of
24 age. He told me the last grade he completed was
25 the eighth grade of school.

1 THE COURT: He's how old?

2 MR. KATONAK: 35.

3 THE DEFENDANT: Correct.

4 MR. KATONAK: 35. He's had -- been employed
5 on and off through most of his adult life. He is
6 married although he and his spouse -- he's been in
7 jail for almost two and a half, going on three
8 years, so they've been separated during that whole
9 time.

10 So, we ask the Court to be as lenient as
11 possible.

12 THE COURT: Mr. Massey?

13 MR. KATONAK: Who?

14 THE COURT: What I want -- Whaley, I'm sorry.
15 I've written the wrong name. I apologize.

16 THE DEFENDANT: Your Honor.

17 THE COURT: Sir?

18 THE DEFENDANT: You know, I can't deny the
19 fact that I've been mean to people.

20 THE COURT: Been mean to people?

21 THE DEFENDANT: I've treated people wrong.
22 And, you know, I've spent almost, well, it seems
23 almost a thousand years in jail, sitting there in
24 23-hour lock down. And has given me time to grow
25 as a man to reflect on my life and see who I was

1 and who I want to be and who I should be.

2 I've gotten into the Word and I've studied
3 and learned what it is to fear to do wrong and to
4 not want to do things that are wrong. And I'm
5 taught in Ezekiel that if a person who does wrong
6 turns away from doing things wrong that the Word
7 says that I won't even mention those things
8 anymore. And if you're called to remembrance
9 things you've done wrong, then I have to punish him
10 for it -- punish you for it.

11 I believe that if you look at the things that
12 I've written them, to people associated with this
13 case, that it shows you by their own words that
14 I've grown as a man to -- towards the right path of
15 doing what is acceptable in life. And I believe
16 that -- I believe in what the Bible teaches me
17 forgiveness is which is to let go of those things
18 and if you even want to mention the name of Christ
19 that you have to depart from inequity.

20 And I'm someone who stands here and says that
21 I've done that.

22 Now you found me guilty of these things and I
23 accept your verdict, but I believe in what this
24 Word tells me is truth; that you can either be
25 cleansed of things you've done wrong and let them

1 go, or you can hold yourself guilty and
2 unforgiveness of yourself.

3 THE COURT: Anything else?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Any apologies, maybe?

6 THE DEFENDANT: I've -- I have apologized.
7 I've given written apologies. If they would like
8 to hear it in person --

9 THE COURT: No, sir. No, sir. Not at all.

10 Well, Mr. Whaley, this is the first case I've
11 ever tried non-jury. And, quite frankly, I
12 struggled last night with the concept of reasonable
13 doubt. You know, you had a number of horrible
14 charges that I found you not guilty on.

15 And I'm not saying that I didn't believe that
16 young lady. Obviously something very bad went on.
17 From a legal standpoint sitting up here, I was not
18 firmly convinced that you had done all of these
19 things to her. And that was based on some of the
20 testimony that was given. That doesn't mean that I
21 don't believe a lot went on. I just was not firmly
22 convinced.

23 I was firmly convinced beyond a reasonable
24 doubt as to the two other girls.

25 And not withstanding the preachings of the

1 Bible, one of my main tasks as a judge is to
2 protect young people from people preying upon them.
3 You have a record of contributing to the
4 delinquency of minors going back to '01, another
5 one in '08, and then all of this. So obviously I
6 have to perform my duties as a judge, one of which
7 is to protect children of tender ages from being
8 preyed upon.

9 THE DEFENDANT: Your Honor, you know, I
10 haven't really spoken to my lawyer about this but
11 for me, it came to my mind that I feel like this,
12 this would be in violation of habeas corpus.

13 THE COURT: What's that?

14 THE DEFENDANT: For me, I believe that that
15 is -- is because there was once death, that
16 there's --

17 THE COURT: Once what? Say it. I'm not -- I
18 just couldn't hear you. I'm not cutting you off.

19 THE DEFENDANT: For me, I believe that Jesus
20 was the Son of God and that because he was once
21 dead, he died for all transgressions.

22 THE COURT: I understand.

23 THE DEFENDANT: To those who belong to him.

24 THE COURT: That is a recognized religious
25 belief. What does that have to do with this? Sir?

1 THE DEFENDANT: That's what I -- I believe
2 that our courts is based on what is written in this
3 Word. You know, that's --

4 THE COURT: You're entitled to your opinion.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right.

7 Mr. Whaley, AS TO INDICTMENT 13-GS-2-1272,
8 THAT'S THE INDICTMENT FOR INDECENT EXPOSURE, THE
9 SENTENCE OF THE COURT: YOU BE COMMITTED TO THE
10 STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF
11 THREE YEARS. YOU'LL BE GIVEN CREDIT FOR YOUR TIME
12 THAT YOU'VE HERETOFORE SERVED.

13 AS TO INDICTMENT 11-GS-2-1642, THE INDICTMENT
14 FOR LEWD ACT, THE SENTENCE OF THE COURT: YOU BE
15 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS
16 FOR A PERIOD OF 15 YEARS. THAT WILL RUN
17 CONSECUTIVE TO THE THREE YEARS I HAVE GIVEN YOU ON
18 THE INDECENT EXPOSURE.

19 AS TO 11-GS-02-1643, THAT'S THE DISSEMINATION
20 OF THE HARMFUL MATERIAL, THAT IS A 10-YEAR
21 SENTENCE. IT RUNS CONCURRENT TO THE 15-YEAR
22 SENTENCE THAT RAN CONSECUTIVE TO THE THREE-YEAR
23 SENTENCE.

24 Good luck to you.

25 THE DEFENDANT: Thank you, Your Honor.

1 THE COURT: We'll stand at ease.

2 END OF PROCEEDINGS: 12:36 P.M.

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1 CERTIFICATE OF REPORTER

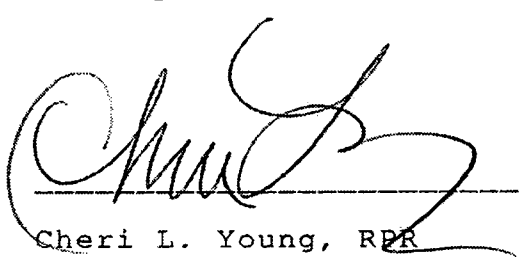
2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF AIKEN)

5 I, Cheri L. Young, Registered Professional
6 Reporter and Official Court Reporter for the State
7 of South Carolina, Second Circuit-At Large, do
8 hereby certify that the foregoing proceedings were
9 written stenographically by me using computer-aided
10 translation; further, that the foregoing is a true,
11 accurate and complete record, to the best of my
12 skill and ability, of all the proceedings had and
13 evidence introduced in the hearing of the captioned
14 case, relative to appeal, in the Court of General
15 Sessions for Aiken County, on the 10th, 11th and
16 12th days of September, 2013.

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

19 I have hereunder set my hand this 26th day of
20 February, 2018.

21
22 
23 Cheri L. Young, RPR
24 Official Court Reporter
25

FORM 5

STATE OF SOUTH CAROLINA

County of AikenJAMES WHALEY 357132

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2011-65-02-01642
01643
2013-65-02-01272
APPLICATION FOR

POST-CONVICTION RELIEF

Additional information on back of
pages 3 and 4**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- Place of detention Kershaw Correctional Institution 4848 Gold Mine HWY Kershaw, S.C. 29067
- Name and location of Court which imposed sentence GSC Aiken, S.C.
- Name(s) of co-defendant(s) (if any) none
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2011-GS-02-01642(b) 2011-GS-02-01643

2015-CP-02-01381
2016-CP-02-01642-01643
2013-CP-02-01272
Filed 6-10-15
C.C.P. & G.S. Aiken County
Deputy Clerk 10:05 am
Trial Judge John E. Smith
Trial Atty. Brian K. Smith
Court Reporter Cheryl Young
Sec. PCR Petitioner General Sessions
Solicitor Appointed Atty.

- (c) 2013-GS-02-01272
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Sept 12, 2013 15 years ?
- (b) Sept 12, 2013 10 years ?
- (c) Sept 12, 2013 3 years ?
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty check
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. /
- iii. /
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. /
- iii. /
- (c) the date of each such result:
- i. April 28, 2014
- ii. /
- iii. /
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Counsel for appellant Failed to order transcript Rule 207(a)(1)
- ii. /
- iii. /
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) /
- (b) /

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Counsel
- (b) Denied Due Process/Amendment 14 §1 notes 2644, 2646-2648
- (c) Denied Due Process/Ineffective Counsel/No Counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see back of this page (page 3)
- (b) See back of this page (page 3) and page 4
- (c) Without Counsel and Transcript I cannot fully present more facts at this time
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Maybe
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. A more detailed version of this sent to Judge, Solicitor and Defense.
- ii. During sentencing I told the Judge I believe my habeas Corpus rights were violated
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. GSC. Aiken, South Carolina
- ii. GSC Aiken, South Carolina
- iii. _____
- iv. _____

Q 11(a) - Being that ~~trial~~ Defense Attorney or the S.C. Indigent Defense 195 Office did not order a transcript leading to dismissal of Appeal.

Appeal was not knowingly, willfully, or intelligently ignored ~~to process~~ by appellate. Reference also WHITE vs. STATE 263 S.C. 110, 208 S.E. 2d 35 S.C. 1974 I did not get to fully pursue appeal.

Q 11(b) Though I do not have a transcript to confirm I state Amendment 14, section (1) note 2644 False testimony by prosecution witness, "...includes situation in which state, although not soliciting false evidence, allows it to go uncorrected when it appears. They were notified C. 05/11/15 via Clerk of Court. In good Deligence the Solicitors Office had a duty to know their case ~~which~~ ^{and} had more or less than 30 months for the Solicitors Office to prepare for. Hence they had a duty to know testimony by Alexis Curry was blatant perjury which derived from testimony ~~to~~ heard by Curry given by Kyrston Johnson. I believe it may have been conspired perjury in order to gain conviction. Solicitor has a duty to correct perjury when known.

Due to very inconsistent statements/affidavits pretrial and or blatant perjury/inconsistent testimony during trial The witnesses Alexis Curry and Kyrston Johnson are not creditable witnesses. In addition all state witnesses were present to listen to and repeat any prior testimony to gain wrongful conviction and sentence.

Alexis Curry repeated key testimony (perjury) claiming she had seen a harmful video with Kyrston Johnson. Just as Johnson testified. Yet pretrial Curry denied any knowledge, In Fact stating ~~to~~ to the C.A.C. or in police reports/statements she she Did NOT see any video. This one witness, A. Curry was the only one to give credit to ^{any of} Johnson's allegations and Curry's own by ~~st~~ testifying she and Johnson witnessed the same criminal act. Curry through perjury created an aura of belief in the charges by Johnson and Curry. Without Curry nothing the state claimed had evidence or testimony to cause belief. The entire testimony of Alexis Curry and Kyrston Johnson should be discredited and withdrawn as testimony. Johnson's testimony had major inconsistencies than stated pretrial and the warrant. ~~These alone of the states witnesses are reliable.~~

(c) the disposition thereof:

- i. no answer as of 06/01/15
- ii. no answer yea or nay as of 06/01/15
- iii. /
- iv. /

(d) the date of each such disposition:

- i. not received ~~at~~ as of this day
- ii. 09/12/13
- iii. /
- iv. /

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. /
- ii. /
- iii. /
- iv. /

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

I believe this question has been answered
in Questions 12 and 13

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. /
- ii. /
- iii. /

(b) the proceedings in which each ground was raised:

- i. /
- ii. /
- iii. /

Q11(b) continued State witness Alicia Powell also is not 197
a reliable witness. In Pretrial Police affidavit Powell stated
a direct written quote using parenthesis that according to
Powell the defendant had written this exact quote in an email
to her and or Curry and or Johnson. Yet upon examination of said
email it is clear this exact quote does not exist. What
was told to Police was Form Fitted to support the claims
by Johnson and Curry. And I believe also was a result of ~~paranoid~~
paranoid delusions. The defendant also had written to
Powell - lawfully - requesting Powell come forward with evidence -
a statement as to a conversation Powell had with a female,
Jamie Whaley. Powell claims not to recall the conversation
which was supposedly very notable of outlandish accusations, the
conversation being only a few week or less prior to the defendants
request. The defendant honored no contact request later given. ~~That is~~
~~But~~ if Powell cannot recall recent appalling conversation there is no
reliability to believe Powell can recall a supposed phone conversation
so claimed to have taken place over 15 years ago. And if Powell
thought a crime was committed 15 years ago a reliable person would
have take action then. The defendant claims Powell, Johnson and
Curry are not reliable, nor creditable witnesses.

Johnson told Police ~~a lewd act~~ and or C.A.C. a lewd act occurred in
a bed; That Curry was asleep beside her. In trial Johnson says it was
on a couch. Johnson told Police and or C.A.C. a harmful video was shown
at one certain address - as also on warrant, but in trial she testified it
was a different address many, many miles away. These are not minor
differences. ~~Not~~ And Johnson says she saw the defendant in video, then
says she never saw defendant, that she assumed it was him.
These three witnesses cannot be trusted to know the
truth, nor can they be trusted to tell the truth.
Defendant never agreed to a multi-case trial. Defense claim it cant happen
(Pretrial.) New trials cannot reverse damage of witnesses hearing others testimony.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Counsel
 (b) Ineffective Counsel
 (c) (11)

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes maybe, and, yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? I was supposed to be unknown
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Brian Katonak
Chesterfield St. Aiken, SC. 29802
 ii. S.C. OFFICE OF Indigent Defense ?
Columbia S.C.
 iii.

(b) the proceedings at which each such attorney represented you:

i. (a), (b), (c) = Katonak d?
 ii. d?
 iii.

19. State clearly the relief you seek in filing this application:

Vacated sentence, reversal of guilty judgement, major efforts to clear my public and private name, letters of apology, immediate liberty, remuneration to begin new life, ~~assistance of counsel~~, back of this page.

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)

County of Aiken)

VERIFICATION

I, JAMES WHALEY, being duly sworn ^{JCW affirmed}
 upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes ~~the~~ ^{my} grounds known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true. may need the help of counsel if this is not enough

I affirm JCW

SWORN to and subscribed before me this 1st
 day of June, 2015.

Catherine A. Cameron (L.S.)
 Notary Public

My Commission Expires: December 22, 2018

you cannot force me to do so in order to proceed. JCW

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JAMES WHALEY, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James Whaley
Applicant

~~SWORN~~ or affirmed to and subscribed before me this
1st day of June, 2015.

Catherine A. Carrasco
Notary Public

My Commission Expires: December 22 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
James Whaley, #357132,	)	2015-CP-02-01381
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	ALL CLAIMS BUT <u>WHITE V. STATE</u>
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief filed June 8, 2015 would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the November 2011 term of the Aiken County Grand Jury for disseminating harmful material to a minor (2011-GS-02-01643), lewd act upon a child (2011-G-02-01642). Applicant was true bill indicted at the August 2013 term of the Aiken Country Grand Jury for indecent exposure (2013-GS-02-01272). Applicant was represented by Brian Katonak, Esquire. The Applicant underwent trial by jury pursuant to which he was found guilty as charged. On September 12, 2013, he was sentenced by the Honorable Doyet A. Early, III, to confinement for three years for indecent exposure, ten years for disseminating harmful material to a minor, fifteen years for lewd act on a minor running consecutive to the three year sentence and ten years for disseminating harmful material to a minor running concurrent to the fifteen year sentence.

A timely Notice of Appeal was filed on Applicant's behalf. On April 10, 2014, the South Carolina Court of Appeals dismissed the appeal due to Applicant's failure to order the transcript. The remittitur was issued April 28, 2014.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "being that defense attorney or the S.C. Indigent defense office did not order a transcript leading to dismissal of appeal. Appeal was not knowingly, willfully, or intelligently ignored by appellate. Reference White v. State 263 S.C. 110, 208 S.E.2d 35 S.C. 1974). I did not get to fully persue (sic) appeal."
2. "Denied due process/amendment 14§ 1 notes 2644, 2646-2648"
 - a. "Though I do not have a transcript to confirm I state amendment 14, section (1) note 2644 false testimony by prosecution witness, '...includes situation in which state, although not solicitor, false evidence, allows it to go uncorrected when it appears. They were notified C.05/11/15 via clerk of court."
3. Denied due process/ Ineffective counsel/no counsel

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent submits that all allegations except the allegation regarding a direct appeal should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was pled guilty to the offense(s) he challenges in this Application on September 12, 2013. The South Carolina Court of Appeals dismissed Applicant's appeal on April 28, 2014. The Applicant was therefore required to file his application on or before April 29, 2015. This Application was filed on June 8, 2015, which was well beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

IV.

Applicant claims that he was denied effective assistance of counsel because his plea attorney did not appeal his guilty plea. The one-year statute of limitations does not apply to a claim that an applicant was denied his direct appeal. Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002).

Respondent submits that trial counsel for the Applicant was diligent in his representation of Applicant and that he performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). In Strickland, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Respondent submits that trial counsel's performance was not deficient nor was the Applicant prejudiced in any way by such performance. The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the Applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.

Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). The Respondent submits that the Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise the Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

V.

WHEREFORE, Respondent moves to summarily dismiss all allegations as they are barred by the statute of limitations. Respondent request a hearing solely on the issue of counsel's failure to perfect an appeal pursuant to White v. State.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: Jessica E. Thompson
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
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September 23, 2015

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

JAMES C. WHALEY, #357132,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2015-CP-02-01381

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss all Claims but White v. State in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Aimee Jendrzewski Zmroczek, Esquire;
A.J.Z. Law Firm, LLC,
PO Box 11961
Columbia, SC 29211

DATED this 23rd day of September, 2015.


Caroline Collins, Legal Assistant
For Respondent

1 State of South Carolina) In the Court
2 County of Aiken) Of Common Pleas
3
4 Docket No. 2013-CP-01381
5
6 James C. Whaley,)
7 Applicant,)
8 vs.) Transcript of Record
9)
10 State of South Carolina,)
Respondent.)

11
12 May 26, 2017
13 Aiken, South Carolina
14

15 B E F O R E:

16 The Honorable Diane S. Goodstein, Judge.
17

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

19 Aimee Zmroczek, Esquire
20 Attorney for the Applicant

21 Julie Coleman, Assistant Attorney General
22 Attorney for the Respondent
23

24 Brenda J. Sigwald, Circuit Court Reporter
25 To The Honorable Doyet A. Early III
P.O. Box 206, Jackson, South Carolina 29831 MS. COLEMAN:

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

POST-CONVICTION RELIEF HEARING

MS. COLEMAN: James Whaley is up next, Your Honor.
May it please the Court?

THE COURT: Yes.

MS. COLEMAN: This is James Whaley versus the State
of South Carolina, Docket Number 2015-CP-02-1381.

Applicant is presently confined in the South Carolina
Department of Corrections pursuant to orders of commitment
of the Aiken County Clerk of Court.

Applicant was true-bill indicted at the November
2011 term of the Aiken County Grand Jury for disseminating
harmful material to a minor, lewd act upon a -- and lewd
act upon a child. Applicant was true-bill indicted at the
August 2013 term of the Aiken County Grand Jury for
indecent exposure. Applicant was represented by Brian
Katonak, Esquire.

Applicant under went a trial by jury, pursuant to
which he was found guilty as charged. On September 12,
2013, he was sentenced by the Honorable Doyet A. Early, III
to confinement for 3 years for indecent exposure, 10 years
for disseminating harmful material to a minor, 15 for lewd
act upon a minor, running consecutive to the 3 year
sentence and 10 years or disseminating harmful material to
a minor, running concurrent to the 15 year sentence.

A timely notice of appeal was filed on applicant's

1 behalf. On April 10, 2014, the South Carolina court of
2 appeals dismissed the appeal due to applicant's failure to
3 order the transcript. The remittitur was issued April 28,
4 2014.

5 Applicant subsequently filed an application for
6 post-conviction relief on June 8, 2015, alleging that he
7 was being held in custody unlawfully based on allegations
8 of ineffective assistance of counsel and due process
9 violations as well as a White claim.

10 The State filed its return and motion to dismiss
11 all claims for White versus State on September 23, 2015.
12 He's present today and represented in this matter by
13 Ms. Amy Zmroczek.

14 And Your Honor, at this time the State moves to
15 dismiss all of his claims except White as untimely. And
16 the State is also willing to consent to his White claim.
17 So...

18 THE COURT: Okay. Yes, ma'am.

19 MS. ZMROCZEK: Thank you. Your Honor. The issue
20 that we have here, I think, is the lack of transcript. And
21 so one of my concerns -- and I had offered this to
22 Mr. Whaley a while ago that the State had agreed because I
23 believe they have a letter from the attorney saying that he
24 just didn't do it -- that they would agree to a White
25 claim, but that -- the Court's aware that when you agree to

1 a White claim that any other matters that could have been
2 preserved by PCR --

3 THE COURT: Uh-huh.

4 MR. WILLIAMS: -- are therefore waived. So my
5 concern in this case -- I mean, I think it's certainly
6 right, it's appropriate; however, my concerns are because
7 we don't have a transcript, I don't know what other claims
8 that he could have raised, so it may be an issue where
9 suppression for the Court once they get to the appeal if he
10 did -- if the appeal is then denied; and so then he would
11 at that time file another PCR, would they consider that
12 success sieve application, but because I don't have a
13 transcript, I can't really advise him on what other issues
14 we could have raised. Does that make sense?

15 THE COURT: It does, but let me ask you this
16 question: What -- what issue could you raise as the PCR
17 issue based upon the transcript that would not be barred by
18 the statute of limitations.

19 MS. ZMROCZEK: Well, Your Honor --

20 THE COURT: At this point.

21 MS. ZMROCZEK: Well, at this point, I don't know
22 that there -- I don't know the answer to that question.

23 THE COURT: Okay.

24 MS. ZMROCZEK: But because I didn't -- because the
25 transcript wasn't ordered --

1 THE COURT: Yes.

2 MS. ZMROCZEK: -- and I think that that was what
3 the confusion or the problem and his delay was in filing
4 the PCR.

5 THE COURT: Right.

6 MS. ZMROCZEK: I don't know the answer. So that's
7 why, you know, I think procedurally -- procedurally, as it
8 stands, I mean, I think that -- that his other claims
9 aren't timely and I've tried to explain that to him. But
10 he just kept wanting to see the transcript and we just
11 can't get it.

12 And that may be an issue for -- that they decide on
13 at appeal that may solve all of our problems. But we just
14 can't get a copy of the transcript.

15 THE COURT: I understand. But what I'm trying --

16 MS. ZMROCZEK: But even if we had gotten the
17 transcript -- I think what you're trying to ask -- even if
18 I had a copy of the transcript, they would still be
19 procedurally time barred, correct?

20 THE COURT: Right.

21 MS. ZMROCZEK: And I agree with that and I would
22 say that the reason that he didn't file it timely was
23 because of his -- because of the problems with the appeal.
24 So -- you see what I'm saying?

25 THE COURT: I do. I do. But the problem is, is

1 that when there is a remittitur --

2 MS. ZMROCZEK: Right.

3 THE COURT: -- there's a remittitur. That is done.

4 MS. ZMROCZEK: Right.

5 THE COURT: And whether you agree, understand, or
6 confused with what happens at the appellate court, that's
7 all academic because there was a remittitur.

8 MS. ZMROCZEK: Absolutely.

9 THE COURT: Yeah. I'm going to grant the motion of
10 the attorney general because I do believe it's time barred
11 and the remittitur as I understand it was filed on the 28th
12 of -- April 28, 2014; and the claim was filed on 6/18/15 --
13 6/8/15. And I think it's time barred.

14 Having said that, there is a White claim. The
15 attorney general does consent to that, so --

16 MS. COLEMAN: And, Your Honor, if I may put on the
17 record, our reason for consenting, we consulted with
18 Mr. Katonak, who represented him in this case. He filed
19 the notice of appeal. He indicates that he asked if he
20 should order this transcript and was told by appellate
21 defense that they usually order that. It's their procedure
22 to order it. It somehow fell through the cracks and was
23 never ordered. I believe he followed up just to be sure
24 that it was ordered and somehow it got lost. But
25 regardless of whose fault it was, it's clear that it was

1 not ordered, so...

2 THE COURT: Yes. And that -- it failed to be
3 ordered through no fault of the applicant, so I concur.
4 And I appreciate so much the -- just in terms of the
5 resources from the attorney general in consenting to that.
6 All right.

7 And if you'll prepare an order to that effect --

8 MS. COLEMAN: Yes, Your Honor.

9 THE COURT: -- I'll sign it.

10 MS. COLEMAN: Thank you.

11 THE COURT: Very well, thank you.

12 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of Common Pleas in and for
12 the State of South Carolina on the 26th day of May, 2017.

13 I FURTHER CERTIFY that I am neither kin, counsel,
14 nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal at Aiken County, this 3rd day of November, 2017.

17
18
19
20
21 *Brenda J. Sigwald*
22 _____
23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
 My commission expires
 January 4, 2020

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

James Whaley, #357132,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2015-CP-02-01381

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 8, 2015. Respondent filed its Return and Motion to Dismiss All Claims But White v. State on September 23, 2015, requesting an evidentiary hearing be convened solely on Applicant's allegation of counsel's failure to perfect an appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). A hearing was held on May 26, 2017, at the Aiken County Courthouse. Applicant was present and represented by Aimee Zmroczek, Esquire. Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office appeared on behalf of Respondent.

At the hearing, Respondent moved to dismiss all allegations beyond the scope of White relief, as the application was filed after the statute of limitations. Respondent further explained to this Court that based on the appellate records in this case as well as on conversations with Applicant's trial counsel, the State was willing to consent to a belated review of Applicant's direct appeal issues pursuant to White v. State. This Court had before it the Aiken County Clerk of Court records, the appellate records, Applicant's South Carolina Department of Corrections records, the PCR application, and the Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted at the November 2011 term of the Aiken County Grand Jury for disseminating harmful material to a minor (2011-GS-02-01643), lewd act upon a child (2011-G-02-01642). Applicant was true bill indicted at the August 2013 term of the Aiken Country Grand Jury for indecent exposure (2013-GS-02-01272). Applicant was represented by Brian Katonak, Esquire. Applicant underwent trial by jury pursuant to which he was found guilty as charged. On September 12, 2013, he was sentenced by the Honorable Doyet A. Early, III, to confinement for three years for indecent exposure, ten years for disseminating harmful material to a minor, fifteen years for lewd act on a minor running consecutive to the three year sentence and ten years for disseminating harmful material to a minor running concurrent to the fifteen year sentence.

A timely Notice of Appeal was filed on Applicant's behalf. On April 10, 2014, the South Carolina Court of Appeals dismissed the appeal due to Applicant's failure to order the transcript. The remittitur was issued April 28, 2014.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "being that defense attorney or the S.C. Indigent defense office did not order a transcript leading to dismissal of appeal. Appeal was not knowingly, willfully, or intelligently ignored by appellate. Reference White v. State 263 S.C. 110, 208 S.E.2d 35 S.C. 1974). I did not get to fully persue (sic) appeal."
2. "Denied due process/amendment 14§ 1 notes 2644, 2646-2648"
 - a. "Though I do not have a transcript to confirm I state amendment 14, section (1) note 2644 false testimony by prosecution witness, '...includes situation in which

state, although not solicitor, false evidence, allows it to go uncorrected when it appears. They were notified C.05/11/15 via clerk of court."

3. Denied due process/ Ineffective counsel/no counsel

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that Applicant's post-conviction relief allegations must be dismissed as untimely because the application was filed past the statute of limitations, and Respondent's Partial Motion to Dismiss is granted. However, based on the record before the Court and Respondent's consent to White relief, this Court finds that Applicant is entitled to a belated review of his direct appeal issues. It is clear from the record that the transcript was never ordered to perfect Applicant's appeal, resulting in the dismissal of his direct appeal. Therefore, Applicant is granted leave to file a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

III. CONCLUSION

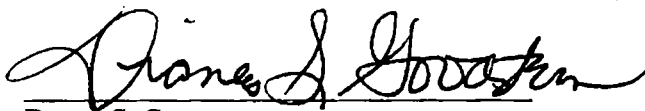
This application for post-conviction relief must be dismissed as untimely. However, Applicant is entitled to relief under White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974) and is granted leave to file a belated appeal.

The Court notes Applicant must file and serve the notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations except a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974); and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22 day of June, 2017.



DIANE S. GOODSTEIN
Presiding Judge
Second Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

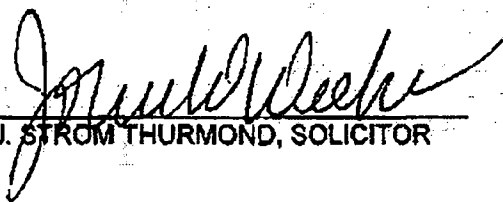
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INDICTMENT FOR
DISSEMINATING HARMFUL MATERIAL TO A
MINOR

§ 16-15-0385(A)(B)

At a Court of General Sessions, convened on November 14, 2011, the Grand Jurors of Aiken County present upon their oath:

That JAMES C. WHALEY did in Aiken County at divers times on or between February 26, 2008 and February 25, 2010, knowing the character or content of the material, furnish, present, or distribute sexually explicit magazine(s) and/or film(s) to [REDACTED] and [REDACTED], both minor children, and or allow said minors to review or peruse sexually explicit magazine(s) and/or film(s). All in violation of Section 16-15-385 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.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Kim Sievers

Law Enforcement Case #: 11-012520

BRB

ARREST WARRANT NUMBER

M007972

FILED

9 Nov 10 2011
[Signature]
[Signature]
 Deputy Clerk

ACTION OF GRAND JURY

TRUE BILL

[Signature]
 Foreperson of Grand Jury
 Date: November 10, 2011

VERDICT*Guilty*

Foreperson of Petit Jury

Date:

Bench Trial
 Sept. 12, 2013

DOCKET NO. 2011GS0201643

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2011

THE STATE

vs.

JAMES C. WHALEY

CDR #: 0378

Indictment for

DISSEMINATING HARMFUL MATERIAL
TO A MINOR

§ 16-15-0385(A)(B)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

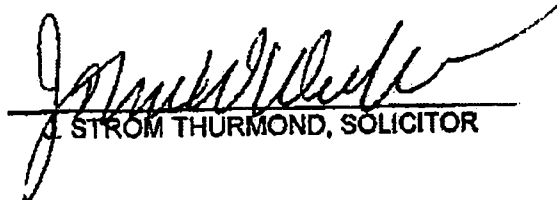
INDICTMENT FOR
LEWD ACT UPON A CHILD

§ 16-15-0140

At a Court of General Sessions, convened on November 14, 2011, the Grand Jurors of Aiken County present upon their oath:

That JAMES C. WHALEY, being over the age of fourteen (14) years, did in Aiken County at divers times on or between February 26, 2001 and February 25, 2006, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of [REDACTED] a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-15-140 of the Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Kim Sievers

Law Enforcement Case #: 11-012520

BRB

ARREST WARRANT NUMBER

M007975

FILED

Nov 10, 2011
David L. ...
Deputy Clerk

ACTION OF GRAND JURY

TRUE BILL

W. ...
 Foreperson of Grand Jury
 Date: November 10, 2011

VERDICT

Guilty

W. ...
 Foreperson of Petit Jury

Date:

Bench Trial
Sept. 12, 2013

DOCKET NO. 2011GS0201642

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2011

THE STATE

vs.

JAMES C. WHALEY

 CDR #: 2468

Indictment for

LEWD ACT UPON A CHILD

§ 16-15-0140

 J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

INDICTMENT FOR
INDECENT EXPOSURE

§ 16-15-0130

At a Court of General Sessions, convened on August 5, 2013, the Grand Jurors of Aiken County present upon their oath:

That JAMES R. WHALEY did in Aiken County on or between September 2, 2001 and September 1, 2002, willfully, maliciously, and indecently expose his person in a public place or on property of others or to the view of any person on a street or highway; to wit: James R. Whaley did expose his person to [REDACTED]. All in violation of §16-15-130 of the Code of Laws of South Carolina (1976), as amended.

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

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Kim Sievers

Law Enforcement Case #: 11-012520

JWW

ARREST WARRANT NUMBER

M008021

FILED August 1 2013J. J. Gaddard
J.C.C.P. & G.S.Amey Sanders
Deputy Clerk

ACTION OF GRAND JURY

True BillC. J. Kern
Foreperson of Grand Jury
Date: August 1, 2013

VERDICT

GuiltyW. B. Early, Jr.
Foreperson of Petit Jury
Date: Sept. 12, 2013

DOCKET NO. 2013GS0201272

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

AUGUST TERM 2013

THE STATE

vs.

James C Whaley

CDR #: 0091

Indictment for

INDECENT EXPOSURE

§ 16-15-0130

J. STROM THURMOND, SOLICITOR