

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

AUGUST BRYON KREIS III,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001351

APPENDIX

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State of South Carolina
 County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2015-GS-32-2030
	)	2015-GS-32-2034
August Byron Kreis, III	)	2015-GS-32-2036
	)	
<u>Defendant.</u>	)	

November 2-5, 2015
 Lexington, South Carolina

B E F O R E:

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

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

Suzanne Mayes, Assist. Solicitor
 Christopher Samellas, Assist. Solicitor
 Attorneys for the State

Thomas Shealy, Assist. Public Defender
 Attorney for the Defendant

Bethanie K. Creppon
 Circuit Court Reporter

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1 (The following proceedings were held November
2 2nd - 5th, 2015.)

3 (Jury panel sworn at 9:42 AM.)

4 THE COURT: Good morning, ladies and gentlemen.
5 First thing we're going to do this morning is
6 qualify you to make sure you're qualified to serve
7 on the jury this week. We're running two courtrooms
8 today. Downstairs, Judge James is doing pleas;
9 upstairs, I'll be doing trials. We have currently
10 listed for trial about four cases. Don't know how
11 that's going to shake out, but what we're going to
12 do this morning is I'm going to qualify you. We'll
13 probably have to qualify and take about a ten-minute
14 break, let me discuss where we are with all the
15 lawyers, come back in, and draw maybe one or two
16 juries and see if we can't get down the road with
17 that.

18 My name is Jack Early. I am the resident judge
19 of the Second Circuit, which is Bamberg, Barnwell,
20 and Aiken Counties. I've been assigned to hold
21 court here in Lexington by the Chief Justice this
22 week. It's always a pleasure to come to Lexington.
23 We've been here a couple times in the past this
24 year. We got -- the last time was when that dam
25 broke over there.

1 So let me ask some questions. If any of the
2 questions apply to you, please stand, identify
3 yourself by name and number, and then respond to the
4 question. And we'll go through this process until
5 we get concluded.

6 Do I have any member of the jury panel who is
7 not a citizen of the United States? If so, please
8 stand.

9 Do I have any member of the jury panel who is
10 not a citizen and resident of Lexington County,
11 South Carolina? If so, please stand.

12 Do I have any member of the jury panel who is
13 unable to read, write, speak, or understand the
14 English language? If so, please stand.

15 Do I have any member of the jury panel who is
16 less than a 6th grade education or its equivalent?
17 If so, please stand.

18 Do I have any member of the jury panel, because
19 of physical or mental infirmities, is unable to
20 render efficient jury service? This normally
21 requires an excuse from your treating physician. If
22 so, please stand.

23 Do I have any member of the jury panel who has
24 been convicted by guilty plea or trial in a state or
25 federal court of record of a crime punishable by

1 imprisonment for more than one year and your civil
2 rights have been restored by pardon or amnesty?
3 Punishable by more than one year means that you
4 could have received a sentence of more than one
5 year, regardless of what sentence you actually
6 received. If so, please stand.

7 Do I have any member of the jury panel who is a
8 clerk or deputy clerk of court, a constable, sheriff
9 or other commissioned law enforcement officer, a
10 probate judge, county commissioner, magistrate or
11 other county officer, or employed within the walls
12 of any courthouse? If so, please stand.

13 Do I have any member of the jury panel who has
14 previously served on jury duty in circuit court this
15 calendar year? That would be the year 2015. If so,
16 please stand.

17 Do I have any member of the jury panel who
18 served on the Lexington County Grand Jury during the
19 past several years? If so, please stand.

20 Ms. Mayes, do I have anyone on that criminal
21 list?

22 MS. MAYES: May I approach, Your Honor?

23 THE COURT: Yes, ma'am. How are you?

24 MS. MAYES: Okay.

25 THE COURT: May I see Juror No. 36 up here,

1 Kevin Brown, and also Juror No. 74, Daniel Ellis.

2 (Mr. Kevin Brown comes forward.)

3 THE COURT: Your name and number, please, sir?

4 POTENTIAL JUROR: Kevin Brown, 36.

5 THE COURT: Did you tell them that you had a
6 felony conviction?

7 POTENTIAL JUROR: I don't have a felony for
8 nothing.

9 THE COURT: Do you have any conviction?

10 POTENTIAL JUROR: No, sir, nothing.

11 THE COURT: Ms. Mayes?

12 MS. MAYES: Okay. I'm going off the
13 information that was on our jury qualification.

14 THE COURT: Well, you're not showing up
15 anywhere, that's why I called you up here.

16 POTENTIAL JUROR: Not that I'm aware of, sir.

17 THE COURT: No problem. I'm sorry. Wrong man.

18 THE BAILIFF: 74, Your Honor.

19 THE COURT: Thank you.

20 (Mr. Daniel Ellis comes forward.)

21 THE COURT: You have a criminal background?

22 POTENTIAL JUROR: I was arrested for
23 shoplifting when I was 17.

24 THE COURT: First offense? Anything else
25 besides that?

1 POTENTIAL JUROR: No, sir.

2 THE COURT: Okay. That does not disqualify
3 you. Sorry I had to bring you up here.

4 POTENTIAL JUROR: Thank you, sir.

5 THE COURT: 216, would you come forward,
6 Mr. William White.

7 (Mr. William White comes forward.)

8 THE COURT: Good morning. You got an arrest
9 out of Colorado; is that correct?

10 POTENTIAL JUROR: I've never been to Colorado.

11 THE COURT: Never been to Colorado in your
12 life?

13 POTENTIAL JUROR: Never.

14 THE COURT: Thank you.

15 Ladies and gentlemen, when you're subpoenaed
16 for jury duty, they get your name from the driver's
17 license list ad voter registration. It's done by
18 computers and your names are automatically run
19 through the NCIC, National Crime Information Center.
20 Sometimes they'll have somebody's name with a
21 different social security or somebody's name with a
22 similar name that you had -- like the last man that
23 was called up here, there was an arrest warrant out
24 of Colorado. He's never been in Colorado in his
25 life. So sometimes that infallible system spits out

1 bad information. So I didn't mean to embarrass
2 anybody by calling them up, but that's -- just had
3 to clear that up. None of the people I called up
4 had any kind of record that would disqualify them or
5 any record at all.

6 Now, that's the qualifying questions that I
7 have to ask. And all of you are qualified. State
8 law also has what we call exemptions to jury
9 service. And that means, notwithstanding the fact
10 that you're qualified, you can say, Judge, I just
11 choose not to serve. And let me go through these
12 exemptions. And if any of these exemptions apply to
13 you and you wish not to serve, just stand up and
14 give me your name.

15 First exemption deals with those of you who are
16 65 years or older. If you're 65 or older, you can
17 say, Judge, I choose not to serve. You're welcome
18 to serve. If you're like me, I'm over 65, I'm
19 serving -- anybody over 65 that would like to be
20 excused, please stand.

21 Now, I'm going to have to see your birth
22 certificate. You're much younger than 65. Your
23 name, please, sir?

24 POTENTIAL JUROR: Glenn Gainey.

25 THE COURT: Would you like to stay with us or

1 would you like to be excused?

2 POTENTIAL JUROR: Well, I've got a couple
3 doctor appointments this week. So due to that, I'd
4 like to be excused.

5 THE COURT: Are you telling me you're over 65?

6 POTENTIAL JUROR: Yes, sir. You want to see my
7 driver's license?

8 THE COURT: No, sir. I believe you. But thank
9 you for coming this morning. I know it's a messy
10 morning and --

11 POTENTIAL JUROR: I've never served. And I
12 thought, well, if it would be -- well, anyway.

13 THE COURT: I can let you stay. We like mature
14 citizens who have a lot of experience and wisdom.

15 POTENTIAL JUROR: Sir, if you will excuse me --

16 THE COURT: I will, sir. They'll send you a
17 huge check. Thank you.

18 THE CLERK: He was Juror No. 83.

19 THE COURT: Thank you.

20 The next exemption deals with those who may
21 have served previously on jury duty. You're not
22 required to serve more often than once every three
23 calendar years in circuit court. So do I have
24 anyone who has served in circuit court jury duty
25 during the last three calendar years, '15, '14, '13?

1 You may be exempt.

2 Likewise, if you've served on the grand jury
3 during the last five years, you may be exempt; '15,
4 '14, '13, '12, '11. Does that apply to anyone?

5 The next exemption deals with those of you who
6 may have a small child or children. You may be
7 exempt from jury duty if you have a small child or
8 children under the age of seven, you're the primary
9 and principal caregiver and custodial parent, and
10 you have no other means of providing care for the
11 child or children this week. Does that apply to
12 anyone?

13 Yes, sir. Name and number?

14 POTENTIAL JUROR: My number is 128, Matthew
15 Koon. I have a two-year-old son that -- the way my
16 job works, this week I work three days, so I'm
17 responsible for him Wednesday and Thursday of this
18 week.

19 THE COURT: Okay. Why don't you stay with me
20 today and tomorrow and then we'll cut you loose?

21 POTENTIAL JUROR: All right. Thanks.

22 THE COURT: There's also an exemption sort of
23 akin to that: If you're the primary caretaker of a
24 person who is unable to take care of themselves over
25 65 or has a severe mental or physical handicap and

1 you're unable to provide care for that person while
2 serving. Does that apply to anyone? Please stand.

3 Yes, ma'am. Name and number?

4 POTENTIAL JUROR: 51. I was planning on
5 serving, but my father has taken ill. He'll be 89
6 next month. He's having a procedure done tomorrow.
7 I can be here today. I've got someone to stay with
8 him today, but tomorrow I need to be out.

9 THE COURT: I understand that. I suspect the
10 case that we start today may go into tomorrow. So
11 that may not -- how about Wednesday, Thursday,
12 Friday?

13 POTENTIAL JUROR: I can do that.

14 THE COURT: All right. We'll protect you today
15 and tomorrow and then you'll be back with us on
16 Wednesday. Call in on Tuesday night and make sure
17 what's going on. Thank you, ma'am.

18 THE CLERK: What's her name and number?

19 THE COURT: Ma'am, what was your number?

20 POTENTIAL JUROR: 51.

21 THE COURT: Yes, sir.

22 POTENTIAL JUROR: 191, Wilbur Sewell. My
23 mother -- I care for my mother on Wednesday and
24 Thursday nights.

25 THE COURT: All right. Can you stay with us

1 Monday and Tuesday?

2 POTENTIAL JUROR: Yes, sir.

3 THE COURT: Thank you.

4 Yes, ma'am. Name and number?

5 POTENTIAL JUROR: Juror No. 30, Alyce

6 Bramblett. I have a son that has Fragile X Syndrome
7 and he's developmentally delayed. And normally that
8 wouldn't matter because I have my husband, but his
9 father has been really sick. He was in intensive
10 care. He just got out of the hospital yesterday, so
11 my husband to leave. He's 33, but he's home alone.
12 And I can do it today and tomorrow and --

13 THE COURT: Why don't we keep you today and
14 tomorrow and I'll excuse you the rest of the week?
15 Fair enough?

16 POTENTIAL JUROR: Okay. Thank you.

17 THE COURT: Yes, ma'am.

18 The next exemption deals with those of you who
19 may be involved in working in some capacity with the
20 school or attending school at this time. This
21 particular exemption, I cannot excuse you, but I can
22 transfer you to another term of court which would
23 not interfere with your school activities. So I
24 have anyone who is a full-time student, teacher,
25 school bus driver, crossing guard, cafeteria worker,

1 janitor, anything else involved with the school, and
2 serving this week would interfere with your school
3 activities? I can transfer you, but I cannot excuse
4 you. But just sort of looking at this situation
5 this week here in Lexington, I think it's probably a
6 desirable week to serve.

7 Anyone employed with the department of
8 corrections and would like to be exempt? If so,
9 please stand.

10 Ladies and gentlemen that concludes the
11 statutory list of qualifying questions and
12 exemptions. It may very well be that you're
13 qualified and no exemption applies to you, but this
14 week creates an extreme hardship to serve; you've
15 had something planned for a while, you have
16 long-standing doctors visits planned or a vacation
17 or something very personal. I can consider any
18 personal hardships. I cannot excuse you, but I can
19 transfer you to another term. But, bear in mind,
20 you may be transferred to a week that lasts two
21 weeks. But I can consider anyone. If it's
22 personal, you can come up and talk to me, or you can
23 tell me from there.

24 Yes, ma'am, on the front row.

25 POTENTIAL JUROR: 15, Emma Bass. I'm scheduled

1 for vacation Thursday and Friday. We have a cabin
2 in Gatlinburg.

3 THE COURT: Great. I'll let you stay with me
4 Monday, Tuesday, and Wednesday. Is that fair?

5 POTENTIAL JUROR: Yes, sir.

6 THE COURT: Thank you.

7 Yes, ma'am, in the boots. You want to do it up
8 here?

9 POTENTIAL JUROR: Please.

10 THE COURT: Yes, ma'am.

11 POTENTIAL JUROR: 132. My son is scheduled for
12 surgery Wednesday at the Medical University of South
13 Carolina. I'd be okay to stay today and tomorrow.
14 I just found out last week, so --

15 THE COURT: Okay. What number?

16 POTENTIAL JUROR: 132.

17 THE COURT: Okay. Excuse her for the week.
18 Children come first.

19 POTENTIAL JUROR: Thank you.

20 THE COURT: Good luck with your son.

21 Yes, sir, in the -- is that Clemson orange?
22 Name and number, please.

23 POTENTIAL JUROR: Nathan Yandle, 224. My
24 fiancee has a doctor appointment Wednesday and I'm
25 going with her.

1 THE COURT: All right. We'll excuse you on
2 Wednesday.

3 Yes, ma'am, in the blue sweater.

4 POTENTIAL JUROR: 211, Robin Thompson. I just
5 have a doctors appointment today and I'd have to
6 leave around 3:00 to be there by 4:00. And I'm Type
7 1 --

8 THE COURT: I'll excuse you today and you can
9 come back with us tomorrow.

10 Yes, ma'am, in the black blouse.

11 POTENTIAL JUROR: Can I come up front?

12 THE COURT: Yes, ma'am, you may.

13 POTENTIAL JUROR: 153. I have to work
14 Wednesday through Sunday, and I'm the only delivery
15 driver. We're really short-staffed.

16 THE COURT: What number?

17 POTENTIAL JUROR: 153.

18 THE COURT: Excuse her Wednesday, Thursday,
19 Friday.

20 POTENTIAL JUROR: Thank you.

21 THE COURT: Yes, ma'am. Name and number?

22 POTENTIAL JUROR: 166, Sherrie Purvis. I'm
23 scheduled to be in Charleston on Friday for an event
24 all weekend. So I won't be in town on Friday.

25 THE COURT: We can handle that. Thank you.

1 POTENTIAL JUROR: I'm Juror 226, Pam Hayes.
2 And I'm scheduled to leave town at 5:00 a.m. on
3 Friday for Boone, North Carolina for vacation.

4 THE COURT: Snow skiing?

5 POTENTIAL JUROR: No, I'm not.

6 THE COURT: We can take care of you on Friday.

7 POTENTIAL JUROR: Thank you, sir.

8 THE COURT: Yes, sir.

9 POTENTIAL JUROR: Can I come up there?

10 THE COURT: You may.

11 POTENTIAL JUROR: Number 202. I was wondering
12 if I could be exempt because I can't afford to be
13 here. I need to make money.

14 THE COURT: I can't do that, sir. If I did
15 that, everybody in here would come forward.

16 All right. It's 10:20. I'll take a 20-minute
17 break, that will be 20 minutes to 11:00. Please be
18 ready to -- back in here seated at 20 minutes to
19 11:00. Let me see all lawyers in my chambers on all
20 of the cases on the trial docket. Thank you.

21 (Short break.)

22 THE COURT: All right. Ms. Mayes, you may call
23 your first case.

24 MS. MAYES: Thank you, Your Honor. May it
25 please the Court.

1 Your Honor, this is the State of South Carolina
2 vs. August Byron Kreis, III, Indictment No.
3 2015-GS-32-2034. This indictment is criminal sexual
4 conduct with a minor in the second degree.

5 Indictment No. 2015-GS-32-2036, this indictment
6 is for lewd act upon a child.

7 Indictment No. 2015-GS-32-2030, this indictment
8 is for attempting or committing a lewd act upon a
9 child.

10 Your Honor, Mr. Kreis is present in the
11 courtroom with his attorney Mr. Shealy, and the
12 State is ready for trial in this case.

13 THE COURT: Mr. Shealy, are you ready to strike
14 the jury?

15 MR. SHEALY: Yes, Your Honor.

16 THE COURT: All right. Ladies and gentlemen of
17 the jury panel, as you've heard, the State has
18 called for trial -- ladies and gentlemen of the jury
19 panel, we're going to draw this first jury, and then
20 once we've completed that selection, we'll draw the
21 jury for the second case.

22 Those who are selected in the first case, once
23 you're selected, I'll dismiss you, and we'll start
24 the trial of that case at 2:00. I don't want you
25 sitting around. I've got some pretrial matters that

1 I have to do.

2 Those who are selected on the second case,
3 you'll be released for the balance of the day. Not
4 sure when that second case will start, whether it be
5 Wednesday morning or Wednesday at lunchtime. We'll
6 just have to wait and see. But if you're not drawn
7 on the first two cases, you'll be on a stand-by,
8 call back in by telephone to see where you stand. I
9 hope that's the most efficient way to do it and not
10 conflict with your personal schedules any more than
11 it already has.

12 All right. Ladies and gentlemen of the jury,
13 the State has called for trial three indictments:
14 Attempting or committing a lewd act upon a child, an
15 indictment for lewd act upon a child, and an
16 indictment for criminal sexual conduct with a minor
17 in the second degree. The fact that these cases
18 have been indicted and brought before you,
19 obviously, that is not evidence in the case. The
20 defendant, Mr. Kreis, has pled not guilty to all
21 three indictments. And a plea of not guilty
22 triggers certain constitutional rights.

23 Number one, it triggers the right that the
24 defendant is presumed to be innocent, unless the
25 State is able to prove each and every element of

1 each and every indictment to you beyond a reasonable
2 doubt. The indictment is not evidence in the case;
3 it is simply the legal charging document by way this
4 case comes into the courtroom. And the burden, as I
5 said, is on the State to prove his guilt to you
6 beyond a reasonable doubt.

7 Now, in order to select a jury in this case, I
8 need to ask certain questions. And if any of the
9 questions apply to you, please, once again, stand
10 and identify yourself and answer the question.

11 First question: Is any member of the jury
12 panel related by blood or marriage or does anyone
13 have a close personal or social relationship with
14 the defendant, Mr. August Byron Kreis, III? And
15 that is spelled K-R-E-I-S. Mr. Kreis is seated at
16 the counsel table. Mr. Kreis, can you wheel around
17 and let everybody take a look at you, please. Thank
18 you. If jurors cannot see, I'd ask that you stand.

19 The alleged victims are **Minor 2**. Is
20 **Minor 2** in the courtroom? If you could
21 please stand, ma'am. Thank you. **Minor 1**. Is
22 **Minor 1** in the courtroom? Thank you. You
23 may be seated.

24 Now, question is, do I have any member of the
25 jury panel who has been, now or in the past, related

1 by blood or marriage to the to the defendant or to
2 the two alleged victims, or does anyone have a close
3 personal or social relationship with the defendant
4 or the alleged victims? If so, please stand.

5 All right. We have to list all of the
6 potential witnesses. It may very well be that not
7 all of them are called. And if anyone is in the
8 courtroom, I'd ask that you please stand. I'm going
9 to call the names of the potential witnesses and ask
10 the same question: Are you related by blood or
11 marriage, now or in the past, or do you now or in
12 the past had a close personal or social
13 relationship?

14 Karley Hollis, **Minor 3**, Eddie Kreis,
15 Ryan Stephens, Detective Shannon Dykes, Detective
16 Traci Barr, Lieutenant Steve Knafelc with Kershaw
17 County, Joseph Clarke with Richland County, John
18 Carwell with Richland County Sheriff's Office,
19 Margaret Holliman with the Lexington County
20 Sheriff's Office, Candi Kyzer with Lexington County
21 Sheriff's Office, Laurie Caldwell with SLED, Colleen
22 Corbin and Brooke Wymer, both with the Child
23 Advocacy Center here in Lexington; Brian Metz with
24 Richland County Sheriff's Office, Gaile Heath with
25 SLED, Heather Smith with LPC Columbia, Gail Baker

1 with the detention center in Columbia, Lieutenant
2 James Hayes with the detention center in Columbia,
3 Brandon Hudson with the Kershaw County Sheriff's
4 Department, and Michael Morris.

5 Anyone related by blood or marriage or do you
6 now or have you in the past had a close personal or
7 social relationship with any of these witnesses? If
8 so, please stand.

9 The State will be prosecuted by members of the
10 Solicitor's Office, Ms. Suzanne Mayes and Mr. Chris
11 Samellas. The defendant is represented by Mr. Tommy
12 Shealy.

13 Question: Any member of the jury panel now or
14 in the past have been represented in legal matters
15 by any of the lawyers? If so, please stand.

16 Any member of the jury panel related now or in
17 the past by blood or marriage or do you have a close
18 personal or social relationship with any of the
19 attorneys? If so, please stand.

20 Ladies and gentlemen, in these indictments --
21 and this is simply allegations, it not evidence in
22 the case -- it is alleged that here in Lexington
23 County between May of 2005 and March of 2008 that
24 the defendant, Mr. Kreis, committed a sexual battery
25 on **Minor 2** whose date of birth is alleged to

1 be [REDACTED]. That's the indictment for
2 criminal sexual conduct with a minor in the second
3 degree. It is further alleged that here in
4 Lexington County between May 8th, 2005 and October 1
5 2008, that Mr. Kreis committed the offense of lewd
6 act by improperly fondling and touching **Minor 1**
7 whose date of birth is [REDACTED]. And it's
8 further alleged that Mr. Kreis, the defendant, on or
9 about May 8th, 2005 through October 1, 2008,
10 attempted to commit a lewd and lascivious act upon
11 one **Minor 2** whose date of birth is March 26th,
12 1994.

13 In other words, there are three indictments
14 alleging a lewd act upon **Minor 1**; criminal
15 sexual battery, which I'll define to you, upon
16 **Minor 2**, and an attempt to commit a lewd act
17 upon **Minor 2**. The lewd act is upon **Minor 1**
18 **Minor 1**. These are simply allegations. The State has
19 to prove these beyond a reasonable doubt.

20 But my question is, does any member of the jury
21 panel know anything at all about the allegations
22 contained in these indictments, about the alleged
23 improper criminal conduct by the defendant
24 against -- these are his daughters, ma'am?

25 MS. MAYES: Yes, sir Your Honor.

1 THE COURT: -- by the daughters -- to the
2 daughters that happened in Lexington County,
3 allegedly, between May 8th of 2005 and March or
4 October of 2008? Does anybody know anything at all
5 about this? Read anything about it? Seen anything
6 on TV? Seen anything on the internet? Anyone
7 discussed it with you? Formed any opinion? Know
8 anything at all about these facts? If so, please
9 stand.

10 Do I have any member of the jury panel who
11 attended Gilbert Elementary or Gilbert Middle School
12 during the years of 2005 through 2009?

13 Do I have any member of the jury panel whose
14 family -- you or your family member is employed
15 currently as a federal or state law enforcement
16 officer or with the U.S. Attorney's Office or the
17 Attorney General's Office or the Solicitor's Office
18 or with the Department of Social Services? If so,
19 please stand.

20 Yes, sir, your name and number?

21 POTENTIAL JUROR: Juror 156. My nephew is with
22 Lexington.

23 THE COURT: He's with Lexington who?

24 POTENTIAL JUROR: He's a -- he was a K-9 unit.
25 Now, I think, he's with code enforcement.

1 THE COURT: Is he currently with the Lexington
2 County Sheriff's Office?

3 POTENTIAL JUROR: Yes, sir.

4 THE COURT: Your name and number, please?

5 POTENTIAL JUROR: 156, Michael Padula.

6 THE COURT: All right. This is being
7 investigated by the Lexington County Sheriff's
8 Office?

9 MS. MAYES: Yes, sir, Your Honor.

10 THE COURT: All right. I'm going to excuse you
11 because your nephew works for them and I don't want
12 the appearance of any impropriety. But just sit
13 tight for a second, please.

14 Yes, ma'am, in the purple?

15 POTENTIAL JUROR: My son works for Lexington
16 County Sheriff's Department.

17 THE COURT: Your name and number?

18 POTENTIAL JUROR: 10, Doreen Bair.

19 THE COURT: I'm going to excuse her from the
20 trial of the case.

21 Yes, sir?

22 POTENTIAL JUROR: 89. My son-in-law is a
23 detective with the Lexington County Sheriff's
24 Department.

25 THE COURT: All right. I'll excuse you from

1 the trial of this case.

2 Sir?

3 POTENTIAL JUROR: Matthew Koon, 128. My
4 brother is the sheriff of Lexington County.

5 THE COURT: The sheriff?

6 POTENTIAL JUROR: Yes, sir.

7 THE COURT: I will likewise excuse you.

8 Ma'am, your name and number?

9 POTENTIAL JUROR: Juror No. 32, Shera Brigman.
10 My sister works with DSS.

11 THE COURT: Whereabouts, ma'am?

12 POTENTIAL JUROR: 2600 Bull Street, the DSS
13 building.

14 THE COURT: Does she have any responsibility in
15 Lexington County?

16 POTENTIAL JUROR: Yes. She's an auditor also
17 with the County.

18 THE COURT: She's just an auditor? She doesn't
19 do the actual work with the children and --

20 POTENTIAL JUROR: No, no. She audits the
21 counties.

22 THE COURT: All right. You're allowed to serve
23 on this jury.

24 Do I have any member of the jury panel who is a
25 member of or a contributor to organizations that

1 normally back law enforcement or for the stricter
2 enforcement of criminal law such as MADD, SADD, CAV,
3 those sorts of organizations? If so, please stand.

4 Yes, ma'am, your name and number?

5 POTENTIAL JUROR: Juror 52, Toni Carter. I
6 work closely with MADD.

7 THE COURT: Okay. And the fact that you work
8 closely with Mothers Against Drunk Drivers, would
9 that in any way preclude or keep you from being a
10 fair and impartial juror and try this case based
11 solely on what you hear in the courtroom?

12 POTENTIAL JUROR: I'm not sure.

13 THE COURT: Not sure of what?

14 POTENTIAL JUROR: I'm not sure if it would
15 affect my decision.

16 THE COURT: Well, you're a grown lady and you
17 listen to people all the time. Can you sit here
18 and -- and the idea is what we need to have are
19 jurors that can sit here and listen to the
20 testimony, determine what the true facts are, and
21 apply those true facts to the law as I give it to
22 you and render a decision. Can you do that?

23 POTENTIAL JUROR: Yes.

24 THE COURT: Thank you.

25 Yes, sir, your name and number?

1 POTENTIAL JUROR: Juror No. 44, Devon Butler.
2 I'm a member of Sons of American Legion.

3 THE COURT: And the fact that you are a member
4 of Sons of American Legion, would that in any way
5 keep you from being a fair and impartial juror in
6 the trial of the case?

7 POTENTIAL JUROR: No. I'm good to go.

8 THE COURT: Thank you. Please have a seat.

9 Do I have any member of the jury panel who you
10 or a member of your immediate family been
11 prosecuted, accused of a criminal offense?

12 Yes, ma'am, front row?

13 POTENTIAL JUROR: Wendy Wilson, 222. My son is
14 on probation in Lexington County.

15 THE COURT: The fact that you got a son that's
16 on probation, would that in any way preclude or keep
17 you from being a fair and impartial juror?

18 POTENTIAL JUROR: No.

19 THE COURT: Thank you, ma'am.

20 Yes, ma'am?

21 POTENTIAL JUROR: 84, Judy George. I have a
22 brother that served in a federal penitentiary for
23 armed robbery.

24 THE COURT: Okay. And the fact that you have a
25 brother who has a brush with the law and is paying

1 his dues, would that in any way preclude or keep you
2 from being a fair and impartial juror in the trial
3 of the case?

4 POTENTIAL JUROR: No, sir.

5 THE COURT: Thank you, ma'am.

6 Yes, ma'am?

7 POTENTIAL JUROR: 75, Ann Marie Elmwood. I
8 have a brother that's currently incarcerated.

9 THE COURT: And the fact that you have a
10 brother who is currently incarcerated, would that in
11 any way preclude you from serving, performing your
12 civic duty as a juror in this case?

13 POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you.

15 Now, that was asking anyone if they've got
16 family or who has been convicted of crimes. Do I
17 have anyone who has been a victim of a violent
18 crime? If so, please stand.

19 Ladies and gentlemen, let me tell you what my
20 main responsibility as a judge is. That's to ensure
21 that anyone who has been indicted and accused of a
22 criminal act and has pled not guilty and has asked
23 for a jury trial, I have to -- I guess my main
24 responsibility as a trial judge is to make sure that
25 he or she receives a fair trial by an impartial

1 jury. And the way our system works is this: During
2 the trial of the case, we have two judges who
3 perform certain duties in the trial; my position
4 makes me the judge of the law. I instruct you what
5 the law is in the case dealing with these various
6 offenses and general propositions of criminal law.
7 And you're under an oath to accept the law as I give
8 it to you. So I'm the judge of the law.

9 My other responsibility is to rule on the
10 admissibility of evidence. The lawyers have to ask
11 questions that comply with our rules of evidence and
12 our rules of criminal procedure. And it may very
13 well be that the lawyer may ask a proper question to
14 witness 1 and he'll say it's five, and ask the same
15 proper question to witness 2 and he'll say it's ten,
16 and the third witness will say it's 15. All of
17 those are proper questions, but you got three
18 different answers. So, therefore, I need a judge of
19 the facts.

20 Now, the judge of the facts is the 12 citizens
21 from the community who can judge the credibility or
22 the believability of the witness who testifies. You
23 are the judge of the facts. And the idea is this:
24 Once you determine what the true facts are, whether
25 it be 5, 10 or 15 -- that's just an example -- you

1 take those true facts as you find them to be and you
2 apply those facts to the law as I give it to you,
3 and you'll be in a position to render a true and
4 just verdict. And, obviously, that requires, being
5 the judge of the facts, for you to listen to the
6 witnesses who testify and use your common sense,
7 your ordinary experience with husbands, wives,
8 children, employees, employers, friends. You know
9 how to tell who is telling the truth. You use those
10 same skills and determine what the true facts are.

11 You are 12 jurors from the community
12 collectively acting as one. You are the judge of
13 the facts in the case. Your job is much, much, much
14 more important than mine, because it is you who
15 determine what the true facts are and apply it to
16 the law. It's not unusual, in fact, it's generally
17 the case, that a witness in a case with say one
18 things and another witness will say another. You
19 have to determine who is telling the truth.

20 Now, having said that, my question is this: Do
21 I have any member of the jury panel who is unable to
22 perform that important civic duty of sitting as a
23 judge of the facts in the case because of some
24 personal relief, religious belief, political belief,
25 any kind of belief? I need to know now instead of

1 at the end of the case. So my question is, do I
2 have anyone who is unable to perform their duty as
3 being a judge in this case, particularly the judge
4 of the facts? Please let me know now by standing
5 and giving me your name.

6 And, obviously, that same responsibility
7 includes being able to listen to me give you what
8 the law is in the case dealing with certain
9 constitutional issues and certain laws dealing with
10 the facts in this case -- not the facts, but the
11 elements of the crimes that are charged in following
12 my instructions and applying my instructions to the
13 facts as you find them. Anyone not able to do that?

14 Do I have any member of the jury panel who is
15 unable to render efficient service in this case by
16 placing particular inferences on being fair both to
17 the State and to the defendant?

18 Do I have any member of the jury panel who
19 knows of any reason whatsoever in the world that you
20 should not serve as a juror in this case?

21 Any additional questions by the State?

22 MS. MAYES: None from the State, Your Honor.

23 THE COURT: Mr. Shealy?

24 MR. SHEALY: No, Your Honor.

25 THE COURT: All right. Ladies and gentlemen,

1 in a criminal case such as this, the State has --
2 and, Madam Clerk, didn't we have one juror that was
3 stricken for cause?

4 MS. MAYES: Yes, sir.

5 THE COURT: In a criminal case, your names will
6 be put in a random selection process. And as your
7 name is called, randomly, please come forward, come
8 between the two doors right here, and stand right
9 here at the -- where they have the screen where the
10 bailiff is raising his hand, turn around and face
11 the lawyers.

12 The State has five strikes, the defendant has
13 ten strikes. And they can strike you for most any
14 reason or no reason at all with certain bounds that
15 the lawyers are cognizant of. So don't get your
16 feelings hurt if they strike you. But we'll go
17 through that process until we get 12 jurors and two
18 alternates.

19 Okay. As your name is called by the Clerk,
20 please come forward, stand right here in front, and
21 turn around and face the lawyers.

22 THE CLERK: Juror 204, Caleb Strickland.

23 (Mr. Strickland comes forward.)

24 THE CLERK: What say you for the State?

25 MS. MAYES: Please present the juror.

1 THE CLERK: What say you for the Defense?

2 MR. SHEALY: Please swear the juror.

3 THE CLERK: Have a seat in the jury box, sir.

4 78, William Ford.

5 (Mr. Ford comes forward.)

6 THE CLERK: What say you for the State?

7 MS. MAYES: Please present the juror.

8 THE CLERK: What say you for the Defense?

9 MR. SHEALY: Please swear the juror.

10 THE CLERK: Have a seat in the jury box, sir.

11 193, Jennifer Shaw.

12 (Ms. Shaw comes forward.)

13 THE CLERK: What say you for the State?

14 MS. MAYES: Please present the juror.

15 THE CLERK: What say you for the Defense?

16 MR. SHEALY: Please excuse the juror from this

17 trial.

18 THE CLERK: Return to your seat, please, ma'am.

19 158, Janet Patrick.

20 (Ms. Patrick comes forward.)

21 THE CLERK: What say you for the State?

22 MS. MAYES: Please present the juror.

23 THE CLERK: What say you for the Defense?

24 MR. SHEALY: Please swear the juror.

25 THE CLERK: Have a seat in the jury box, ma'am.

1 74, Daniel Ellis.

2 (Mr. Ellis comes forward.)

3 THE CLERK: What say you for the State?

4 MS. MAYES: Please present the juror.

5 THE CLERK: What say you for the Defense?

6 MR. SHEALY: Please swear the juror.

7 THE CLERK: Have a seat in the jury box, sir.

8 187, Philip Scarborough.

9 (Mr. Scarborough comes forward.)

10 THE CLERK: What say you for the State?

11 MS. MAYES: Please excuse the juror from the
12 trial of this case.

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

14 Number 16, Renay Bates.

15 (Ms. Bates comes forward.)

16 THE CLERK: What say you for the State?

17 MS. MAYES: Please present the juror.

18 THE CLERK: What say you for the Defense?

19 MR. SHEALY: Please excuse the juror from this
20 trial.

21 THE CLERK: Return to your seat, please, ma'am.

22 177, Larry Richardson.

23 (Mr. Richardson comes forward.)

24 THE CLERK: What say you for the State?

25 MS. MAYES: Please present the juror.

1 THE CLERK: What say you for the Defense?

2 MR. SHEALY: Please swear the juror.

3 THE CLERK: Have a seat in the jury box, sir.

4 104, Kathryn Harris.

5 (Ms. Harris comes forward.)

6 THE CLERK: What say you for the State?

7 MS. MAYES: Please present the juror.

8 THE CLERK: What say you for the Defense?

9 MR. SHEALY: Please excuse the juror from this
10 trial.

11 THE CLERK: Return to your seat, please, ma'am.

12 155, David Padgett.

13 (Mr. Padgett comes forward.)

14 THE CLERK: What say you for the State?

15 MS. MAYES: Please present the juror.

16 THE CLERK: What say you for the Defense?

17 MR. SHEALY: Please swear the juror.

18 THE CLERK: Have a seat in the jury box, sir.

19 184, Robert Sable.

20 (Mr. Sable comes forward.)

21 THE CLERK: What say you for the State?

22 MS. MAYES: Please present the juror.

23 THE CLERK: What say you for the Defense?

24 MR. SHEALY: Please swear the juror.

25 THE CLERK: Have a seat in the jury box, sir.

1 36, Kevin Brown.

2 (Mr. Brown comes forward.)

3 THE CLERK: What say you for the State?

4 MS. MAYES: Please present the juror.

5 THE CLERK: What say you for the Defense?

6 MR. SHEALY: Please swear the juror.

7 THE CLERK: Have a seat in the jury box, sir.

8 44, Devon Butler.

9 (Mr. Butler comes forward.)

10 THE CLERK: What say you for the State?

11 MS. MAYES: Please present the juror.

12 THE CLERK: What say you for the Defense?

13 MR. SHEALY: Please swear the juror.

14 THE CLERK: Have a seat in the jury box, sir.

15 40, Kathy Burch.

16 (Ms. Burch comes forward.)

17 THE CLERK: What say you for the State?

18 MS. MAYES: Please present the juror.

19 THE CLERK: What say you for the Defense?

20 MR. SHEALY: Please swear the juror.

21 THE CLERK: Have a seat in the jury box, ma'am.

22 180, Rachel Rose.

23 (Ms. Rose comes forward.)

24 THE CLERK: What say you for the State?

25 MS. MAYES: Please present the juror.

1 THE CLERK: What say you for the Defense?

2 MR. SHEALY: Please excuse the juror from this
3 trial.

4 THE CLERK: Return to your seat, please, ma'am.
5 84, Judith George.

6 (Ms. George comes forward.)

7 THE CLERK: What say you for the State?

8 MS. MAYES: Please present the juror.

9 THE CLERK: What say you for the Defense?

10 MR. SHEALY: Please swear the juror.

11 THE CLERK: Have a seat in the jury box, ma'am.
12 216, William White.

13 (Mr. White comes forward.)

14 THE CLERK: What say you for the State?

15 MS. MAYES: Please present the juror.

16 THE CLERK: What say you for the Defense?

17 MR. SHEALY: Please swear the juror.

18 THE CLERK: Have a seat in the jury box, sir.

19 Alternates, Your Honor.

20 THE COURT: Two and one.

21 THE CLERK: 226, Pamela Hayes.

22 (Ms. Hayes comes forward.)

23 THE CLERK: What say you for the State?

24 MS. MAYES: Please present the juror.

25 THE CLERK: What say you for the Defense?

1 MR. SHEALY: Please swear the juror.

2 THE CLERK: Have a seat in the jury box, ma'am.

3 143, David McDougall.

4 (Mr. McDougall comes forward.)

5 THE CLERK: What say you for the State?

6 MS. MAYES: Please present the juror.

7 THE CLERK: What say you for the Defense?

8 MR. SHEALY: Please swear the juror.

9 THE CLERK: Have a seat in the jury box, sir.

10 THE COURT: Any motions by the State in
11 connection with the selection of the jury?

12 MS. MAYES: None from the State, Your Honor.

13 THE COURT: Mr. Shealy?

14 MR. SHEALY: No, Your Honor.

15 THE COURT: All right.

16 Ladies and gentlemen, those of you selected for
17 this jury, we're going to start the trial of the
18 case at 2:00. We'll probably go til around 5:00,
19 maybe just a tad before or after depending on where
20 we are with the testimony. You'll walk out with the
21 bailiff and he'll show you where to return. I'm
22 going to start right at 2:00, so be back a few
23 minutes before. Please don't discuss the case with
24 anyone and don't let anyone discuss it with you. I
25 look forward to working with you. We'll go ahead

1 and get all of the pretrial matters out of the way
2 so we can go straight forward starting at 2:00.

3 (The jury exits the courtroom at 11:30 AM.)

4 (State's Exhibit Nos. 1-12 marked for
5 identification.)

6 THE COURT: All right. Let's make sure that we
7 all agree that we had one juror that you agreed to
8 strike for cause. I think he was an employee of the
9 jail there in Richland County, Alvin S. Glenn.

10 MS. MAYES: Yes, sir, Your Honor.

11 THE COURT: His name was what?

12 MR. SAMELLAS: Your Honor, Griffie Cole, Juror
13 No. 60.

14 THE COURT: Is that correct, Mr. Shealy?

15 MR. SHEALY: Correct, Your Honor.

16 THE COURT: And we discussed that in the
17 pretrial and before the jury was selected that he'd
18 be struck for cause.

19 Also, I was informed in pretrial earlier this
20 morning in an informal conference that the defendant
21 had consented to the combined indictments that we
22 had discussed. Is that correct, Mr. Shealy?

23 MR. SHEALY: That is correct, Your Honor.

24 THE COURT: And that resulted in what,
25 Ms. Mayes?

1 MS. MAYES: That allowed the State, Your Honor,
2 to call both the indictments concerning **Minor 2**
3 **Minor 2** and **Minor** together in this joint
4 proceeding. There is no objection by the defendant
5 of a consolidation of those three indictments
6 involving both victims, **Minor** and **Minor 2**
7 **Minor 2**

8 THE COURT: When you say consolidation, you
9 mean trying all three indictments in this trial?

10 MS. MAYES: Yes, sir, Your Honor.

11 THE COURT: And then, of course, that does not
12 mean he's consented to the, perhaps, 404 testimony
13 of the third daughter that we'll have to deal with
14 at the appropriate time?

15 MS. MAYES: Yes, sir, Your Honor. And I wanted
16 to put on the record that the only reason there's
17 not an indictment concerning the third daughter in
18 Lexington County is because the family left
19 Lexington and moved to Richland County and then
20 Kershaw County, and that is where the assaults
21 against the third daughter occurred. He does have
22 pending charges in those jurisdictions, but that's
23 the reason he does not have a Lexington indictment
24 as to **Minor 3**.

25 THE COURT: Okay. So that leaves us with the

1 three indictments in Lexington County, criminal
2 sexual conduct in the second degree --

3 MS. MAYES: Yes, sir, Your Honor.

4 THE COURT: -- lewd act and attempted lewd act.

5 MS. MAYES: Yes, sir.

6 THE COURT: And CSC in the second carries up to
7 20 years, and lewd act up to 15?

8 MS. MAYES: On each charge, yes, sir.

9 THE COURT: So that's 50 years all together?

10 MS. MAYES: Yes, sir Your Honor.

11 THE COURT: Have you explained that to your
12 client, Mr. Shealy?

13 MR. SHEALY: I have, Your Honor.

14 THE COURT: And you and I have had the
15 discussion that if plead or accepted responsibility,
16 that I would more than likely give him a concurrent
17 sentence, meaning they'd all run at the same time,
18 something less than the 20 years?

19 MR. SHEALY: Yes, Your Honor.

20 THE COURT: And, Ms. Mayes, if we resolved it
21 by way of a plea, would that affect the
22 Richland/Kershaw County charges or could that be
23 made part of a global resolution?

24 MS. MAYES: I'd have to address that with the
25 prosecutor in that jurisdiction, and we've not

1 discussed it any time recently.

2 THE COURT: All right.

3 Mr. Shealy, any way of resolving it or we need
4 to move forward?

5 MR. SHEALY: I believe we need to move forward,
6 Your Honor.

7 THE COURT: No problem.

8 MR. SHEALY: Thank you, Your Honor.

9 THE COURT: All right. What motions do we
10 have?

11 MR. SHEALY: Your Honor, just one thing that
12 you touched on that I think we veered away from was
13 that the State offered to indict my client on a
14 number of charges because of the length of time
15 period in the indictment.

16 The Supreme Court has -- there's a case, I
17 forget the name of the case, that deals with --
18 well, essentially, they said they could have broken
19 this indictment down into four separate indictments,
20 all alleging the summer months. And in discussing
21 with my client, we prefer to be charged with just
22 the single indictment as opposed to the numerous
23 single indictments over a two-and-a-half-year
24 period.

25 THE COURT: And that's where we are, right,

1 Ms. Mayes?

2 MS. MAYES: Yes, sir, Your Honor. And
3 Mr. Shealy and I have discussed this: He is not
4 objecting at all to the expanded timeframe that is
5 in the indictments currently before the Court. I
6 believe those indictments cover timeframes between
7 the years 2005 and 2008, and the Defense elects to
8 go forward on these indictments with the expanded
9 timeframes as opposed to us bringing 9, 10, multiple
10 indictments against the defendant.

11 THE COURT: And you discussed that with your
12 client?

13 MR. SHEALY: I have, Your Honor.

14 THE COURT: And, obviously, the effect of that
15 is, if there were multiple indictments and he was
16 found guilty on multiple indictments, then he could
17 have consecutive sentences on each one; whereas
18 where it stands now, it's only three indictments.
19 It still could be consecutive, but it's not nine
20 consecutive or whatever it was.

21 MR. SHEALY: Correct, Your Honor.

22 THE COURT: And you've explained all that to
23 your client?

24 MR. SHEALY: Yes, Your Honor.

25 THE COURT: Any questions about that,

1 Mr. Kreis?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Thank you.

4 THE DEFENDANT: But if you find me guilty, I
5 want life.

6 THE COURT: Well --

7 THE DEFENDANT: I don't want all this playing
8 with numbers --

9 THE COURT: -- I won't find you guilty. That's
10 up to the jury to find you guilty or not. And --

11 THE DEFENDANT: I know. I'm just saying.

12 THE COURT: I can't give you life though. The
13 statute doesn't allow it.

14 The maximum charge, Mr. Kreis, is 20 years on
15 the criminal sexual conduct in the second degree;
16 the maximum charge on the lewd acts is 15 years
17 each. Of course I have to look at all of the
18 circumstances, if, in the event, we come to that.
19 And I'll certainly listen to your input on it.
20 You'll be allowed to give me what your thoughts are,
21 if that happens. It may be that they find you not
22 guilty. Who knows?

23 THE DEFENDANT: Stranger things have happened.

24 THE COURT: Now, what other motions do we have?

25 MR. SHEALY: Your Honor, most of them have been

1 resolved. I had a motion in limine as to a picture.
2 They've cropped the picture, have shown it to me,
3 and I have shown it to my client.

4 THE COURT: That was the one we discussed in
5 chambers about an alleged -- some type of derogatory
6 sign or signal or something?

7 MR. SHEALY: Yes, Your Honor. And that's
8 acceptable to us.

9 The other motion was a motion in limine. We
10 were concerned they'd attempt to introduce evidence
11 concerning my client's participation in the Ku Klux
12 Klan and the Aryan Nation. However, we've discussed
13 that as well, and they've agreed --

14 THE COURT: Well, that's certainly not
15 relevant. He has the right to be a member of
16 whatever he wants to be a member of. It shouldn't
17 affect this case.

18 MR. SHEALY: Thank you, Your Honor.

19 The -- another issue we had is -- and we were
20 getting ready to discuss this when you came in. It
21 may be resolved. But they have a sketch, Your
22 Honor -- may I show it to him?

23 MR. SAMELLAS: Yes.

24 MR. SHEALY: They have a sketch of the
25 Maplewood address where the offense took place.

1 And, quite frankly, my client drew his sketch, he
2 had the bathroom over here. But in talking to him,
3 he doesn't recall -- he's happy with that.

4 What we're objecting to is, this shows solid
5 walls as opposed to doors and other things. He
6 tells me that the space on this side of the
7 fireplace, going towards the kitchen -- on the left
8 side of the fireplace, going to the kitchen, and on
9 the right side of the fireplace going into the
10 dining room, that a portion of that, a good portion,
11 was open, there wasn't even a door. Also, this
12 doesn't show the interior doors. And the --

13 THE COURT: So your objection is it's not an
14 accurate depiction of how the house is designed at
15  ?

16 MR. SHEALY: Correct, Your Honor.

17 THE COURT: Ma'am?

18 MS. MAYES: I believe we can make adjustments,
19 Your Honor. It was done on a computer software. If
20 Mr. Shealy wants to write out on there where he
21 wants the doors to be, we can make adjustments prior
22 to this afternoon.

23 THE COURT: Let him review that sketch with his
24 client, because his client probably knows the inside
25 diagram of the inside of the house better than any

1 of us, and he can put the doors where they're
2 supposed to be so it will be an accurate depiction.

3 That should cure that, should it not,
4 Mr. Shealy?

5 MR. SHEALY: Yes, Your Honor.

6 THE COURT: All right.

7 MR. SHEALY: I'll go over it with him in just a
8 moment, Your Honor.

9 THE COURT: Sure.

10 MR. SHEALY: The next big issue is, the State's
11 requested to do -- have Lyle evidence on **Minor 3**,
12 which we oppose, Your Honor.

13 THE COURT: All right. Let's go over that.
14 Have you explained to your client what that entails?

15 MR. SHEALY: I have, Your Honor.

16 THE COURT: Under our rules of evidence, under
17 Rule 404 in Lyle, if they want to get into testimony
18 of the third daughter alleging that there are
19 charges similar that occurred outside of this
20 jurisdiction -- have you explained that to him?

21 MR. SHEALY: I have, Your Honor. I'm not sure
22 that he fully understand it. But he does understand
23 that the State intends to call **Minor 3** as a
24 witness, even though there's not a charge.

25 THE COURT: All right. Ms. Mayes, you want to

1 make that -- I don't know if I can make a ruling on
2 that until we take some testimony and make a
3 proffer. But you can tell me where we're going.

4 MS. MAYES: Yes, sir, Your Honor. As to
5 **Minor 3** Your Honor, her charges are nearly
6 identical to the situation involving both **Minor 2**
7 and **Minor 1**

8 THE COURT: Well, tell me, succinctly, what are
9 the allegations against **Minor 2** and **Minor 1**

10 MS. MAYES: While they were living in Lexington
11 County at [REDACTED], Your Honor, he -- there
12 were multiple occasions in which he fondled the
13 vaginal area of his oldest daughter **Minor 2** and
14 also had **Minor 2** engage in fellatio with him. There
15 were multiple incidents with her that escalated as
16 well to him performing oral sex on **Minor 2**

17 And, secondly, as to **Minor** Your Honor,
18 very similar in that he fondled her vaginally and
19 also attempted to have her perform oral sex on him.

20 And then thirdly, Your Honor, as to **Minor 3**
21 again, fondled her vaginally and attempted to have
22 her perform oral sex on him. But she resisted and
23 turned away.

24 In all of these situations, Your Honor, he is
25 in the role of biological father. He has shared the

1 family home with him for years. I think,
2 ultimately, when the family was living in Kershaw,
3 he had moved out of the residence, but still would
4 visit on a very frequent basis and had access to the
5 children in the home as a result of that frequent
6 visitation. So there are strong similarities, Your
7 Honor.

8 In addition to that, all of the girls have been
9 around the same age group when these acts occurred.
10 As to **Minor 2** this is going on -- it includes
11 the time period she would have been 11, 12, 13; as
12 to **Minor** it includes the time period she
13 would have been 10 or 11, so early preadolescence or
14 early adolescence; and as to **Minor 3** it covers the
15 time period she would have been around 11, and then
16 it stopped when she was 12 because that's when the
17 crime was reported. So as to all of the girls, it's
18 very early preadolescence time period.

19 And then, Your Honor, he also is finding
20 opportunities when the girls are alone and no one
21 else is around in order to engage in these acts with
22 the children. So under the existing case law, which
23 there is significant case law that covers the
24 scenario where a parent is acting out against
25 children, and it's a similar situation occurring

1 over a period of time with those children. Some of
2 the cases that I've passed up to the Court for
3 consideration is State v. Wallace, State v. Hubner,
4 State v. Clasby, State v. Wingo, State v. Holmes,
5 and State v. McClellan and State v. Blanton and,
6 also, State v. Kirton, Your Honor.

7 But, without doubt, the Supreme Court has
8 created a recognized exception for common scheme or
9 plan when it's a scenario like this where a father
10 is repeatedly engaging in a pattern of behavior with
11 his daughters in the family home.

12 THE COURT: All right.

13 Mr. Shealy?

14 MR. SHEALY: Thank you, Your Honor.

15 Your Honor, first and foremost, all the
16 commentary I've found on the Lyle issues, including
17 the Prosecutor's Guide to Prosecution of Child Abuse
18 in South Carolina, mainly for solicitors and
19 investigators, when they talk about Lyle evidence,
20 they talk about prior bad acts.

21 The case law implies prior bad acts and a lot
22 of times in dicta, they talk about prior bad acts.
23 But our position, Your Honor, is that while whatever
24 happened to **Minor 2** -- whatever allegedly happened
25 to **Minor 2** or **Minor 1** may be used in **Minor 3** case.

1 Since this came afterwards, it certainly can't be
2 evidence of a plan or a scheme or absence of mistake
3 or any of the other bases, because it happened
4 later, not before. That would be our first
5 argument, Your Honor.

6 The next argument is, I've looked through the
7 stuff I have on **Minor 3** and what I can see is that
8 her allegations are that he touched her both under
9 her clothes and over -- above her clothes. I
10 believe it was above her clothes. But, certainly,
11 under her clothes. She also said he only used his
12 hand, and that he apparently allegedly fondled
13 himself and ejaculated and she saw that. But I
14 cannot find any reference to any attempt to or
15 actual oral sex on **Minor 3** that that would be just
16 fondling -- not just fondling -- and the issue --
17 the circumstances are less graphic than what's
18 alleged in the first two cases. Thank you, Your
19 Honor.

20 THE COURT: Ms. Mayes?

21 MS. MAYES: Yes, sir, Your Honor. I don't
22 believe that there is any distinction concerning
23 prior bad acts that occur over the course of time.
24 The prior bad acts relates to -- and the prior bad
25 acts relates to -- it's a prior bad act at the time

1 of the trial which, certainly, the **Minor 3** trial
2 would be. But it's really about common scheme or
3 plan and what makes more or less probable that the
4 acts occurred against both **Minor 1** and **Minor 2**
5 is that it also occurred against the third daughter.

6 There's no restriction and I've never seen any
7 restriction in the case law that because one
8 continues on later or occurs later, that that
9 somehow prevents it from being a prior bad act.
10 It's all part of the same common scheme or plan
11 involving all three daughters.

12 THE COURT: Well, let's do it this way: I'm
13 not going to rule before the trial starts. I'll ask
14 that you not mention the third daughter outside of
15 Lexington County in your opening. Obviously, you'll
16 put up the two victims before her, I would
17 suspect -- or however you try your case.

18 But when you get to the third daughter outside
19 of Lexington County, we'll do a proffer to see
20 exactly what she's going to say and what we've got
21 already in evidence, and I'll make a ruling on it at
22 that time. So don't mention it in opening that you
23 have a third daughter -- that you're attempting to
24 get it in under Lyle. We'll make that independent
25 finding after the proffer has been made.

1 Anything else?

2 MS. MAYES: Nothing from the State, Your Honor.

3 MR. SHEALY: Yes, Your Honor. There is one
4 matter that I have mentioned, the transportation and
5 housing of my client. The -- my concern is that, as
6 I understand it, Lexington County does not have a
7 handicap-capable van. My client doesn't have any
8 legs. I'm concerned for both his safety and for
9 humanitarian reasons that he be transported in a
10 handicap-accessible van, that seatbelts -- since he
11 doesn't have legs for the seatbelts to be around,
12 we'd would be ineffective in providing safety should
13 there be an accident, also the bodily handling -- the
14 handling of him in and out of the van, we don't
15 believe is proper.

16 THE COURT: What's the answer to your solution?
17 How do you solve it?

18 MR. SHEALY: How do I solve it?

19 THE COURT: How do you suggest I solve it? I
20 normally have absolutely no control over the SCDC or
21 the local jails. That's entirely -- I mean, I can't
22 control the safety and security and all of that
23 other than asking them to be as cognizant of your
24 client's handicap as possible. But I don't know
25 that I can get involved in how they handle people

1 who are incarcerated.

2 MR. SHEALY: Also, Your Honor, the housing, he
3 needs to be able to go to the bathroom, he needs to
4 be able to access the toilet facilities.

5 THE COURT: Where is he currently housed?

6 MR. SHEALY: Well, up until this morning, he
7 was housed at Alvin S. Glenn.

8 THE COURT: So everything's --

9 MR. SHEALY: They have that.

10 THE COURT: What's the problem of letting him
11 return to Alvin S. Glenn each day?

12 MR. SHEALY: I don't know, Your Honor. It's
13 the sheriff's department you'd have to speak to.

14 THE COURT: Do we have handicap bathrooms
15 available here for him to use? Maybe not in the
16 holding cell, but I can get him access to a handicap
17 bathroom here in the courthouse.

18 MR. SHEALY: Once again, Your Honor, I'm not
19 familiar with what's available. I know they've had
20 people with wheelchairs in the jail before.

21 THE COURT: All right. Well, let me talk to
22 the officers during the lunch break, and I'll see
23 what we can do.

24 MR. SHEALY: Thank you, Your Honor.

25 THE COURT: I can't get involved with their

1 responsibilities. I don't want to get involved with
2 the security of the prisoners and people on trial.
3 But I will, obviously, do all I can to make sure
4 your client has all of the comforts he needs, as
5 well as access to the facilities based on his
6 handicap. I'll have to ask them what they intend to
7 do at night if they don't have a handicap facility
8 at the Lexington jail. I'll make sure he's treated
9 as humanely and as fairly as possible considering
10 his handicap.

11 MR. SHEALY: Thank you, Your Honor.

12 And our last motion would be that we'd ask that
13 the witnesses be -- well, at least the daughters,
14 the witnesses be sequestered.

15 THE COURT: Ms. Mayes?

16 MS. MAYES: Your Honor, as to the sequestration
17 issue, we have no objection as it concerns witnesses
18 in this case; however, under State v. Carmack, if a
19 witness has given a written statement, sequestration
20 would not be required. I'll go ahead and pass up
21 State vs. Carmack now.

22 THE COURT: Some of them are victims too,
23 aren't they?

24 MS. MAYES: Yes, sir, Your Honor. Both **Minor 1**
25 and **Minor 2** are the named victim in the indictment

1 before the Court, so they'd be exempt from
2 sequestration. And then as to **Minor 3**, she's
3 given a written statement as well as two forensic
4 interviews, which have been provided to Mr. Shealy.
5 So we believe under State v. Carmack, she'd be
6 exempt to sequestration.

7 And then other than that, we have our chief
8 investigating officer, which is Detective Shannon
9 Dykes.

10 THE COURT: And he would not be subject to
11 sequestration. All right. I'll rule on that. Any
12 objection to that, Mr. Shealy? I think that's the
13 law.

14 MR. SHEALY: No, Your Honor.

15 THE COURT: All right. They'll be allowed to
16 stay in the courtroom. Any other witnesses would be
17 sequestered.

18 All right. Are y'all ready to start at 2:00?

19 MR. SHEALY: Yes, sir, Your Honor.

20 MS. MAYES: One other matter, Your Honor. We
21 have filed a Rape Shield motion. There's no intent
22 to offer any evidence pursuant to Rape Shield?

23 MR. SHEALY: I'm not aware of any.

24 MS. MAYES: Thank you, Your Honor. That's all
25 from the State.

1 MR. SHEALY: That's all from the Defense, Your
2 Honor.

3 THE COURT: Thank you.

4 Any questions, Mr. Kreis?

5 THE DEFENDANT: (Shakes head.)

6 THE COURT: All right. I'll speak with the
7 jail people and the security personnel and make sure
8 all of your needs can be met as humanly as possible.
9 Thank you. We'll stand at ease.

10 (A luncheon recess transpired.)

11 THE COURT: Okay. Good afternoon, sirs. We've
12 got a handicapped defendant who has been housed over
13 in Richland County and, obviously, he's now here for
14 this week's trial. The trial will be, obviously,
15 through today and maybe through tomorrow. But it
16 will be two nights that we have to provide for him
17 over here. What kind of facilities do we have for
18 someone who is a double amputee, such as the
19 defendant here?

20 CORRECTIONAL OFFICER: We have handicap cells
21 that we have for him. And we'll be able to house
22 him.

23 THE COURT: So y'all have got the handicap cell
24 here and the means of transporting with all the
25 handicap understandings and considerations?

1 CORRECTIONAL OFFICER: Yes, sir.

2 THE COURT: You feel confident you can handle
3 him?

4 CORRECTIONAL OFFICER: Yes, sir. Yes, sir.

5 THE COURT: Mr. Shealy, I can't ask for
6 anything better than that.

7 MR. SHEALY: That's what I want.

8 THE COURT: Thank you very much. I appreciate
9 y'all coming. I'm sorry to interrupt your day, but
10 I just wanted to make sure he had accommodations
11 over here. Have a wonderful day. Keep the weather
12 dry outside. Thank you very much.

13 Anything for the record before we start by the
14 State?

15 MS. MAYES: Yes, sir, Your Honor. I know we
16 discussed this in chambers, but we wanted it to be
17 on the record as well. There's a letter that will
18 be offered in evidence in this case. It's a
19 handwritten letter by the defendant August Kreis.
20 There was a previous court proceeding in which the
21 defendant acknowledged that he did write the letter,
22 that it is his handwriting. So he admits to being
23 the author of that letter. And we just wanted to go
24 ahead and clear up that stipulation for the record
25 in this matter because it will be offered as

1 evidence in this case.

2 THE COURT: Mr. Shealy, I think you told me
3 that's correct and that you would not require them
4 to authenticate by an expert that he wrote the
5 letter, he's admitted to writing it?

6 MR. SHEALY: Yes, sir. And he said that on the
7 record. We're stipulating that he wrote the letter.

8 THE COURT: And let the record reflect the
9 defendant shook his head in a positive manner.

10 Okay. Anything else from you, Mr. Shealy,
11 before we start back?

12 MR. SHEALY: Just briefly, Your Honor. Just to
13 keep you informed, first, there was an issue
14 about -- this whole matter came to light based on
15 one of the victims saying that, by the way, Jen was
16 telling the truth. And that was a prior allegation
17 against my client in Pennsylvania. But that's not
18 going to be offered by the Solicitor, so that's not
19 going to be --

20 THE COURT: We're not trying anything in
21 Pennsylvania.

22 MR. SHEALY: Right. And the other is, one of
23 the -- one of the State's witnesses saw me for the
24 first time, I guess, today, and he thought that I
25 may have represented him. We talked, he came

1 forward, he wasn't sure. I told him I've only been
2 here since July 28th of 2014. And he said, no, it
3 was longer than that. So he no longer thinks I
4 represented him. But my understanding is that he
5 had no objection to me anyway.

6 THE COURT: Thank you. Anything else?

7 MR. SHEALY: Thank you, Your Honor. That's all
8 I have.

9 THE COURT: Bring the jury in, please.

10 (The jury enters the courtroom at 2:08 PM.)

11 THE COURT: I hope you're dry. We're getting
12 more rain than we need.

13 All right. The first thing we have to do is
14 have you sworn in for this particular case. If you
15 would stand and raise your right hand, Madam Clerk
16 will initiate the oath.

17 THE CLERK: (Initiates the oath to the jury.)

18 THE JURY: I do.

19 (Jury sworn at 2:09 PM.)

20 THE COURT: Thank you.

21 Ladies and gentlemen of the jury, let me give
22 you a little bit of an opening statement as to where
23 we're going and what you can expect while we try
24 this case. As I told you when we selected the jury,
25 the fact that the defendant has been charged and

1 arrested and indicted on these three indictments,
2 one for lewd act upon a child, one for attempting to
3 commit a lewd act upon a child, and one for criminal
4 sexual conduct with a minor in the second degree,
5 the fact that he's been arrested, charged, and
6 indicted is not evidence in this case; that's simply
7 the allegations.

8 He's pled not guilty. By pleading not guilty,
9 he has a constitutional protection of being presumed
10 innocent, unless the State is able to prove to you
11 beyond a reasonable doubt each and every element
12 contained in all three indictments.

13 When we try cases in criminal court, as opposed
14 to civil court, the burden of proof is different.
15 If we were trying a wreck case or a medical or legal
16 malpractice case where we're saying that the doctor
17 fell below the standard of care by treating us in a
18 substandard way, we were hurt, that's a civil case
19 where you're asking for monetary damages. The
20 burden of proof in that case is what we call by the
21 preponderance or greater weight of the evidence, as
22 opposed to when we try a case like this in criminal
23 court where the burden of proof is beyond a
24 reasonable doubt.

25 And the best way to sort of show that or the

1 example I use a lot of times is, if you use the
2 scales of justice, as we call it, in that civil
3 case, the parties come in on equal footing. And for
4 the person to prevail bringing the case, they have
5 to prove their case by the preponderance or greater
6 weight of the evidence; in other words, he has to
7 tip the scales ever so slightly in his or her favor.
8 If he's able to do that, then he's entitled to the
9 verdict. If the scales remain the same or tip in
10 favor of the defendant, he would not be entitled.
11 But if he can tip them over so slightly, he would be
12 entitled to a verdict.

13 In a criminal case, because the defendant is
14 presumed to be innocent under the constitution, he
15 comes in with the scales tipped in his favor. And
16 the burden of proof in a criminal case is beyond a
17 reasonable doubt. So the burden of proof is greater
18 in a criminal case such as this than in a civil
19 case.

20 Now, the way the case will run is this: When I
21 finish my opening remarks, the State, through the
22 Solicitor's Office, will stand up and make their
23 opening statement, followed by the defendant with
24 his opening statement. Opening statements are not
25 facts in the case, it's simply what the lawyers

1 contend the issues are to be. They'll tell you what
2 to look for. It's sort of presenting a roadmap of
3 what they're going to attempt to prove to you, what
4 the issues are, the things for you to look after.
5 But remember, the opening statements, that is not
6 evidence in the case.

7 Once the lawyers make the opening statements,
8 since the State has the burden of proof, they go
9 first, they'll present their witnesses. Once they
10 conclude the presentation of their witnesses, the
11 defendant has the right to put up testimony, if he
12 so chooses. And at the conclusion of that
13 testimony, the State has the right to put up reply
14 testimony. At the conclusion of all of the
15 testimony, then the lawyers will make a final
16 argument and then I'll instruct you or charge you on
17 the law.

18 As I said earlier, my position is to charge or
19 instruct you on the law and rule on the
20 admissibility of evidence; your duty as the judges
21 of the facts is to determine what the true facts are
22 that are presented in the courtroom. And you'll
23 probably hear different versions of the facts, but
24 you'll have to determine who is telling the truth
25 and what the true facts are. You take those true

1 facts as you find them to be and apply it to the law
2 as I give it to you, and you'll be in a position to
3 render a true and just verdict. So that's the way
4 we'll move down through the trial.

5 I try to move my cases along in an efficient
6 manner. In other words, we they'll have to call one
7 witness and then the next and the next and the next.
8 We don't try to take a lot of breaks and a lot of
9 downtime because, obviously, your time is as
10 important as anyone else's in here.

11 Not withstanding the fact that we're trying to
12 run it efficiently, I'm not trying to run a race
13 either. So if at any time you become uncomfortable,
14 need to use the restroom, you get hot, cold, you
15 need a glass of water or something to drink, you
16 just get tired of listening to me, whatever it is,
17 just raise your hand and I'll make sure your needs
18 are met.

19 Normally we'd go til about 3:30 or quarter to
20 4:00, take a little short break then, and then come
21 back and go til about 5:00 today, then we'll talk to
22 you about tomorrow as to what time you want to start
23 in the morning. We'll look at our schedules and see
24 if we have anything scheduled for early in the
25 morning so that you won't be sitting and waiting on

1 me. I'll tell you each time we take a break, please
2 don't discuss the case, please don't start any
3 deliberations. You're not to do that until all of
4 the evidence is in and I've instructed you on the
5 law. So you can talk about most anything you want
6 to in the jury room, but don't talk about the case
7 until it's all complete.

8 I will ask you when we take our first break to
9 select a foreperson from the 12 regular jurors, not
10 the two alternates. The foreperson is simply
11 someone who acts as a spokesperson for the jury,
12 bring to me anything you might need to bring to my
13 attention, you'll head up the deliberations at the
14 conclusion of the case. So I'll that you do that.

15 In just a few seconds, we're going to start the
16 trial with the opening statements by the Solicitor,
17 followed by the defendant, and then we'll get right
18 into the testimony. I ask that you pay close
19 attention. Obviously, this is an important case to
20 the State and the alleged victims; it's an important
21 case to the defendant.

22 I've been doing this a long time. I've
23 practiced law for 30 years and I've been on the
24 bench now 12 years, and I can tell you from all that
25 experience that we have in our country the best

1 judicial system in the world. If someone accuses us
2 from of a crime, we can ask 12 citizens from our
3 community to come in and listen to it and decide
4 what are the true facts and base it on the law. We
5 don't go before some dictator or a firing squad or
6 some other means of dispensing justice. You are an
7 intricate part of the justice system, and I can't
8 think of any better system that's ever been devised
9 than what we've had in our country since its
10 inception, on founded common-law principles that
11 were in England and other European nations.

12 So you're part of it. This is not TV, this is
13 the real world. I ask that you pay close attention,
14 and I think you'll enjoy your experience. It's a
15 pretty weighty experience and the responsibility to
16 serve as a juror particularly in these types of
17 cases.

18 Any objections to my opening remarks by the
19 State?

20 MS. MAYES: None from the State, Your Honor.

21 THE COURT: Mr. Shealy?

22 MR. SHEALY: No, Your Honor.

23 THE COURT: Ms. Mayes.

24 MS. MAYES: May it please the Court.

25 THE COURT: Yes, ma'am.

1 MS. MAYES: What this case is really about is
2 broken trust. In this world, nothing is more sacred
3 than the bond between a parent and a child. A child
4 should be able to trust their parent, their father,
5 to protect them from harm, to protect them from
6 anyone or anything that could potentially hurt them.
7 And in this case, the trust of this defendant's two
8 daughters, **Minor 2** and **Minor** was
9 violated in the most terrible way imaginable. They
10 were sexually assaulted in their own home at the
11 hands of this man, their own father, the defendant,
12 August Kreis.

13 I ask you to keep in mind throughout the
14 testimony in this case, at times when we talk about
15 sexual assault, the details of it, the reality of
16 it, it is something that, at times, may make you
17 feel uncomfortable. But keep in mind, it's
18 absolutely necessary as proof of the elements and
19 the facts of this case, the testimony that you'll
20 hear from the girls, from this witness stand.

21 And by that same token, when we talk about
22 sexual abuse, we ask you to keep in mind that it's a
23 secret crime, especially when it happens in the
24 home, incest; when it happens at night with no other
25 witnesses, only their father in the room. So we ask

1 you again to keep in mind that sexual abuse, sexual
2 assault, is a secret crime. It's a crime of silence
3 and it's a crime of shame, but in this case, **Minor 2**
4 and **Minor** have overcome that shame and all
5 the stigma that goes along with it, and have found
6 the courage to tell the truth about what happened to
7 them when they lived here in Lexington County at **[REDACTED]**
8 **[REDACTED]** between the years 2005 and 2008.
9 And back then, they weren't even teenagers. **Minor 2**
10 **Minor 2** was 11, 12 years of age; **Minor 1** was 9, 10, 11
11 years of age when these events occurred here in
12 Lexington County.

13 You'll also hear the testimony in this case
14 from this detective, Shannon Dykes of the Lexington
15 County Sheriff's Department who conducted the
16 investigation in this case. You'll hear about a
17 letter that was written by this defendant in his own
18 handwriting once the investigation began in which he
19 acknowledged that he harmed his daughters and, as I
20 stated before, harmed them in the most terrible way
21 imaginable.

22 Now, the law in this case is actually very
23 simple. And right now is really not even the time
24 to concern yourself with it, because at the close of
25 this case, Your Honor will charge you on exactly

1 what the law is and he'll do it in a much more
2 detailed way than I could possibly do now. But when
3 we talk about criminal sexual conduct with a minor
4 in the second degree, it's a fancy term for,
5 basically, a crime against the child who is between
6 the ages of 11 and 14, and it involves what we call
7 sexual battery.

8 Sexual battery can be one of many things but,
9 basically, it includes fellatio, which is oral sex
10 between the defendant and **Minor 2** it includes
11 any intrusion, however slight, of the genital
12 opening of **Minor 2** which includes what we call
13 digital penetration, in placing his finger in his
14 child's vagina, and then we also have the charges of
15 what we call attempting or committing a lewd act
16 upon a child. That, basically, again, is a fancy
17 term that the Legislature used for improper touching
18 or fondling of a child. It could be attempted
19 touching or completed touching, but it's when an
20 improper touching of a sexual nature occurs with a
21 child under the age of 16 years.

22 Ladies and gentlemen, I submit that when all is
23 said and done, the State will meet its burden of
24 proof, proof beyond a reasonable doubt, that the
25 defendant has committed these crimes against his

1 daughters, **Minor 1** and **Minor 2** . Thank you.

2 THE COURT: Mr. Shealy.

3 MR. SHEALY: May it please the Court, Your
4 Honor.

5 We've already met, but I'll introduce myself
6 again. I'm Tommy Shealy. I'm the defense counsel
7 here. And there's August Kreis sitting there at the
8 defense table. The -- if I'm looking familiar to
9 you, I've been told I look a like Colonel Sanders.
10 So there's that.

11 August Kreis right now, as the Judge told you,
12 is presumed innocent. He is innocent. He's sitting
13 there right now. This is a trial involving an
14 innocent man. And he stays that way unless and
15 until the Solicitor brings evidence to convince
16 y'all beyond a reasonable doubt of what the State
17 claims happened. The Judge has told you a little
18 bit about reasonable doubt. And by the time we get
19 to the end of this trial, he will charge you on the
20 law as to reasonable doubt.

21 You've heard the allegations from the
22 Solicitor. August denies it. You've heard the talk
23 about broken trust. August feels that his trust in
24 his children has been broken, because he doesn't
25 know what they're talking about. You've heard

1 comments about this letter. August admits writing
2 that letter, he's stipulated to the letter. It's
3 not a problem. And you'll get a chance to read the
4 letter, and you can determine -- it speaks for
5 itself. You can determine what the letter says and
6 why it says whatever it says.

7 Now, we have had investigations in this matter.
8 There's been reports made and things like that, so
9 we have an idea of what's going to be said today.
10 But we don't know for sure. I've been doing this a
11 pretty long time, and I find that the testimony
12 sometimes is different than what we expect. But
13 whatever the testimony is, that is what you'll base
14 your decision on, what comes out at -- from the
15 witness stand.

16 Now, when you're listening to the witnesses, I
17 ask that you be skeptical, all of the witnesses,
18 because all of the witnesses want your approval.
19 Every one of the witnesses will want your approval.
20 They will want to phrase things that will gain your
21 approval, so they have a reason to want to spin
22 their testimony; not a particularly malicious reason
23 but, nevertheless, that's human nature. Your job is
24 to determine what's spin and what's the truth.

25 The reason we have 12 jurors is because each

1 one of you have a different experience in life.
2 Each one of you deal with people on a daily basis,
3 and you determine what you trust, what you believe
4 in, whether that person is telling you the truth.
5 We ask that you listen closely to all of the
6 testimony, that you be skeptical, you use your
7 collective knowledge, all of you join in whenever
8 it's time to join in to discuss the testimony, look
9 at whether or not there's reasons to tell false
10 information, to testify -- if there's any motives to
11 lie. Listen to -- is there any self-interest that's
12 being perceived here?

13 We want you to get to the truth and we feel
14 confident that once you do get to the truth, you'll
15 find that there is reasonable doubt. We're
16 confident that you will find August Kreis not guilty
17 of all the charges he's facing here today. Thank
18 you.

19 THE COURT: You may call your first witness.

20 MS. MAYES: The State calls **Minor 2**

21 **Minor 2**

22 being first duly sworn, testified as follows:

23 THE WITNESS: I do.

24 THE COURT: Once you're seated, state your full
25 name, spelling your last, on the record, please.

1 THE WITNESS: Minor 2

2 DIRECT EXAMINATION

3 BY MS. MAYES:

4 Q. All right. And, Ms. Kreis, we'll need you to
5 try and talk into the microphone, if you can. And
6 that's so that even this last juror here will be
7 able to hear your testimony.

8 How old are you today?

9 A. Twenty-one.

10 Q. And, Minor 2 what is your mother's name?

11 A. Karley Hollis.

12 Q. Where do you currently reside?

13 A. At [REDACTED]

14 Q. And who do you live with at that address?

15 A. My fiance Ryan Stephens.

16 Q. And do you and Ryan live alone together at that
17 residence?

18 A. Yes, ma'am.

19 Q. And is Ryan -- Ryan is employed?

20 A. Yes, ma'am.

21 Q. Now, before you moved into the residence that
22 you live in now with Ryan, who did you live with?

23 A. Actually, we had another place in Camden. And
24 for a little bit, I did stay with my mom. We did
25 stay there in between the moves.

1 Q. And prior to that? Is it possible to remember
2 how many different homes you've lived in with your
3 family?

4 A. No, ma'am.

5 Q. **Minor 2** how is it that you know the defendant
6 in this case, August Kreis?

7 A. He's my father.

8 Q. Is he your biological father?

9 A. Yes, ma'am.

10 Q. Was there ever a period of time that you
11 resided in the same home with him?

12 A. Yes, ma'am.

13 Q. How many children does your mother, Karley
14 Hollis, and your father, August Kreis, have? How
15 many siblings do you have between them?

16 A. Six younger.

17 Q. Okay. What I'd like to do is have you, if
18 possible, kind of tell us a little bit about your
19 siblings in the chronological order in which you
20 were born. We're going to start here with August
21 Kreis. Now, does your father have a nickname?

22 A. Chip.

23 Q. So he goes by Chip?

24 A. Yes, ma'am.

25 Q. And your mother is, I believe you said, Karley

1 Hollis.

2 A. Yes, ma'am.

3 Q. And who is the oldest child?

4 A. I am.

5 Q. All right. So you're the oldest. And what is
6 your date of birth?

7 A. [REDACTED].

8 Q. And who is the next oldest child?

9 A. **Minor 1**

10 Q. And who is the next child after that?

11 A. [REDACTED] It's actually [REDACTED] Does that matter?

12 Q. Okay. [REDACTED], but your family calls him

13 [REDACTED]

14 A. Yes.

15 Q. All right. And who is next?

16 A. [REDACTED]

17 Q. And is [REDACTED] a boy or a girl?

18 A. Boy.

19 Q. Who is next?

20 A. **Minor 3**

21 Q. And who is next?

22 A. Eddie.

23 Q. All right. And then who is the youngest child?

24 A. Aiden.

25 Q. Aiden. Now, you have six siblings. There are

1 seven children all together?

2 A. Yes, ma'am.

3 Q. Are all of you the biological children of your
4 father, Chip Kreis, and your mother --

5 A. Yes, ma'am.

6 Q. -- Karley Hollis?

7 Now, I know I was asking you about the
8 different locations in which your family has lived.
9 How many states has your family lived in?

10 A. Like, six.

11 Q. To your recollection, what are those states?

12 A. There's Pennsylvania, New York, Florida,
13 Tennessee, Kentucky, and South Carolina.

14 Q. Okay. And while living in South Carolina, can
15 you tell us whether or not you ever lived here in
16 Lexington County?

17 A. Yes, ma'am.

18 Q. What is the location you recall living at here
19 in Lexington County?

20 A. [REDACTED], Lexington, South Carolina.

21 Q. Okay. So that's [REDACTED]. And can
22 you tell us what ages you recall or what approximate
23 ages you recall being when your family lived here on
24 Maplewood Drive?

25 A. 10, 11, 12, 13.

1 Q. Okay. And, Minor 2 after you left Maplewood,
2 where did your family go to live?

3 A. Pond Branch.

4 Q. In the Pond Branch Road house, what county was
5 that in?

6 A. Lexington County.

7 Q. So that was also here in Lexington --

8 A. Yes, ma'am.

9 Q. -- that you went to live in --

10 A. Yes, ma'am.

11 Q. -- after Maplewood?

12 A. Yes, ma'am.

13 Q. And then what county did your family move to
14 after you left Lexington County?

15 A. Kershaw County.

16 Q. All right.

17 A. Richland and then Kershaw, I think. So
18 Richland.

19 Q. So from Lexington County to Richland County,
20 and then from Richland County to Kershaw County; is
21 that correct?

22 A. It was actually from Lexington County to
23 Kershaw County and then to Richland County and then
24 back to Kershaw.

25 Q. Okay. Now, during this period of time when

1 your family resided in multiple locations, was your
2 father working during that period of time?

3 A. No, ma'am.

4 Q. And I want to ask you specifically about when
5 you lived at [REDACTED] in Lexington
6 County. Was your father working during that period
7 of time?

8 A. No, ma'am.

9 Q. Was he normally home during day and night --

10 A. Yes, ma'am.

11 Q. -- while you were growing up there at [REDACTED]
12 [REDACTED]?

13 A. Yes, ma'am.

14 Q. And today your father is in a wheelchair.
15 While living in Lexington County at [REDACTED]
16 was he in a wheelchair then?

17 A. No, ma'am.

18 Q. Was he mobile? And by that I mean able to
19 stand, able to walk.

20 A. Yes, ma'am.

21 Q. I'm going to show you several pictures and ask
22 you whether or not you recognize them and, if so,
23 how. This will be State's Exhibits 5, 10, 4, and 3.

24 A. Yes. That's the mailbox.

25 Q. Okay. And if you could, take a look at 4, 5,

1 and 10.

2 A. Yes, ma'am. That's the house on Maplewood
3 Drive.

4 Q. Okay. The house that you already talked
5 about --

6 A. Yes, ma'am.

7 Q. -- that you lived in when you were
8 approximately 11, 12, 13 years of age?

9 A. (Nods head.)

10 Q. Okay. And do you know whether or not you were
11 living there between the years 2005 and 2008?

12 A. Yes, ma'am.

13 MS. MAYES: Your Honor, at this time we'd offer
14 3, 4, 5 and 10 as evidence.

15 THE COURT: Any objection?

16 MR. SHEALY: No objection.

17 (State's Exhibit Nos. 3, 4, 5, 10 admitted in
18 to evidence.)

19 BY MS. MAYES:

20 Q. **Minor 2** as the oldest child, how would you
21 describe your relationship with your father while
22 growing up here in Lexington County?

23 A. My father and I actually didn't have a horrible
24 relationship during the day. It was like nothing
25 happened. And this is something that -- it wasn't

1 just -- didn't just start all of a sudden. It's
2 been going on since I remember. And while it was
3 going on there, it was -- by that time, it was
4 normal. It was -- it was normal. It happened so
5 repeatedly that it just -- I don't know. It just...

6 Q. When you say that during the day it was as if
7 nothing happened, what do you mean by that?

8 A. I mean, when he would do stuff at night, the
9 next morning it was like nothing ever happened. It
10 was never acknowledged. This is the first time that
11 I've been in his presence and talked about this.
12 And, yeah, that's it.

13 Q. Okay. When you say this is the first time that
14 you've been in his presence and talked about it,
15 have you seen your father at all since the time he
16 was arrested?

17 A. No, ma'am.

18 Q. Have you had any communication with him?

19 A. No, ma'am.

20 Q. And you said it had been going on for a long
21 period of time. Did anyone else ever see what was
22 happening, to your knowledge?

23 A. No, ma'am.

24 Q. What were the occasions in which your father
25 would find an opportunity to be alone with you for

1 these things to happen in your home?

2 A. It was always in the middle of the night,
3 especially with living at [REDACTED]. There
4 wasn't a lot of opportunity during the daytime.
5 And, you know, at night when everybody is sleeping,
6 he would come in either -- if I was in the bedroom,
7 he would come in and pick me up and take me to the
8 couch while nobody was in the living room, or if I
9 was sleeping on the couch that night, he would just
10 come out of his bedroom and on the couch.

11 Q. All right. And your mother normally slept in
12 what room in the house?

13 A. The master bedroom.

14 Q. And did the girls have a room?

15 A. Yes, ma'am.

16 Q. Did the boys have a room?

17 A. Yes, ma'am.

18 Q. If you were in the girls' room, would that stop
19 him from --

20 A. No, ma'am.

21 Q. -- coming in?

22 A. No, ma'am.

23 Q. And you mentioned that if he did, he'd move
24 you. Where would he move you to?

25 A. The couch.

1 Q. And what room was the couch in?

2 A. The living room.

3 Q. And if you didn't sleep in the girls' room,
4 where did you normally sleep?

5 A. The couch.

6 Q. Is that the same couch in the living room that
7 you mentioned earlier?

8 A. Uh-huh.

9 Q. What rooms in the house, **Minor 2** do you recall
10 something happening with your father?

11 A. The living room, the master bedroom, and the
12 master bedroom bathroom, and the girls' room.

13 Q. Okay. And you mentioned the master bedroom.
14 Would your mother be in that room when this would
15 happened?

16 A. No, ma'am.

17 Q. These would be opportunities when he was alone
18 with you?

19 A. Yes, ma'am.

20 (State's Exhibit No. 13 marked for
21 identification.)

22 Q. This would be State's Exhibit 13. I'll show
23 you this exhibit and ask you whether or not you
24 recognize it.

25 A. Yes, ma'am.

1 Q. Can you tell us whether or not that is a fair
2 and accurate representation of your home at [REDACTED]

3 [REDACTED]

4 A. It is.

5 Q. And you mentioned before, the living room. Can
6 you show us where the living room is here?

7 A. (Indicating.)

8 Q. And then the master bedroom you mentioned --

9 A. There, bathroom (indicating).

10 Q. And that's the girls' room here?

11 A. Yes, ma'am.

12 Q. If you were moved from the girls' room, you'd
13 be moved to the couch in what location?

14 A. The living room.

15 MS. MAYES: Your Honor, this would be State's
16 Exhibit 13 for evidence.

17 THE COURT: Any objection?

18 MR. SHEALY: No objection, Your Honor.

19 (State's Exhibit No. 13 admitted in to
20 evidence.)

21 BY MS. MAYES:

22 Q. Minor 2 what are -- let me ask you this: What
23 are some of the things that you recall happening
24 with your father while at [REDACTED]? And by
25 that I'm asking specifically what -- how did he have

1 contact with you?

2 A. It was always oral. He would put his mouth on
3 my vaginal area and --

4 Q. Did that happen one time or more than one time?

5 A. All the time. That was the one reoccurring
6 thing that was like every time, do that.

7 Q. And what else?

8 A. He would try to put his penis in my mouth. He
9 would touch me, touch my breasts, touch my vagina.
10 Yeah.

11 Q. When you said put his private part in your
12 mouth. Did his private part ever actually ever go
13 in your mouth?

14 A. Yeah.

15 Q. Was that one time or more than one time?

16 A. That was more than once.

17 Q. When he put his private part in your mouth, do
18 you know whether or not that happened after you
19 turned 11 years of age?

20 A. I do not.

21 Q. Okay. Let me ask you this: Where did you have
22 your 12th birthday?

23 A. Maplewood.

24 Q. And you had your 12th birthday at Maplewood.
25 Did what you're talking about continue happening?

1 A. Yes.

2 Q. And did that include him putting his mouth on
3 your private part?

4 A. (Nods head.)

5 Q. And the reason we need you to say yes or no is
6 so that the court reporter can get all of your
7 responses.

8 A. Yes.

9 Q. You mentioned your private part was touched.
10 What part or parts of his body did he touch your
11 vaginal area with?

12 A. His mouth and his hands.

13 Q. Did that happen after your 12th birthday?

14 A. It did.

15 Q. You said with his hands. Do you know whether
16 or not he ever touched inside your vagina?

17 A. Yeah.

18 Q. And was that one time or more than one time?

19 A. More than once.

20 Q. Did anything more than that ever occur or did
21 he ever attempt anything more than that?

22 A. The very last time something happened, I was 13
23 years old and I was sleeping on the couch. And
24 instead of the usual where he would just perform
25 oral and touching, he had a condom with him. And I

1 struggled, turned to the side. I would always
2 pretend like I was sleeping and just let it happen.
3 Like I said, it was a normal occurrence. And that
4 time he was going to go all out. And it didn't get
5 that far. And that was actually the very last time
6 it happened.

7 Q. And you mentioned you would turn away.
8 Describe how it was that your body would turn away
9 from him.

10 A. I would roll over on my side, you know, bring
11 my knees up in the fetal position.

12 Q. Why would you do that?

13 A. Because he'd be trying to touch me or put his
14 face in my vagina.

15 Q. And this last time that he had the condom, was
16 he able to actually to put his private part in your
17 vagina?

18 A. He did not.

19 Q. How did you prevent him from doing that?

20 A. It didn't work. It wouldn't work. And then I
21 struggled and he just gave up.

22 Q. When you say it didn't work, did he attempt
23 to --

24 A. Uh-huh.

25 Q. -- put it in your vagina when you were 13 years

1 of age?

2 A. Yes.

3 Q. Did that occur on Maplewood Drive?

4 A. It did.

5 Q. What room or location in the house did that
6 happen at?

7 A. On the couch in the living room.

8 Q. Was anyone else there in the living room when
9 that occurred?

10 A. No, ma'am.

11 Q. Back then, **Minor 2** when those things were
12 going on in your home, did you tell your mother?

13 A. No, ma'am.

14 Q. Why or why not?

15 A. I never imagined having, you know, a split
16 family. My mother didn't have a job and my father
17 was living off of his pension off of the government.
18 And he would never allow her to go back to school or
19 go get a job because that would interfere with his
20 government pension. So she was never allowed to do
21 any of that.

22 Q. Was your mom financially independent?

23 A. On my father? Yes. And if -- you know, my
24 little 13-year-old self was like, hey, this is going
25 on, I was always, you know, terrified that my family

1 would be split up, my brothers and sisters would be
2 taken away from my mom, and I couldn't do that.

3 Q. Was telling about it back then a valid option
4 for you?

5 A. Not really. It was -- like I said, it was
6 normal by then. It wasn't -- it wasn't something --
7 it's disgusting. I mean, to go to somebody and tell
8 them that your -- that your father, the man that is
9 supposed to love and protect you is doing these
10 things, it's just...

11 Q. Were you able to tell anyone outside of the
12 home back then?

13 A. No. It's embarrassing. It's disgusting.

14 Q. And during that time, did you have any personal
15 knowledge that anything had happened between your
16 father and your sister **Minor** ?

17 A. No, I did not.

18 THE COURT: Are you okay?

19 Q. If you had known that then, would you have
20 told?

21 A. I would have.

22 Q. But you thought you were the only one?

23 A. Yes, ma'am.

24 Q. **Minor 2** what made you finally be able to tell
25 someone when you were 19?

1 THE COURT: You okay? You need a break?

2 THE WITNESS: No, sir. I'm fine.

3 My father, I -- as you can tell, he doesn't
4 have any legs. He --

5 BY MS. MAYES:

6 Q. Let me ask you about that. You said when you
7 lived on Maplewood that he was mobile back then --

8 A. Yes.

9 Q. -- and not in a wheelchair. Was it after
10 Maplewood that your father had surgery?

11 A. It was.

12 Q. And what was his condition that led the loss of
13 his legs?

14 A. He's diabetic.

15 Q. Were you involved in caregiving for your father
16 after --

17 A. Yes, ma'am.

18 Q. -- his surgery when you were still home?

19 A. Yes, ma'am. I was his little nurse. I took
20 care of his PICC line. He had to have antibiotics
21 twice a day. I was changing his bandages. I mean,
22 he had amputations. It started with toes and worked
23 their way up. There were so many of them. I was
24 the only one in the house that could stomach any
25 kind of medical things like that, so I took care of

1 him for most of my teenage years. I would get calls
2 saying that I needed to come home because he needed
3 his medicine.

4 Q. And did you continue living with your family at
5 the various locations after Maplewood, when you
6 lived on Pond Branch and then Kershaw and then
7 Richland and then back to Kershaw again?

8 A. I didn't live in Richland with them.

9 Q. You were 17 at that point?

10 A. No, ma'am; 18.

11 Q. So you moved out at 18?

12 A. Yes, ma'am.

13 Q. And when you first moved out, were you working
14 anywhere?

15 A. Waffle House.

16 Q. All right. So that allowed you to live out on
17 your own for the first time?

18 A. Actually, it was -- we -- I was still with my
19 mom for a little bit. And then when I met -- well,
20 not when I met. When Ryan and I got our own place
21 is when I moved out and we lived together.

22 Q. All right. Now, your mother and father, did
23 they live together at the Maplewood address?

24 A. Yes, ma'am.

25 Q. So your mother and father stayed together until

1 approximately when? What house was it when they
2 separated?

3 A. It was in Tennessee.

4 Q. Okay. And eventually then your mother and
5 father were no longer living together in your late,
6 late teens; would that be fair?

7 A. Yes, ma'am.

8 Q. Okay. I want to take you specifically to
9 January of 2014 when you were 19 years old. Who was
10 the first person that you told that something
11 happened with your father?

12 A. My mom.

13 Q. And after you told your mom, did she support
14 you?

15 A. Yes, ma'am.

16 Q. And this was after your father was no longer
17 living in the residence?

18 A. (Nods head.)

19 Q. And that would be yes or no?

20 A. Yes, ma'am. He was visiting the residence on a
21 regular basis though.

22 Q. And, ultimately, did you meet with a law
23 enforcement -- a female officer, Sergeant Barr, to
24 also make a statement about these crimes?

25 A. Yes, ma'am. I spoke with Detective Dykes at

1 the Lexington office and made my statement there
2 with him.

3 Q. Okay. And, ultimately, did you also
4 participate in what's called a forensic interview
5 during this investigation?

6 A. Yes, ma'am.

7 Q. **Minor 2** how would you describe your
8 relationship with your father, how it progressed
9 over time?

10 A. Like I said, it was -- I was like his little
11 buddy.

12 Q. What do you mean by that?

13 A. I mean, he -- he would -- I --

14 Q. Did he ever take you places with him?

15 A. Yes, he would take me places with him.

16 Q. Would he involve you with his activities?

17 A. Yes.

18 Q. And how old were you when he started doing
19 those things, involving you with his activities?

20 A. Like, since I started walking.

21 Q. All right. And did that include up through
22 that time you lived at Maplewood?

23 A. Yes, ma'am.

24 Q. And when you lived at Maplewood here in
25 Lexington, did you play any sports?

1 A. Yes, ma'am.

2 Q. What sport?

3 A. I played soccer for about six and a half years.

4 Q. Was there an occasion where he came to one of
5 your soccer games?

6 A. He only came to one soccer game, never any
7 practices. And the first soccer game he came to, he
8 ended up passing out and needing to go to the
9 hospital.

10 Q. Okay. And during that time, you had not yet
11 disclosed what had taken place?

12 A. No, ma'am.

13 Q. What if any -- let me phrase it like this: How
14 would you describe your father's personality during
15 that time period that he lived with you at
16 Maplewood?

17 A. My father has always been a very, angry violent
18 man. He -- one of the infamous sayings of his was
19 violence solves everything. And so I'd go to school
20 and get in a lot of trouble because, you know,
21 violence solves everything.

22 Q. Can you tell us whether or not that -- whether
23 or not that affected your decision to tell someone
24 about what was taking place?

25 A. No, ma'am.

1 MS. MAYES: I beg the Court's indulgence.

2 BY MS. MAYES:

3 Q. And when I was asking before about your
4 involvement in any of his activities, did you ever
5 go places with him outside the home?

6 A. Yes, ma'am.

7 Q. All right. And did he have conversations with
8 you as well?

9 A. Yes, ma'am.

10 Q. All right. So to an outside observer, did
11 anything appear abnormal about your relationship
12 with him?

13 A. No, ma'am.

14 Q. I'm going to show you two photos and ask you if
15 you recognize them, State's Exhibit 1 and State's
16 Exhibit 2.

17 A. Yes, ma'am.

18 Q. Who is in State's Exhibit 1?

19 A. That's my father and I.

20 Q. And who is in State's Exhibit 2?

21 A. That's my father and all of his children.

22 Q. Okay. And where was this photo, State's
23 Exhibit 2, taken?

24 A. That was taken in the driveway of [REDACTED]

25 [REDACTED]

1 Q. Okay. The same address that we've been talking
2 about where these events occurred?

3 A. Yes, ma'am.

4 MS. MAYES: Your Honor, this would now be
5 State's Exhibit 1 and 2 for evidence.

6 THE COURT: Any objection?

7 MR. SHEALY: No, Your Honor.

8 (State's Exhibit Nos. 1 and 2 admitted in to
9 evidence.)

10 BY MS. MAYES:

11 Q. In this photo here, State's Exhibit 2, that you
12 said was taken in the driveway there at Maplewood
13 Drive, tell us who is shown in the photograph.

14 A. That's my father, that's me, my little brother
15 Eddie, Minor 1 Minor 3 Zak, Gideon and Aiden.

16 Q. All right. And, again, during this point, did
17 your father have any health difficulties whatsoever
18 that precluded him from being mobile?

19 A. No.

20 Q. Minor 2 when is the first time that you found
21 out that something had happened with your sister

22 Minor 1

23 A. The night I told my mom, she went ahead and
24 asked my sister Minor 1 if anything had happened, and
25 she said yes.

1 Q. And did you observe Minor 1 on that night?

2 A. I was -- I was there. Yes, ma'am.

3 Q. Where did you see her at?

4 A. She actually took off to the neighbor's house
5 and then came back, and we sat on the porch outside
6 the house and talked briefly.

7 Q. And that was after she had disclosed or
8 informed your mother that something had happened
9 with her also?

10 A. I believe so, yes, ma'am. I was not around
11 when my mom spoke to her. But...

12 Q. What do you recall about your sister Minor 1
13 that night?

14 A. She was really upset.

15 Q. Had you and she ever talked about this before?

16 A. No, ma'am. We still haven't. This is a first.

17 Q. Is this something that you can talk openly
18 about to other people?

19 A. No.

20 Q. Or would ever want to talk openly about with
21 other people?

22 A. No, ma'am.

23 Q. And to clarify, Minor 2 while living at the
24 [REDACTED], after you turned eleven and while you
25 were 12 and before you moved out, were there

1 occasions during that timeframe in which either he
2 put his mouth on your vagina or his private part in
3 your mouth?

4 A. Yes, ma'am.

5 Q. And the incident that you mentioned before
6 about touching your vaginal area, that also occurred
7 at Maplewood?

8 A. Yes, ma'am.

9 Q. How did your clothes get off?

10 A. He would take them off. Sometimes I would wake
11 up in the morning with backward panties.

12 Q. And did he ever touch your body anywhere else
13 besides your vaginal area?

14 A. My breasts.

15 Q. And, again, that occurred during what time of
16 day or night?

17 A. Night.

18 MS. MAYES: Nothing further, Your Honor.

19 THE COURT: Mr. Shealy.

20 MR. SHEALY: May it please the Court.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. SHEALY:

24 Q. **Minor 2** where were you living when you were
25 playing soccer?

1 A. [REDACTED], and Pond Branch also.

2 Q. And when he came to watch you playing that
3 soccer game, where were you living?

4 A. The 160 -- no. It was at Pond Branch. It was
5 after he had his leg amputated, I believe.

6 Q. Are you sure?

7 A. Not sure -- yes, sure. Yes, I'm sure. Because
8 he had to be ambulated out and everything. Yeah,
9 sorry.

10 Q. I'm sorry?

11 A. He had to be ambulated out and they had to do
12 all this big thing. It was actually embarrassing.

13 Q. Did he have diabetes when you lived in
14 Maplewood?

15 A. Yes.

16 Q. Okay. And when did they start amputating his
17 toes?

18 A. They started, actually, with just taking the
19 bones out. And the first surgery wasn't even here;
20 it was when we were in Florida. And that's when the
21 surgeries started. And then they progressed into
22 taking pieces of his foot. And that was -- that all
23 started -- well, like, the pieces started when we
24 were at Pond Branch.

25 Q. All right. So they started taking bones out in

1 Florida?

2 A. Yeah. Like, that was one of his first few
3 surgeries.

4 Q. And that was before y'all moved to --

5 A. Yes.

6 Q. So he had diabetes well before then?

7 A. He's always had diabetes -- well, ever since I
8 can remember.

9 Q. And the bones they removed, do you know what
10 bones they were?

11 A. No. It was just -- he gets ulcers on the
12 bottom of his feet, and it's an open wound. And
13 because he's diabetic, the circulation isn't right.
14 And they tried to take bones out to relieve
15 pressure. So it wasn't -- I'm not a doctor.

16 Q. So it's bones in his foot they took out?

17 A. Yes.

18 Q. All right. Now, so how old were you when you
19 lived in Florida?

20 A. Young. It was before -- I was, like, ten.

21 Q. So you were around ten years old?

22 A. Yes, sir.

23 Q. And then from Florida, where did you move?

24 A. South Carolina?

25 Q. I don't know. You tell me.

1 A. Yeah, it was South Carolina. Florida to South
2 Carolina, I think.

3 Q. Okay. And then your testimony was that --
4 let's see. After you left Maplewood, you moved
5 where?

6 A. Pond Branch.

7 Q. And where was that?

8 A. In Lexington County.

9 Q. Okay. And then after Pond Branch, where did
10 you move?

11 A. Tennessee, Kentucky.

12 Q. Okay. You didn't mention Tennessee before.
13 But you actually from Pond Branch to Tennessee?

14 A. We moved from Maplewood to Pond Branch and then
15 from Pond Branch to Tennessee, from Tennessee to
16 Kentucky. And then my father left and came back to
17 South Carolina and my family and I stayed there.
18 And then my family left to come back to South
19 Carolina so my father could help support the
20 children and my mother. And when everybody left
21 Tennessee, I stayed for a couple months and then
22 went to Pennsylvania and then came back to South
23 Carolina to stay with my mother.

24 Q. Okay. Now, when y'all came back to South
25 Carolina, where did y'all go?

1 A. I went to Basin Rock, a trailer park off of --
2 I think it's Pond Branch in Lexington, White Knoll.

3 Q. And then from there where did you go?

4 A. We went to -- we actually got evicted and were
5 staying in hotels. And then my boyfriend -- my
6 fiance -- at that time, he was my boyfriend -- he
7 had a trailer in Kershaw County that we moved into.

8 Q. All of you moved into the trailer?

9 A. Yes. My fiance and I took my family to live in
10 that trailer.

11 Q. And then where did you move to?

12 A. My family, my mom and six brothers and sisters,
13 went to stay in Richland with my father in an
14 apartment complex. And that's when I moved in with
15 my fiance in an apartment in Camden. And they were
16 all living in Richland.

17 Q. Okay. And then how did the family wind up in
18 Kershaw County?

19 A. The apartment complexes were -- it was a bad
20 area. They weren't -- they just were ready to move
21 back to the country. They weren't digging the city
22 life.

23 Q. So where did they move?

24 A. Kershaw County.

25 Q. Where in Kershaw?

1 A. Cassatt. That's the address they're at now.

2 Q. Now, when you were -- you mentioned doing
3 forensic interviews and writing statements and stuff
4 like that. You've always said that your father
5 never threatened you at all; is that correct?

6 A. Yes.

7 Q. And you also testified he would take you
8 places.

9 A. Yes, sir.

10 Q. And the -- and he never warned you not to say
11 anything or anything like that; is that correct?

12 A. Correct.

13 Q. Okay. Now, the -- so when y'all were living in
14 Maplewood, there's eight of you; is that correct?

15 A. Define eight of us.

16 Q. Well, let's see. There's August, one, Karley,
17 two, **Minor 2** three, **Minor 1** four, Zak is five,
18 Gideon, six, **Minor 3** seven, Eddie, eight -- well,
19 I'm sorry. There's nine of you living in that
20 house.

21 A. Yes, sir.

22 Q. And I'll show you what's been marked as State's
23 Exhibit 4. Do you recognize that?

24 A. Yes, sir. That's [REDACTED].

25 Q. And would you characterize that as a big house

1 or a small house?

2 A. It's a doublewide.

3 Q. Doublewide trailer?

4 A. I think one of those bigger doublewides.

5 Q. And there was how many bedrooms in there?

6 A. Three.

7 Q. Okay. And you testified one was the girls'
8 room and one was the boys' room and one was a master
9 bedroom.

10 A. Uh-huh.

11 Q. Is that correct?

12 A. Yes, sir.

13 Q. Okay. So you had three girls living in one
14 bedroom; is that right?

15 A. Yes, sir.

16 Q. And four guys living in the other bedroom?

17 A. My youngest brother Aiden was in a crib in my
18 parents' bedroom.

19 Q. So you had three girls in a bedroom, three boys
20 in a bedroom, and one boy in the master bedroom with
21 your mom and your --

22 A. Yes, sir.

23 Q. Okay. Now, the -- and sometimes you would
24 actually sleep on a couch in the living room; is
25 that correct?

1 A. Yes, sir.

2 Q. Okay. Why would you do that?

3 A. Well, three girls in one bedroom just wasn't
4 awesome. I always wanted my own room. And they
5 were just there, man.

6 Q. Okay. How many beds were in the girls'
7 bedroom?

8 A. Do what? Three.

9 Q. So each of you had your own bed?

10 A. Yeah.

11 Q. So you would sleep by yourself in your bed?

12 A. Yes. There were bunk beds.

13 Q. But sometimes you'd sleep on the couch?

14 A. Uh-huh.

15 Q. And why was that? Say that again.

16 A. Actually, there was usually a dog in the
17 bedroom. And my sister slept on the bottom bunk
18 and -- I liked sleeping on the couch.

19 Q. Did you sleep on the couch a whole lot of
20 times?

21 A. Not a whole lot. I mean, it was pretty even.

22 Q. Okay. So you slept there often?

23 A. Uh-huh.

24 Q. That's a yes?

25 A. Yes, sir.

1 Q. Okay. And nobody forced you to sleep on the
2 couch, did they?

3 A. No, sir.

4 Q. Did your sister Minor 1 sleep on the couch?

5 A. I'm not sure.

6 Q. You're not sure?

7 A. I'm not sure, sir.

8 Q. Did she ever sleep on the couch with you?

9 A. No, not with me.

10 Q. So as far as you know, if she ever slept on the
11 couch, you don't know anything about it?

12 A. I don't remember.

13 Q. You don't recall?

14 A. I don't recall.

15 Q. Any idea why you don't recall? That wasn't
16 just a habit of y'all's, taking turns sleeping on
17 the couch?

18 A. No, it wasn't.

19 Q. Okay. Did she sleep in the bunk bed?

20 A. She did.

21 Q. So y'all had two sets of bunk beds or one set?

22 A. One set.

23 Q. Okay. And then, what, a single bed or --

24 A. I honestly don't remember. I don't think there
25 was -- I think there was just two bunk beds in

1 there.

2 Q. Two bunk beds?

3 A. Or one, top and bottom bunk.

4 Q. So now you're saying there's only two beds in
5 there?

6 A. I'm pretty sure there was.

7 Q. Earlier you said there was three and each of
8 you had your own bed.

9 A. I understand that.

10 Q. Okay. So when you slept in the girls' bedroom,
11 what bed did you sleep in?

12 A. The top -- well, it was both, actually. We'd
13 sleep on the top and bottom. We'd swap.

14 Q. Did you sleep with a particular person?

15 A. No.

16 Q. You always slept by yourself?

17 A. I did.

18 Q. So the other two girls would be sleeping in the
19 other bed?

20 A. Uh-huh.

21 Q. All the time?

22 A. Not all the time. I'm not going to say all the
23 time.

24 Q. Okay. The -- so now we got -- just -- now
25 we've just got two beds in the girls' room. Were

1 there only two beds in the boys' room too?

2 A. Yes. There was one set of bunk beds.

3 Q. So they had to double up as well?

4 A. Uh-huh.

5 Q. And so sometimes, even though you got a bed all
6 by yourself and the other two girls had to sleep
7 together, you would go sleep on the couch?

8 A. Uh-huh.

9 THE COURT: You have to say yes or, please.

10 THE WITNESS: Yes.

11 THE COURT: Thank you.

12 Q. And what would the other girls do?

13 A. They'd be in the bedroom.

14 Q. In the same bed?

15 A. No; one on the top, one on the bottom.

16 Q. Okay. So even though you weren't in the
17 bedroom, you would know that one would be on the top
18 and one would be on the bottom?

19 A. Yes, sir.

20 Q. But you don't know whether or not Minor 1 ever
21 slept on the couch?

22 A. Not with me, she didn't. She's fallen asleep
23 on the couch.

24 Q. Okay. And whenever you were sleeping in the
25 girls' room, you don't know if she was ever sleeping

1 on the couch?

2 A. She was usually in the bottom bunk underneath
3 me.

4 Q. Usually on the bottom bunk underneath you?

5 A. Uh-huh.

6 Q. Okay. Now, it's been your testimony that your
7 father would come out when you were sleeping on the
8 couch and do these things to you; is that correct?

9 A. Uh-huh.

10 THE COURT: Yes or no?

11 THE WITNESS: Yes, sir.

12 Q. And that would happen often?

13 A. Yes, sir.

14 Q. Well, let me ask you this: If your father
15 would come out to the living room often and do the
16 things you said he did to you on the couch, why
17 would you sleep alone on the couch in the living
18 room?

19 A. Because of the sleeping arrangements in the
20 house. If my father would have bought -- you know,
21 I always wanted a futon. I hated sleeping in a bed.
22 I liked sleeping on a couch. He would actually
23 always comment on how I sleep with my head cocked so
24 sideways. He doesn't understand. But, yeah, I
25 preferred sleeping on a couch. I always have.

1 Q. Despite what was happening to you sleeping on
2 the couch?

3 A. What was happening to me was normal. It was --
4 honestly, I couldn't even give you an exact age as
5 to when it started. My earliest memories are of him
6 secluding me. When I was younger, it was a lot
7 easier for him because he could take me off
8 somewhere and go ahead and do it.

9 But then with being at [REDACTED], it
10 was opportunities where I was sleeping alone
11 somewhere. And I'm terribly sorry I did not make
12 sure that I was not sleeping with all of my brothers
13 and sisters so they could protect me from what he
14 was doing.

15 Q. You said that's normal?

16 A. It was normal for me. It was something that
17 had been happening so often that it...

18 Q. All right. Well, earlier when the solicitors
19 were questioning you, you started to cry?

20 A. Uh-huh.

21 Q. You cry about things that are normal?

22 A. What I mean by normal is it had happened so
23 often and for so long that there was no coming out
24 with it. There was -- it was really, like,
25 difficult for me to deal with the fact that these

1 things go on in the middle of the night and then I
2 wake up the next morning and it's like nothing ever
3 happened. My father never said anything, never did
4 anything that would, you know, hint towards any
5 wrongdoing in the middle of the night.

6 Q. So it's your testimony that your father never
7 did anything that was wrong in the middle of the
8 night?

9 A. No --

10 THE COURT: Take your time and just answer the
11 questions.

12 A. Could you repeat that, please?

13 Q. Is it your testimony that your father -- and
14 correct me if I'm wrong. I may not be recalling
15 what you said right. Is it your testimony that your
16 father never did any wrongdoing in the middle of the
17 night?

18 A. No, that is not my testimony. During the day
19 he didn't act like, you know, somebody that's
20 molesting their daughters at night.

21 Q. All right. Well, when these things would
22 happen, would you get upset?

23 A. The very last time it happened with the condom,
24 I actually went outside and sat in the car and cried
25 and cried and cried. And I sat there and I

1 contemplated calling one of his friends who actually
2 happens to be in this room to tell him that I needed
3 to go to the hospital to have a rape kit done. But
4 I could not bring myself to do that. I couldn't go
5 through with going to a hospital and telling them
6 that, you know, my father is doing these things and
7 there's evidence right now, please get them.

8 And, like I said, there was -- it was a big
9 secret. And I didn't -- I didn't want to have
10 nobody believe me, I didn't want to have to go
11 through all of this, I didn't want to have to sit
12 here and tell so many strangers what happened,
13 because it's disgusting, man, and it's really hard
14 for me to talk about.

15 Q. Okay. So you said that you wanted a rape kit
16 done because now you had evidence that you'd been
17 raped; is that --

18 A. And I --

19 Q. Is that correct?

20 A. I don't have regrets in life. But if I did,
21 that would be one thing I regret not doing. If I
22 had done that, we wouldn't be sitting here and we'd
23 actually have hardcore evidence.

24 Q. So it's your testimony that he raped you --
25 that he penetrated you --

1 A. No, sir, he did not. He performed oral and had
2 plenty of enough saliva down there that I guarantee
3 you would have popped up on a rape kit.

4 Q. So you know about rape kits?

5 A. Yes. What I've seen on TV, CSIs.

6 Q. You realize that's not reality?

7 A. No, sir. I figured they'd swab, get saliva off
8 the swabs. I wanted to, like -- like I said, see --
9 you're pruning me, right? If I would have went to
10 have that done, would anything have come out of
11 that? I don't know. I was scared.

12 Q. But you didn't call the friend?

13 A. I did not. I pretended like nothing happened
14 like I always had.

15 Q. When you left the house, did your father follow
16 you?

17 A. No, he did not. He was gone at that point,
18 back to his bedroom.

19 Q. How did you get in the car?

20 A. Well, I walked out the door.

21 Q. Okay. And you had a telephone?

22 A. No, I didn't have a telephone.

23 Q. So how --

24 A. I sat in the car crying contemplating on what
25 to do, whether or not I should run across the street

1 and talk to the old couple across the street or call
2 somebody or do something. And I just couldn't bring
3 myself to do it.

4 Q. You originally said you contemplated calling
5 your father's best friend.

6 A. Uh-huh.

7 Q. But you didn't have a phone?

8 A. No.

9 Q. So now you're testifying that you contemplated
10 running across the street to talk to the old couple?

11 A. Uh-huh.

12 Q. Is the old couple your father's best friend?

13 A. No, they're not.

14 Q. So that's different.

15 A. Yes, it is. There was different options; I
16 could have run across the street, I could have
17 called somebody. No, I did not have a phone, but I
18 had access to a phone.

19 Q. And your mother slept in the master bedroom
20 with your father?

21 A. She did.

22 Q. And the -- or he would often get up and visit
23 you in the living room or --

24 A. Yes, he would.

25 Q. And she wouldn't wake up?

1 A. No, she wouldn't.

2 Q. Nobody else ever heard anything?

3 A. No, sir, not to my knowledge.

4 Q. Nobody ever came out to get a glass of water or
5 anything like that?

6 A. No, sir.

7 MR. SHEALY: Okay. Your Honor, if I may just
8 have a moment.

9 BY MR. SHEALY:

10 Q. All right. I'm going to show you what's been
11 marked as State's Exhibit 13. Would you refresh the
12 jury's memory of what that is?

13 A. That's a diagram of .

14 Q. That's what the house -- the floor plan of the
15 house?

16 A. Yes, it is.

17 Q. Okay. Now, there's no wall here between the
18 living room and the dining room?

19 A. No, sir.

20 Q. Okay. And between the fireplace and the
21 laundry room, there's no wall there and between the
22 kitchen?

23 A. No, sir.

24 Q. Okay. So this is a very open space; right?

25 A. I forget what it's called. But I think it's

1 like a galley kitchen or something.

2 Q. Okay. And then there's a doorway without a
3 door between the kitchen and living room?

4 A. Yes.

5 Q. Now, this hallway, this is the boys' room;
6 correct?

7 A. Uh-huh.

8 Q. And this is the girls' room?

9 A. Uh-huh.

10 Q. This hallway goes all the way to the wall;
11 correct?

12 A. No.

13 Q. Okay. Where does this stop?

14 A. I don't remember exactly. But I'm pretty sure
15 the boys' room turns in -- like, the hallway goes to
16 the boys' bedroom door.

17 Q. So maybe there's a wall here and part of it
18 is --

19 A. Yeah, it's a closet.

20 Q. All right. Now, the door for the girls' room,
21 is it on the hallway or is it in the living room?

22 A. Hallway.

23 Q. And the boys' room door is also in the hallway;
24 is that correct?

25 A. It is.

1 Q. And this bathroom, y'all call that the main
2 bathroom, don't you?

3 A. It was just the bathroom -- the kids' bathroom.

4 Q. And where was the door?

5 A. That was in the hallway.

6 Q. Now, was there a doorway from the boys' room to
7 the bathroom?

8 A. No.

9 Q. And the master bedroom, the door was to the
10 living room?

11 A. Uh-huh.

12 Q. Yes?

13 A. Yes, it was.

14 Q. Okay. And the couch that we've been hearing so
15 much about, where was it in relation to the
16 fireplace?

17 A. There was a chair in front of the fireplace,
18 and then it was to the left.

19 Q. Okay. Why don't you, if you don't mind, come
20 up and point to it, that general area where the
21 couch would be.

22 A. It was a sectional that wrapped around here
23 (indicating).

24 Q. Okay. So it's in the middle of the living
25 room?

1 A. Uh-huh.

2 Q. Okay. And the hallway, was that open or was
3 there a door between --

4 A. It was an open hallway.

5 Q. No door there, no wall there?

6 A. No.

7 Q. Okay. Now, the -- and it's your testimony that
8 sometimes your father would come in this doorway to
9 the girls' room and pick you up out of bed --

10 A. Yes, sir.

11 Q. -- and take you into the living room?

12 A. Yes, sir.

13 Q. And you were on the top bunk?

14 A. Yes, sir.

15 Q. So he'd have to lift up and pick you up?

16 A. Yes, sir.

17 Q. And this is after he's had a bone removed from
18 his leg -- or foot. I'm sorry. After he had bones
19 removed from his foot.

20 A. There was absolutely -- the picture you see is
21 of my father standing there perfectly healthy. The
22 couple bones that they took out of his foot were to
23 help him to be able to walk so he could have, you
24 know, use of that foot so they didn't have to take
25 it. He was walking around fine.

1 Q. So he didn't limp or --

2 A. No. No, he did not.

3 Q. So he would come -- and if the boys wanted to
4 go to the bathroom, they'd have to come into the
5 hallway and go into the bathroom; is that correct?

6 A. Uh-huh.

7 Q. And if they wanted to get some water from the
8 kitchen, they had to go through the hallway, through
9 the living room, dining room, to the kitchen?

10 A. Uh-huh.

11 Q. Same thing with the girls?

12 A. Yes.

13 Q. And if your mom wanted something from the
14 kitchen, she would have to go through the living
15 room?

16 A. Yes.

17 Q. So the living room is the central room of this
18 place?

19 A. Yes, it was.

20 Q. And we've got nine people staying there,
21 counting you and your father?

22 A. Yes.

23 Q. So we got seven people staying here night after
24 night after night; correct?

25 A. Yes, sir.

1 Q. And this, what you said happens to you, happens
2 on a very often basis, not only when you slept on
3 the couch, but also when you slept in the girls'
4 room; is that correct?

5 A. Yes, sir.

6 Q. So this happened many, many, many times;
7 correct?

8 A. Yes, sir.

9 Q. How is it that no one in such a small house
10 that is so open, the floor plan so open, no one ever
11 stumbled in on y'all?

12 A. He had plenty of years to get his timing down.

13 Q. What does that mean?

14 A. He would take, you know, like,
15 super-middle-of-the-night trips, and it would never
16 be long. And just -- I honestly can't even tell you
17 where my family was when these things were going on.

18 Q. He would take super-middle-of-the-night trips?

19 A. Yeah, like 3:00 in the morning.

20 Q. He would do what?

21 A. He would come out, he would either go to -- I
22 would always wake up to it and pretend I was
23 sleeping and roll over, you know, squirm around. It
24 was in the middle of the night when everybody else
25 was sleeping. My family has never been one of those

1 get up in the middle of the night to get a drink of
2 water. Like, the kids, when they're in bed, they're
3 in bed.

4 Q. So he gets up in the middle of the night to go
5 on a trip, you wake up -- he goes somewhere, you
6 don't know where he goes, and then he comes back?

7 A. I'm sorry. What?

8 Q. You said middle-of-the-night trips. You said
9 he's had years to prepare --

10 A. That's his
11 molest-his-daughters-in-the-middle-of-the-night
12 thing.

13 Q. You said middle-of-the-night trips. You said
14 that he had many years to get his timing down
15 because he would take middle-of-the-night trips.
16 And then you testified that sometimes you'd wake up
17 as he was leaving. Did you know where he went?

18 A. I didn't mean trips by, like, he would leave to
19 take trips. I meant he would, in the middle of the
20 night, sneak into the other bedrooms or into the
21 living room and do what he did. Does that make
22 sense?

23 Q. So how did he get his practice over a number of
24 years?

25 A. Because, like I said, this is something that

1 had been happening to me since I can remember, like,
2 since I was a very small child.

3 Q. Right. But practicing would indicate that
4 he's -- from the very start, he was expert at
5 avoiding people waking up and --

6 MS. MAYES: Objection, Your Honor. May we
7 approach?

8 THE COURT: You may.

9 (Sidebar conference.)

10 MS. MAYES: Objection is that it's been asked
11 and answered, Your Honor.

12 THE COURT: All right.

13 Mr. Shealy, I'm not cutting you off, but we've
14 covered this ground a number of times. Please move
15 along.

16 MR. SHEALY: Thank you, Your Honor.

17 BY MR. SHEALY:

18 Q. Now, the evening that you informed your mom of
19 what happened, do you recall that?

20 A. Yes, sir.

21 Q. There was a dispute that evening involving some
22 members of your family. Would you tell us about
23 that?

24 A. I honestly don't remember what the dispute was
25 over. But I remember I was at a point with my

1 father where we weren't on good terms at all. And I
2 believe it's because I was with my fiance and he
3 would refer -- he's always referred to my boyfriends
4 as my F word buddy.

5 He has always had a problem with me being with,
6 you know, boyfriends. And I don't think he liked
7 the fact that I was so serious with my now fiance.
8 And I completely lost where I was going with that.
9 Could you --

10 Q. The argument that --

11 A. The dispute. Yeah.

12 Q. -- you had with your family members.

13 A. Yes. Like I said, we were not on good terms,
14 and I was just fed up with it. He would not allow
15 my fiance and I to come to the house and have
16 Thanksgiving with my family.

17 Q. All right. The night of the revelation, you
18 father was not there; right?

19 A. No, he wasn't.

20 Q. Okay. So he was not part of the argument?

21 A. No, he was not.

22 Q. All right. There was an argument regarding
23 your brothers, wasn't it?

24 A. Yes.

25 Q. Tell the jury about that argument.

1 A. By brother Zak has some anger issues. And he
2 was picking on one of my younger -- well, his little
3 brother. And my husband stepped in and tried to
4 intervene and be like, hey, man, you're huge
5 compared to this kid, you don't need to put your
6 hands on him. Then there was an argument between
7 them and an argument between me and my brother
8 because of the way he was talking to my fiance.

9 And that's when I just had it and I was done
10 with feeling like there was a problem -- like, the
11 family -- we weren't a family. We weren't a family
12 because of him. And it was like he was treating me
13 like I did something wrong.

14 Q. You're talking about Zak?

15 A. No. My father was treating me like I did
16 something wrong.

17 Q. Okay. But he wasn't there that night.

18 A. No. And I just got to the point where I was
19 tired of it. And right now, I -- I'm not that
20 little girl anymore, the little girl that he would
21 molest in the middle of the night. I'm not --

22 Q. All right. I want you to listen to my
23 question --

24 THE COURT: Hold on. She's not finish
25 answering.

1 Finish your answer.

2 A. I'm not the scared, quiet little
3 keep-this-a-secret little girl anymore. And I was
4 at a point in my life where I was growing up and
5 moving on. Like I said, I'm engaged to be married.
6 And my father was in no way supportive. He didn't
7 care, he was rude, nasty, mean, and he was unfair.

8 He came at my mother with it's either me or
9 her, and I was tired of feeling like that because --
10 over nothing. And he --

11 Q. All right.

12 A. Yeah. Go ahead.

13 Q. There was a fight between Zak, your brother,
14 and your fiance?

15 A. Yes.

16 Q. Okay. And your mom told you to leave?

17 A. Yes. I believe so.

18 Q. And before that, you knew that your father had
19 been in touch with your mother about the lack of
20 discipline in the household.

21 A. Could you --

22 Q. Your father had been in touch with your mother
23 about the lack of discipline in the household; is
24 that correct?

25 MS. MAYES: Objection; calls for speculation.

1 THE COURT: Rephrase the question.

2 BY MR. SHEALY:

3 Q. Were you told that your father was going to
4 move back in?

5 A. I was not.

6 Q. Did you know that he was running out of money?

7 A. I did not. I knew that he got paid \$1,500
8 every month to go to school.

9 Q. But he wasn't living in the house there with
10 you?

11 A. No. He was staying in Columbia.

12 Q. But you were never told that you and Zak --
13 that he would not support you?

14 A. No.

15 Q. So you didn't know about that?

16 A. No.

17 Q. And it didn't get you angry that your mom told
18 you that you had to leave?

19 A. No, it did not. I had my own apartment with my
20 fiance. My problem was the fact that I was not
21 allowed at family gatherings or get-togethers, such
22 as Thanksgiving, because my father would not allow
23 me there. My fiance and I were not allowed while he
24 was there.

25 MR. SHEALY: I beg the Court's indulgence, Your

1 Honor.

2 THE WITNESS: Am I allowed to say anything?

3 THE COURT: You just have to answer the
4 questions, please, ma'am.

5 BY MR. SHEALY:

6 Q. You mentioned that you were the caregiver for
7 your father whenever he had the diabetes and started
8 losing his feet. When did that start?

9 A. I cannot give you a start date. He's always
10 been sick, in and out of the hospital with health
11 problems stemming from his diabetes and not taking
12 care of himself. He's got all of the health
13 problems that go along with diabetes, blood pressure
14 problems, heart problems. There's a list.

15 Q. And this is even before Maplewood?

16 A. Yes.

17 Q. Okay. And during the time he was at Maplewood?

18 A. Yes.

19 Q. Now, it's been your testimony that you would
20 clean the wounds. He started losing toes, and then,
21 eventually, he wound up losing his leg, and now we
22 see that he's lost both legs. At what point did you
23 start doing the nursing, the cleaning of the wounds,
24 that sort of thing?

25 A. Right off the bat. I mean, the -- he -- they

1 took toes first. And then after that wasn't
2 working, it would get infected, the infection would
3 run up his groin, get really bad. And, actually,
4 while we were living in Pond Branch, he was almost
5 in the hospital more than he was home. And I would
6 sit there and wait on that phone call saying that,
7 you know, he didn't make it because he was so sick.

8 Q. Okay. That's at Pond Branch right y'all lived
9 at Maplewood?

10 A. Yes.

11 Q. All right. Did you do any nursing of him at
12 Maplewood?

13 A. Yeah. He got toes taken off and they did a
14 shark bite --

15 Q. What's a shark bite?

16 A. It's a -- they take a little pizza cut out of
17 the toes. I think that one was at Pond Branch. And
18 then they took toes on Maplewood. Yeah.

19 Q. So, essentially, he started losing his toes,
20 started losing -- eventually lost his leg. He had
21 all these other health issues. Why were you still
22 scared of him?

23 A. Could you --

24 Q. Were you still scared of him?

25 A. He was my father. I mean, it's not -- it's not

1 I'm, you know, scared to death of my father. It
2 wasn't -- no, sir, I wasn't.

3 Q. You were his caregiver?

4 A. Yes, sir.

5 MR. SHEALY: May I just have a moment, Your
6 Honor?

7 Thank you, Your Honor. That's all I have.

8 REDIRECT EXAMINATION

9 BY MS. MAYES:

10 Q. All right. To clarify, did -- his diabetes,
11 ulcers, problems with toes, did that prevent him
12 from walking into your room and carrying you out of
13 your room onto the couch in the living room?

14 A. No, it did not.

15 Q. During that time at Maplewood, was he still
16 able to carry items?

17 A. Yes, he was. It was -- his health started --
18 like, his feet started getting worse right before we
19 moved out. And then it was shortly after we moved
20 into Pond Branch when he lost half the leg.

21 Q. All right. And you were at Maplewood for a
22 period of over three years; correct?

23 A. Yes, ma'am.

24 Q. And to clarify here while we're looking at the
25 diagram, this is the living room, this is the girls'

1 room. Now, I believe your testimony earlier during
2 cross-examination was that there were times that you
3 recall someone else falling asleep on the couch that
4 wasn't you. Who was that person?

5 A. Everybody would kind of sleep on the couch
6 sometimes.

7 Q. All right. And do you recall whether Minor 1
8 would fall asleep on the couch in the living room?

9 A. I don't recall. But I'm sure she did sleep on
10 the couch.

11 Q. Okay. And where the girls' room is concerned,
12 can you tell us whether or not there were times that
13 Minor 1 was in the girls' room and you were not in
14 there?

15 A. There were times.

16 Q. Can you tell us whether or not there were times
17 that you did sleep in the girls' room and not on the
18 couch in the living room?

19 A. Yes, ma'am.

20 Q. And Mr. Shealy was asking you why you would
21 sleep on the couch if he would come in there. Were
22 there times that you slept in the girls' room and
23 something still happened?

24 A. Yes, ma'am. It didn't matter where I was, it
25 would happen anyway.

1 Q. How so?

2 A. If I was not alone, he would move me. So I
3 don't see a point in trying to, you know, sleep with
4 everybody when there's -- he's just going to move me
5 anyway.

6 Q. Did it ever prevent it from happening
7 regardless of where you were sleeping in the home?

8 A. No, ma'am.

9 Q. And he was asking you about in the living room,
10 that there's no wall here in the kitchen or wall
11 here in the dining room. But was there ever a time
12 in the middle of the night that something is
13 happening to you in the living room and people are
14 up and about in the kitchen and the dining room?

15 A. No, ma'am.

16 Q. And you testified during cross-examination that
17 this started at a young age, even before Maplewood;
18 correct?

19 A. Yes, ma'am.

20 Q. And as a young child, did you know what to do
21 to protect yourself?

22 A. No, ma'am.

23 Q. What was the way you could protect yourself or
24 stop it while it was happening?

25 A. I couldn't.

1 Q. And on cross-examination Mr. Shealy was asking
2 you about a time when you were 13 and you wanted to
3 tell someone. Do you recall that testimony?

4 A. Yes, ma'am.

5 Q. Could you drive at 13?

6 A. No, ma'am.

7 Q. Did you have your own mobile phone at 13?

8 A. No, ma'am.

9 Q. You said on cross-examination that you
10 pretended like nothing happened, quote, like I
11 always had. What did you mean by that?

12 A. I mean, ever since I can remember, my father
13 had been doing those things to me, and the next
14 morning it was like nothing ever happened. And it
15 was -- it -- the last time it happened is the time I
16 was talking about where he tried to have a condom.
17 And so for 13 years of my life, that had been going
18 on.

19 And I -- Mr. Shealy pointed out that it's not
20 normal. And by normal, I don't mean it's normal.
21 But for me it was -- I can't think of a better word
22 other than normal. It was just...

23 Q. Had you ever known any other life other than
24 that life?

25 A. No, ma'am.

1 Q. And when Mr. Shealy was asking you about why
2 you didn't tell at 13 when you were sitting in that
3 car, what reasons went through your mind that you
4 couldn't or shouldn't tell at that age?

5 A. You -- after he would do what he did, the
6 feelings that I would get were overwhelming. I
7 was -- I'd be disgusted, upset. This is my father
8 and he's doing these things, and it's really
9 confusing and upsetting.

10 And he is supposed to be the man in your life
11 that takes care of things and takes care of the
12 family and provides for the family and handles
13 everything. And he did that in his own way. But I
14 was always afraid that if I came forward and said
15 anything that, you know, my six little brothers and
16 sisters, who -- they drive my crazy, but I love them
17 more than anything.

18 And if -- if I could have came out with it
19 sooner, you know, maybe I could have protected them
20 from that. But I didn't. And because I didn't go
21 through and tell somebody about what happened, I now
22 have to sit here and not only talk about what
23 happened to me, but I have to think about the fact
24 that I know that it wasn't just me and it was my
25 sisters too.

1 Q. All right. Did you feel responsible for
2 keeping your family together?

3 A. I did. Because, you know, if I would have said
4 something, I wouldn't have a family anymore. And,
5 like I said, my father and I, we didn't have an
6 awful relationship. And, yeah, I just never thought
7 of the fact that I could be one of those kids that
8 didn't have a mom and a dad in the house. I didn't
9 want a broken family, I didn't want my little
10 brothers and sisters in foster care. I didn't know
11 what would happen. And I was scared and ashamed and
12 embarrassed.

13 Q. Did you think you had a way out back then at
14 13?

15 A. I didn't --

16 MR. SHEALY: Objection, Your Honor; leading
17 question.

18 MS. MAYES: Nothing further.

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

20 All right. Let's take a short afternoon break
21 for about ten minutes. Please don't discuss the
22 case, don't deliberate. We'll come back and go til
23 about 5:00. If you can, select me a foreperson out
24 of the 12 of you. We'll be back in about ten
25 minutes.

1 (The jury exits the courtroom at 3:49 PM.)

2 THE COURT: Anything from the State before we
3 take a break?

4 MS. MAYES: Your Honor, in terms of scheduling,
5 I believe we have one more witness, which would be
6 **Minor**, and then we could proffer the
7 testimony of **Minor 3**, if Your Honor wanted to
8 go ahead and hear that this afternoon.

9 THE COURT: Well, we'll go til about 5:00. I'm
10 pretty cognizant of courthouse personnel. We'll go
11 til about 5:00 and see how we get.

12 MS. MAYES: Yes, sir, Your Honor.

13 THE COURT: Anything, Mr. Shealy?

14 MR. SHEALY: I'm just a little surprised. Your
15 Honor, just my own comment: I would expect **Minor 1**
16 to last longer than 5:00. But I've been wrong
17 before.

18 THE COURT: Anything for the record before we
19 break?

20 MR. SHEALY: Thank you, Your Honor.

21 THE COURT: Thank you. We'll stand at ease for
22 about ten minutes.

23 (Short break.)

24 THE COURT: All right. It's been brought to my
25 attention that there's been some untoward behavior

1 out of the defendant and out of some of the
2 witnesses in the audience, some remarks made back
3 and forth. I will not stand any, any outbursts, any
4 interaction between the defendant and the family
5 members. If I find it again, hear of it again,
6 you'll be subject to contempt, as well as other
7 punishments. So if you can't control yourselves
8 ladies, sir, these signs, if I see that one more
9 time --

10 THE DEFENDANT: I was just scratching my neck,
11 sir.

12 THE COURT: I don't believe you. I'm telling
13 you, don't push me.

14 Anything else for the record before we begin?

15 MS. MAYES: Yes, sir, Your Honor. Mr. Shealy
16 and I spoke before Your Honor took the bench. I
17 believe that the comment was by someone who is not a
18 witness, not a family member. We do not need that
19 person in the courtroom, and we've requested that
20 person not be in the courtroom.

21 THE COURT: Who was it?

22 MS. MAYES: It is -- I don't know the name.
23 But it is an adult female wearing black. And my
24 understanding is that there's also another spectator
25 in the courtroom who is not an essential person.

1 And a lot of these people are affiliated with the
2 former Aryan Nation. Our request to the Court is --
3 and we do realize it is a public forum. But due to
4 the volatile nature of these --

5 THE COURT: Well, this young man back here, I'm
6 going to ask him to be removed because he's been
7 back here nodding and making facial gestures the
8 whole time, and I won't handle that.

9 So you can leave voluntarily or I'll get the
10 cops to remove you. Thank you.

11 MS. MAYES: And that was our request that
12 Mr. Shealy and I were going to make, that unless
13 they're a family member, they do not need to be in
14 the courtroom.

15 THE COURT: Anything else?

16 MS. MAYES: Nothing from the State, Your Honor.

17 THE COURT: Bring the jury in, please.

18 (The jury enters the courtroom at 4:06 PM.)

19 THE COURT: Congratulations, Ms. George. Your
20 first elected position?

21 THE FOREWOMAN: (Nods head.)

22 THE COURT: All right. You may call your next
23 witness.

24 MS. MAYES: The State calls

Minor

25 Minor

1 being first duly sworn, testified as follows:

2 THE WITNESS: I do.

3 THE CLERK: Have a seat, please, ma'am. Once
4 you're seated, speak up loud and clear, stating your
5 full name and spelling your last, please.

6 THE WITNESS: Minor

7 DIRECT EXAMINATION

8 BY MS. MAYES:

9 Q. All right. Now, Ms. Kreis, I'm going to move
10 this a little bit forward. If you could, speak into
11 it as well as you can -- you'll probably want to
12 keep your mouth maybe about two inches away from
13 it -- and that's so that the last juror can hear
14 your testimony.

15 Ms. Kreis, how old are you today?

16 A. I'm 19.

17 Q. And how is it that you know Minor 2 who
18 previously testified in this case?

19 A. She's my sister.

20 Q. And how is it that you know the defendant in
21 this case, August Kreis?

22 A. He's my father.

23 Q. Is he your biological father?

24 A. Yes.

25 Q. Minor 1 you stated that you're 19 today?

1 A. Yes, ma'am.

2 Q. Is it possible for you to remember how many
3 different homes your family has lived in through the
4 years?

5 A. Most of them.

6 Q. Do you remember whether or not your family
7 lived here in Lexington County?

8 A. We did.

9 Q. Do you remember where you were living when you
10 were 9, 10, and 11 years of age?

11 A. [REDACTED].

12 Q. All right. And is that the [REDACTED]
13 that is shown in State's Exhibit 4?

14 A. Yes, ma'am.

15 Q. And also the diagram that's over there.

16 THE COURT: 13, right?

17 MS. MAYES: Yes, sir, Your Honor.

18 BY MS. MAYES:

19 Q. During that time, Minor 1 when you were 9, 10,
20 and 11 years of age, who all do you remember living
21 in your home at [REDACTED]

22 A. My six siblings and me and my mother and
23 father.

24 Q. And during that point in time, did your father
25 work?

1 A. No.

2 Q. Can you tell us whether he was normally home
3 during the daytime?

4 A. He was.

5 Q. Can you tell us whether he was normally home
6 during the nighttime at that location?

7 A. He was.

8 Q. **Minor 1** how would you describe your
9 relationship with your father while growing up there
10 on Maplewood?

11 A. I mean, he's my father. But I never really
12 liked being around him much.

13 Q. All right.

14 A. Because of what happened.

15 Q. Did you feel comfortable around him?

16 A. No.

17 Q. Did you feel safe around him?

18 A. No.

19 Q. And we see that today he's in a wheelchair.
20 What happened when y'all were living at that [REDACTED]

21 [REDACTED] What do you recall about his
22 ability back then to be mobile and walk around?

23 A. Oh, he could walk around fine then.

24 Q. You said there were times that you didn't feel
25 safe or comfortable around your father.

1 A. I never did.

2 Q. I'm going to ask you specifically about [REDACTED]
3 [REDACTED], at that residence. What, if
4 anything, do you recall happening that made you feel
5 uncomfortable or not safe?

6 A. One night I was sleeping on the couch and he
7 came out of his room and pulled me on the floor.

8 Q. All right. And you said that you were on the
9 couch. In what room was the couch?

10 A. The living room.

11 Q. What else do you remember being in the living
12 room?

13 A. A coffee table and a chair.

14 Q. Do you know whether or not there was a
15 television?

16 A. There was a flat screen.

17 Q. So the living room was a place where you could
18 watch TV?

19 A. Yes.

20 Q. And was anyone else in there other than you
21 that night?

22 A. No. It was just me.

23 Q. What's the first thing you remember?

24 A. I remember him trying to put his privates in my
25 mouth.

1 Q. And at that point in time, was his private --
2 when you say private, you're referring to -- let me
3 show you a diagram. I'm going to show you what's
4 premarked as State's Exhibit 12. Do you see on this
5 diagram, looking at both the front and back, the
6 part or parts of the body you're talking about?

7 A. There (indicating).

8 Q. Okay. Let me give you a marker and ask you to
9 specifically mark the location that you're talking
10 about when you say his private.

11 A. (Witness complies.)

12 Q. And at this point in time, Minor 1 was his
13 private part inside or outside his clothing?

14 A. Outside his clothing.

15 Q. And now looking at the female diagram, which is
16 premarked as State's Exhibit 11, where on your body
17 did he attempt to touch with his private part that
18 was outside of his clothing?

19 A. My mouth.

20 MS. MAYES: Your Honor, we'd ask that State's
21 Exhibits 11 and 12 be offered as evidence at this
22 point.

23 THE COURT: Any objection?

24 MR. SHEALY: No, Your Honor.

25 (State Exhibit Nos. 11 and 12 admitted in to

1 evidence.)

2 BY MS. MAYES:

3 Q. When he tried to put his private part that was
4 outside his clothing in your mouth, what did you do
5 in response to that happening?

6 A. I didn't open my mouth, I kept it shut.

7 Q. And what happened next?

8 A. I could feel it on my lips and my teeth.

9 Q. And when you felt it on your teeth, were you
10 still trying to keep your mouth closed?

11 A. Yes, ma'am.

12 Q. And what was he doing?

13 A. Trying to get it open.

14 Q. And that's when it touched your teeth?

15 A. Yes, ma'am.

16 Q. Did you cooperate with him?

17 A. Not -- no. No, ma'am.

18 Q. What happened next?

19 A. He touched my private area.

20 Q. And what part or parts of your body are you
21 talking about when you say your private area?

22 A. My vagina.

23 Q. Was that inside your clothing or outside your
24 clothing?

25 A. Inside my clothing.

1 Q. In what way did he touch it? What did he do,
2 if anything?

3 A. Put his finger inside me.

4 Q. How did you respond to that?

5 A. I would always keep my eyes closed and pretend
6 I was sleeping.

7 Q. Why would you pretend like you were sleeping?

8 A. Because that's my father and I can't deal with
9 that.

10 Q. Did you know what to do in that situation?

11 A. No.

12 Q. Did you know how to protect yourself?

13 A. No, ma'am.

14 Q. You had your eyes were closed. What, if
15 anything, about this person allowed you to know this
16 was your father?

17 A. His beard.

18 Q. Where did you feel his beard?

19 A. On my face and...

20 Q. Was he the only one in the house with a beard?

21 A. Yes, ma'am.

22 Q. Did anything else happen while you lived there
23 at [REDACTED]?

24 A. There was this time, it was during the day, and
25 him and I were the only ones home. I don't remember

1 where everyone else went. But I was in his room and
2 he tried to get me on the bed. But I remember
3 struggling with him and getting away and running out
4 the door. And I heard him laughing as I ran out the
5 door.

6 Q. And that happened in which room?

7 A. The master bedroom.

8 Q. All right. The master bedroom. Was there a
9 bed in that master bedroom?

10 A. Yes.

11 Q. And what happened as he tried to pull you onto
12 the bed?

13 A. I got away from him.

14 Q. Let me ask you this: In that situation you're
15 in the master bedroom, there's a bed, and no one
16 else is home, did you feel safe at that moment?

17 A. No, ma'am.

18 Q. Why did you resist him?

19 A. Because I knew what he was trying to do.

20 Q. What you've told us about, **Minor 1** around what
21 time did it happen when you were living at
22 Maplewood? Was it in the very, very beginning?

23 A. The middle.

24 Q. The middle of when you lived there at
25 Maplewood?

1 A. Yes, ma'am.

2 Q. All right. Of that time period between 2005
3 and 2008?

4 A. Yes, ma'am.

5 Q. **Minor 1** did you tell your mother, Karley
6 Hollis, what had happened?

7 A. No, ma'am.

8 Q. Did you think about telling her?

9 A. Yes.

10 Q. What are some of the reasons, if any, that you
11 did not tell her?

12 A. Because he was the one paying the bills. I
13 mean, what would happen to us if he was gone?

14 Q. Did you ever confide in your sister **Minor 2**

15 A. No.

16 Q. Did you know that anything happened with your
17 sister **Minor 2**

18 A. No.

19 Q. And what you've told us about that happened to
20 you in the living room when you had been asleep on
21 the couch, did anyone else witness that?

22 A. No, ma'am.

23 Q. Was anyone in the kitchen or dining area when
24 that occurred?

25 A. No, ma'am.

1 Q. What time of day or night was that?

2 A. I don't remember exactly.

3 Q. **Minor 1** what, if anything, allowed you to
4 finally tell someone?

5 A. My sister brought it up first and then my
6 mother just asked me.

7 Q. Were you there when your sister brought it up?

8 A. No.

9 Q. And you're referring to your sister **Minor 2**

10 A. Yes.

11 Q. Okay. So you weren't home. What happened when
12 you got home that day?

13 A. My mother just straight-out asked me if he
14 touched me too.

15 Q. And how did you react to that?

16 A. At first I said no. But then she just -- then
17 I just told her the truth that he did.

18 Q. Why did you say no at first?

19 A. Because I was scared.

20 Q. And then you said you told her the truth. How
21 did you react after you told her?

22 A. I went out the front door and sat on the porch.

23 Q. Why did you do that?

24 A. Because I had to get away -- get away from
25 them.

1 Q. How did you feel about being with your mom and
2 your siblings after you were told this?

3 A. I felt numb, like I didn't want to face
4 anybody.

5 Q. When this was going on, did you ever confront
6 your father or ask him why he did these things?

7 A. No.

8 Q. And why or why not? And I'm talking about when
9 you were 10 or 11 at Maplewood.

10 A. I was scared.

11 Q. How would you describe your relationship with
12 during that time period when you said you were
13 scared?

14 A. I didn't like being around him. I, like, tried
15 to avoid him most of the time.

16 Q. Had he ever said anything that made you scared?

17 A. No.

18 Q. You were scared -- let me ask you this: What
19 was it that made you scared?

20 A. Him. He was always violent and mean.

21 Q. And you had witnessed that or observed that
22 yourself?

23 A. Yes.

24 Q. Now, once this happened where your mother
25 started to ask you and you gave her an answer, you

1 told her yes, and then you went outside and sat on
2 the porch, when is the first time that you learned
3 something had happened with your sister **Minor 2**

4 A. That same night.

5 Q. And, **Minor 1** did you go and meet with the
6 police, particularly this detective, Shannon Dykes,
7 with the Lexington County Sheriff's Department?

8 A. Yes, ma'am.

9 Q. And do you remember a female detective as well,
10 Sergeant Traci Barr?

11 A. Yes, ma'am.

12 Q. And can you tell us whether or not you
13 participated in what's called a forensic or an
14 investigative interview as well?

15 A. Yes, ma'am.

16 Q. Ultimately, **Minor 1** from the point your father
17 was arrested on, have you had any contact with him?

18 A. No, ma'am.

19 Q. Any phone calls or personal contact whatsoever?

20 A. No, ma'am.

21 Q. Is today the first day you've seen him since
22 then?

23 A. Yes, ma'am.

24 Q. And where do you currently reside?

25 A. 1932 Thoroughfare Branch Road. I live with my

1 mother and five younger siblings.

2 Q. So you're the second oldest. And you are
3 living at home with your mom and your other siblings
4 except **Minor 2**

5 A. **Minor 2** has her own place with her fiance.

6 Q. And the rest of you are residing in Kershaw
7 County with your mother?

8 A. Yes, ma'am.

9 MS. MAYES: I beg the Court's indulgence.

10 BY MS. MAYES:

11 Q. **Minor 1** what is your date of birth?

12 A. February 24th, 1996.

13 Q. So you're about two years younger than **Minor 2**
14 is that fair to say?

15 A. Yes, ma'am.

16 Q. And when you said that your father was always
17 violent, what, if anything, do you recall him saying
18 in terms of violence?

19 A. He'd always be fighting with **Minor 2** or yelling
20 a lot.

21 Q. How did that make you feel to witness those
22 things?

23 A. I don't like violence.

24 Q. **Minor 1** did you live with your family -- have
25 you always lived with your family from the time

1 y'all left [REDACTED] on to live in Richland
2 County and Kershaw County?

3 A. Yes, ma'am.

4 Q. Were you always living at home with your family
5 members throughout -- well, really, throughout your
6 entire life?

7 A. Yes, ma'am.

8 MS. MAYES: Nothing further.

9 THE COURT: Mr. Shealy?

10 CROSS-EXAMINATION

11 BY MR. SHEALY:

12 Q. **Minor 1** at the time that you lived at [REDACTED]
13 [REDACTED], how many people were living in that
14 house?

15 A. Nine.

16 Q. And who slept in the master bedroom?

17 A. My parents.

18 Q. Anybody else?

19 A. Aiden.

20 Q. Okay. And who slept in the boys' room?

21 A. The boys, the three boys.

22 Q. Except Aiden?

23 A. Yes.

24 Q. And who slept in the girls' room?

25 A. Me and my sisters.

1 Q. Okay. Now, were you here in the courtroom when
2 your sister testified?

3 A. Yes, sir.

4 Q. So did you hear her testimony?

5 A. Yes, sir.

6 Q. Okay. Now, the couch in the living room, tell
7 me what happened there.

8 A. What happened to me there?

9 Q. Yes.

10 A. My father came out of his room and pulled me
11 off the couch and tried to put his private part in
12 my mouth. But I wouldn't open my mouth, but it
13 touched my teeth and my lips.

14 Q. Okay. Well, were you on your knees?

15 A. I was on the floor.

16 Q. Okay. And where was he?

17 A. Right next to me.

18 Q. He was beside you?

19 A. Yes.

20 Q. Okay. Were you on your side?

21 A. No. I was on my back.

22 Q. Okay. Was he on his side?

23 A. No. I -- no.

24 Q. He wasn't on his side?

25 A. No, sir.

1 Q. Okay. The -- and you said that he tried to
2 force your mouth open. Did he use his fingers to
3 try to force your mouth open?

4 A. No. He used his private to try to get my mouth
5 open.

6 Q. Okay. That's all he used?

7 A. Yes.

8 Q. Okay. How often did you -- did this happen
9 more than once?

10 A. That's the only time I recall that he tried to
11 do that.

12 Q. Okay. And **Minor 2** did she -- to your
13 knowledge, did she often stay in the living room?

14 A. I don't -- I don't remember.

15 Q. You don't remember if she often slept in the
16 living room?

17 A. She wasn't there when I was there.

18 Q. All right. Well, let's talk about the girls'
19 room. How many beds were in the bedroom?

20 A. One set of bunk beds.

21 Q. Okay. And two people would double-up on them
22 when all three of you were sleeping in there?

23 A. Not all the time, no.

24 Q. Where would the third one sleep?

25 A. The couch, usually.

1 Q. And who would that be?

2 A. It would always be different.

3 Q. Okay. So all of you knew that each of you took
4 turns sleeping out on the couch at different times?

5 A. Yes, sir.

6 Q. Okay. The -- and the other incident you
7 mentioned took place in the master bedroom?

8 A. Yes.

9 Q. Why were you in the master bedroom?

10 A. He called me in there.

11 Q. Okay. And you remember talking to the forensic
12 interviewer about that situation?

13 A. Yes.

14 Q. Okay. Do you remember telling that lady
15 that -- and I'm -- I remember last time. But it
16 wasn't, like, sexual. He -- no one was there. He
17 grabbed my leg and he tried to pull me on the bed
18 and I ran outside and just walked for a while. He
19 just sat on the bed and laughed. Is that correct?

20 A. Yes.

21 Q. Okay. And that was the incident in the master
22 bedroom?

23 A. Yes.

24 Q. Okay. The -- excuse me. Do you recall when
25 your father was going to Midlands Tech?

1 A. Yes.

2 Q. Okay. Did he live at home with y'all then?

3 A. We did live in the apartments for a while.

4 Q. Okay. But he wasn't living with you at that
5 time, was he?

6 A. He was, I believe.

7 Q. Okay. While he was going to Midlands Tech?

8 A. I think so. Yes.

9 Q. Okay. There wasn't any discussion about him
10 moving back in with y'all?

11 A. When? Can you rephrase --

12 Q. Towards the revelation, was he living with you
13 then?

14 A. No.

15 Q. And you said that that was a result of an
16 argument; is that correct?

17 A. What was the --

18 Q. When **Minor 2** told about what happened to her,
19 that was -- what happened right when that revelation
20 took place?

21 A. What happened? A big fight broke out and I
22 took off to the neighbor's house with my younger
23 siblings. And when I got back, my mother asked me
24 if he touched me too. And I tried to play it off
25 that he didn't, but then she kept asking me and I

1 couldn't -- I had to tell her because -- because he
2 did.

3 Q. Okay. Do you have any pets?

4 A. Yes.

5 Q. What do you have?

6 A. I have rabbits and cats.

7 Q. Do you have a dog?

8 A. Yes.

9 Q. Okay. And those are your pets; is that
10 correct?

11 A. Family pets, really.

12 Q. Okay. Now, when your father was losing his
13 toes and his feet, did you help take care of him?

14 A. No.

15 Q. No --

16 MR. SHEALY: May I have just a moment, Your
17 Honor?

18 BY MR. SHEALY:

19 Q. And these two times that this occurred, are
20 those the only two times you recall?

21 A. Can you repeat that?

22 Q. Are these the only two times that you recall,
23 the master bedroom and the couch?

24 A. Yes, that's the only two times.

25 Q. That that ever happened to you?

1 A. No. It's happened before, that's just the only
2 two times that I remember that much.

3 MR. SHEALY: Thank you, Your Honor. That's all
4 I have.

5 REDIRECT EXAMINATION

6 BY MS. MAYES:

7 Q. And just to clarify, those are the only two
8 times you recall at what address or location?

9 A. [REDACTED].

10 Q. And that's the residence here in Lexington
11 County.

12 Okay. Mr. Shealy was asking you about when you
13 spoke in the forensic interview and you said the
14 last time in the master bedroom, that it wasn't
15 sexual. What did you mean by that?

16 A. That he didn't touch me in inappropriate
17 places, he just tried to grab me and get me on the
18 bed.

19 Q. All right. And what stopped it from becoming
20 sexual?

21 A. I got away.

22 MS. MAYES: Nothing further.

23 THE COURT: You may step down.

24 Madam forelady, ladies and gentlemen, we're
25 going to go ahead and break now for today. I have

1 about another 45 minutes with the lawyers on
2 something I have to do outside of your presence.

3 I have a 9:30 in the morning that will probably
4 take us at least 15 or 20 minutes. We've got a
5 posttrial motion in a case that's going to start
6 at 9:30. So why don't we start our trial at 10:00?
7 I don't want you to wait on us to finish that up.
8 We'll start at 10:00 in the morning. Please don't
9 discuss the case, don't let anyone discuss it with
10 you, don't start any deliberations. I'll see you in
11 the morning at 10:00. Everybody have a pleasant
12 evening.

13 (The jury exits the courtroom at 4:37 PM.)

14 THE COURT: Let's use this next 25 or 30
15 minutes for the proffer, please.

16 MS. MAYES: Yes, sir, Your Honor. The State
17 calls Minor 3 .

18 Minor 3
19 being first duly sworn, testified as follows:

20 THE WITNESS: Yes.

21 THE CLERK: Once you're seated, speak up loud
22 and clear and state your full name and spell your
23 last.

24 THE WITNESS: Minor 3

25

1 EXAMINATION

2 BY MS. MAYES:

3 Q. Minor 3 how old are you today?

4 A. Fourteen.

5 Q. You're 14. Okay. And what county is it that
6 you currently live in?

7 A. Cassatt.

8 Q. Okay. Cassatt. And you live in a town called
9 Cassatt; is that right?

10 A. Yes.

11 Q. Okay. I'm going to show you a picture and ask
12 you whether or not you recognize the house in that
13 picture.

14 A. Yes.

15 Q. State's Exhibit 7. Which house is that?

16 A. [REDACTED] -- no. That's the current house we
17 live in.

18 THE COURT: I can't hear her.

19 Q. What I'm going to need you to do, Minor 3 is --
20 we'll move this so that it comes really close to
21 your mouth. And maybe lean into it so that way the
22 Judge can hear everything you're saying. Okay?

23 A. That's the house we live in now.

24 Q. This is the house you live in now?

25 A. Yes.

1 Q. In the town called Cassatt?

2 A. Yes.

3 Q. That's State's Exhibit 7.

4 Now I'm going to show you what's State's
5 Exhibit 8.

6 A. That's the apartment.

7 Q. Have you ever lived in that place?

8 A. Yes. St. Andrews.

9 Q. You called it the apartment?

10 A. St. Andrews. Yeah.

11 Q. St. Andrews. Okay. Now, there's been some
12 testimony in this case about [REDACTED].

13 And you might have been little, but do you know
14 whether or not you ever lived in that house with
15 your family?

16 A. Yes.

17 Q. The house that's shown in that picture right
18 there?

19 A. Yes.

20 Q. Okay. So 8 and 7, the house in Cassatt and
21 that apartment in St. Andrews, did you live there
22 before Maplewood or after Maplewood?

23 A. That one after, and then -- both after, I
24 think. I don't remember.

25 Q. All right. But you remember living in these

1 places?

2 A. Yes.

3 Q. Minor 3 when you lived here at St. Andrews
4 Apartments, who all lived in that house with you?

5 A. Everyone except Minor 2

6 Q. Okay. That's your oldest sister?

7 A. Uh-huh.

8 Q. And when you say everyone, how is it that you
9 know the defendant in this case, Mr. Kreis?

10 A. That's my father.

11 Q. All right. And did he live there too?

12 A. Yes.

13 Q. All right. Now, when you lived at this house,
14 has he ever been to this house?

15 A. Yes.

16 Q. When would he come to this house?

17 A. On occasions, I don't know, like weekends.

18 Q. Okay.

19 THE COURT: And that's number 7?

20 MS. MAYES: Yes.

21 Q. When he would come to the house in Cassatt, can
22 you tell us whether or not he was ever alone with
23 you?

24 A. Yes.

25 Q. So I'm going to ask you now, Minor 3 what grade

1 are you in right now?

2 A. 8th.

3 Q. You're in 8th grade and you're 14. I'll take
4 you back to when you were 12. And when you were 12
5 and living at that house in Cassatt, did you ever
6 have a time to tell your mom about something that
7 had happened with your father?

8 A. No.

9 Q. And by that, I mean -- who is the first -- has
10 anything ever happened with your father?

11 A. Yes.

12 Q. That made you uncomfortable?

13 A. Yes.

14 Q. What are the place or places you remember
15 something happening that made you feel
16 uncomfortable?

17 A. That house and the apartment.

18 Q. Okay. The apartment I showed you in the
19 picture, St. Andrews?

20 A. Yes.

21 Q. And then that house meaning the house where?

22 A. At Cassatt.

23 Q. Okay. Who is the first person that you told
24 that something happened?

25 A. My mom.

1 Q. All right. And after you talked to your mom,
2 can you tell us whether or not you talked to the
3 police?

4 A. Yes.

5 Q. And what about a lady who did an interview with
6 you where it was just you and her in the room?

7 A. Yes.

8 Q. **Minor 3** what is it that happened that made you
9 feel uncomfortable?

10 A. We were up on the bed together and all the
11 sudden, the movie was over, the Wizard of Oz, and he
12 tried to grab me up onto the bed, like, next to him,
13 next to him, and he starts touching me.

14 Q. Okay. Was that on your clothing or underneath
15 your clothing?

16 A. Underneath.

17 Q. All right. And what part or parts of your body
18 did he touch?

19 A. My lower part.

20 Q. Okay. And what part or parts of his body did
21 he use to touch you with?

22 A. His hand.

23 THE COURT: His what?

24 THE WITNESS: His hand.

25 Q. And where do you remember that happening at?

1 A. At the house now.

2 Q. Okay. In Cassatt. Minor 3 when you said lower
3 part, do you see the part you're talking about on
4 this?

5 A. Yes.

6 Q. Okay. I'm going to ask you, if you can, to
7 point to the part on this diagram, the front and the
8 back of the girl.

9 A. (Indicating.)

10 Q. All right. And, again, point for the record so
11 that this lady right here can see you.

12 A. (Indicating.)

13 Q. All right. And when you said under your
14 clothes, what part or parts of your body did he
15 touch under your clothes?

16 A. (Indicating.)

17 Q. Okay. So when you say lower part, you're
18 referring to the private part of the girl?

19 A. Yes.

20 Q. And you said he used his hand to touch you
21 there?

22 A. Uh-huh.

23 THE COURT: Yes or no?

24 THE WITNESS: Yes.

25 THE COURT: Thank you.

1 BY MS. MAYES:

2 Q. You said that y'all were in bed and you had
3 been watching a movie. What movie do you remember
4 watching?

5 A. The Wizard of Oz.

6 Q. Okay. And was anyone else in the room with you
7 and your father?

8 A. Yes.

9 Q. Do you know if anyone else has ever seen
10 anything happen?

11 A. I didn't know at first. But, yes, now I know.

12 Q. Okay. Where were you when someone else saw
13 something happen?

14 A. St. Andrews.

15 Q. Okay. I want to back up to what you said about
16 the Wizard of Oz. Did anyone else see your father
17 touch your private part on that occasion?

18 A. No not that I know of.

19 Q. Okay. You said at St. Andrews, which is what's
20 in this photo number 8, that you think somebody saw
21 something.

22 A. Eddie.

23 Q. Who is Eddie?

24 A. My brother.

25 Q. Okay. What was happening that you think Eddie

1 saw something?

2 A. We were in the room together and he was
3 touching my lower area and --

4 Q. When you say he, you're talking about who?

5 A. Chip.

6 Q. And you say Chip, but you're referring to the
7 defendant, August Kreis?

8 A. Yes.

9 Q. And when you say lower area, again, is that a
10 different area than you showed us before or the same
11 area?

12 A. The same.

13 Q. Okay.

14 A. That's what I mean by lower area.

15 Q. Okay. And where were y'all at at the
16 St. Andrews apartment when he did that?

17 A. Up in the master bedroom, his bedroom.

18 Q. What you call his bedroom, meaning the
19 defendant's bedroom?

20 A. Yes.

21 Q. Was anyone else in there at first?

22 A. No.

23 Q. Okay. And what, if anything, was happening
24 when he, as you said, touched your lower part?

25 A. What do you mean?

1 Q. Okay. What were y'all doing in the bedroom?
2 Was anything going on?

3 A. No.

4 Q. Okay. Do you know if the television was on or
5 anything like that?

6 A. Oh, yeah. He had his phone and he was showing
7 me, like -- like you said, it was -- you didn't see
8 anything up on his phone, so it had to be a movie or
9 something.

10 Q. Okay. Did you look at the phone for a long
11 time?

12 A. No.

13 Q. All together, how long do you think you looked
14 at his phone?

15 A. Like probably about a second.

16 Q. Okay. Now, when you were in there with the
17 defendant, what happened? What happened that made
18 you think Eddie saw something?

19 A. He came in the room.

20 Q. How did he get in the room?

21 A. He opened the door.

22 Q. Okay. What did you do when Eddie walked in?

23 A. I didn't do anything. He, like, stopped.

24 Q. Okay. When you say he stopped, again, I got to
25 ask --

1 A. Yes.

2 Q. -- you, who is he?

3 A. My father.

4 Q. Your father stopped. Okay. Stopped doing
5 what?

6 A. Like, touching me and everything. He just
7 stopped.

8 Q. Okay. When Eddie walked in?

9 A. Yes.

10 Q. Okay. How did that make you feel?

11 A. What do you mean? Whenever Eddie came in?

12 Q. Yes.

13 A. I don't know. Nervous.

14 Q. **Minor 3** has that happened one time or more than
15 one time?

16 A. More than one.

17 Q. Okay. What about when you were living at
18 St. Andrews? Was it one time or more than one?

19 A. More than one.

20 Q. What about at the house in Cassatt that you
21 told us about with the Wizard of Oz movie?

22 A. Once.

23 Q. Okay. And that's the time you told us about
24 with the Wizard of Oz movie?

25 A. Yes.

1 Q. So you've told us about him touching your lower
2 part with his hand. Can you tell us whether or not
3 he has ever tried to touch your body with another
4 part of his body? Do you understand my question?

5 A. Not really.

6 Q. Okay. Has he ever tried to do anything else?

7 A. Yes. He's tried to make me -- man...

8 Q. Just take your time.

9 A. Put my mouth on his thing.

10 Q. Okay. And when you say on his thing, you're
11 talking about what part of his body? Do you see it
12 on this diagram that I'm going to show you of a man?
13 And look at the front of the man and the back of the
14 man. Where would it be?

15 A. On that (indicating).

16 Q. Okay. Can you point so --

17 A. (Indicating.)

18 Q. Okay. So that's the part you're talking about
19 when you said thing?

20 A. Yes.

21 Q. Okay. And how did you react to that, Minor 3

22 A. I rolled over. I didn't open my mouth.

23 Q. Okay. Was he able to do that?

24 A. No.

25 Q. And can you tell us whether or not he's ever

1 taken your hand and make your hand touch him
2 somewhere?

3 A. He's tried to, but I wouldn't let that happen.

4 Q. Okay. What part did he try to make your hand
5 touch?

6 A. His lower area that --

7 Q. That you showed us on the diagram?

8 A. Yes.

9 Q. When that was going on, did you tell your mommy
10 about it?

11 A. No.

12 Q. Why or why not?

13 A. Because he was the one in charge. He was
14 paying everything. And -- yeah.

15 Q. When you said he paid everything, do you know
16 who paid your rent that --

17 A. Him.

18 Q. -- allowed you to live at that apartment?

19 A. Him.

20 Q. And you knew that?

21 A. Yes.

22 Q. When you say he was in charge, has he been in
23 charge your whole life?

24 A. Yeah.

25 Q. So, Minor 3 how old were you when all of this

1 came out and you finally told when you were at that
2 house in Cassatt?

3 A. Probably 11.

4 Q. Okay. Do you know if you might have been 12?

5 A. I might have been. I'm not for sure.

6 Q. Okay. You think you were 11 or 12?

7 A. Yeah.

8 Q. Okay. But it was about two years ago, does
9 that sound right --

10 A. Yes.

11 Q. -- that it all came out?

12 And what was it that made you tell?

13 A. The fight between Zak and Minor 2 and all them.

14 Q. Were you there when that happened?

15 A. No. I was at my grandma's.

16 Q. When you came back from your grandma's, did
17 someone ask you?

18 A. Yes.

19 Q. And who asked you?

20 A. Mom.

21 Q. And she asked you what?

22 A. Did that ever happen.

23 Q. And what did you say?

24 A. Yes.

25 Q. How did you feel about telling your mom?

1 A. Sad. I cried.

2 Q. If your mom wouldn't have asked you, do you
3 think you would have told her?

4 A. No.

5 MS. MAYES: I beg the Court's indulgence.

6 Your Honor, I believe that's all from this
7 witness at this time on this pretrial matter.

8 THE COURT: Any questions you want to ask on
9 the proffer?

10 MR. SHEALY: No, Your Honor.

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

12 MS. MAYES: State calls Eddie Kreis. He's in
13 the sequestration room.

14 EDDIE KREIS

15 being first duly sworn, testified as follows:

16 THE WITNESS: Yes.

17 THE CLERK: Have a seat, please. Once you're
18 seated, state your full name, spelling your last.

19 EXAMINATION

20 BY MS. MAYES:

21 Q. What's your full name?

22 A. Edward Charles Kreis.

23 Q. And what's your nickname that you go by?

24 A. Eddie.

25 Q. And how old are you right now?

1 A. Twelve.

2 Q. All right. I'm going to show you, Eddie, a
3 picture. What is State's Exhibit 8? Have you ever
4 seen that place before?

5 A. Yes.

6 Q. What is that place?

7 A. The apartment that we used to live in.

8 Q. Okay. That's an apartment that yu used to live
9 in. And can you tell us whether your -- all your
10 sisters lived there except **Minor 2**

11 A. Yes.

12 Q. What about your mom?

13 A. (Nods head.)

14 Q. And the reason we need you to give an answer
15 with your mouth is, this lady types down everything
16 that's said. Did your mom live there too?

17 A. Yes.

18 Q. What about your father, August Kreis?

19 A. He -- yes.

20 Q. Okay. And what about all of your brothers?

21 A. Yes.

22 Q. Okay. So that house, is it one floor or more
23 than one floor?

24 A. Two.

25 Q. Two floors. Okay. What was on the second

1 floor that you remember?

2 A. The master bedroom.

3 Q. Okay. Who stayed in that master bedroom?

4 A. My dad.

5 Q. Okay. Eddie, when y'all were living at this
6 house or this apartment, did anything -- did you
7 ever see anything in the master bedroom that seemed
8 unusual?

9 A. Yes.

10 Q. What was that?

11 A. When I walked in, my dad and my sister was on
12 the bed.

13 Q. All right. And when you said when you walked
14 in, how did you get to the master bedroom?

15 A. Walked up the stairs.

16 Q. Okay. And who was in the master bedroom?

17 A. My dad and Minor 3

18 Q. Okay. And when you said my sister, you're
19 talking about your sister Minor 3

20 A. Yes.

21 Q. Is Minor 3 older than you or younger than you?

22 A. Older.

23 Q. Tell us about when they were on the bed. Did
24 they have anything over them?

25 A. A blanket.

1 Q. All right. What did you see happening with the
2 blanket?

3 A. Moving.

4 Q. All right. Who did you see moving under the
5 blanket?

6 A. It was covered up.

7 Q. Okay. What could you see moving?

8 A. I don't know.

9 Q. All right. When you said moving, what did you
10 mean by that?

11 A. Like, the blanket was just moving.

12 Q. Okay. And when you walked in, what, if
13 anything, happened next? Do you understand that
14 question?

15 A. (Shakes head.)

16 Q. Okay. Let me ask you this way: You walk in
17 and you see a blanket, and you can see moving under
18 the blanket. Who is under the blanket?

19 A. My dad and **Minor 3**

20 Q. All right. And then what happened?

21 A. I walked back out of the room.

22 Q. Why did you do that?

23 A. Because something was strange.

24 THE COURT: Because why?

25 THE WITNESS: Something was strange.

1 THE COURT: What do you mean by that?

2 THE WITNESS: Like, not right.

3 BY MS. MAYES:

4 Q. Did that seem strange or unusual to you to see
5 your dad and Minor 3 with someone moving under the
6 blanket?

7 A. Yes.

8 Q. Do you know if the moving ever stopped?

9 A. No.

10 Q. Okay. And was anyone else in the room other
11 than the two of them?

12 A. No.

13 Q. Okay. And you said you left the room?

14 A. Yes.

15 Q. Did you tell your mom about what you saw?

16 A. Yes.

17 Q. Do you remember what -- when it was that you
18 told your mom or what made you tell your mom?

19 A. That it was, like, not right?

20 Q. Yes.

21 Do you remember talking to a lady at a place
22 where you got an interview?

23 A. Yes.

24 Q. And it was only that lady and you?

25 A. Yes.

1 Q. Did you tell that lady what you saw?

2 A. Yes.

3 Q. And from all the houses that you lived in,
4 Eddie, your whole life, which house or place or
5 apartment was this? Does that question make sense
6 to you?

7 A. (Shakes head.)

8 Q. Okay. Where was it y'all were living when this
9 happened?

10 A. The apartment.

11 Q. Okay. And when you say the apartment, you mean
12 which one?

13 THE COURT: Does it have a name?

14 THE WITNESS: I don't know the name.

15 THE COURT: Is it the same apartment in the
16 picture you just saw, number 8?

17 THE WITNESS: Yes.

18 MS. MAYES: Nothing further, Your Honor.

19 THE COURT: Mr. Shealy, anything you want to
20 ask him on the proffer?

21 MR. SHEALY: No, Your Honor.

22 THE COURT: All right. Young man, you may step
23 down. Thank you.

24 Any additional witnesses on the proffer?

25 MS. MAYES: No, Your Honor.

1 THE COURT: Mr. Shealy, do you want to reserve
2 your argument until the morning so you can have a
3 chance to digest what was said and review the cases?

4 MR. SHEALY: Please, Your Honor.

5 THE COURT: All right. I'll allow that. We'll
6 do that at 9:15 AM. Be here at 9:15 to do that
7 argument.

8 Anything for the record before we break for the
9 evening?

10 MS. MAYES: No, sir, Your Honor.

11 THE COURT: Mr. Shealy, anything for the record
12 before we break?

13 MR. SHEALY: No, nothing for the record.

14 THE COURT: Mr. Kreis, they've got
15 arrangements, as we've heard. I hope things will
16 accommodate your needs tonight.

17 All right. We'll stand at ease until 9:15 in
18 the morning.

19 (Court in recess for the evening at 5:02 PM.)

20 THE COURT: Good morning, Mr. Kreis.

21 THE DEFENDANT: Good morning.

22 THE COURT: All right. What we have left this
23 morning is the ruling on the proffered testimony
24 yesterday of **Minor 3** and Eddie Kreis. I've
25 received the memo from the State in support of

1 these -- introduction of this evidence under Rule
2 404(b), Lyle, subject to a 403 analysis. I've read
3 the cases that were submitted to me, including State
4 vs. Carl Wallace, which I think is probably the one
5 that's probably -- 2009 case. And it's a recitation
6 of all the other cases dealing with the similar type
7 requests. So I know what the State's position is.

8 Mr. Shealy, any argument in connection with
9 this?

10 MR. SHEALY: Your Honor, prior to starting my
11 argument, I'd like to put it on the record that my
12 client has asked me not to contest the children
13 testifying.

14 THE COURT: Not to contest it?

15 MR. SHEALY: Yes, Your Honor. But I'm the
16 attorney here, and I feel that --

17 THE COURT: Let me just hang tight.

18 Mr. Kreis, good morning. You heard yesterday,
19 late in the afternoon, what we call proffered
20 testimony, which means testimony outside the
21 presence of the jury, offering evidence that's
22 alleged events that occurred which are not part of
23 the three indictments here; i.e., the testimony of
24 your daughter who alleges that she had some
25 inappropriate involvement with you in the house of

1 Cassatt and the apartment at St. Andrews, and your
2 son Eddie who allegedly saw some untoward activities
3 under the bedsheets or bed covering in the
4 St. Andrews apartment.

5 Obviously, that's not facts that are the basis
6 for the three indictments that you're being charged
7 it, but they're being offered under certain rules
8 that if I make certain findings that show what we
9 call -- the law calls a common scheme or plan,
10 actions of prior bad acts or other prior bad acts,
11 you understand where all of this is going and what
12 that means?

13 THE DEFENDANT: Yes, Mr. Early.

14 THE COURT: And understanding that, sir, you
15 have no objection to that coming in?

16 THE DEFENDANT: No, I don't.

17 THE COURT: You understand that it could be
18 prejudicial towards you if the jury believes it?

19 THE DEFENDANT: I don't care. I'd rather have
20 it all come out now.

21 THE COURT: I understand.

22 Mr. Shealy?

23 MR. SHEALY: Your Honor, just for my protection
24 on the record, I'd like it to go on record that I
25 disagree with that decision, and that I'm prepared

1 to continue to argue --

2 THE COURT: Well, why don't you put your
3 argument on the record?

4 MR. SHEALY: Thank you, Your Honor.

5 Your Honor, the basis of Lyle is that it's got
6 to be a prior bad act. The cases that I've
7 researched use the term prior bad act and the
8 context of the cases deal with acts that happened
9 before the alleged crimes, the alleged allegations.
10 The -- and they're used, just as you pointed out, to
11 show scheme, plan, intent, lack of mistake or
12 accident. But the act has to be prior, to show
13 these things in a later incident.

14 Here, the acts are subsequent to the charge of
15 misconduct, not prior to. And they do not fall
16 under Lyle or 404. Remember, this is a rule of
17 exclusion, not inclusion. The State argues that
18 prior means before trial. If that was true, Your
19 Honor, then there would be no need to use the word
20 prior because the only acts they could talk about
21 would be acts that took place prior to trial. So
22 there has to be some significance to the word prior.

23 Your Honor, as to the specific allegation s,
24 first, I'd like to talk about the incident on the
25 bed, Eddie's testimony and that portion of **Minor 3**

1 testimony that dealt with the blanket on the bed.
2 Your Honor, we'd submit that's factually dissimilar.
3 Here we have a bed -- laying on the bed, they're
4 covered by a blanket, it's happening when someone
5 else is in the house, and it's not late at night, no
6 one is asleep, or at least there's no testimony that
7 everybody was asleep. All of the other testimony in
8 the prior two crimes were totally dissimilar. In
9 those, either no one was at home or it was late at
10 night and everyone was asleep, and that there were
11 measures taken that nobody could walk in.

12 So, Your Honor, I believe the crux of the Lyle
13 principle is that the facts have to be similar. And
14 the courts, particularly the Supreme Court, are
15 very, very strict on the similarity of the
16 incidents.

17 Your Honor, as to the incident that happened as
18 they watched The Wizard of Oz, it's also dissimilar.
19 Once again, they're on the bed, this time they're
20 watching a movie. There's no movie in the
21 allegations against August. They -- she alleged --
22 and, Your Honor, this is my notes. And I want you
23 to rely on your recollection of the testimony as
24 making your decision. But my notes and my
25 recollection is that she testified someone was there

1 with them, that that person -- I think it was one of
2 her brothers, but that person didn't see him grab
3 her, the -- her lower extremity with her [sic]
4 hands. Your Honor, once again, that's dissimilar to
5 what the allegations are against my client.

6 For those reasons, Your Honor, we'd submit that
7 this is not admissible under Lyle or 404. Thank
8 you, Your Honor.

9 THE COURT: Ms. Mayes?

10 MS. MAYES: Yes, sir, Your Honor. The Court
11 has admitted both prior acts and subsequent bad acts
12 on multiple occasions, Your Honor. There is --
13 there are numerous cases where that has been upheld,
14 and I'm going to go ahead and submit those cases to
15 the Court. I provided these earlier this morning to
16 Mr. Shealy.

17 Most recently, Your Honor, is State vs.
18 Barry -- that's a 2015 case that just came out this
19 June -- which supported the admission of both prior
20 and subsequent bad acts in a criminal sexual conduct
21 prosecution. Also, one of the prevailing cases is
22 State v. Weaverling from 1999, and State v. Taylor
23 from 2011. And then, Your Honor, among the cases
24 that were passed up to you yesterday is State v.
25 McClellan. State v. McClellan is also a prevailing

1 case that supported the admission of subsequent bad
2 acts in addition to prior bad acts to show an
3 ongoing course of conduct. And that's really what
4 we're dealing with here. It is a common scheme or
5 plan, and that proceeds on past the prior bad acts
6 to include subsequent bad acts.

7 On the topic of 404(b), Your Honor, the first
8 criteria for admissibility would be that the crimes
9 are substantially similar. Mr. Shealy points out,
10 well, in one of these cases, the child was watching
11 a Wizard of Oz movie. Your Honor, I can't imagine
12 any scenario where every possible single detail is
13 the same. And that's not the requirement of the
14 court in admitting common scheme or plan evidence.
15 It's certainly never going to be absolutely
16 identical.

17 But what we know are similarities are that all
18 three girls are the biological daughters of August
19 Kreis; as a result, he shared the same relationship
20 with all three girls them. He had access to them in
21 the family home as a result of that relationship,
22 and he abused his parental role and authority in
23 each of these cases by carrying out these planned
24 sexual assaults against his three daughters.

25 Your Honor, specifically, all three girls were

1 what we would classify as preadolescent or early
2 adolescent during this timeframe. All of them
3 report assaults during the timeframe of 11 and 12,
4 including **Minor 3**. Your Honor, as stated
5 previously, all of them were assaulted in the family
6 home, but specifically in the master bedroom.

7 When **Minor 2** testified about the various
8 locations in the home in which she was assaulted,
9 she included the living room and master bedroom.

10 **Minor 1** testified that there was an attempted assault
11 in the master bedroom at which she resisted and was
12 able to get away from the defendant. And, finally,

13 **Minor 3** reported an assault in the master
14 bedroom.

15 Your Honor, all of the victims report that
16 there was vaginal touching, unwanted vaginal
17 touching. And perhaps most significantly, all three
18 victims have reported fellatio or attempted
19 fellatio, which is a very specific type of assault
20 that clearly was part of the defendant's common
21 scheme or plan in this case to carry out these
22 sexual assaults against his three daughters
23 including both prior bad acts or subsequent bad acts
24 as they pertain to **Minor 3**.

25 Your Honor, the second criteria would be that

1 it's clear and convincing. There was testimony by
2 **Minor 3**. We know that there are pending charges in
3 both Richland and Kershaw County as a result of her
4 disclosures. We also know that that crime was
5 witnessed or at least partially witnessed by her
6 brother Eddie who received a forensic interview and
7 reported that he had witnessed this event. His
8 testimony corroborated what took **Minor 3** reported
9 what took place in the master bedroom when she was
10 alone with the defendant. Eddie reported that he
11 saw them underneath the blanket, that he saw
12 movement underneath the blanket, that it just didn't
13 look right. It didn't strange, were his words,
14 enough to make him turn around and leave the room.

15 And, Your Honor, finally, as to probative value
16 outweighing prejudicial effect, here there's no
17 physical evidence in this case, there's no medical
18 evidence, there's no forensic evidence. It's a case
19 that simply comes down to the testimony of these
20 three children who -- at least they were children at
21 the time, who all experienced nearly identical
22 assaults by the father in the family home.

23 And, Your Honor, the supporting evidence would
24 be a letter that the defendant wrote in which he
25 apologized for harming his daughters or harming his

1 children. And what is significant is he wrote that
2 letter while at the Alvin S. Glenn Detention Center
3 where he was being detained for his Richland County
4 charges. So it all ties together, and that makes
5 **Minor 3** testimony even more probative to the
6 State's case.

7 THE COURT: Anything in response, Mr. Shealy?

8 MR. SHEALY: Yes, Your Honor. First off, I
9 neglected to mention the prejudicial value
10 outweighing the probative value. The Solicitor
11 spoke to that, but I'd like to go on record that I
12 raise that issue. And we believe this third young
13 girl with substantially different facts, to admit
14 all that, along with the son, the prejudicial value
15 there would outweigh any probative value.

16 But, also, Your Honor, I'd like to distinguish
17 State v. Barry. It appears, from my reading of
18 State v. Barry, is that the subsequent -- so-called
19 subsequent bad acts involve the same victim. And
20 all it did -- the activity went beyond the dates of
21 the indictment, but that it was a single course
22 of -- single relationship with the same person over
23 a period of time. I think that would distinguish
24 Barry. Thank you, Your Honor.

25 Your Honor, my client also wishes to comment.

1 THE COURT: Yes, sir.

2 THE DEFENDANT: I'd like to know why they
3 weren't taken to a medical doctor. I mean, when
4 something like this -- what I'm being accused, why
5 didn't they have them examined? I mean, that I'm
6 really fit to be tied about.

7 THE COURT: I understand that. I cannot answer
8 that. Obviously, I'm the Judge; I don't control the
9 prosecution or the development of the case or the
10 investigation that goes on. I cannot answer that.
11 I don't know.

12 THE DEFENDANT: Well, I mean, to me, all the
13 rest of this forensic stuff, I mean, that's a
14 pseudoscience; it's not even real.

15 THE COURT: I understand.

16 THE DEFENDANT: You know, so trying to accuse
17 me with words, that's all this is. So I'm going to
18 protect myself with the jury with my words. And I'm
19 going to say what I want to say to that jury.

20 THE COURT: And, obviously, at the conclusion
21 of the State's case, you will have to opportunity to
22 do one of two things; you can exercise your
23 constitutional right to remain silent, and I'll
24 explain that right to you, or, obviously, you have
25 the absolute right to take that witness stand and

1 tell your side of the story.

2 THE DEFENDANT: Okay.

3 THE COURT: That comes at the conclusion of the
4 State's case. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay.

7 All right. Obviously, when a question comes
8 before the Court to have evidence of other bad acts
9 introduced which are not part of the facts
10 surrounding the indictment itself, the analysis
11 begins with the consideration under Rule 401 as to
12 whether or not the evidence is relevant. And I find
13 that the evidence is relevant. Obviously, it goes
14 to the heart of the -- the facts surrounding the
15 allegations in the indictment.

16 Then, obviously, since it's bad acts that
17 aren't included in the indictment, I must determine
18 whether or not these bad acts or the evidence of bad
19 acts or alleged bad acts fits within an exception
20 under Rule 404(b) or, as often stated, under State
21 vs. Lyle. And in doing that, I have to find out
22 whether it's admitted as a common scheme or plan
23 under 404(b), and I must analyze that in determining
24 the similarities and dissimilarities between the
25 crimes charged in the indictments and the bad act

1 evidence to determine whether or not there's a close
2 degree of similarity. And when the similarities
3 outweigh the dissimilarities, our courts have held
4 that the bad act evidence is admissible under 404(b)
5 and/or Lyle.

6 Our courts have given -- appellate courts have
7 given the trial court certain factors that I must
8 look at in determining whether there's a close
9 degree of similarity between the bad act and the
10 crime charged; one is the age of the victims when
11 the abuse occurred, two is the relationship between
12 the victim and the perpetrator, three is the
13 location where the abuse occurred, four is the use
14 of coercion or threats, and five is the manner of
15 occurrence; in other words, the type of sexual
16 battery that was involved. And when there is a
17 close degree of similarity, obviously, between the
18 acts and the bad acts and the acts that are the
19 subject of the indictment, then they're admissible.

20 So what all I have to look at here is,
21 obviously, the age of the victims. They were all
22 close in age, they were young children at the time
23 it occurred. The relationship is the same, they
24 were all biological, natural children. The alleged
25 perpetrator is their dad. The location is all in

1 the home; different homes, but in the home where the
2 children lived. I don't think there's any evidence
3 of any coercion or threats other than -- no evidence
4 of threats. The manner of occurrence, all are
5 similar in that it was digital penetration,
6 attempted or forced fellatio, oral sex. The
7 children's descriptions were pretty much mirror
8 images of each other. So I find that the
9 similarities outweigh the dissimilarities, and that
10 the bad acts or the testimony of **Minor 3** and Eddie
11 Kreis should be admitted under a 403 analysis, which
12 is required.

13 Once I find that it is admissible, I find that
14 the probative value outweighs the prejudicial effect
15 in this case. As argued by the solicitor, this is a
16 case where we have no physical evidence, we have no
17 medical evidence, we have no forensic evidence. We
18 have, as we have in so many of these cases, it's a
19 he said/she said. The jury has to judge the
20 credibility of the witnesses who testify. And I
21 find that the probative value of **Minor 3** and Eddie
22 outweigh any prejudicial effect to the defendant.

23 And, even though this is not part of my
24 analysis, the defendant is -- has consented to the
25 testimony of **Minor 3** and Eddie. He's advised me

1 that he wishes to take the witness stand. He
2 advises me he wishes, you know, the whole story come
3 out and tell his side, and wants any allegations
4 that **Minor 3** or Eddie may testify, he consents to
5 their testimony. So I'll allow the testimony with
6 that ruling.

7 All right. If y'all would step aside just a
8 second. Let me handle this other matter that was
9 scheduled at 9:30, and we'll start this case right
10 at 10:00.

11 (Brief pause in the proceedings.)

12 THE COURT: All right. Anything from the State
13 before we proceed?

14 MS. MAYES: Nothing further, Your Honor.

15 THE COURT: Mr. Shealy?

16 MR. SHEALY: Yes, Your Honor. My client has
17 elected to wear his jail clothes as opposed to the
18 street clothes. We've talked about it, I've advised
19 him how I felt about it. He appreciates that, but
20 he prefers to wear the jail clothes.

21 THE COURT: Is that correct, sir?

22 THE DEFENDANT: That's correct.

23 THE COURT: All right. Anything before we
24 bring the jury in?

25 MS. MAYES: Your Honor, I believe we're ready.

1 I just need to make sure all of the parties are
2 here.

3 Yes, sir, Your Honor.

4 THE COURT: All right.

5 (The jury enters the courtroom at 10:11 AM.)

6 THE COURT: Good morning.

7 THE JURY: Good morning.

8 THE COURT: Everybody have a pleasant rainy
9 evening?

10 THE JURY: Yes.

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

13 MS. MAYES: The State calls **Minor 3**.

14 **Minor 3**

15 being first duly sworn, testified as follows:

16 THE WITNESS: Yes.

17 THE CLERK: Have a seat. Once you're seated,
18 state your full name, spelling your last please,
19 please.

20 THE WITNESS: **Minor 3**

21 DIRECT EXAMINATION

22 BY MS. MAYES:

23 Q. I'm going to scoot this kind of close to you.

24 And maybe keep your mouth about two inches away.

25 And, **Minor 3** we'll need to you speak up so that even

1 this last lady on the jury can hear you. Okay?

2 A. Okay.

3 Q. What is your full name?

4 A. Minor 3.

5 Q. And how old are you right now, Minor 3

6 A. Fourteen.

7 Q. What grade are you in?

8 A. 8th.

9 Q. Minor 3 how is it that you know the defendant in
10 this case?

11 A. He's my father.

12 Q. Okay. Now, yesterday there was some testimony
13 about all of your brothers and sisters. Do you see
14 your name up here?

15 A. Yes.

16 Q. Okay. And, Minor 3 what is your date of birth?

17 A.

18 Q. All right. And, Minor 3 there's a place here
19 called . You would have been
20 about four or five years old back then, but can you
21 tell us whether or not you remember living there?

22 A. Yes.

23 Q. Okay. Where did you go -- where do you
24 remember living the last two places that you've
25 lived?

1 A. The apartment, which is St. Andrews, and...

2 Q. Where do you live right now?

3 A. Cassatt, which is 1932 Thoroughfare Branch.

4 Q. Okay. So right now you live at Cassatt. And

5 I'm going to show you a photograph and ask you

6 whether or not you recognize what's in the

7 photograph. And this one is marked State's Exhibit

8 7.

9 A. Yes.

10 Q. What is that place?

11 A. The house we live in now.

12 Q. Okay. The house you live in now. And this is

13 the house in Cassatt, South Carolina?

14 A. (Nods head.)

15 MS. MAYES: Your Honor, we'd offer this as

16 State's Exhibit 7.

17 THE COURT: Any objection?

18 MR. SHEALY: No objection, Your Honor.

19 (State's Exhibit No. 7 admitted in to

20 evidence.)

21 BY MS. MAYES:

22 Q. So this is the house that you live in now in

23 Cassatt. Do you know whether or not this is Kershaw

24 County?

25 A. Yes. I think so.

1 Q. Okay. And you said that there was also an
2 apartment. I'm going to show you what's marked
3 State's Exhibit 8.

4 A. That's St. Andrews. Yes.

5 Q. Okay. And is that a house or an apartment?

6 A. Apartment.

7 Q. Is that the apartment you used to live in, 401?

8 A. Yes.

9 MS. MAYES: Your Honor, at this time we'd offer
10 State's Exhibit 8.

11 MR. SHEALY: No objection.

12 (State's Exhibit No. 8 admitted in to
13 evidence.)

14 BY MS. MAYES:

15 Q. Okay. So, Minor 3 this is the house you live in
16 now in Cassatt. And what place did you live right
17 before you lived in Cassatt?

18 A. St. Andrews.

19 Q. This place, St. Andrews apartment. And this
20 would be in Richland County; is that right?

21 A. Yeah.

22 Q. Okay. So you are now how old, 14?

23 A. Yes.

24 Q. Okay. I want to take you back, Minor 3 to around
25 two years ago when you were 12. All right? You

1 mentioned that the defendant is your father.

2 A. Yeah.

3 Q. Can you tell us whether or not he lived with
4 your family here at the St. Andrews apartments?

5 A. He did.

6 Q. Okay. And once you moved to Cassatt, who all
7 lived in the Cassatt house, the same house you live
8 in now?

9 A. My mom and siblings.

10 Q. Okay. What about your oldest sibling **Minor 2**

11 A. No. She had her own.

12 Q. Okay. So it's all your other siblings and your
13 mom. Now, did your father ever come visit this
14 place?

15 A. Yes.

16 Q. Okay. And when he came to visit this place,
17 were you ever alone with him?

18 A. Yes.

19 Q. And you testified that your father lived here,
20 St. Andrews apartment?

21 A. Yes.

22 Q. Can you tell us whether or not you were ever
23 alone with him here?

24 A. Yes.

25 Q. **Minor 3** has there ever been a time that something

1 made you feel uncomfortable?

2 A. Yes.

3 Q. Where did those things happen?

4 A. That apartment that you're showing me and the
5 house we live in now.

6 Q. Okay. So this place, St. Andrews apartment,
7 and this place, Cassatt?

8 A. Yes.

9 Q. Can you tell us what you recall happening that
10 made you feel uncomfortable? And I want to ask you
11 about the Cassatt place first.

12 A. I was in the master bedroom and we were
13 watching The Wizard of Oz. And once it was over, my
14 brothers and sisters left the room -- no. It was
15 just my brothers. And we -- I was on the floor
16 because my other brother was laying next to Chip.
17 And he pulled me up on the bed and then he touched
18 my lower area.

19 Q. All right. When you say he touched your lower
20 area, what part or parts of your body are you
21 talking about?

22 A. Hmm.

23 (State's Exhibit No. 15 marked for
24 identification.)

25 Q. All right. Let me ask you like this: Do you

1 see on this girl --

2 A. Yes.

3 Q. -- the part or parts that you're talking about
4 when you say lower area?

5 A. Yes.

6 Q. Okay. Can you use this to draw a circle and
7 tell us exactly what you mean?

8 A. (Witness complies.)

9 Q. Okay. And what part or parts of his body did
10 he use to touch you with?

11 A. His hand.

12 Q. Was that inside your clothing or outside your
13 clothing?

14 A. Inside.

15 Q. Was anybody else able to see what was happening
16 at that time?

17 A. No.

18 Q. And how did that make you feel?

19 A. Uncomfortable.

20 Q. Had anything happened before that time?

21 A. Yes.

22 Q. Where did that happen at?

23 A. St. Andrews.

24 Q. Did something happen at St. Andrews one time or
25 more than one time?

1 A. More than once.

2 Q. Okay. I want to ask you about this
3 apartment --

4 THE COURT: Exhibit, please?

5 MS. MAYES: 8, Your Honor.

6 THE COURT: Are you going to introduce that
7 sketch?

8 MS. MAYES: Yes, sir, Your Honor. This would
9 be State's Exhibit 15 for evidence.

10 THE COURT: Any objection?

11 MR. SHEALY: No objection, Your Honor.

12 (State Exhibit No. 15 admitted in to evidence.)

13 BY MS. MAYES:

14 Q. This apartment, State's Exhibit 8, is it one
15 floor or more than one floor?

16 A. More than one.

17 Q. Okay. What floors does it have?

18 A. Upstairs and downstairs.

19 Q. Okay. Where do you remember something
20 happening here at the St. Andrews --

21 A. Master bedroom.

22 Q. Was that upstairs or downstairs?

23 A. Upstairs.

24 Q. And who stayed in the master bedroom?

25 A. Chip.

1 Q. When you say Chip, you're talking about who?

2 A. My father.

3 Q. The defendant. When you were in the -- let me
4 go back. So the master bedroom -- he stayed in the
5 master bedroom?

6 A. Yes.

7 Q. How did you get in the master bedroom?

8 A. I walked upstairs and opened the door.

9 Q. Okay. And what happened when you were up
10 there?

11 A. He grabbed me on to the bed and then he started
12 touching me.

13 Q. Okay. When you say that he started touching
14 you, let me ask you this: Was anyone else in the
15 room at that point when he first started touching
16 you?

17 A. No.

18 Q. And what part or parts of your body did he
19 touch that time?

20 A. The lower area where I said the other time.

21 Q. Okay. So looking at State's Exhibit 15, you
22 mean the same lower area?

23 A. Yes.

24 Q. Okay. Was that outside your clothing or inside
25 your clothing?

1 A. Inside.

2 Q. And what part or parts of his body was he using
3 to touch you there?

4 A. His hand.

5 Q. Okay. And what, if anything, happened while
6 this was going on?

7 A. What do you mean?

8 Q. Did anything happen or do you know whether or
9 not anybody might have seen anything?

10 A. Yes.

11 Q. Who was that person?

12 A. My second younger brother, Eddie.

13 Q. Your second younger brother, Eddie. And he's
14 the one that's on the list as being right below you?

15 A. Yes.

16 Q. What happened to cause Eddie to maybe see
17 something?

18 A. He walked in the door.

19 Q. Okay. And where were you at when Eddie walked
20 in?

21 A. On the bed.

22 Q. With who?

23 A. Chip, the defendant.

24 Q. Okay. And what was the defendant doing when
25 your younger brother Eddie walked in?

1 A. Touching me.

2 Q. Okay. How did it make you feel when Eddie
3 walked in?

4 A. Nervous.

5 Q. Why were you nervous?

6 A. Because he walked in.

7 Q. Up to that point, did anybody ever know that
8 anything had happened with your father?

9 A. No.

10 Q. Had you ever told your mom?

11 A. No.

12 Q. Why or why not?

13 A. Why? Because he was paying the bills and I
14 wondered what would happen to us after.

15 Q. Okay. Had you ever told either of your older
16 sisters, Minor 1 or Minor 2

17 A. No.

18 Q. And I want to ask you -- you said that some
19 things happened more than one time at St. Andrews.
20 What, if anything, can you tell us about whether or
21 not the defendant ever wanted you to touch him?

22 A. Yes, he did.

23 Q. How so?

24 A. What do you mean?

25 Q. What did he do to --

1 A. He yanked my hand out of my -- where -- he
2 yanked my hand and I yanked it back.

3 Q. Okay. When he yanked your hand, did he try to
4 put it anywhere?

5 A. Yes.

6 Q. Where did he try to put it?

7 A. His private spot.

8 Q. Okay. And has he ever tried to -- can you tell
9 us whether or not he's ever tried to touch you with
10 his private spot?

11 A. He tried to, but I didn't let that happen.

12 Q. Okay. Where did he try to touch you with
13 his --

14 A. In my private spot.

15 Q. Can you tell us whether or not he tried to do
16 anything else with his private spot, touch any other
17 part of your body?

18 A. My mouth.

19 Q. What did you do then?

20 A. I didn't let that happen.

21 (State's Exhibit No. 16 marked for
22 identification.)

23 Q. I'll show you a diagram of a man, and this is
24 front and back. Do you see, looking at this
25 diagram, what you mean when you say private spot?

1 A. Yes.

2 Q. Can you show us exactly where with this marker?

3 A. (Indicating.)

4 MS. MAYES: Your Honor, this would be State's
5 Exhibit 16 for evidence.

6 THE COURT: Any objection?

7 MR. SHEALY: No objection.

8 (State Exhibit No. 16 admitted in to evidence.)

9 BY MS. MAYES:

10 Q. Minor 3 you said that when he tried to touch your
11 mouth with his private spot, that you didn't let
12 that happen. How did you stop that?

13 A. I kept my mouth shut and I yanked away.

14 Q. Who was the first person that you ever told
15 about --

16 A. My mom.

17 Q. And what caused you to tell your mom?

18 A. An argument between my sister and mom and
19 everybody.

20 Q. Were you there when that argument happened?

21 A. No. I was at my grandma's.

22 Q. Okay. And what happened when you came home
23 from Grandma's?

24 A. My mom asked me and I said yes.

25 Q. Okay. Your mom asked you what?

1 A. If he ever did the stuff he did.

2 Q. Okay. And what made you tell her?

3 A. She said that **Minor 2** had already said yes
4 and -- yeah. So I just said yes.

5 Q. Okay. And would you have told your mom if
6 **Minor 2** hadn't told first?

7 A. No.

8 Q. Did you want anybody to know this was
9 happening?

10 A. No.

11 Q. **Minor 3** after you told your mom, did you talk to
12 the police?

13 A. Yes.

14 Q. Okay. And did you go at any point to talk to a
15 lady where it was just you and her in the room?

16 A. Yes.

17 Q. And back then when you were 12, how did you
18 feel talking to strangers about it?

19 A. Uncomfortable.

20 Q. Have you had any contact with your father since
21 he was arrested?

22 A. No.

23 MS. MAYES: I beg the Court's indulgence.

24 BY MS. MAYES:

25 Q. When the time happened at St. Andrews in the

1 apartment and you said Eddie walked in, where were
2 you and your father at that point in time?

3 A. On the bed, underneath the covers.

4 MS. MAYES: Nothing further.

5 THE COURT: Mr. Shealy?

6 MR. SHEALY: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. SHEALY:

9 Q. Hey, **Minor 3** How are you doing?

10 A. Good.

11 Q. You told the solicitor that you talked to the
12 police. Is that correct?

13 A. Yes.

14 Q. And did you write a written statement?

15 A. Yes.

16 Q. Okay. Did they give you all the time you
17 needed to write the statement?

18 A. Yeah, a good amount of time.

19 Q. Now, the -- did you need any more time to write
20 the statement?

21 A. No.

22 Q. Do you have a copy of your statement?

23 A. No.

24 Q. All right. I have a copy, but I got
25 highlighters on it. Would you like to see my copy?

1 A. No.

2 Q. Okay. Do you recall what you said in the
3 statement?

4 A. Yes.

5 Q. Okay. Now, you never mentioned him trying to
6 put his private parts in your mouth, did you?

7 A. I don't remember.

8 Q. Would you like to look?

9 A. (Nods head.) I don't think I did.

10 Q. Do you still want to look?

11 A. Yeah.

12 THE COURT: She said she didn't think she did.

13 Q. Done?

14 A. Yeah.

15 Q. Did you mention that?

16 A. No.

17 Q. Can I have it back, please? Thank you.

18 But your testimony is that he did and you
19 fought him off?

20 A. Yeah.

21 Q. And you were 12 years old?

22 A. Yeah.

23 Q. And he was determined to do this to you, and
24 yet you were able to fight him off?

25 A. Yeah.

1 Q. Okay. And how did you fight him off?

2 A. I was tossing and turning.

3 Q. And you were 12 years old when this happened?

4 A. Yes.

5 Q. And the -- you seem to be very concerned about
6 him paying the bills. Why is that?

7 A. Because my mom didn't have any money and he was
8 paying for everything.

9 Q. Okay. And **Minor 2** what's your relationship
10 with **Minor 2** I know she's your older sister. But
11 is she a leader?

12 A. Yes.

13 Q. You'd follow **Minor 2** wouldn't you?

14 A. Yes.

15 Q. If she told you to do something, you would do
16 it?

17 A. No.

18 Q. Oh, you won't do it? So you won't follow her?

19 A. It depends on what it is.

20 Q. Well, do you listen to her?

21 A. Sometimes.

22 Q. Okay. But in this case, you weren't going to
23 tell anybody about what happened unless **Minor 2**
24 already told; is that correct?

25 A. Yes.

1 Q. So why is that one time that you would listen
2 to Minor 2 but other times you won't?

3 A. Because this is serious.

4 Q. So on serious things, you would listen to
5 Minor 2

6 A. Yes.

7 Q. Okay.

8 MR. SHEALY: If I may just have a moment, Your
9 Honor.

10 Thank you, Your Honor. That's all I have.

11 MS. MAYES: Yes, sir, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. MAYES:

14 Q. Now, Minor 3 when Mr. Shealy was asking you about
15 the statement that you wrote, where were you at when
16 you wrote the statement?

17 A. My bedroom.

18 Q. Okay. And who asked you to write a statement?

19 A. My mom and...

20 Q. A police officer?

21 A. Yes.

22 Q. Okay. So how did you feel about -- what's the
23 most -- let me ask it this way: What's the most
24 embarrassing thing out of everything that happened?

25 A. That that's my father and he would do that.

1 Q. All right. Did you want to talk about what
2 happened when he tried to put it in your mouth?

3 A. No.

4 Q. Mr. Shealy was asking you about Minor 2 telling
5 first. How come you didn't decide to tell first?

6 A. Because I was not home.

7 Q. All right. And you said that you were away at
8 your grandma's?

9 A. Yes.

10 Q. And when you came back and your mom asked you
11 about it, was Minor 2 there or not there?

12 A. She wasn't there.

13 Q. Okay. And I know I asked you before, if
14 Minor 2 wouldn't have told, would you have told on
15 your own when you were 12?

16 A. No.

17 Q. How old do you think you would have had to be
18 before you felt brave enough to tell?

19 A. Probably this age.

20 MS. MAYES: Nothing further.

21 THE COURT: You may step down.

22 MR. SHEALY: Your Honor, may I have recross?

23 THE COURT: You may.

24 MR. SHEALY: Thank you, Your Honor.

25 RE CROSS-EXAMINATION

1 BY MR. SHEALY:

2 Q. You just said that you weren't there when
3 **Minor 2** told. But if you had been there, you would
4 have told first; is that what you said?

5 A. No.

6 Q. So, in fact, you would not have told unless
7 **Minor 2** would have told first?

8 A. Say that again.

9 Q. Your testimony is that you would not have told
10 about what happened to you, except for the fact that
11 **Minor 2** told your mom.

12 A. Okay.

13 Q. Is that correct?

14 A. Yes.

15 Q. Okay. And you also said that you were away
16 when **Minor 2** told, and yet if you had been there,
17 you would have told first. Do you remember saying
18 that?

19 A. Yes.

20 Q. So which one is true?

21 A. Well, both of them are true, because I didn't
22 have the courage to tell at that time, but now I do.

23 Q. Okay. But if you would have been there at the
24 time of the argument --

25 MS. MAYES: Objection, Your Honor; asked and

1 answered.

2 THE COURT: Overruled.

3 Go ahead.

4 BY MR. SHEALY:

5 Q. If you had been there at the time of the
6 argument, would you have waited for **Minor 2** to tell
7 or would you have told first?

8 A. I would have waited and then I would have said
9 I did too.

10 Q. So you followed **Minor 2** lead on that
11 particular thing?

12 A. Yes.

13 MR. SHEALY: Thank you, Your Honor.

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

15 Next witness, please, ma'am.

16 MS. MAYES: The State calls Eddie Kreis.

17 EDDIE KREIS

18 being first duly sworn, testified as follows:

19 THE WITNESS: Yes.

20 THE CLERK: Have a seat, please. Once you're
21 seated, state your full name, spelling your last.

22 THE WITNESS: Edward Kreis, K-R-E-I-S.

23 DIRECT EXAMINATION

24 BY MS. MAYES:

25 Q. Okay. And, Eddie, you talk pretty loud. I'll

1 scoot this forward just a little bit more, okay, and
2 maybe down just a little bit so it will catch your
3 voice.

4 And you said your full name is Edward. What
5 nickname do you go by?

6 A. Eddie.

7 Q. How old are you now, Eddie?

8 A. Twelve.

9 Q. And how is that you know the defendant in this
10 case? How do you know August Kreis?

11 A. Because he's my dad.

12 Q. Okay. Eddie, I'm going to show you a picture,
13 which is State's Exhibit 8, and ask you whether or
14 not you've ever seen this place before.

15 A. Yes.

16 Q. Where have you seen that place before?

17 A. We used to live in it.

18 Q. Okay. And is this a house or an apartment?

19 A. Apartment.

20 Q. And how many floors were on this apartment?

21 A. Two.

22 Q. All right. And what do you remember being on
23 the upstairs floor?

24 A. My dad and Minor 3 was in the same room.

25 Q. Okay. And what room was that?

1 A. The master bedroom.

2 Q. Okay. And did your father live here with you
3 and your siblings?

4 A. Yes.

5 Q. What about your mom?

6 A. Yes.

7 Q. You said that your dad and **Minor 3** were in the
8 master bedroom?

9 A. Yes.

10 Q. How do you get to the master bedroom?

11 A. Go up the stairs.

12 Q. Okay. And what happened when you went up the
13 stairs?

14 A. I opened the door.

15 Q. Okay. And the door had been shut?

16 A. Yes.

17 Q. What did you see when you opened the door?

18 A. My dad and **Minor 3** was under the cover.

19 Q. Okay. Where at in the room?

20 A. On the bed.

21 Q. Was anybody else in the room other than your
22 dad and **Minor 3**

23 A. No.

24 Q. What did you see happening?

25 A. The blanket was moving.

1 Q. Okay. Who was underneath the blanket?

2 A. My dad and Minor 3

3 Q. What did you do next?

4 A. I went downstairs and told my mom.

5 Q. You say you went downstairs. What caused you
6 to go downstairs?

7 A. Because something wasn't right.

8 Q. When you say something wasn't right, what do
9 you mean by that?

10 A. There was something wrong with that.

11 Q. Okay. Had you ever seen anything like that
12 before with your dad and Minor 3

13 A. No.

14 MS. MAYES: I beg the Court's indulgence.

15 Nothing further.

16 THE COURT: Mr. Shealy?

17 CROSS-EXAMINATION

18 BY MR. SHEALY:

19 Q. Eddie, why was that not right?

20 A. That the blanket was moving.

21 Q. Okay. The -- you have your brother Gideon.
22 He's older than you?

23 A. Yes.

24 Q. Okay. But it's not unusual for y'all to go up
25 in the master bedroom or any bedroom and get on the

1 bed and get under the covers and either sleep or
2 watch movies or things together, is it?

3 A. We do sometimes.

4 Q. All of you do that?

5 A. Yes.

6 Q. Okay. And sometimes y'all would tickle each
7 other and kid around and things like that; is that
8 correct?

9 A. Yes.

10 Q. Okay. And that wouldn't be unusual, would it?

11 A. No.

12 Q. And if that was going on under the covers, the
13 covers would be moving, wouldn't it?

14 A. Yes.

15 MR. SHEALY: Okay. Thank you, Your Honor.

16 Just a moment.

17 THE COURT: Redirect?

18 MS. MAYES: Yes, sir, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. MAYES:

21 Q. When you say that something didn't seem right,
22 let me ask you this: Had you ever seen anything
23 before that didn't seem right until that day?

24 A. Yes.

25 Q. What do you mean by that?

1 A. That it wasn't right.

2 Q. Okay. And whatever you saw that day --
3 whatever you saw that day made you think something
4 wasn't right. If you saw Minor 3 and your dad playing
5 games or doing something normal, would you have left
6 the room?

7 A. No.

8 Q. But what you saw that day made you leave the
9 room?

10 A. Yes.

11 MS. MAYES: Nothing further.

12 THE COURT: All right. You can step down, son.
13 Next witness, please.

14 MS. MAYES: The State calls Sergeant Traci
15 Barr.

16 TRACI BARR

17 being first duly sworn, testified as follows:

18 THE WITNESS: I do.

19 THE CLERK: Have a seat, please. Once you're
20 seated, state your full name, spelling your last.

21 THE WITNESS: Traci, T-R-A-C-I, Barr, B-A-R-R.

22 DIRECT EXAMINATION

23 BY MS. MAYES:

24 Q. All right. And, Sergeant Barr, where are you
25 currently employed?

1 A. With the Lexington County Sheriff's Department.

2 Q. All right. In what capacity?

3 A. I'm a major crimes sergeant and I supervise the
4 special victims unit for the sheriff's department.

5 Q. All right. And you say the special victims
6 unit, what is that?

7 A. It's a specialized unit of detectives who
8 investigate child homicide, physical and sexual
9 abuse of children, elder abuse, and sexual
10 exploitation and child pornography cases.

11 Q. All right. And how long have you been involved
12 the investigation of child abuse and/or sexual
13 assault cases?

14 A. Roughly, 12 years.

15 Q. And can you tell us whether or not that
16 includes any specialized training?

17 A. Yes. Over the course of 12 years, I've
18 attended 21 specialized different training hosted by
19 various agencies; Department of Justice, FBI, Fox
20 Valley Technical College, things of that nature.

21 Q. All right. And can you tell us specifically,
22 as to the field of child abuse, sexual assault
23 investigation, does it require updated training and
24 specialized training?

25 A. It's always best practice. Yes.

1 Q. Okay. So I want to take you forward to this
2 investigation and ask you, specifically, how you
3 became involved in this case involving State vs.
4 August Kreis?

5 A. On January 21st, 2014, at the request of
6 Sergeant Lent, I assisted Detective Dykes with
7 interviewing two individuals who had come in to the
8 sheriff's department to file a report.

9 Q. Okay. And who were those two individuals?

10 A. **Minor 2** and **Minor 1**.

11 Q. And can you tell us, when you're conducting an
12 interview with witnesses or potential witnesses in a
13 sexual assault investigation, is anyone else
14 normally present in the room?

15 A. It's been my common practice over the past 15
16 years when conducting interviews to most often keep
17 everyone separate as to not taint their statements
18 or confuse statements.

19 THE COURT: Ma'am, pull that mic closer,
20 please.

21 THE WITNESS: Okay.

22 BY MS. MAYES:

23 Q. Please continue.

24 A. Like I said, it's my common practice to conduct
25 interviews separately with individuals one on one so

1 to avoid tainting any of that information.

2 Q. Can you tell us in this situation whether or
3 not **Minor 2** was interviewed alone by yourself?

4 A. She was.

5 Q. Can you tell us whether or not **Minor 1** was
6 interviewed alone by yourself?

7 A. She was.

8 Q. Now, specifically as to **Minor 1** -- I'm
9 sorry. Let me back up. Specifically as to **Minor 2**
10 **Minor 2**, were you able to determine whether something
11 happened with her in one jurisdiction or more than
12 one jurisdiction?

13 A. Could you repeat that question?

14 Q. Were you able to determine whether this
15 involved one jurisdiction or more --

16 MR. SHEALY: Objection, Your Honor.

17 THE COURT: Hold on. What's the basis of the
18 objection?

19 MR. SHEALY: The basis is that it appears to be
20 hearsay.

21 THE COURT: Hearsay?

22 MR. SHEALY: Yes, sir, Your Honor. She's about
23 to relay as to what she was told.

24 MS. MAYES: This would be a time-and-place
25 exception, Your Honor, under Rule 801(d).

1 THE DEFENDANT: All right. I'll allow it.

2 BY MS. MAYES:

3 Q. I'm going -- let me rephrase it and ask you
4 like this. And this is a yes-or-no question:

5 During your investigation and interview of **Minor 2**
6 **Minor 2** can you tell us whether or not she disclosed
7 sexual assault?

8 A. Yes.

9 Q. Can you tell us whether or not she was able to
10 provide a time or timeframe for this occurrence?

11 A. Yes.

12 Q. And, specifically, can you tell us whether or
13 not it involved Lexington County?

14 A. Yes, it did.

15 Q. Specifically, what, if anything -- did you make
16 notes regarding your interview with **Minor 2**

17 A. I did.

18 Q. And what format were your notes developed into?

19 A. A supplemental report.

20 Q. Okay. Do you have a copy of that supplemental
21 report with you today?

22 A. Yes, I do.

23 Q. I'm going to ask you to refer to your
24 supplemental report.

25 A. Okay.

1 Q. And specifically what, if anything, did **Minor 2**
2 **Minor 2** report to you concerning the time or timeframe
3 of events in Lexington County?

4 A. When I was speaking with **Minor 2**, she
5 indicated that this was something that occurred over
6 a period of time through multiple incidents.

7 Q. So this is an ongoing timeframe?

8 A. Yes, an ongoing situation. And I apologize for
9 having to refer back to my supplemental. I asked
10 her if she specifically remembered anything about
11 the last event. She stated that this was something
12 that occurred that **[REDACTED]** in the Lexington
13 County jurisdiction, ongoing for about approximately
14 six years.

15 Q. And did she give you an approximate age range?

16 A. This was something that happened when she was
17 around 12 or 13 years old.

18 Q. All right. And specifically where, if at all,
19 in Maplewood was she able to tell you something
20 occurred?

21 MR. SHEALY: Objection, Your Honor; getting
22 close to hearsay.

23 THE COURT: Overruled.

24 A. She indicated that the last incident was while
25 sleeping on the couch.

1 Q. All right. And while sleeping on the couch at
2 what location?

3 A. This was at [REDACTED].

4 Q. All right. What, if anything, did you note
5 regarding her demeanor during the course of the
6 interview?

7 A. While speaking with **Minor 2** -- this was my
8 first time ever meeting her -- she was very visibly
9 upset. She appeared to be embarrassed.

10 Q. Did you make a notation concerning her being
11 visibly upset?

12 A. I did in my supplemental.

13 Q. I'm going to ask you whether or not you also
14 conducted an interview with **Minor 1**.

15 A. Yes.

16 Q. Was your interview with **Minor 1** also
17 documented in the form of a supplemental report?

18 A. Yes, it was.

19 Q. And do you have that with you today?

20 A. I do.

21 Q. And this is a yes-or-no question: Can you tell
22 us whether or not **Minor 1** reported sexual
23 assault?

24 A. Yes.

25 Q. And what, if anything, did she report regarding

1 the place or location of that assault?

2 A. **Minor 1** stated that this occurred at **[REDACTED]**

3 **[REDACTED]** in --

4 Q. Okay. Can you tell us what jurisdiction that
5 is in?

6 A. Lexington County.

7 Q. All right. Please continue whether or not
8 anything else was noted concerning the place or
9 location.

10 A. I asked about an incident. She stated she
11 believed it was around 13 or 14 years old. Everyone
12 was at the house asleep on Maplewood. And this
13 occurred while she was on the couch and then also on
14 the floor.

15 Q. All right. So on the couch and on the floor?

16 A. Yes.

17 Q. And what, if anything, did you note concerning
18 her demeanor?

19 A. When I met with **Minor 1** she was also visibly
20 upset. She was nervous, appeared to be more
21 withdrawn than **Minor 2** just seemed very
22 uncomfortable having to talk with me about this
23 situation.

24 Q. What, if any, referrals were made after your
25 interview with the girls pursuant to protocol or

1 recognized practice?

2 A. It's always best practice after an interview to
3 conduct a forensic interview with a child advocacy
4 center. And that was done, I believe, at the
5 Dickerson Center in West Columbia.

6 Q. All right. And the Dickerson Center is a child
7 advocacy center?

8 A. Yes.

9 MS. MAYES: Thank you. Nothing further.

10 THE COURT: Mr. Shealy?

11 MR. SHEALY: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. SHEALY:

14 Q. Now, you said that there were two people in the
15 lobby. Were there actually three people in the
16 lobby?

17 A. I'm not sure about the lobby. I met with
18 **Minor 2** alone in the interview room, which is
19 separate; it's down the hall.

20 Q. Did you meet with Karley Hollis?

21 A. I believe if -- from memory, they were all in
22 the lobby. And when I finished the interview, I
23 escorted -- **Minor 1** was the last one I interviewed.
24 I escorted her out. And I believe that's where they
25 were, was in the lobby, but not specifically in the

1 interview room at the time of the interview.

2 Q. And **Minor 2** and **Minor 1** were both there, the
3 same time, same day. I understand you interviewed
4 them separately --

5 A. Yes.

6 Q. -- but it was the same day, and you just
7 interviewed one right after the other?

8 A. Correct.

9 MR. SHEALY: Thank you, Your Honor. That's all
10 I have.

11 THE COURT: Anything on redirect?

12 MS. MAYES: No, sir, Your Honor.

13 THE COURT: You may step down.

14 May she be excused?

15 MR. SHEALY: Yes, sir.

16 MS. MAYES: Yes, sir, Your Honor.

17 THE COURT: Next witness, please.

18 MS. MAYES: The State calls Laurie Caldwell.

19 She's sequestered, Your Honor.

20 LAURIE CALDWELL

21 being first duly sworn, testified as follows:

22 THE WITNESS: Yes.

23 THE CLERK: Have a seat. Once you're seated,
24 state your full name, spelling your last on the
25 record, please.

1 THE WITNESS: My name is Laurie Varnedoe
2 Caldwell, C-A-L-D-W-E-L-L.

3

4

5

DIRECT EXAMINATION

6

BY MS. MAYES:

7

Q. Where are you currently employed?

8

A. I'm an agent with State Law Enforcement
9 Division.

10

Q. All right. And tell us a little about your
11 educational career background and training.

12

A. In 1984 I graduated from the University of
13 South Carolina with a bachelor's in
14 interdisciplinary studies, and completed my master's
15 degree in social work in 1986. At that time, I
16 began full-time employment at State Law Enforcement
17 Division and was assigned to the missing person and
18 missing and exploited children's unit, which was a
19 fairly new at that time.

20

And from there, I started training specifically
21 in the field of child physical abuse, child sexual
22 abuse, and exploitation, and ended up, after about
23 five years, working that on a statewide level. I
24 transferred to what we refer to as the Midlands
25 Region, which is about ten counties. So I spent 20

1 years there and primarily investigated child abuse,
2 child exploitation, and exploitation of vulnerable
3 adults.

4 And through those years, I had specialized
5 training through the Criminal Justice Academy, the
6 Federal Law Enforcement Training Center, University
7 of Louisville, the Children's Law Center in the
8 field of child sexual abuse and child forensic
9 interviewing.

10 Q. All right. Now, Agent Caldwell, in between
11 where you're working now at the State Law
12 Enforcement Division and your prior work as an agent
13 with the State Law Enforcement Division, can you
14 tell us whether or not you were ever employed in any
15 other capacity?

16 A. Yes. I actually retired from SLED February of
17 2011 and began full-time employment at the Dickerson
18 Center for Children. And that's a community-based
19 child advocacy center here in Lexington County, and
20 it serves all the jurisdictions in Lexington, as
21 well as other counties. And that, again, is a
22 child-based -- that is a child advocacy center.

23 There, I was the director of forensic services,
24 which meant I was the chief child forensic
25 interviewer, as well as I oversaw the other forensic

1 interviews. And I facilitated and coordinated the
2 Lexington County multidisciplinary team, and that's
3 when every agency that would be involved in
4 allegations of child maltreatment come together and
5 staff cases just to make sure everyone's needs are
6 being met.

7 Q. All right. So let me ask you this: What is
8 meant by the term forensic interview?

9 A. Forensic interview is really just a fancy word
10 terminology for a factfinding interview designed for
11 children so that it meets a child on their
12 developmental level. And we're looking for
13 uncontaminated information.

14 Q. All right. And can you tell us whether or not
15 law enforcement, for example, can make a referral
16 for forensic interview at a child advocacy --

17 MR. SHEALY: Objection, Your Honor. May we
18 approach?

19 THE COURT: Certainly.

20 (Sidebar conference.)

21 THE COURT: All right. Madam forelady, ladies
22 and gentlemen, let's take our morning break about 15
23 minutes. Don't discuss the case, don't deliberate.
24 We'll come back and go til about 12:30, quarter to
25 1:00, and then take our lunch break.

1 (The jury exits the courtroom at 11:01 AM.)

2 THE COURT: Let the record reflect we had a
3 sidebar. Mr. Shealy was concerned that the response
4 of uncontaminated evidence, that that may show some
5 indication of the witness vouching for the
6 credibility of the people she's interviewing.
7 Obviously, we have to be very cognizant that
8 forensic interview witnesses cannot, cannot, cannot
9 bolster or vouch for the credibility of any of the
10 witnesses, and use of the word uncontaminated
11 certainly may give that inference.

12 It was your request that I give a curative
13 instruction and strike that from the record,
14 Mr. Shealy?

15 MR. SHEALY: Yes, Your Honor. As to the -- I
16 don't want it to draw unnecessary -- I'm caught
17 between a rock and a hard place, Your Honor. I
18 don't want to draw unnecessary attention to it by
19 the jury, but I think the jury needs to know it's
20 been struck. As to the curative instruction, I
21 leave that in your discretion.

22 THE COURT: Okay.

23 Now, tell me where we're going, Ms. Mayes.

24 MS. MAYES: Yes, sir, Your Honor.

25 THE COURT: You know, there's just a number of

1 cases recently on forensic interviews and,
2 obviously, the Court has to walk the
3 straight-and-narrow with these and be cognizant of
4 them.

5 MS. MAYES: Yes, sir, Your Honor. The --

6 THE COURT: Of course the first rule is, she
7 cannot, under any circumstances, attempt to say she
8 believes what the children are saying, she told the
9 children to tell the truth, any type of bolstering
10 or any type of vouching for their credibility. So
11 where are we going with Ms. Laurie Caldwell?

12 MS. MAYES: Yes, sir, Your Honor. This refers
13 to the time and place reported by the child, and
14 also the demeanor as it was noted in -- based on her
15 observations. And these are all permissible areas
16 of testimony for a forensic interviewer under State
17 vs. Kromah. She's not testifying as to any opinion
18 regarding the child's veracity, and she is not
19 providing any details of the assault that may have
20 been given to her beyond time and timeframe or place
21 and location.

22 Also, pursuant to --

23 THE COURT: All right. Let's go to Kromah,
24 please, ma'am. You got the case with you? Tell me
25 where you want to me to look at it. In Kromah, the

1 forensic interviewer stated, quote, she found
2 compelling finding and there was -- the victim was
3 telling the truth and so forth and so on.
4 Ms. Mayes, I asked you to show me in Kromah what
5 you're talking about.

6 MS. MAYES: Yes, sir, Your Honor. I do not
7 have a copy of the case, but I do have a reference
8 to the case that time and date and circumstances are
9 permissible, as well as observations regarding the
10 child's demeanor.

11 THE COURT: Tell me what you're trying to get
12 out of Ms. Caldwell. Just give me a little quick
13 proffer.

14 MS. MAYES: Yes, sir, Your Honor.

15 EXAMINATION

16 BY MS. MAYES:

17 Q. Agent Caldwell, what, if anything, did
18 Ms. Kreis report concerning the place and location
19 of sexual assault?

20 A. She said it happened at [REDACTED] in
21 Lexington, South Carolina.

22 Q. All right. Specifically, in your report, did
23 you note where at that location?

24 A. Yes. She named four locations.

25 Q. What were those locations?

1 A. Two different bedrooms, a bathroom, and a
2 living room on the couch.

3 Q. And then what, if anything, did you note
4 concerning her demeanor?

5 A. I noted several different --

6 MS. MAYES: Actually, as to this witness, Your
7 Honor, I don't believe there is a notation. That's
8 one of the other witnesses. That was also a
9 reference in the Kromah case regarding --

10 THE COURT: I see that. But go ahead and
11 finish your proffer with --

12 MS. MAYES: That would be the extent of it,
13 Your Honor.

14 THE COURT: Mr. Shealy, any objection to that
15 part of her testimony? Obviously, Kromah says a
16 forensic interviewer may properly testify regarding
17 the following: Time, date, circumstance of the
18 interview, any personal observations regarding the
19 child's behavior or demeanor, or a statement as to
20 events that occurred within the personal knowledge
21 of the interviewer. So she's just asking about time
22 and date, et cetera; she's not asking to -- any
23 opinions about whether the children are telling the
24 truth or whether she believes the or whether it's
25 compelling or --

1 MR. SHEALY: Yes, Your Honor. The only
2 objection is cumulative. We've already established
3 all of this.

4 THE COURT: You have objection as to
5 cumulative?

6 MR. SHEALY: Yes, sir, except for demeanor.
7 Obviously, what her observations as to demeanor was
8 not testified previously.

9 THE COURT: All right. I'll allow her to
10 testify to that which was right here in the proffer.

11 Ms. Mayes, you understand that?

12 MS. MAYES: Yes, sir, Your Honor.

13 THE COURT: And as to her use of the word --
14 what was it?

15 THE WITNESS: Uncontaminated.

16 THE COURT: Uncontaminated. I may just tell
17 the jury that, obviously, they are the finders of
18 the fact, they determine the credibility and
19 believability of the witness, and even though this
20 witness has not given an opinion about whether she
21 did or didn't believe the children, the use of the
22 word uncontaminated may give some inference and
23 they're not to consider that. Or would you rather
24 me stay away from it all together, Mr. Shealy?

25 MR. SHEALY: Your Honor, I think I'd rather you

1 stay away from it all together.

2 THE COURT: All right. Please bring the jury
3 back in.

4 (The jury enters the courtroom at 11:14 AM.)

5 THE COURT: You may continue.

6 MS. MAYES: Yes, sir, Your Honor.

7 DIRECT EXAMINATION

8 (Continued)

9 BY MS. MAYES:

10 Q. Now, Agent Caldwell, can you tell us whether or
11 not you conducted a forensic interview in this case?

12 A. Yes, I did.

13 Q. All right. And that was in the presence of
14 who, if anyone?

15 A. Well, the people watching the interview were
16 not in the room; they were watching through the
17 videocamera that was transmitting through the TV.
18 But Detective Shannon -- Shannon Dykes with the --

19 Q. You can refer to your report.

20 A. Shannon Dykes with the Lexington County
21 Sheriff's Department and, at that time, Steve
22 Knafelc with the Kershaw County Sheriff's
23 Department. Possibly some of the staff members at
24 the Dickerson Center may have been in and out of the
25 room, but I'm not sure of that.

1 Q. All right. And just to clarify, are they
2 physically present in the same room with you and the
3 person you're interviewing?

4 A. No. It's just me and the person I'm
5 interviewing.

6 Q. And in this particular case, who was that?

7 A. That was **Minor 2**.

8 Q. And on what date was that interview conducted?

9 A. February 3rd, 2014.

10 Q. Okay. And can you tell us whether or not
11 **Minor 2** -- and this is a yes-or-no question -- made
12 a disclosure concerning sexual assault?

13 A. Yes, she did.

14 Q. What, if anything, did you note concerning her
15 disclosure regarding the place or locations of
16 sexual assault?

17 A. She spoke about -- she disclosed that it
18 happened at [REDACTED] in Lexington
19 County.

20 Q. And if you could, refer directly to your
21 report.

22 A. Yes.

23 Q. Do you have the report with you?

24 A. Yes.

25 Q. And, again, what address?

1 A. [REDACTED].

2 Q. All right. And specifically as to any place at
3 that location?

4 A. In the house, and she named two bedrooms, a
5 bathroom, and the living room.

6 Q. And specifically where in the living room?

7 A. On a couch.

8 MS. MAYES: Nothing further.

9 THE COURT: Cross, if any?

10 MR. SHEALY: No questions, Your Honor.

11 THE COURT: Thank you, Ms. Caldwell.

12 May she be excused?

13 MS. MAYES: Yes, sir, Your Honor.

14 THE COURT: You're excused, ma'am.

15 Next witness, please.

16 MS. MAYES: State calls Brooke Wymer.

17 BROOKE WYMER

18 being first duly sworn, testified as follows:

19 THE WITNESS: I do.

20 THE CLERK: Have a seat, please, ma'am. Once
21 you're seated, state your full name, spelling your
22 last, please.

23 THE WITNESS: Brooke Wymer, W-Y-M-E-R.

24 DIRECT EXAMINATION

25 BY MS. MAYES:

1 Q. Where are you currently employed and in what
2 capacity?

3 A. I have two employers right now; I'm employed at
4 Columbia College as the director of social work
5 field experiences and a lecturer in social work, and
6 I'm also employed with Firm Foundations Counseling &
7 Wellness, and I provide counseling services there
8 and supervision to counselors.

9 Q. All right. Are you an instructor or professor
10 at Columbia College?

11 A. I am.

12 Q. And prior to joining the faculty at Columbia
13 College, where were you employed?

14 A. At the Dickerson Children's Advocacy Center.

15 Q. All right. That would be the child advocacy
16 center located in what county?

17 A. Lexington County.

18 Q. Now, Ms. Wymer, can you tell us whether or not
19 you were involved in conducting a forensic interview
20 of any person in the case of the investigation of
21 State vs. August Kreis?

22 A. I was.

23 Q. And do you have with you a record or a document
24 reflecting that interview?

25 A. I do.

1 Q. And who did you interview in this case?

2 A. I interviewed **Minor 1**

3 Q. What was the date of that interview?

4 A. That was February 3rd, 2014.

5 Q. Now, is anyone else present in the room when
6 you conduct a forensic interview?

7 A. No.

8 Q. And why is that?

9 A. It's important that the child have an
10 environment where they're not influenced by anyone
11 else. So it's important that nobody else be in the
12 room but the interviewer and the child.

13 Q. Does your document or notes reflect whether or
14 not anyone else was able to observe the interview
15 from a remote location?

16 A. One person observed the interview.

17 Q. Who was that person?

18 A. That person was Erica Arojas [phonetic], which
19 was one of our interns at the time.

20 Q. All right. And do you have any notes
21 concerning specifically the disclosure made by

22 **Minor 1** ?

23 A. I do.

24 Q. Can you tell us whether or not -- and this is a
25 yes-or-no question -- **Minor 1** reported a sexual

1 assault?

2 A. Yes.

3 Q. Ms. Wymer, does your record or report reflect
4 what, if anything, she reported to you about the
5 time or timeframe in which this occurred?

6 A. Yes.

7 Q. What do you have in that regard?

8 A. She stated that it occurred approximately
9 around the age of 10 or 11 or younger.

10 Q. Okay. And specifically as to the place or
11 location in which the assault occurred?

12 A. She stated that it occurred at [REDACTED]

13 [REDACTED] in Lexington.

14 Q. And what, if anything, else did she state
15 specifically regarding the location or place at
16 Maplewood Drive?

17 A. She reported two locations of incidence; one
18 was on a bed in bedroom and the other was on the
19 floor in the living room, both at Maplewood Drive.

20 Q. All right. So one is on the floor in the
21 living room and then one is in a bedroom?

22 A. Yes.

23 Q. Do you also make any notations concerning the
24 demeanor that you observe?

25 A. Yes.

1 Q. What, if anything, did you note regarding
2 **Minor 1** demeanor?

3 A. That she was fearful.

4 MS. MAYES: Nothing further.

5 THE COURT: Cross, if any?

6 MR. SHEALY: Nothing, Your Honor.

7 THE COURT: Thank you. May she be excused?

8 MR. SHEALY: No objection.

9 MS. MAYES: No objection, Your Honor.

10 THE COURT: You're excused, ma'am.

11 Next witness, please.

12 MS. MAYES: The State calls Colleen Corbin.

13 COLLEEN CORBIN

14 being first duly sworn, testified as follows:

15 THE WITNESS: I do.

16 THE CLERK: Have a seat, please. Once you're
17 seated, state your full name, spelling your last,
18 please.

19 THE WITNESS: Colleen Corbin, C-O-R-B-I-N.

20 DIRECT EXAMINATION

21 BY MS. MAYES:

22 Q. Ms. Corbin, where are you currently employed?

23 A. Dickerson Children's Advocacy Center.

24 Q. All right. And the child advocacy center
25 serves what counties?

1 A. Lexington and surrounding areas.

2 Q. And how long have you been an employee at the
3 Dickerson Children's Advocacy Center in Lexington?

4 A. January 2nd will be three years.

5 Q. And can you tell us whether or not you're
6 involved in conducting forensic interviews with
7 children at that location?

8 A. Yes.

9 Q. And, specifically, can you tell us whether or
10 not you conducted a forensic interview with any
11 child or children in the case of State vs. August
12 Kreis?

13 A. Yes, I did.

14 Q. Who were those children?

15 A. **Minor 3** And we had two interviews.

16 Q. All right. And **Minor 3** you said you had two
17 interviews. So I'll start with the first interview.
18 How old was **Minor 3** at the time of your first
19 interview?

20 A. Twelve years old.

21 Q. And what was the date of your first interview
22 with her?

23 A. It was February 2nd, I believe -- February 3rd
24 of 2014.

25 Q. Do you comprise a report that has the details

1 that are disclosed during the course of the forensic
2 interview?

3 A. Yes, I do.

4 Q. And you have that with you today?

5 A. Yes, ma'am.

6 Q. During that first interview on February 3rd,
7 2014, I want to ask you what, if anything, did
8 she -- can you tell us whether or not she reported a
9 sexual assault? And that's a yes-or-no question.

10 A. Yes.

11 Q. All right. And does your report reflect what,
12 if anything, she told you regarding the place that
13 that occurred?

14 A. I'm sorry. You said the report reflect --

15 Q. Does your report reflect what if anything she
16 told you about the place or location where that
17 occurred?

18 A. Yes, it does.

19 Q. What does it reflect?

20 A. Just regarding the place?

21 Q. Right.

22 A. Her current home, which was determined to be in
23 Kershaw County at the time of the interview, in a
24 bedroom while watching The Wizard of Oz when the
25 movie ended.

1 Q. All right. And what, if anything, else did she
2 report regarding location?

3 A. That it occurred everywhere she lived.

4 Q. Specifically, did she give you another
5 location?

6 A. Specifically, she talked about a St. Andrews
7 Road apartment in Columbia and a Kershaw County
8 home.

9 Q. All right. So St. Andrews Road apartment and
10 Kershaw County?

11 A. Yes, ma'am.

12 Q. Now, what, if anything, did you note regarding
13 her demeanor that you observed during that first
14 interview?

15 A. I observed that she shut down, no longer wanted
16 to talk. And I noted in my report that she was very
17 fearful and scared.

18 Q. When you use the term shut down, what do you do
19 if you're conducting an interview and the
20 interviewee shuts down?

21 A. It varies. Sometimes if it's severe enough, we
22 end the interview. Sometimes we'll give them a
23 break. Sometimes we just kind of say some
24 encouraging words to calm them down.

25 Q. All right. So in this particular case, as you

1 noted that she shut down, did you continue with the
2 interview or end it?

3 A. Shortly thereafter, we ended it.

4 Q. Okay. As a result, can you tell us whether or
5 not a second interview was scheduled for a later
6 day?

7 A. Yes. A second interview was conducted --
8 scheduled and conducted.

9 Q. And what was the date of the second interview?

10 A. The second interview was February 18th of 2014.

11 Q. So about 15 days later?

12 A. Uh-huh.

13 Q. In the second interview, can you tell us
14 whether or not -- again, is anyone else present in
15 the room other than you and **Minor 3**

16 A. No; just **Minor 3** and myself.

17 Q. Can you tell us whether or not **Minor 3**
18 disclosed sexual assault?

19 A. Yes.

20 Q. Can you tell us what, if anything, you denoted
21 concerning her demeanor during the course of this
22 second interview?

23 A. She became very distressed, started crying,
24 curled into a fetal position, buried her head into
25 her chest. And then shortly thereafter, I ended the

1 interview.

2 Q. When you say she curled into the fetal position
3 and buried her head into her chest, is that in your
4 report?

5 A. Yes.

6 Q. When you observe a child responding that way
7 during a forensic interview, do you continue it?

8 A. Not usually. Interviews are child-friendly, so
9 we let the child lead to what they need. And in
10 cases of chronic abuse, sometimes more than one
11 interview is needed.

12 MS. MAYES: I beg the Court's indulgence.

13 BY MS. MAYES:

14 Q. Can you tell us whether or not the interview
15 ended when you -- as you put it, when you noted that
16 she was very distressed?

17 A. Uh-huh. Shortly thereafter, I ended it. I
18 think I gave her some time to calm down and then
19 ended it.

20 MS. MAYES: Nothing further.

21 THE COURT: Cross?

22 MR. SHEALY: No questions, Your Honor.

23 THE COURT: Thank you. You may be excused.

24 THE WITNESS: Thank you.

25 THE COURT: Next witness please.

1 MS. MAYES: I beg the Court's indulgence.

2 May we approach?

3 (Sidebar conference.)

4 THE COURT: Next witness, please.

5 MS. MAYES: The State calls Detective Shannon
6 Dykes.

7 SHANNON DYKES

8 being first duly sworn, testified as follows:

9 THE WITNESS: I do.

10 THE CLERK: Have a seat, please, sir. Once
11 you're seated, state your full name, spelling your
12 last, please.

13 THE WITNESS: Shannon Dykes, D-Y-K-E-S.

14 DIRECT EXAMINATION

15 BY MS. MAYES:

16 Q. Detective Dykes, where are you employed?

17 A. Lexington County Sheriff's Department.

18 Q. And how long have you been with the Lexington
19 County Sheriff's Department?

20 A. Going on six years.

21 Q. All right. I need you to pull that microphone
22 down and towards you a little more.

23 And what type of work are you currently doing
24 with the sheriff's department?

25 A. I'm assigned to the fugitive task force,

1 specifically assigned to the State Law Enforcement
2 Division and U.S. Marshals for fugitive
3 apprehensions.

4 Q. And prior to your involvement with the U.S.
5 Marshals task force, can you tell us what division
6 you were working in at the Lexington County
7 Sheriff's Department?

8 A. The major crimes division.

9 Q. And how long were you a member of the major
10 crimes division?

11 A. Approximately a year and two months.

12 Q. Can you tell us whether or not your involvement
13 in the major crimes division included the
14 investigation of cases of sexual assault and child
15 abuse?

16 A. They did.

17 Q. Can you tell us whether or not that included
18 specific training in the field of sexual assault and
19 child abuse?

20 A. It did.

21 Q. In this particular case involving the
22 defendant, August Kreis, what date did Lexington
23 County Law Enforcement first be advised of this
24 report?

25 A. I completed the incident report on January

1 21st, 2014.

2 Q. All right. So January 21st, 2014, the report
3 was made to the Lexington County Sheriff's
4 Department. And who came in to make that report?

5 A. Karley Hollis.

6 Q. And she's related to the victims how?

7 A. She's their mother.

8 Q. All right. And, specifically, which victims
9 came to the sheriff's department? And we've heard
10 previously from Sergeant Barr. But who specifically
11 was present at the sheriff's department?

12 A. **Minor 2**, **Minor 1**, **Minor 3**,
13 and Ryan Stephens who is **Minor 2** fiance.

14 Q. Now, during the course of this investigation,
15 can you tell us whether or not any additional
16 agencies became involved?

17 A. They did. Richland County Sheriff's Department
18 and Kershaw County Sheriff's Department.

19 Q. How or why did those agencies also become
20 involved in this investigation?

21 A. It was determined at the time of the report
22 from the mother that their jurisdictions --

23 MR. SHEALY: Objection, Your Honor. This is
24 irrelevant as to the other sheriff's departments as
25 to why they got involved.

1 THE COURT: Rephrase the question -- state the
2 same question again.

3 MS. MAYES: Yes, sir, Your Honor.

4 BY MS. MAYES:

5 Q. Why did other agencies become involved with the
6 sheriff's department?

7 A. Because I'm a mandated --

8 THE COURT: Hold on, hold on, hold on.

9 I'll sustain that objection. Move along.

10 MS. MAYES: Yes, sir, Your Honor.

11 BY MS. MAYES:

12 Q. In this particular case, can you tell us
13 whether or not any jurisdictions in Lexington County
14 were determined to be a location of sexual assault?

15 A. Yes.

16 Q. What was that location in Lexington County?

17 A. [REDACTED].

18 Q. All right. In particular with [REDACTED]
19 [REDACTED], what victims had reported an assault at that
20 location?

21 A. [REDACTED] Minor 2 and [REDACTED] Minor 1 .

22 Q. All right. So [REDACTED] Minor 2 and [REDACTED] Minor 1
23 the two oldest daughters. Can you tell us,
24 Detective Dykes, in a case such as this with a
25 delayed report, where several years have passed

1 before a victim comes forward, is what's known as a
2 rape kit or a sexual assault evidence collection kit
3 conducted?

4 A. It was not.

5 Q. Why or why not?

6 A. Due to the degradation of evidence over a
7 period of time, there's no need for it.

8 Q. What is the general timeline for recovering
9 forensic evidence such as DNA?

10 A. Generally, 72 hours is -- unless there's a
11 specific situation that warrants extension. But 72
12 hours is generally what we go by.

13 Q. So 72 hours from the time of assault?

14 A. Correct.

15 Q. Can you tell us whether or not you would refer
16 a victim for a rape kit medical examine after six
17 years?

18 A. No, I would not.

19 Q. Now, based upon the information you obtained
20 during the course of this investigation, did you
21 obtain warrants in this case?

22 A. I did.

23 Q. And those warrants pertained to which victims?

24 A. **Minor 2** and **Minor 1**

25 Q. And that concerns Lexington County; is that

1 correct?

2 A. That's correct.

3 Q. Specifically, [REDACTED]?

4 A. That's correct.

5 Q. What was the next step in the case in terms of
6 actually -- you mentioned that you got warrants.

7 How do you go about making contact with the suspect,
8 in this case being August Kreis?

9 A. Received information that he was attending
10 school at Midlands Technical College at the Beltline
11 campus in Richland County. Myself and Detective Joe
12 Clarke from the Richland County Sheriff's Department
13 went to that location to arrest him --

14 Q. All right. Let me stop you right there.
15 Specifically, the campus that you mentioned,
16 Midlands Tech Beltline campus, what county is that?

17 A. Richland County.

18 Q. So did you have another officer or detective
19 with you?

20 A. I did.

21 Q. Who was that person?

22 A. Detective Joe Clarke.

23 Q. Okay. And he's with what agency?

24 A. Richland County Sheriff's Department.

25 Q. So you and the detective from Richland County

1 went to Midlands Technical College. Can you tell
2 us, at that time had you actually obtained warrants
3 from the magistrate?

4 A. I have.

5 Q. What was the date of that contact with August
6 Kreis at Midlands Tech?

7 A. Let me refer to my notes. February 19th, 2014.

8 Q. So on this date, February 19th, you and a
9 Richland officer go to Midlands Tech. What, if
10 anything, happened once you were at Midlands Tech?

11 A. Detective Clarke introduced himself and the
12 charges to Mr. Kreis. A short time after, I
13 introduced myself and also the warrants that we had
14 at Lexington County Sheriff's Department for him.

15 Q. Can you tell us whether or not you advised him
16 that Lexington County had warrants?

17 A. I did.

18 Q. And, ultimately, was Mr. Kreis detained on that
19 day?

20 A. He was.

21 Q. As a result of being detained on that day, what
22 facility was he taken to?

23 A. He was taken to the Alvin S. Glenn Detention
24 Center.

25 Q. All right. So once he's at the Alvin S. Glenn

1 Detention Center, he is detained at that location.

2 Can you tell us whether or not you had the
3 opportunity to recover any physical evidence of the
4 case?

5 A. I did. After he was detained, Karley Hollis
6 notified me days later that --

7 MR. SHEALY: Objection, Your Honor; hearsay.

8 THE COURT: Sustained.

9 BY MS. MAYES:

10 Q. Let me ask you this way: Who is Karley Hollis?

11 A. The victims' mother.

12 Q. Did you recover any item from her?

13 A. I did.

14 (State's Exhibit No. 14 marked for
15 identification.)

16 Q. I'm going to show you several documents which
17 are marked as State's Exhibit 14 and ask you whether
18 or not you recognize these documents.

19 A. Yes, I do.

20 Q. How so?

21 A. This is the letter provided to me from Karley
22 Hollis.

23 Q. All right. And when you say it was provided to
24 you, what did you do once you retrieved that letter?

25 A. I submitted it to evidence.

1 Q. When you say to evidence, at what department?

2 A. At the Lexington County Sheriff's Department.

3 Q. All right. So this item then went into
4 evidence at the Lexington County Sheriff's
5 Department?

6 A. That's correct.

7 Q. And this includes -- I know you mentioned a
8 letter. What else is with the letter?

9 A. An envelope addressed to Karley Hollis.

10 Q. All right.

11 MS. MAYES: Your Honor, at this time this would
12 be State's Exhibit 14 as evidence. We would offer
13 this item as evidence along with the stipulation.

14 THE COURT: Any objection as to number 14?

15 MR. SHEALY: No, Your Honor.

16 (State Exhibit No. 14 admitted in to evidence.)

17 THE COURT: All right. Now, madam forelady,
18 ladies and gentlemen of the jury, there's been a
19 stipulation entered between the Defendant and the
20 State. In almost all cases you determine the
21 believability or the credibility of the witnesses
22 and what is true. A stipulation is a non-contested
23 fact; everybody agrees that that is the fact in the
24 case and is the truth.

25 And it is stipulated in this case that State's

1 Exhibit 14, including a letter and envelope, were
2 authored or written by the defendant, Mr. Kreis.

3 Is that the correct stipulation, Mr. Shealy?

4 MR. SHEALY: Yes, Your Honor.

5 THE COURT: Ma'am?

6 MS. MAYES: Yes, sir, Your Honor.

7 THE COURT: So it's an uncontested fact. That
8 does not need to be proven by any additional
9 witnesses, it's uncontested.

10 BY MS. MAYES:

11 Q. Now, Detective Dykes, I'm going to again show
12 you this document, which is now in evidence, the
13 letter and envelope written by the defendant, August
14 Kreis. Can you unseal this document?

15 A. (Witness complies.)

16 Q. Have you had the opportunity to review that
17 document prior to today?

18 A. I have.

19 Q. Can you tell us whether or not at any point
20 during the course of the letter August Kreis
21 addresses or discusses his children?

22 A. He does.

23 Q. And can you tell us whether or not he addresses
24 or discusses the current situation involving his
25 detainment pursuant to this investigation?

1 A. He does.

2 Q. Detective Dykes, I'm going to start by asking
3 you about the envelope. All right. This particular
4 envelope is addressed to who?

5 A. Karley D. Hollis.

6 Q. At what address?

7 A. 1932 Thoroughfare Branch Road, Cassatt, South
8 Carolina.

9 Q. What county is that in?

10 A. Kershaw County.

11 Q. Okay. Can you tell us whether or not that's
12 the location of the children and the mother's
13 current address depicted in State's Exhibit 7, the
14 Cassatt house?

15 A. That's correct.

16 Q. Now, what is the notation in the upper
17 left-hand corner concerning who's writing and
18 sending the envelope?

19 A. August B. Kreis, III.

20 Q. And the letter is sent from what location?

21 A. Alvin S. Glenn Detention Center, 201 John Mark
22 Dial Drive, Columbia, South Carolina 2- --

23 Q. And what is the postmark on the letter?

24 A. March 6th, 2014.

25 Q. All right. And specifically on the back of the

1 letter, is there any type of warning or notation
2 that is standard when a letter or correspondence is
3 sent from the Alvin S. Glenn Detention Center?

4 A. Yes.

5 Q. What does it state?

6 A. The Alvin S. Glenn Detention Center has neither
7 censored nor inspected this item; therefore, the
8 department does not assume responsibility for the
9 contents.

10 Q. All right. And then in addition to the
11 envelope, how many pages does the letter consist of?

12 A. Two pages, but four total pages because they're
13 written front to back. So two pages total, but four
14 pages of written documentation.

15 Q. I'm going to ask you to start at the beginning,
16 Detective Dykes, and if you could very slowly, for
17 the benefit of the court reporter, she's going to
18 need you to go slowly as you read that letter or
19 publish that into evidence. And if you could start
20 at the top or the beginning of the correspondence.
21 Is it typed or handwritten?

22 A. It's handwritten.

23 And before the letter starts, there's one
24 sentence above. I'll read that: Please read this
25 and don't throw away.

1 Karley, just have a few things I need to tell
2 you. Hopefully by the time you receive this letter,
3 you've already heard from Jack or Nelson. I wrote
4 and mailed Jack a letter on Tuesday, 2/25, and have
5 not recovered a response yet -- excuse me, received
6 a response yet.

7 As you're already aware, I was arrested on
8 campus where my bookbag and carry bag was left with
9 campus security. Bookbag had books and --

10 Q. You want to spell that word?

11 THE DEFENDANT: Dinar, D-I-N-A-R.

12 MS. MAYES: And we would stipulate, Your Honor.

13 THE COURT: What does it say?

14 MS. MAYES: Dinar.

15 THE COURT: What?

16 MS. MAYES: Foreign currency, dinar.

17 A. -- and dinar in it. If Jack does what I've
18 asked, the dinar and some more foreign currency are
19 yours and the children's, just in case it happens.
20 Hopefully you didn't send the Higher One, in
21 quotations, card and have drained it already. If
22 not, do it ASAP. Should be two grand or better
23 which, along with your 516, if you're careful,
24 should last you at least four months while you're
25 working on getting SSI.

1 Check from VRAP will be next to nothing with
2 snow days and last day being the 18th. Don't even
3 know yet if Jack will help me. If not, I told him
4 to hand my letter to Nelson. All my usual carry bag
5 things were left there, phone, charger, ID cards and
6 all debit cards. I'm writing this on borrowed paper
7 and pen.

8 I realize you most likely regret even knowing
9 me now. If by chance my SSI continues until charged
10 and prison, I'll continue to help out when school
11 loan runs out. What you need to do is set up a bank
12 account that money can be transferred into when the
13 time comes. When speaking to the court-appointed
14 attorney, he told me the state of South Carolina
15 recognizes common-in-law marriage. If that's the
16 case, when I'm dead, you'll be able to apply for
17 death benefits through Social Security.

18 In case someone other than my wife is reading
19 this, no, I'm not considering suicide. Five days
20 marked in a cell with lights on 24/7 was enough to
21 make me not want to go back there. Just for your
22 knowledge, I'm not asking for bail and have already
23 told the lawyers that they gave me it's not going to
24 trial. I'll stay here until sentenced to prison.
25 If I'm gone before the children turn 18, you can

1 apply for SS for them also. If I can't be with or
2 even see our children again, I'd rather be dead.

3 Don't want to get off track of why I'm
4 contacting you. Hopefully I hear back from Jack
5 prior to being able to send this to you. I'm going
6 to see if I can trade my hardboiled eggs for another
7 envelope this week. You need to really take care of
8 yourself and get your health back.

9 3/5: Unsure if Jack's going to help me or not.
10 Haven't heard from him. If I don't hear from him
11 today I'm putting this in the mail tomorrow. You
12 should get the number for Alston Wilkes and get
13 Nelson Postin's cell number and call him. Find out
14 if Jack's picked up my belongings from school and if
15 he plans to do what I asked him in my letter. I
16 believe I should write to Nelson's from the
17 beginning, but didn't want to bother him because
18 he's still going to school at Fortis. Figured Jack
19 had more time.

20 A man named Eddie usually answers the phone at
21 Alston Wilke's, but explain that you need to get in
22 touch with my roommate. But if he won't give you
23 the number, ask for Michael Morris. You know him
24 and I'm sure he'll give it to you.

25 Although I'm sure you want nothing to do with

1 me, I'd like to know you got my things from the
2 house. Use the computer to go back to school, and
3 the hard drive has all the movies and cartoons you
4 wanted for Aiden. I hate myself more than anyone
5 else could, but if you find it in your heart, I'd
6 appreciate it if you let me know if you're able to
7 get ahold of Nelson or Jack and if they are going to
8 see that you get my things from the house.

9 Maybe I'm just not giving it enough time on my
10 end, but time passes very slowly here. This is the
11 third letter I wrote you and threw the other two
12 away because I stayed off course of what I wanted to
13 say, not mentioning what brought me here where I'll
14 be for a long time, if not til the end of my life.

15 No letter from Jack so I'm starting to believe
16 that he's not planning on helping me out. Like I've
17 said, he may be, but slowly. If he does do what
18 I've requested of him, I'm going to have him mail
19 Jim my debit and 10 cards and have him take care of
20 my finances. I want to get my SSI direct-deposited
21 into my Wells Fargo account, and in a few months
22 have WF start sending you or Liz the \$500 rent at
23 least until I lose it when finally sentenced.

24 I believe it will continue while I'm waiting,
25 which the public defender said could be one to three

1 years of which would count toward my time received.
2 I deserve whatever happens to me, but I'm so sorry I
3 hurt the only ones I love and love me, you and our
4 children.

5 If you know when you clean out my room I'm
6 going to write Nelson next whom I should have
7 written from the beginning and see if he'll keep my
8 leg, shoe, walker, and socks for my stump there.
9 I'm going to work with a VA liaison here at the jail
10 and see if I can get them brought here through the
11 proper channels. I'm the only one with a power
12 wheelchair here at this facility. They put it in
13 the back of a pickup truck when I was arrested. The
14 only time it was taken from me was when they had me
15 on suicide watch the first five days.

16 I hope everything goes right and you're able to
17 get my things. There's an envelope from Jim with
18 some more foreign currency in my nightstand drawer
19 to be put with the rest from my bookbag. Even if it
20 goes for .86 or less cents, cash in for it will be a
21 blessing for you and the children.

22 Wednesday 3/6: Not planning to wait for mail
23 call today because they pick it up prior to handing
24 out mail. I'm going to write Nelson today and try
25 to find out what's going on. If you find out,

1 please drop me even a one-liner and let me know.

2 The printer, CB mobile radio, laptop, hard
3 drive, 3.0 USB, couch mouse are the electronics in
4 my room. Already told you what was taken from me at
5 school. Sure pray they let you have everything from
6 my room and you let me know or someone does.

7 Whatever you think of me, I want you to know
8 that I still love you all and will be worried all
9 the time what's happening outside my cage. Lastly,
10 please find a church in the area and have the
11 children attend. Even if it's not exactly what we
12 believe in, it's better than nothing at all. Be
13 safe and may Yahweh bless you and our children.
14 With love, Chip.

15 Q. So it's signed, with love, Chip?

16 A. Yes.

17 Q. Now, the portion of the letter that states, I
18 deserve whatever happens to me, is that handwritten
19 as well?

20 A. Yes.

21 Q. Detective Dykes, do you have with you a copy of
22 the warrant that you obtained in this case?

23 A. I do.

24 Q. What is the defendant's date of birth?

25 A. [REDACTED].

1 Q. Can you tell us whether or not he would have
2 been over the age of 14 at the time these offenses
3 occurred?

4 A. Yes.

5 Q. And all of the events that occurred or have
6 been testified to at the [REDACTED], can
7 you tell us whether or not that has remained in the
8 jurisdiction of Lexington County?

9 A. Yes.

10 MS. MAYES: I beg the Court's indulgence.

11 BY MS. MAYES:

12 Q. Can you tell us whether or not, based upon your
13 contact with August Kreis at Midlands Technical
14 College, he was aware that this investigation was
15 for criminal sexual conduct with a minor?

16 A. Yes.

17 MS. MAYES: Nothing further.

18 THE COURT: Cross?

19 MR. SHEALY: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. SHEALY:

22 Q. Detective Dykes, just a couple minor things
23 about the letter. The second page, about the sixth
24 line down, you said five days -- I think you said
25 marked in a cell. Would you look at that and tell

1 me if that says naked in a cell?

2 A. It could possibly.

3 Q. Okay. And also, when you mentioned about
4 mailing Jim my debit and 10 cards, could that also
5 be ID cards?

6 A. What page?

7 Q. I'm sorry. That's the third page, just below
8 halfway. I just wanted to clarify that.

9 A. It could possibly. It looks like a 10.

10 Q. Could go either way?

11 A. Yes, sir.

12 Q. All right. You commented on the -- there was
13 no rape kit. Was there any medical examinations
14 ordered for these children?

15 A. Not in my case.

16 Q. Okay. Well, why wouldn't there be a medical
17 examination?

18 A. Because it wasn't needed due to delay of the
19 reporting being years prior.

20 Q. But there's possibility there could be injuries
21 or even diseases or anything of that nature still
22 evident at that time; correct?

23 A. Correct.

24 Q. But still, there was no medical exam done?

25 A. Correct.

1 MR. SHEALY: Thank you, Your Honor. That's all
2 I have.

3 REDIRECT EXAMINATION

4 BY MS. MAYES:

5 Q. Detective Dykes, the reference to being naked
6 in a cell, can you tell us whether or not that's
7 part of policy with suicide watch?

8 A. It is not.

9 Q. Okay. Are you aware of what policy would be in
10 place if someone is under suicide watch?

11 A. Not verbatim.

12 Q. Nothing further.

13 THE COURT: You may step down.

14 MR. SHEALY: Your Honor, could I just --

15 THE COURT: You know I don't normally allow
16 recross, but in this case, I will allow it.

17 MR. SHEALY: Thank you, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. SHEALY:

20 Q. All right. Detective, you don't know what the
21 protocol is at Alvin S. Glenn Detention Center, do
22 you, as to suicide watch?

23 A. I do not.

24 Q. And this is where this took place? You
25 testified that's where he was taken?

1 A. Correct.

2 MR. SHEALY: Thank you.

3 THE COURT: All right. You may step down, sir.

4 Next witness, please.

5 MS. MAYES: Your Honor, may we approach?

6 THE COURT: Yes, ma'am.

7 (Sidebar conference.)

8 THE COURT: Madam forelady, ladies and
9 gentlemen of the jury, let me tell you where we are.
10 The State has one more witness left.

11 About a 30-minute witness, Ms. Mayes?

12 MS. MAYES: Correct, Your Honor.

13 THE COURT: And then the Defense, I think, has
14 one or two witnesses. And the witness who is coming
15 had some scheduling problems. We finished a little
16 earlier this morning than we thought because I've
17 been pushing them a little bit.

18 We're going to break until 2:00. During the
19 break, I've got several things I need to do outside
20 of your presence anyway, so I'll have all that taken
21 care of. When you come back, we'll go straight into
22 the final testimony.

23 Now, we'll probably end up finishing today
24 around 3:30 or 4:00. That's just a guesstimate.
25 Then what's left after that is the final arguments

1 by the lawyers, and then I have to instruct you on
2 the law. And if we finish testimony at 4:00, that
3 would probably put us to 5:00 or 5:30 before you
4 would receive the case. So what I'll probably do,
5 because of court personnel and security and
6 everything else is, if we finish around the 4:00
7 hour, come back in the morning and finish it up, if
8 that's okay. If you'd rather stay the night, I can
9 make some arrangements. Y'all talk about that. But
10 that would take us into the night. And probably the
11 best thing, unless that's an imposition on you, I'll
12 start it in the morning whatever time you want to,
13 whatever suits y'all.

14 But tomorrow, if you continue to deliberate
15 through the lunch hour, we'll order lunch in so you
16 don't have to leave. So that's probably the better
17 way to do it.

18 All right. We'll break till 2:00. Don't
19 deliberate, don't discuss the case, don't let anyone
20 discuss it with you, and please don't do any
21 independent research. We'll come back at 2:00
22 finish up and then see where we are.

23 (The jury exits the courtroom at 12:04 PM.)

24 THE COURT: Okay. Mr. Kreis, if you don't
25 mind, let me swear you in, please. If you'd raise

1 your right hand, please.

2 AUGUST KREIS

3 being first duly sworn, testified as follows:

4 THE DEFENDANT: I so affirm.

5 THE COURT: All right, sir. I normally do this
6 at the conclusion of the State's case, but we've got
7 a few minutes here. And instead of breaking when
8 they put up their last witness, let me just go over
9 one matter with you that I'm required to do in a
10 trial.

11 The State, as I'm told, has one last witness.
12 When that witness is finished, then, obviously, your
13 lawyer has a right to make certain motions. And if
14 I rule against him on those motions, then we'll be
15 reaching the stage of the trial where you can
16 present your defense; in other words, your side of
17 the story, as they may say. And included in that
18 defense, you have the right, obviously, to take the
19 witness stand and testify and give your version of
20 what happened or what didn't happen or what didn't
21 happen.

22 If you do that, obviously, you'll be, like any
23 other witness, subject to cross-examination on all
24 relevant points.

25 Does he have a record, ma'am, that would be --

1 MS. MAYES: Yes, sir, Your Honor. He does have
2 a 2001 [sic] federal conviction for false statements
3 to authorities, and that resulted in a sentence of
4 24 months. And because it is false statements to
5 federal authorities, Your Honor, it would go to his
6 credibility and honesty.

7 THE COURT: There's a rule that says that if
8 you have a prior conviction involving crimes of
9 dishonesty, that that prior conviction can be
10 testified about and given to the jury. But I would
11 give an instruction that they can only use that in
12 judging your credibility. They can't use the
13 conviction of a prior crime involving dishonesty
14 in convicting you, they can just use that in judging
15 your credibility.

16 THE DEFENDANT: I was planning on telling them
17 anyway.

18 THE COURT: Fine. Of course I have to make a
19 determination as to whether or not it's more
20 prejudicial than probative, but if you were going to
21 tell them, we'll just cross that bridge. So that
22 can come out.

23 MR. SHEALY: Just for the Court's edification,
24 my understanding is that that was in 2011.

25 MS. MAYES: Yes, 2011.

1 THE COURT: What did I say? Did I say
2 something different?

3 MR. SHEALY: Suzanne said 2001.

4 THE COURT: All right. So you understand that.

5 Now, you have the absolute right to invoke your
6 right to remain silent under the Fifth Amendment to
7 the Constitution, which says that any defendant in
8 any case has the right to remain silent. You have
9 absolutely no burden of proving anything. You don't
10 have to prove your innocence; the State has to prove
11 your guilt beyond a reasonable doubt.

12 And if you exercise your constitutional right
13 to remain silent, when I instruct the jury, I will
14 tell them that you have the absolute right to remain
15 silent and that they're not to infer anything from
16 the fact that you did not testify.

17 And I would further instruct them that they
18 could not even mention the fact that you didn't
19 testify when they deliberate your guilt or
20 innocence. It would not be a matter that they can
21 consider when they deliberate, they couldn't talk
22 about it, they can't do anything about it. That's
23 your absolute right, and you have the right to that.

24 If you take the stand, obviously, you can
25 testify, as I said, to any relevant information,

1 subject to cross-examination. So do you understand
2 your rights to remain silent?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you wish to exercise that right?

5 THE DEFENDANT: No.

6 THE COURT: You wish to testify?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Now, I think -- I've
9 never tried a case in this courtroom. We have a
10 handicap accessible -- is that working?

11 THE CLERK: Yes, sir.

12 THE COURT: All right. Anything else we need
13 to put on the record concerning his right to remain
14 silent, Mr. Shealy?

15 MR. SHEALY: No, Your Honor. I think you've
16 covered it.

17 THE COURT: Anything else we need to do -- I
18 suspect if we go to 3:30 or 4:00, we're going to
19 come back tomorrow and argue and charge. But before
20 we leave tonight, we'll probably need to talk about
21 the charge. It's a pretty straightforward charge.
22 It's just three indictments and a regular charge.
23 But we'll talk about that. If there's anything in
24 particular you want charged other than my regular
25 charge, let me know so I can consider that.

1 Anything else before we break for lunch by the
2 State?

3 MS. MAYES: So, sir, Your Honor, not on this
4 case.

5 THE COURT: Mr. Shealy?

6 MR. SHEALY: Your Honor, we've already
7 discussed this in chambers and we already know
8 that -- you've already informed me that you have
9 little or no authority over this. But my client
10 asks that I tell you last night they kept him in a
11 place called the tank and kept the light on. He
12 stayed in his wheelchair til about 11:30 last
13 night and --

14 THE COURT: All right. I'll make a special
15 request that --

16 THE DEFENDANT: It wasn't handicap accessible.
17 I had to get on my knees to use the facility.

18 THE COURT: I'll once again do all I can to
19 encourage them, ask them to --

20 THE DEFENDANT: Well, they lied. They stood in
21 here and lied.

22 THE COURT: I'll, once again, talk to them.

23 All right. We'll stand at ease until 2:00.

24 (Luncheon recess 12:11 PM - 2:00 PM.)

25 THE COURT: Anything from the State before we

1 start back?

2 MS. MAYES: Nothing from the State, Your Honor.

3 THE COURT: Mr. Shealy?

4 MR. SHEALY: Yes, sir, Your Honor. I
5 understand that the State intends to call Heather M.
6 Smith. I don't know if she's a doctor. But at any
7 rate, I believe -- and I've mislaid my witness list.
8 But I believe she's going to testify to child abuse
9 dynamics along the lines of what was discussed in
10 State v. Brown. And State v. Brown, in that case,
11 they --

12 THE COURT: Mr. Shealy, I read a million cases
13 a year. What is State v. Brown? B-R-O-W-N?

14 MS. MAYES: Yes, sir, Your Honor. State vs.
15 Damon Brown. I'll pass up a copy.

16 THE COURT: All right. First of all,
17 Ms. Mayes, what is your witness, Ms. Heather Smith,
18 going to testify about?

19 MS. MAYES: Yes, sir, Your Honor. She's a
20 blind expert. And that's one of the
21 issues addressed in State vs. Brown --

22 THE COURT: A what kind of expert?

23 MS. MAYES: A blind expert, where the expert
24 doesn't have any relationship to the children and is
25 not -- doesn't have a pre-existing relationship

1 where she would be vouching for their credibility or
2 anything of that nature. She's coming in clearly as
3 a neutral expert to educate the jury about delayed
4 reporting.

5 In this case, that would include delayed
6 reporting, the disclosure process, and things of
7 that nature in child sexual abuse cases. But it
8 eliminates the possibility of anyone vouching for
9 the child's credibility or doing anything that would
10 be considered bolstering, because she's had no
11 previous contact with the child or children.

12 THE COURT: And what's your objection,
13 Mr. Shealy?

14 MR. SHEALY: Your Honor, my objection is that I
15 believe she's going to talk about delayed
16 disclosure. And there's plenty of basis for that,
17 assuming she qualifies under your scrutiny. But
18 then she goes on and -- I'm assuming she's going to
19 talk about the difficulty of the children to sort
20 the timing of individual incidents and the order in
21 which they occurred. And she's also going to, I
22 believe, testify that victims who tolerate sexual
23 abuse to maintain a relationship.

24 And those, Your Honor, because of the testimony
25 that's taken place, we argue that that would be

1 vouching for the victims' credibility, even if she
2 didn't know what the victims said. It's still an
3 expert coming in and saying this is believable
4 because this is what children do.

5 Now, I want to point out that in State vs.
6 Brown, they admitted it. But our argument is that
7 it's improper.

8 THE COURT: Well, State vs. Brown reiterates
9 cases going back as far as State vs. Schumpert,
10 which was, I think, a case tried out of Newberry
11 back in the early '90s, which says that expert
12 testimony concerning common behavioral
13 characteristics of sexual assault victims and the
14 range of responses to sexual assault encountered by
15 experts is admissible.

16 Such testimony is relevant and helpful in
17 explaining to the jury the typical behavior patterns
18 of adolescent victims of sexual assault. It assists
19 the jury in understanding some of the aspects of the
20 behavior of victims and often provides insight into
21 the abused child's strange demeanor.

22 So they have said if she's duly qualified, that
23 this is the type of the testimony that can be used
24 or can be offered through expert testimony.
25 However, in that case, it goes on to caution both

1 bench and bar that, as in all of those cases, not
2 withstanding the fact that experts are permitted to
3 give an opinion, they cannot -- and I've said this
4 several times throughout this trial. But they
5 cannot offer any opinion or any hint as to the
6 credibility of children who testified in this case.

7 Obviously, witness credibility is for the jury,
8 and I have been cognizant of that throughout the
9 trial and I don't think we've had any of that. And
10 I'm sure if Ms. Mayes tries to go into any that,
11 I'll stop her if you don't, but we'll both stop her.
12 And I don't think she's going to do that anyway
13 because I think we're all aware of all of the cases
14 that have come down recently about bolstering
15 children's testimony in these forensic interview
16 cases.

17 So with that in mind, Ms. Mayes, I caution you
18 not to get into any areas where this witness opines
19 as to the believability of these children. She can
20 testify as to common behavioral responses to someone
21 who has been sexually abused as a child, including
22 delayed disclosure and things of that nature, which
23 the Courts have allowed in other cases. Understand?

24 MS. MAYES: Yes, sir, Your Honor.

25 THE COURT: Mr. Shealy, anything else?

1 MR. SHEALY: No, Your Honor.

2 THE COURT: All right. Bring my jury in.

3 (The jury enters the courtroom at 2:10 PM.)

4 THE COURT: You may call your next witness.

5 MS. MAYES: The State calls Heather M. Smith.

6 HEATHER SMITH

7 being first duly sworn, testified as follows:

8 THE WITNESS: I do.

9 THE CLERK: Have a seat, please, ma'am. Once
10 you're seated, state your full name, spelling your
11 last, please.

12 THE WITNESS: My name is heather Marie Smith.

13 DIRECT EXAMINATION

14 BY MS. MAYES:

15 Q. All right. Ms. Smith, can you tell us some
16 information about yourself. Where are you employed?

17 A. I work at the Assessment & Resource Center.
18 It's the Richland County Child Advocacy Center.

19 Q. All right. And how long have you been working
20 in that capacity?

21 A. I've been there 13 years.

22 Q. What, if anything, can you tell us about your
23 educational background and training?

24 A. I have a master's degree in counseling from the
25 University of South Carolina School of Medicine, I'm

1 a licensed professional counselor in state of South
2 Carolina.

3 Q. And in order to become a licensed professional
4 counselor, do you have to have any type of testing
5 or certification that goes along with that?

6 A. You do. You take an exam, and then for two
7 years following that, you have direct supervision
8 while you work with clients.

9 Q. How many clients do you maintain in the course
10 of an ordinary year, if you could estimate?

11 A. Well, I conduct forensic interviews with
12 approximately 200 clients. And then I provide
13 treatment services, therapy, with approximately 50.

14 Q. All right. And I want to ask you specifically
15 about the treatment services or therapy that you
16 provide. Are those adult patients or primarily
17 children?

18 A. Children.

19 Q. Including children and adolescents?

20 A. Yes.

21 Q. And, specifically, can you tell us whether or
22 not that includes children and adolescents who are
23 victims of sexual assault and child abuse?

24 A. Yes.

25 Q. During your career, Ms. Smith, how many years

1 do you think have been devoted to working and
2 counseling with children who you were treating for
3 child abuse or sexual assault?

4 A. Okay. So prior to my 13 years working at the
5 child advocacy center, I worked at residential
6 treatment facilities with children who often had
7 histories of sexual abuse and assault. So in a
8 total career, thousands.

9 Q. All right. And you mentioned forensic
10 interviewing. Can you tell us whether or not the
11 forensic interviews you conduct in Richland County
12 are primarily focused on assessing child abuse and
13 sexual assault?

14 A. Yes. Those are investigative interviews for
15 law enforcement or the department of social
16 services.

17 Q. Now, in addition to your own clinical
18 experience treating patients and providing therapy
19 to patients, can you also tell us whether or not
20 you've also received education and training in the
21 field of child abuse and sexual assault?

22 A. Yes. In order to conduct forensic interviews
23 in South Carolina, you must undergo an intensive
24 training, at least 40 hours, and learning an
25 interview protocol and then practicing it with peer

1 review and getting supervision on that.

2 I currently teach the state in forensic
3 interviewing and I also provide a lot of training in
4 trauma-focus therapies, working with children who
5 have sexual abuse trauma, and then working with
6 adolescents and children in mental health services.

7 Q. All right. You mention that you train other
8 interviewers in the state. What program is that
9 through?

10 A. Through our interviewing protocol program that
11 we use in our state. It's called Child First. But
12 I also train -- and so during that training, I'm
13 training law enforcement, department of social
14 services, doctors that work in the field of child
15 abuse. But I also do trainings for the FBI, for the
16 department of justice, for their interviewing
17 specialists.

18 Q. All right. And again, this pertains to the
19 field of child abuse and sexual assault?

20 A. Yes.

21 Q. Ms. Smith, have you testified previously as an
22 expert in a court in this state in the field of
23 child abuse assessment and/or treatment?

24 A. I have.

25 Q. Is it possible to estimate how many such times

1 you've been qualified as an expert witness?

2 A. It's over 50.

3 THE COURT: I'm sorry. What?

4 THE WITNESS: Over 50.

5 MS. MAYES: Your Honor, at this time, the State
6 would offer Ms. Smith as an expert in the field of
7 child abuse assessment and/or treatment.

8 THE COURT: Any cross-examination as to her
9 qualifications?

10 MR. SHEALY: Yes, Your Honor, please.

11 EXAMINATION

12 BY MR. SHEALY:

13 Q. Could you tell us what child abuse assessment
14 is?

15 A. So child abuse assessment tends to refer to the
16 forensic investigative interviewing. But any time
17 that you work in the field of mental health
18 treatment, you are assessing for -- also, you know,
19 you're conducting mental health assessments for
20 children; to look at symptoms, how they're
21 functioning, home, school, and their developmental
22 level.

23 Q. Can you define it without using the word
24 assessment? I'd like to know exactly what you mean
25 by assessment.

1 A. So in forensic interviewing, it's a factfinding
2 interview for law enforcement and DSS to just gather
3 information so that investigation can be done. And
4 then in mental health assessment, you're, again,
5 looking at symptoms, how often the symptoms are
6 present. And this could be anything; trauma
7 symptoms, could also be sleeping, eating, how
8 they're functioning at school and home. That's
9 considered assessment at well.

10 Q. Okay. And the -- what is child abuse
11 treatment?

12 A. So the treatment is actually using best
13 practice therapy models to work with children who
14 have validated or disclosed some type of child
15 abuse.

16 Q. And what is child abuse dynamics?

17 A. Child abuse dynamics refers to certain types of
18 behaviors that children may express who have been
19 abused.

20 Q. Okay. Now, I haven't heard you comment on your
21 experience in that area. Do you have any experience
22 in that area?

23 A. Well, as part of training, the intensive
24 training that you receive to work with children who
25 have been abused, you do receive training in that

1 field. That really covers a wide range of topics of
2 how children may respond when they're being -- you
3 know, when they have been abused or express some
4 type of child maltreatment. That could be neglect,
5 witness to a domestic violence incident, witness to
6 violent crime. It really covers a wide, wide range
7 of dynamics of child abuse.

8 Q. Okay. But what's your training in child abuse
9 dynamics?

10 A. So all trauma training, any type of trauma, you
11 read a lot of trauma research, you read a lot of
12 research from therapists who work in the field of
13 child abuse, you read -- you read a lot of research
14 about best practice therapy models of how to treat
15 children that have been through something like that.

16 Q. And this research that you're speaking of, this
17 would be something that you would undertake in
18 addition to your 40 hours?

19 A. That's correct. Specialized training and
20 different training opportunities that are out there
21 in the community.

22 Q. Okay. And this research, it would deal with
23 things about -- and child abuse, why children say
24 what they say and when they say it; is that
25 essentially --

1 A. Or -- yes, that would be one. Or how they're
2 affected behaviorally, what kind of behaviors you
3 might see in a child who had suffered trauma -- not
4 necessarily just child abuse, but trauma -- how to
5 treat those symptoms, and then how to include the
6 family in treating that.

7 Q. I guess what my question comes down to is the
8 reliability of the research. How is the research
9 tested to show that this child is doing this because
10 of this as opposed to something else? Do you --

11 A. Yes, I do understand that. So in terms of
12 reliability, it always -- the research is based on
13 children where there is some type of indication of
14 abuse. So that would be a medical evidence of
15 abuse, that could be a, you know, conviction in
16 court, that could be a confession, a sexually
17 transmitted disease. And so of those children, what
18 they look for is a pattern of how those children
19 behave.

20 It's not always that it's diagnostic of abuse,
21 but that's where that research comes from. It's --
22 of course, you know, it's not ethical to abuse a
23 child and then see how they respond. So the
24 reliability studies is always children where abuse
25 has been indicated in that manner that I just

1 described.

2 Q. Sort of an indirect type of --

3 A. No. It's called a -- qualitative studies is
4 what they call them.

5 Q. And the --

6 MR. SHEALY: Thank you, Your Honor. That's all
7 of the questions I have.

8 THE COURT: Well, do you object to her
9 qualification as an expert in this field of child
10 abuse assessment?

11 MR. SHEALY: Your Honor, I do not object -- I
12 accept her as an expert. I do object to the
13 reliability.

14 THE COURT: All right.

15 Ma'am, any response to that?

16 MS. MAYES: Yes, sir, Your Honor.

17 EXAMINATION

18 BY MS. MAYES:

19 Q. Regarding the reliability, you've already
20 stated on the record the basis for qualitative
21 studies in this field. Are we talking about more
22 than one study?

23 A. Yes.

24 Q. Are we talking about years of study?

25 A. Yes.

1 Q. Can you tell us whether or not these
2 qualitative studies that have followed victims of,
3 as you stated, indicated cases of child abuse
4 through the years, are they accepted among peers in
5 your field?

6 A. Yes, they are.

7 Q. Can you tell us whether or not they are
8 commonly used as training and research guides among
9 peers in your field?

10 A. Yes, they are.

11 Q. And have you, yourself, through your own
12 clinical experience, seen similar behaviors in
13 children that you were treating?

14 A. Yes, I have.

15 Q. And as a result, have you found, through your
16 own clinical experience, such research to be
17 reliable?

18 A. Yes, I have.

19 MS. MAYES: That's all from the State at this
20 time.

21 THE COURT: All right. I'm going to qualify
22 her as an expert in the field of child abuse
23 assessment and forensic interview. I find that
24 based on her training and experience that she's
25 qualified to give opinions in this field.

1 Now, ladies and gentlemen of the jury, Madam
2 Forelady, our rules of evidence normally do not
3 allow a person to give opinion testimony. You can
4 only testify about what you hear or see or smell or
5 taste and things that you have direct knowledge of.
6 As an exception to that rule, someone who has the
7 education, training, and skill in a certain
8 scientific field or a field that's not normally in
9 the ordinary province of a layperson, they can give
10 opinion testimony. And I'll tell you how you judge
11 opinion testimony at the conclusion of the trial.
12 But she will be allowed to give opinion testimony in
13 the field of child abuse assessment and forensic
14 interviewing.

15 You may proceed.

16 MS. MAYES: May it please the Court.

17 THE COURT: Yes, ma'am.

18 DIRECT EXAMINATION

19 (Continued)

20 BY MS. MAYES:

21 Q. Now, Ms. Smith, I want to start by asking you,
22 do you have any pre-existing relationship with
23 **Minor 2** or **Minor 1** in this case?

24 A. No, I do not.

25 Q. Do you have any pre-existing bias or personal

1 interest in this case concerning August Kreis?

2 A. No.

3 Q. Can you tell us whether or not you had any
4 pre-involvement in the investigation of this case?

5 A. I did not.

6 Q. All right. Now, in general, does your training
7 and clinical experience include various aspects of
8 the disclosure or reporting process among victims of
9 child sexual abuse?

10 A. Yes, routinely.

11 Q. In discussing the disclosure process, what is
12 meant by the term delayed reporting or delayed
13 disclosure in child sexual abuse?

14 A. So research has found and my experience has
15 also indicated that in cases where children are
16 being molested or there's some type of child abuse,
17 sexual abuse, that it's often in a secretive
18 environment, it's not happening where people know
19 about it, and that children, even often when asked
20 directly, will deny it initially and they will say
21 it's not happening.

22 And then over time, they may disclose
23 throughout -- you know, throughout time. It's a
24 process. It doesn't happen all at once. And there
25 are reasons, you know, why children don't disclose

1 right away.

2 Q. In your training and experience, how common is
3 delayed reporting among victims of child sexual
4 abuse?

5 A. It's very common. It's more typical for
6 children to delay disclosure, to not disclose, to
7 deny when asked than it is for a child to be what we
8 call in an active state of disclosure where they're
9 ready to tell and just telling everything all at
10 once.

11 Q. What is meant by the term chronic sexual abuse?

12 A. So chronic sexual abuse is when children have a
13 history of years of sexual abuse. And it's not what
14 we'd call an acute case where it happened one or two
15 times; where it happens, really, over years for the
16 child. And it can impact their development and, you
17 know, it's usually occurring, again, within a
18 secretive environment.

19 Q. In terms of chronic sexual abuse, what factors
20 may commonly play a role in a child's delayed
21 reporting of abuse?

22 A. In general, when children have delayed
23 disclosure in a case of chronic sexual abuse,
24 typically it's because it's a family member. If a
25 child has been abused by a stranger or someone that

1 they don't know very well, a friend, they tend to
2 tell sooner than children who have undergone years
3 of abuse. And then it's a family member, someone
4 that they love, that they trust, then they will not
5 disclose.

6 They have -- children, especially, are taught
7 to -- that the home environment is, you know, their
8 safety net. So they often don't know that they can
9 tell. Sometimes children don't even know that it's
10 wrong. They just think that's a part of reality for
11 them, that's just how every family is, until they
12 realize that it's not, and then there's a lot of
13 shame, guilt, and embarrassment.

14 They also want to protect the family.
15 Sometimes it's hard for people who have not been
16 through that experience to understand why you would
17 protect someone that's hurting you or harming you.
18 But because your family unit is your safety net,
19 that you will do everything you can to just, what we
20 often call, just accommodate to it, to just find a
21 way to survive within it.

22 So, typically, if it's a family member, someone
23 who is paying the bills, you know, then oftentimes
24 kids know that in the family system, so they don't
25 want that person to get in trouble. Sometimes there

1 are direct threats to a child that if they tell,
2 someone will get in trouble, either them or the
3 person that they're trusting and loving, their
4 family member that's doing it. And then also, if
5 they have siblings, they're going to want to protect
6 their siblings, their brothers and sisters.

7 Q. Based upon your training and experience, is
8 delayed reporting by a child common or uncommon if
9 the perpetrator is a family member?

10 A. It's more common.

11 Q. Have you observed that in your own clinical
12 experience?

13 A. Yes.

14 Q. Now, what is meant by the term partial
15 disclosure of abuse?

16 A. So partial disclosure refers to when children
17 tell a little bit. Sometimes children initially
18 will tell -- will, what we call, test the waters.
19 They're tentative in their disclosure and they may
20 say somebody was messing with them or somebody is
21 bothering them, making them uncomfortable. But they
22 don't come out and say exactly what's going on with
23 someone.

24 And so sometimes also children will use what we
25 call qualifiers in their language. So they may say

1 something like, someone probably hurt me, someone
2 may have touched me. It's very tentative. And
3 oftentimes when children say things like that,
4 people aren't sure what to -- you know, whether to
5 pursue it further, or just to drop it, to look
6 further to it. So when children are in a tentative
7 state of disclosure, usually they're just testing
8 the waters to see what response they may get.

9 Q. Now, do you necessarily expect a child to make
10 a complete disclosure of abuse in an initial
11 statement or during an initial interview?

12 A. No. Again, children are still testing those
13 waters to see how people are -- what's going to
14 happen to the family, what's going to happen to me,
15 am I going to get in trouble, so they wait and see
16 what happens.

17 Q. What is meant by the phrase disclosure is a
18 process?

19 A. Just that children don't tell everything all at
20 once right away. It could take weeks, it could take
21 months, it could take years before everything is
22 told.

23 Q. Now, based upon your training and experience,
24 why may a child accept sexual abuse, especially
25 chronic sexual abuse, or consider it normal?

1 A. Well, it depends on the age when the sexual
2 abuse started. If it starts at a very young age,
3 children under ten often don't know it's wrong.
4 They don't know what that's something that you're
5 not supposed to do with family members or that
6 family members are supposed to do you.

7 But also if it starts after age 10, they,
8 again, want to protect that family unit and they
9 want to make sure everybody is taken care of,
10 everybody stays together, people aren't going to
11 jail, people aren't being separated, put in foster
12 care, which is what happens sometimes when children
13 tell because families might get split up, siblings
14 might get split up, put into foster care, and it's a
15 really scary time.

16 Q. All right. Your opinion that you've given
17 throughout your testimony as an expert, can you tell
18 us whether it's supported by your research of
19 literature and publications in this field?

20 A. Yes, it is.

21 Q. And is it supported by your own clinical
22 experience as a therapist and child abuse
23 professional?

24 A. Yes, it is.

25 MS. MAYES: I beg the Court's indulgence.

1 Nothing further at this time, Your Honor.

2 THE COURT: Mr. Shealy?

3 CROSS-EXAMINATION

4 BY MR. SHEALY:

5 Q. When you say secretive environment, what do you
6 mean?

7 A. So when child abuse happens, when child sexual
8 abuse, particularly, happens, it's a secret, there's
9 a secret to keep. People in the home don't know
10 about it. It usually occurs when no one else is
11 around. And sometimes children are taught or asked
12 to keep a secret about it.

13 Q. And asked by the perpetrator, this is a
14 secret --

15 A. Yes.

16 Q. -- or even threatened by the perpetrator that
17 if you tell anybody, this will happen?

18 A. Yes.

19 Q. And the -- you also testified when they're over
20 10 -- when they're 10 or under, that they don't know
21 it's wrong, but when they're over 10, they're
22 worried about the family unit staying together.

23 Now, why would a 10-year-old or an 11-year-old be
24 concerned or even know about DSS and the possibility
25 of a family being broken up and that sort of thing?

1 A. It's more about by age 10, children have
2 learned what we call moral development. So between
3 age 9 and 10, that's when they're really learning
4 what's right, what's wrong, what choices to make.
5 So between 9 and 10, with the moral development,
6 becomes embarrassment, guilt, shame, particularly
7 they're learning about body parts, they're learning,
8 you know, okay/not okay touch.

9 And so when they -- often when they realize at
10 that time that it's not correct for someone to do
11 that to them, on top of just worrying about the
12 family and not wanting the family to be split up,
13 they also then have shame, guilt, embarrassment,
14 another kind of reason not to tell.

15 Q. Okay. Now, with delayed reporting, you said
16 that they will often deny if asked directly. What
17 about if they don't deny when they're asked
18 directly?

19 A. Well, oftentimes, it depends on who is doing
20 the asking. You know, typically, before children
21 have a formal interview about abuse, they're asked
22 by people in their family, people around them,
23 friends, siblings. So when I say that, I'm
24 referring to a professional, formal questioning.

25 Q. Okay. But it's more common than uncommon for

1 someone with delayed reporting -- it's more common
2 for them to deny if they're asked directly?

3 A. Yes.

4 Q. Okay. It's less common to admit it if asked
5 directly?

6 A. Yes.

7 Q. And it's more common for them to go through
8 this disclosure process; is that correct?

9 A. Yes.

10 Q. So that would indicate more than one interview?

11 A. They may tell, like, family members -- they may
12 tell people in their family first, they may tell
13 people at church first, and then someone makes a
14 report and then interviews start to happen.

15 Q. All right. And over this time, it would
16 gradually -- more disclosure would be made?

17 A. Yes, depending on the response that they get
18 from their family system. Maternal support is very
19 important to children. When they're talking or
20 telling about things that happened, if their mother
21 or someone in their family is supporting them, they
22 have an easier time telling. But then over time,
23 they do -- with more favorable response, if the
24 child is feeling supported, taken care of, they will
25 disclose more.

1 Q. Okay. But generally speaking, where you have a
2 delayed reporting, that you would expect the
3 therapist or counselor or forensic interviewer or
4 whoever to have to hold more than one interview;
5 correct?

6 A. So best practice is that you only forensically
7 interview by a trained professional. So a therapist
8 really shouldn't be doing the investigative part.
9 Children may disclose to their therapist over time,
10 but in terms of the investigation, there should be
11 one or two interviews, no more -- three, maybe.

12 Q. Okay. So the -- if there's a disclosure
13 process and they're not disclosing immediately, when
14 should the forensic interview take place? Would it
15 be after the therapist has talked to them and taken
16 them through this disclosure process or should it be
17 immediately after the report is made?

18 A. So in terms of that, when a report comes out of
19 either a child tells a family member or someone that
20 they know and trust, a trusted adult, and then a
21 report gets made to an investigative agency,
22 attempts should definitely be made to have trained
23 professionals interview.

24 If therapy is going to take place within that,
25 it really needs to be a forensically sensitive

1 therapy in the sense that knowing that the child may
2 need to go back and get a forensic interview if they
3 disclose anything.

4 Q. Okay. I guess what I'm struggling with is,
5 you've testified that after delayed reporting, that
6 there's a disclosure process, and over time more and
7 more information becomes available. And my question
8 is, if that's true, then what good is a forensic
9 interview immediately upon or shortly after the
10 report is made? How does that time element fit in?

11 A. It's important to attempt a forensic interview
12 because law enforcement and the department of social
13 services need information to investigate, otherwise,
14 they don't have much to go on to try to investigate
15 a case.

16 But if a child -- it depends on if a child is
17 in a tentative state of disclosure. If they're
18 testing the waters, it may be that supportive
19 therapy is needed, and then you revisit the forensic
20 interview within months.

21 Q. And you said delayed reporting is more common.
22 But I didn't hear, more common than what?

23 A. So delayed disclosure is more common than
24 children who disclose everything right away all at
25 once. So, typically, with adults, we -- if someone

1 is hurting us, we run out and find someone who will
2 stop it, you know, the police, someone in authority.
3 Children don't do that. Children -- particularly
4 children who are being sexually abused where there's
5 secrecy, shame, guilt, and embarrassment, they tend
6 to find ways to survive within it instead of running
7 out right away and going to the police. So that's
8 what the term delayed disclosure -- more typical
9 than children who run out and tell the police right
10 away.

11 Q. Okay. I'm going to ask you a question that's a
12 hybrid of what you just said.

13 A. Okay.

14 Q. The child -- how common is it for a child to
15 delay disclosure, but the moment they're asked to,
16 immediately admit everything and participate in a
17 forensic interview and reveal everything?

18 A. It's not common, but it could happen. I mean,
19 there are a small percentage of children who may do
20 that. It would depend on their age, their family
21 system. Oftentimes we find that children, when
22 asked, will tell, if the perpetrator of the abuse
23 has, for some reason, left the home. Sometimes
24 children will tell everything then, even though
25 they've waited five years to do something.

1 Q. Okay. But the -- so that's -- it's less common
2 for them to -- for a delayed reporter to immediately
3 start saying what happened?

4 A. Right. I mean, they -- telling right away is
5 right when it happened. So if they've delayed
6 disclosure, there are reasons for that. And
7 that's -- you know, that's the reason.

8 But in some cases, after a delayed disclosure,
9 when asked, if the timing and circumstances are
10 right, they may tell.

11 Q. All right. Now, in some of these situations,
12 may those disclosures or what they say happen, could
13 they be not truthful?

14 A. Yes.

15 Q. Is that common?

16 A. In terms of the -- you know, the research that
17 I have based my experience and testimony and
18 training on are those where there's some kind of
19 indication of sexual abuse. Do children lie? Yes.

20 Q. Okay. And just to reiterate, your earlier
21 testimony was that the research is based on -- since
22 it's illegal to go and abuse a child and then gauge
23 the treatment, that the research is based on things
24 that are indicated by other means, and I called that
25 indirect; you recall all that? That's sort of an

1 indirect verification.

2 A. That's the way that cases are indicated for
3 sexual abuse, whether there's medical evidence, a
4 sexually transmitted disease, a confession, a
5 conviction.

6 MR. SHEALY: Thank you, Your Honor. That's all
7 I have.

8 REDIRECT EXAMINATION

9 BY MS. MAYES:

10 Q. And just to clarify, Ms. Smith, all of the
11 behaviors and characteristics that you've described
12 in the research is based on validated cases of
13 sexual abuse; correct?

14 A. Correct.

15 Q. Not false reports?

16 A. Correct.

17 Q. And you mentioned during cross-examination that
18 maternal support can often be an important factor.
19 Why is that an important factor?

20 A. So research has shown that particularly
21 mother -- when the mother believes, supports, takes
22 care of the child, protects the child after a child
23 comes to them and tells them or tells someone
24 else -- it doesn't always have to be the mother that
25 they tell -- that level of support allows children

1 to feel safe and ready to even tell more and
2 further.

3 So in a case where you do have high maternal
4 support, when they do have a formal forensic
5 interview or if they're interviewed by the
6 department of social services, they tend to be able
7 to tell and disclose more.

8 Q. All right. And if a child has not previously
9 disclosed but they have a supportive and protective
10 mother, may they make that disclosure to the mother
11 in that situation?

12 A. Yes, they may.

13 MS. MAYES: Nothing further.

14 THE COURT: Ma'am, you may step down.

15 Next witness, please.

16 MS. MAYES: Your Honor, that's all from the
17 State. At this time, the State rests.

18 THE COURT: All right. Madam forelady, ladies
19 and gentlemen, that concludes the State's
20 presentation. I need about five minutes with the
21 lawyers. Let's take a quick five- or ten-minute
22 break. Please. Don't discuss the case and do not
23 deliberate.

24 (The jury exits the courtroom at 2:45 PM.)

25 THE COURT: Any motions by the State?

1 MS. MAYES: None from the State, Your Honor.

2 THE COURT: By the Defendant?

3 MR. SHEALY: Your Honor, ordinarily I'd make a
4 motion for directed verdict. But I don't see the
5 grounds to make an argument for that. Thank you.

6 THE COURT: All right. Of course in this stage
7 of the game, I'm concerned with the existence of the
8 evidence, not the weight. There's obviously
9 testimony in the record by the three -- the two
10 ladies who were the victims in this case and other
11 evidence corroborating it that, if the jury believed
12 it, would support a verdict. So I respectfully deny
13 the motion.

14 Okay. Any change in the decision to take the
15 stand?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. Let's go ahead and get
18 everything ready to go. Let's take a short break.

19 (Short break.)

20 THE COURT: Anything from the State before we
21 start back?

22 MS. MAYES: No, Your Honor.

23 THE COURT: Mr. Tommy Shealy?

24 MR. SHEALY: No, Your Honor.

25 (The jury enters the courtroom at 2:55 PM.)

1 THE COURT: Mr. Shealy, you may call your first
2 witness.

3 MR. SHEALY: The Defense calls August Kreis.

4 AUGUST KREIS, III

5 being first duly sworn, testified as follows:

6 THE WITNESS: I so affirm.

7 THE CLERK: Thank you. Please state your full
8 name, spelling your last.

9 THE WITNESS: August Byron Kreis, III,
10 K-R-E-I-S.

11 DIRECT EXAMINATION

12 BY MR. SHEALY:

13 Q. Mr. Kreis, you're the defendant in this case;
14 is that correct?

15 A. Yes.

16 Q. Okay. And --

17 MR. SHEALY: Sorry, Your Honor.

18 THE COURT: No problem.

19 BY MR. SHEALY:

20 Q. Mr. Kreis, tell me about your family. Who is
21 in your family?

22 A. Well, my ex-wife Karley, and seven of my
23 children.

24 Q. All right. And are these names accurate on
25 this list?

1 A. Yes, sir.

2 Q. So there's seven of them; is that correct?

3 A. Uh-huh.

4 Q. And did you in fact at one time live at [REDACTED]

5 [REDACTED] with them?

6 A. Yes, I did.

7 Q. And at the St. Andrews apartment?

8 A. Yes; three and a half months.

9 Q. Okay. Now, tell me about your relationship
10 with your family before these allegations were made.

11 A. Well, I thought it was a lot better than what I
12 found out. I never heard any of my children call me
13 Chip before; that was an experience. I thought
14 pretty good. I mean, I -- we had our ups and downs
15 like any other family, but I didn't know that my
16 daughters hated me.

17 I mean, **Minor 1** said she was always afraid of
18 me, and we were pretty close. I was close with all
19 of my children. I was home 24/7 their whole life, I
20 mean, because I had diabetes and the rest, you know.

21 **Minor 2** did take care of me, she really did. And
22 she did -- and the nurses told her she did a good
23 job.

24 Everything was fine until 2011. They haven't
25 been -- they haven't told you the whole story. I'm

1 planning on telling you the whole story. In 2011, I
2 got arrested for fraud and embezzlement against the
3 U.S. government. And what it was, was it was a lie
4 by omission. I didn't tell them about money that
5 was coming into my household because I had seven
6 children and they take out dollar per dollar.

7 So at that time, I was on a
8 nonservice-connected pension. We had about \$2,600
9 coming in a month. I was just making it. Property
10 sold up in Pennsylvania and a couple other things
11 and I put the money in the bank. Well, when the
12 FBI, for reasons we'll get into when I have a
13 chance, has been looking into me for many years.

14 Well, they did a full financial investigation
15 and determined that I had money coming in. They
16 used VA to come after me. And now I'm on the
17 Treasury watch list for, like, \$193,000. So my
18 relationship with the government has been rocky for
19 many years. So -- and when I get the chance, I'll
20 tell you why.

21 Q. And were you convicted of this charge?

22 A. I was -- it was a closed indictment and I found
23 out about it. I had to turn myself in. They wanted
24 me to fly back here to Columbia. I said, no way. I
25 said, if you want me, you come get me. So that's

1 what they did; they sent the Marshals and I turned
2 myself in to the sheriff's department. We were
3 living in South Fulton, Tennessee at the time.

4 I turned myself in, came back here. I wound up
5 doing 25 weeks in solitary confinement here at LCDC,
6 and took a plea agreement in October of 2011. And
7 my pension was shut off, my family went homeless in
8 Tennessee, they wound up going into a HUD
9 development in Kentucky where they were the only
10 white family and -- and I've been constantly in the
11 newspapers and stuff over the years. And they went
12 and told the people in that development who my
13 family was. So they were under constant
14 bombardment. And when I say bombardment, I mean
15 beating on the house and -- you know.

16 What I'm trying to get at is I always have been
17 very concerned about my family. But worrying about
18 them going homeless again, you know, I --

19 Q. All right. Mr. Kreis --

20 A. Okay.

21 Q. -- when you were convicted, you pled guilty to
22 that charge; is that correct?

23 A. Yeah, because I did it.

24 Q. Because you did it. Why are you -- you're
25 pleading not guilty to these charges?

1 A. Yeah, because I didn't do it.

2 Q. You didn't do these things that they said?

3 A. No.

4 Q. Okay. Now, when you --

5 A. And the zero-to-20 offer is stupid. I'm 61
6 years old yesterday.

7 Q. Mr. Kreis, after you got out of prison for this
8 charge, what -- where did you go? What did you do?

9 A. When I got out of jail, I went to a former --
10 the former friend that was here yesterday, I went to
11 his house and stayed and there several for months.
12 Then I wound up going with the Alston Wilkes Society
13 here in Columbia.

14 Q. And what is the Alston Wilkes Society?

15 A. It's a veterans advocacy group. I mean, it's a
16 group home with 18 -- it's an 18-bed man facility.

17 Q. And you were eligible for that because of your
18 service in the Navy during Vietnam?

19 A. Yes.

20 Q. Now, while you were living there, what did you
21 hear about your family up in, I believe it was,
22 Tennessee?

23 MS. MAYES: Objection to hearsay.

24 BY MR. SHEALY:

25 Q. Based on what you learned about your family,

1 what did you do?

2 A. I talked to another veteran there, and we left
3 the facility and took a road trip to get my family
4 and bring them back.

5 Q. And that's how they wound back here in South
6 Carolina?

7 A. Correct.

8 Q. All right. Now, the -- were you going to
9 school?

10 A. Yes. I was going to VRAP, a government program
11 for unemployed vets.

12 Q. Okay. And at what point --

13 A. And underemployed.

14 Q. And at what point did you start going to
15 Midlands Tech?

16 A. What was I going for?

17 Q. At what point did you start going? Was that
18 part of this VRAP?

19 A. Yeah.

20 Q. Okay. And what were you studying?

21 A. Computer science.

22 Q. Okay. And while you were living -- while you
23 were going there, where did you continue to live or
24 where did you live?

25 A. I was living with Alston Wilkes' home, and then

1 left there and went to Palmetto State Base Camp,
2 which is another part of Alston Wilkes, which has
3 about 20 homes in the Columbia area. And I stayed
4 in one of the base camp units.

5 And then when I left there, I moved with a
6 couple of guys -- a couple of veterans up to
7 Hollywood Hills. That was interesting.

8 Q. All right. And the meanwhile, when you came
9 out of prison, did you have any income?

10 A. Well, they took my pension away. And I applied
11 for my SSI, and I got that back.

12 Q. Okay. And you received some money for school?

13 A. Yes. I was getting around 1,500 a month. And
14 that's how I look -- when I left -- I'm sorry. When
15 I left Alston Wilkes, I went to -- Alston Wilkes to
16 one of the state base camp homes. Then I went to
17 the apartments for three and a half months,
18 St. Andrews Pointe Apartments with my family.

19 And then I went from there -- I found them a
20 place out in Cassatt to get them back out into a
21 country. I had to stay to go to school, so I went
22 to Hollywood Hills.

23 Q. Okay. Now -- and up to this point, as far as
24 you knew, what was your relationship with your
25 children like?

1 A. We were living apart, but only because of the
2 situation of what happened. I didn't know anything
3 about being -- being in a bad position with the
4 family. I didn't know anything about that.

5 Q. Okay. The -- at any point -- let me start.
6 Were you continuing to support the family when they
7 moved to Cassatt?

8 A. Yes. Yes.

9 Q. And was anybody else supporting the family?

10 A. Well, my ex-common-law wife was getting
11 five-something a month through family services.
12 Yeah.

13 Q. And other than that?

14 A. No.

15 Q. The -- and did you go visit them up in Cassatt?

16 A. Yes, whenever she would come get me on
17 weekends.

18 Q. Did you ever improperly touch or --

19 A. No.

20 Q. -- do anything sexually with **Minor 3**

21 A. No.

22 Q. Do you know where she could have possibly
23 gotten that from -- scratch that. I'm sorry.

24 At some point while you're going to school, was
25 there any discussion of you moving back in with

1 them?

2 A. Yes.

3 Q. And why were you going to have to move back in
4 with them?

5 A. Because there was no way that we could keep up
6 my rent on the renting the house with my roommates
7 plus keep up the payments on paying for the rental
8 and utilities and everything then.

9 Q. And what had you noticed about the discipline
10 of the children or the behavior of the children
11 while you were away?

12 A. Well, when I was sick, things kept getting
13 worse and worse. And it's a lot my fault too. But
14 the discipline was going down the drain, you know,
15 just was getting worse and worse. And the mistake I
16 made was I sent them to public school. But
17 hindsight is 20/20.

18 Q. Okay. And as a result, **Minor 1** dropped out of
19 school; is that correct?

20 A. Yeah. She dropped out of school at 17.

21 Q. Okay. Now, when you started to -- when you
22 started making plans or -- who did you talk to about
23 moving back to the house?

24 A. Well, I talked to my wife about it.

25 Q. This would be Karley?

1 A. Karley. And see, we got to go jump back in the
2 past a minute. Karley's folks didn't like me
3 because I'm 20 years older than she is. She was 18
4 and I was 36 when we got together. Do the math.
5 She didn't -- they didn't like me, I didn't care for
6 them very much.

7 And I started telling my ex that when I got
8 back, discipline was going to be a lot different;
9 they were going to listen to me, do what I say, or
10 they were going to hit the highway. I'm one to
11 believe that when you turn 18, you're on your own,
12 you know, otherwise, you don't make it in life.
13 Some people my age got the 30-year-olds still at
14 home, you know. Maybe I'm a little harder than
15 most.

16 But do I have a temper? You darn tootin', yes,
17 I do. Did I ever use it on them? No. No. They
18 knew when I wasn't kidding. And all I can say -- I
19 mean, I don't have any regrets that way, you know,
20 but there's some things I've done wrong, you know,
21 that you can't change.

22 Q. All right. Let's get back to this when you
23 turned 18. **Minor 2** was turning 18; is that correct?

24 A. No. **Minor 2** was already 18. It was **Minor 1**

25 Q. What did you let be known about **Minor 2**

1 A. Well, I didn't want **Minor 2** or her boyfriend --
2 I didn't call him that -- or her boyfriend on the
3 property at all. And I told my wife and my children
4 if they go on the property at all and you don't tell
5 them to get off and you let them stay, then I'm not
6 paying anything in this house anymore, not paying
7 the bills anymore. And since I'm disabled, not much
8 they can do to me, you know. So I wasn't going to
9 pay for it anymore. So the next thing I heard was
10 there was a big argument, and now I'm Chester the
11 molester.

12 Q. Okay. So all of this disclosure that you told
13 happened before anyone ever charged you with
14 molesting any girl -- any of your daughters?

15 A. Oh, yeah.

16 Q. Okay. Now, the boyfriend, what was his name?

17 A. Ryan.

18 Q. Okay. And --

19 A. He's --

20 Q. Go ahead.

21 A. The reason why I didn't want them on the
22 property wasn't, you know, to do -- it was to do
23 with her and him were stealing -- my son Eddie that
24 you met, they were stealing his hyperactivity, HDHD
25 [sic] drugs or whatever. And every time that Karley

1 told me that when she went to find them --

2 MS. MAYES: Objection to hearsay.

3 THE COURT: Don't say what somebody else said.

4 As a result of what Karley said, what did you do?

5 THE WITNESS: I put down the mandate that they
6 weren't allowed on the property anymore.

7 BY MR. SHEALY:

8 Q. And did they still come onto the property; do
9 you know?

10 A. Not to the best of my knowledge. Not until
11 that day that they said there was a big argument.

12 Q. Now, before your arrest, was alcohol allowed in
13 your home?

14 A. No.

15 Q. Have you since learned whether or not it's now
16 allowed in your home?

17 A. Well --

18 MS. MAYES: Objection. Objection to hearsay
19 and speculation.

20 MR. SHEALY: Withdraw the question, Your Honor.

21 THE COURT: Sustained.

22 BY MR. SHEALY:

23 Q. Well, you've heard the testimony of **Minor 2** and
24 **Minor 1** and **Minor 3**

25 A. Uh-huh.

1 Q. How did that testimony make you feel?

2 A. Like shit. Plain English.

3 Q. Do you -- do you --

4 A. Mad. Mad, because if they would have told me
5 they didn't want anything to do with me or didn't
6 want me there, I would have left along time ago.
7 And I could have started enjoying myself a lot
8 earlier.

9 Q. But they didn't tell you, did they?

10 A. No.

11 Q. Have you ever threatened **Minor 2** **Minor 1** or
12 **Minor 3** --

13 A. No.

14 Q. -- with any type of bodily harm or anything
15 like that?

16 A. No. No.

17 Q. Have you ever harmed them physically?

18 A. No; never had any reason.

19 Q. And did all these -- did you routinely, on a
20 weekly basis, abuse -- sexually abuse these
21 children?

22 A. No, I did not.

23 Q. And did you have any indication that these
24 allegations would be made prior to your arrest at
25 Midlands Tech?

1 A. I had a feeling.

2 Q. How did you have that feeling?

3 A. Because back in 1996, my 36-year-old daughter,
4 during the course of a divorce in -- you know, in
5 the '90s, she accused me of something similar. And
6 there was no -- there was no -- it didn't go any
7 further than accusations.

8 But when **Minor 2** and her boyfriend went up to
9 visit my eldest daughter, I thought this was well
10 over -- over and done with a long time ago. And we
11 were -- Jennifer and I get along -- were getting
12 along good. And she went and told **Minor 2** the
13 story. And **Minor 2** came back and told her mother
14 and her mother told me. And that's the way I found
15 out about it. And I said, here we go again.

16 And I didn't know if anything was going to
17 happen. I was hoping not. But the madder I got at
18 **Minor 2** the more words that we had, the more I
19 cussed out her boyfriend and told her she wasn't
20 welcome on the property anymore and told her that if
21 she wanted to talk to her mother, she could call her
22 or go meet her at McDonald 's.

23 I wasn't -- I thought about what could be the
24 ramifications of that. But I just said to hell with
25 it; otherwise, I'd have that hanging over my head

1 forever.

2 Q. Okay. Now, you've heard the letter read into
3 evidence.

4 A. (Nods head.)

5 Q. You have to say yes or no.

6 A. Yes.

7 Q. Okay. And you've always, from day one, even
8 against my advice, have admitted that you wrote that
9 letter?

10 A. Yes. I wrote that letter and I meant every
11 word.

12 Q. All right. And --

13 A. You know, they wanted me to do a handwriting
14 sample and all that. I said no. I said, why don't
15 you just let me say, yes, it's my letter, yes, I
16 wrote it?

17 MR. SHEALY: Is this possible to be open?

18 MS. MAYES: No objection.

19 THE DEFENDANT: I have a copy.

20 BY MR. SHEALY:

21 Q. I'll give you the original. Is this the letter
22 you sent?

23 A. Yes.

24 Q. And this is State's Exhibit 14. All right.

25 Let's take you through the letter.

1 All right. The -- this letter was, in fact,
2 written to Karley?

3 A. Yes.

4 Q. And what was your intent in writing the letter?

5 A. Giving up.

6 Q. Well, at the very start, you start telling them
7 about your personal property and --

8 A. Well, I was worried about them going homeless
9 again. That was my biggest concern, was the
10 financial stability of the family and what would
11 they do if I wasn't there and I wasn't getting the
12 money coming in, you know, because nobody else
13 worked. I mean, I didn't know what was going to
14 happen. So I was very fearful of that.

15 Q. So **Minor 1** didn't work either, even though she
16 dropped out of school?

17 A. No. No.

18 Q. Now, going back to things that you said about
19 when you moved in -- we'll get back to the letter.

20 Did **Minor 1** have several pets?

21 A. Yes.

22 Q. What kind of pets did she have?

23 A. Well, the last I -- three cats and a dog. And
24 the dog growled at me every time I went over there
25 and the dog was leaving.

1 Q. Is that what you told her is that she was going
2 to lose the dog?

3 A. Yeah, and all the cats. But I let her keep
4 one. I was paying for them.

5 Q. Did that make her unhappy?

6 A. I don't know. It didn't really make any
7 difference.

8 Q. Okay. Going back to the letter, the first part
9 you're talking about the Higher One card. What is
10 that?

11 A. That's money that you get from the government
12 to go to school. They put it on a card.

13 Q. Okay. And you told her what to do with that
14 and what to do with your debits cards and things of
15 that nature?

16 A. Yeah.

17 Q. All right. Now, what was your understanding
18 about the money you were receiving from the
19 government for -- was it SSI or social security?

20 A. You know, I was under the assumption that SSI
21 continues until you get sentenced to prison. Well,
22 I was mistaken. Until you get sentenced to jail or
23 kept in jail, the money stops.

24 Q. Okay. And what was your instructions to Karley
25 about the bank account and the money coming from

1 SSI?

2 A. That I was sending my debit card to a former
3 friend, pastor, up in Michigan and that he was going
4 to set up an account for me. And I was going to
5 take care of the rent, 500 bucks a month, to
6 probably write to the -- write to the landlady.

7 Q. Okay. And you also talked about on the second
8 page that you were not considering suicide. What
9 was that about?

10 A. Well, they had me -- I made the comments when I
11 got arrested and got to the jail. And they --
12 they -- I got arrested with my electric wheelchair,
13 and they acted like there could be a bomb or
14 something in it. So I said, if there was, I'd push
15 this button just like this and we'd go boom. Well,
16 that put me on suicide watch, because I was
17 threatening homicide.

18 So I spent five days naked. And I don't care
19 what they say, I mean, I was naked in a cell with
20 the light on 24/7. It was more like psychological
21 warfare. That's what it reminded me of. If I
22 wasn't crazy, any more of that -- I mean, I went
23 more than two weeks. And I told them, if you don't
24 get me out of here, I'm going to be crazy. So --

25 Q. And didn't --

1 A. -- that's what that was about, naked in a jai
2 cell.

3 Q. And then when you -- after --

4 A. And I don't know if they read the letters, so I
5 just put in there if anybody is reading.

6 Q. After that you also added, just for your
7 knowledge, I'm not asking for bail and have already
8 told the lawyers they gave me it's not going to
9 trial, I'll stay here until sentenced to prison.

10 A. Well, I gave up. I mean, this has happened so
11 many -- not this particular thing. But the Feds
12 trying to get me into prison so many other times
13 that I just said screw it, you know, that's it for
14 me.

15 Q. Okay. But that's the only time you've been to
16 prison?

17 A. I said I'm 61, arts and crafts sounds cool.

18 Q. And that's the only -- the only time you've
19 ever been to prison was --

20 A. Was 2011. Yeah.

21 Q. So the government --

22 A. But that turned me into a felon and I lost all
23 my weapons and everything.

24 Q. Okay. Now, the -- and then after you had a --
25 are you there admitting that you're guilty of these

1 allegations?

2 A. No way.

3 Q. So why did you say that?

4 A. Why did I say what I said?

5 Q. Why did you say it's not going to trial, I'll
6 stay here until sentenced to prison?

7 A. Because I really had -- this was a few days
8 after I was arrested, and I had given up and just
9 said to heck with it, I don't care anymore. I had
10 enough, you know, all these years. I mean, I -- I'm
11 on a domestic terrorist watch list, I'm on -- when
12 you go to fly in a plane you have to be taken
13 through Homeland Security and everything.

14 It just got to be me telling the government
15 where to go for so many years and it got to be
16 enough. And I just said I couldn't take it anymore.

17 Q. Okay. And the -- and it --

18 A. And I still feel the same way.

19 Q. And it was also after you were kept five days
20 naked in a cell, is that correct, with the light on
21 24/7?

22 A. Yeah.

23 Q. Now, then you said, if I'm gone before the
24 children turn 18, you can apply for SS for them
25 also.

1 A. Well, if I -- I have social security. And when
2 I die -- when you die and your children did not turn
3 18 yet, you can collect social security on them. So
4 that's what I was telling her.

5 Q. So that's what you mean by if I'm gone?

6 A. Well, if I'm dead before they turn 18, yeah.

7 Q. And then you said if you couldn't be with your
8 children, you'd rather be dead.

9 A. Well, yeah. I was despondent. That's the way
10 I always felt, and I've told Karley that.

11 Q. And then later --

12 A. Now I'm over it.

13 Q. The letter expressed concerned about her health
14 and her need to get her health back.

15 A. Well, yeah. She kept getting -- I mean, I
16 loved her as the mother of my children, but I wasn't
17 in love with her anymore. And I just -- I couldn't
18 get past that the time that I did not see her, she
19 got bigger and bigger and bigger, you know. I just
20 couldn't deal with it. And I always said I'd never
21 let that happen to my children. Well, they eat
22 well.

23 Q. And right before the -- to the top of page 3,
24 you comment that I'm sure you want nothing to do
25 with me. What's that all about?

1 A. Say that again. I'm sorry.

2 Q. At the very end of page 2, the back of the
3 first page, at the top of page 3, you talk about
4 Karley -- that you're sure, you, meaning Karley,
5 don't want anything to do with me?

6 A. Well, so many years of going through what we
7 went through -- I mean, my children were constantly
8 getting picked on and stuff with other children when
9 their father's face was on the front page of the
10 newspaper; when they went to school, their teachers
11 would say, negative -- to be nice, negative things
12 about be. And they were my children.

13 I put them -- I been a part of antigovernment
14 groups since back in the mid '70s. So I've always
15 had my very strong feelings and I voiced my opinion
16 everywhere.

17 Q. Okay. And you told them that on your computer
18 hard drive, you had movies for Aiden and cartoons.
19 And then you said that you hate -- or, I hate myself
20 more than anyone else could. What would --

21 A. Well, I was just having regrets that I put them
22 through all this for so many years and then had it
23 come to this.

24 Q. Were you admitting that you had done anything
25 physically wrong?

1 A. No. No.

2 Q. Okay. And the rest of the letter, you talk
3 about you deserve what happens to you. You think
4 all that is just --

5 A. Well, I put my family through everything I did
6 so many years. And it seems like since I don't seem
7 very much hopeful for what I believe in, it seemed
8 like I wasted a lot of my years spinning my wheels
9 over nothing, you know, nothing that I could see
10 making changes for by myself. It would take --

11 Q. But despite all this, at the time you wrote
12 this letter, you stated that you still loved them;
13 is that correct?

14 A. Yeah. And I do.

15 Q. Now, the --

16 MR. SHEALY: Pardon me for a moment, Your
17 Honor.

18 BY MR. SHEALY:

19 Q. Now, you heard Eddie's testimony about the
20 covers and leaving the room and all that. Do you
21 recall that incident taking place?

22 A. No. I'd be lying if I did.

23 Q. Okay. Was it unusual for your children to be
24 together with you on the bed or under covers?

25 A. No. No, because three of them usually slept

1 with me.

2 Q. Was there ever anything sexually going on?

3 A. No.

4 Q. Have you ever placed your mouth on their
5 private parts?

6 A. No. No.

7 Q. Have you ever with your fingers touched their
8 private parts either over or --

9 A. No. I've never touched them, period, not that
10 way. I mean, I used to give them baths and stuff
11 like that. But no.

12 Q. Okay. Now, getting back to Karley, after you
13 sent this letter, what happened to your SSI?

14 A. Oh, she got it. She took the card. She
15 went to -- she went -- she went to the courthouse,
16 got herself -- got them to say that she was my legal
17 wife. And she went and picked up my personal
18 belongings, along with everything that I was worried
19 about that I had in the bag too.

20 And she got ahold of the card and spent the
21 money for a year. I don't know whether she told
22 welfare about it, but she spent -- I got a bill a
23 couple months back for \$8,600.

24 Q. Did you receive that \$8,600?

25 A. No. I was in Alvin S. Glenn.

1 Q. So was this the first you heard that this
2 \$8,600 --

3 A. Well, when I started getting the bills, yeah.

4 Q. That's the first you learned about this?

5 A. That she spent the money or that she was taking
6 the money out of the account?

7 Q. Well, that she was receiving money from SSI.

8 A. Yeah.

9 Q. And did she get your permission for that?

10 A. Well, in the letter I told her -- no, she did
11 not get my permission.

12 Q. All right. In the letter you told her that it
13 would go to your bank account and that you'd pay the
14 rent; right?

15 A. Yes. I said a lot of things to Karley though
16 because I was trying to get her -- I was trying to
17 get her to get her parents to cover the money that
18 she needed so I didn't have to move back to the
19 house, because my children didn't want to listen to
20 me anymore without a leg. So I couldn't chase them
21 anymore. So --

22 Q. So Karley's parents are well off?

23 A. Yeah.

24 MR. SHEALY: Thank you, Your Honor. That's all
25 I have.

1 THE COURT: Ma'am.

2 MS. MAYES: Yes, sir, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. MAYES:

5 Q. Mr. Kreis, you have gone into a lot of detail
6 here about your antigovernment beliefs. And your
7 testimony is that those antigovernment beliefs put
8 you on, I believe what you called, a domestic
9 terrorist watch list?

10 A. Uh-huh.

11 Q. Why is that?

12 A. Why is that?

13 Q. Why is that?

14 A. Because the government feels that the
15 organizations are a threat to the security of the
16 United States.

17 Q. What organizations?

18 A. The -- to begin with, the Ku Klux Klan for 13
19 years, the Posse -- the Sheriff's -- it's called the
20 Christian Sheriff's Posse Comitatus, antigovernment
21 group for 12 years, and then Aryan Nations.

22 Q. Aryan Nations?

23 A. Yeah. And I took over Aryan Nations for Pastor
24 Butler.

25 Q. You took it over?

1 A. Yes; international leader.

2 Q. International leader --

3 A. Yeah.

4 Q. -- of Aryan Nations?

5 A. Yeah.

6 Q. And the KKK in this state?

7 A. In this state? No. I don't have anything to
8 do with the Klan in this state.

9 Q. What state?

10 A. That was in Pennsylvania.

11 Q. Those are all groups you chose and elected to
12 be a part of; correct?

13 A. Absolutely.

14 Q. So the government isn't out knocking on your
15 door, tracking you down because you're sitting there
16 watching TV, they're tracking you down because
17 you're the leader of the Aryan Nations; correct?

18 A. Yeah.

19 Q. There's a reason that you're on a domestic
20 terrorism watch list; correct?

21 A. In their mind.

22 Q. And just as you chose to become part of those
23 groups, you chose all of the media attention that
24 you could find to make yourself a public spectacle;
25 correct? The Jerry --

1 A. A public spectacle? No.

2 Q. The Jerry Springer show?

3 A. Not a public spectacle. I used whatever means
4 I had to my advantage to spread the word.

5 Q. All right. So when you went on the Jerry
6 Springer show by your own choice, that was to spread
7 the word?

8 A. That was to spread the word, that's right.

9 Q. The word of the Aryan Nation?

10 A. The word of white segregation, period.

11 Q. And, ultimately, you were kicked off even of
12 the Jerry Springer?

13 A. Even? I called him a hook-nosed bastard.

14 THE COURT: You called him what?

15 THE WITNESS: I called him a hook-nosed
16 bastard. And I told that I had his mother in the
17 trunk of my car, she was a piece of luggage.

18 THE COURT: What do you mean by that?

19 THE WITNESS: Well, the Jews said to the
20 Germans, turned them into lampshades and soap and
21 all kinds of stuff, so I was advertising.

22 BY MS. MAYES:

23 Q. So you made derogatory statements to the host,
24 Jerry Springer, and as a result, you were kicked off
25 that show; is that correct?

1 A. And paid to come back the following week.

2 Q. And then in 2005, you spoke with the media
3 about, quote, joining forces with Al Qaeda; correct?

4 A. Yes.

5 Q. And under your proposition, your group, the
6 Aryan Nation, would join forces with Al Qaeda?

7 A. Only to the extent that we have a common enemy.
8 Now, I've since rescinded that because the -- it
9 just wouldn't work. I mean, it's not the way for
10 our folk. But I did contemplate that for a while,
11 yes.

12 Q. And, again, you spoke to the media about that
13 to express that viewpoint; correct?

14 A. Correct.

15 Q. So just to clarify, we're not talking about a
16 situation where you're minding your own business
17 there at [REDACTED] or there at that
18 apartment on St. Andrews Road. You're out seeking
19 as much public attention you could find to draw
20 yourself to the attention of the federal
21 authorities; correct?

22 A. No, that's not what you do it for. I used the
23 media just like they used me. But that's not what I
24 was doing it for. I mean --

25 Q. Well, you're not surprised you'd be on a

1 domestic terrorism watch list; correct?

2 A. That's pretty funny, because I know the truth,
3 you know. I know what I've done and not done. And,
4 you know --

5 Q. So let's talk about --

6 A. -- they've wasted a lot of time watching me.

7 Q. Let's talk about your federal conviction.

8 A. Let's.

9 Q. Federal conviction for false statements to
10 federal authorities, and that was in 2011; correct?

11 A. It wasn't false statement, it was a false
12 omission.

13 Q. Which resulted in your conviction; correct?

14 A. Correct.

15 Q. And your statement during direct examination
16 there with Mr. Shealy, is that when you wrote that
17 letter, that letter that you just testified you
18 meant every word of, where you're begging for the
19 forgiveness of your wife and your children, and you
20 state: I deserve whatever happens to me. I'm so
21 sorry I hurt the only ones I love and loved --

22 A. I know what I said, ma'am.

23 Q. -- me, you, and our children. Correct?

24 A. Correct.

25 Q. Now, you were sitting in that detention center

1 at Alvin S. Glenn because of criminal sexual conduct
2 with a minor; correct?

3 A. That's what you say --

4 MR. SHEALY: Your Honor, this isn't -- he's
5 accused of.

6 A. I was sitting there because I was arrested on
7 February 19th and taken away from my family and not
8 given any -- not given a bond because I was a flight
9 risk, supposedly. No, I was there because you
10 people took me away --

11 Q. I will rephrase --

12 A. -- and your ZOG.

13 Q. You were arrested --

14 THE COURT: I'm sorry. What was that last
15 thing?

16 THE WITNESS: ZOG.

17 THE COURT: What?

18 THE WITNESS: Zionist Occupational Government.

19 THE COURT: Thank you.

20 BY MS. MAYES:

21 Q. All right. You were arrested for criminal
22 sexual conduct with a minor; correct?

23 A. Correct.

24 Q. Okay. So you're sitting there in that
25 detention center, arrested for criminal sexual

1 conduct with a minor, and you state: I hate myself
2 more than anyone else could. I deserve whatever
3 happens to me. And your testimony is, oh, you only
4 said those things because you, quote, gave up?

5 A. Correct.

6 Q. Because the feds, as you put it, are out to get
7 you; correct?

8 A. Pretty much.

9 Q. Your daughter **Minor 3** your daughter **Minor 1**
10 your daughter **Minor 2** they're not feds, are they;
11 they're your children?

12 A. No. But they've been taken through a bunch of
13 psychobabblists, pseudoscientist pieces of shit that
14 don't know anything but to -- couldn't find their --
15 no. They're being used. They're being used. In my
16 eyes, they're being used, ma'am.

17 Q. Mr. Kreis, your daughters went to the Lexington
18 County Sheriff's Department --

19 A. I know what happened, ma'am.

20 Q. Your daughters spoke to this detective and to
21 Sergeant Barr before they ever met any, as you put
22 it, psychobabblists. You're aware of that, aren't
23 you?

24 A. Well, no, I was in jail. Nobody told me
25 anything.

1 Q. You've seen the discovery in this case, haven't
2 you?

3 A. Oh, yeah, now I have.

4 Q. Now, let's talk about [REDACTED].

5 While you resided there with the girls, we're
6 talking 2005 through 2008, **Minor 2** was 11 and 12
7 years old, **Minor 1** was 9, 10, and then turned 11 in
8 that house. Do you remember that?

9 A. Yeah.

10 Q. You remember **Minor 1** -- you remember the little
11 things? You remember **Minor 1** breaking her arm on her
12 bike around the time of **Minor 2** 12th birthday?

13 A. I can remember when she broke her arm, yeah.

14 Q. And then you remember that the family, after
15 you resided there, moved on to, eventually,
16 St. Andrews Pointe apartments and you lived there?

17 A. Yes.

18 Q. And the house in Cassatt, as you put it, you
19 weren't living there?

20 A. No.

21 Q. You were coming to visit --

22 A. Yes.

23 Q. -- but you weren't actually living there day in
24 and day out with the children anymore, were you?

25 A. No. I was paying the bills, but I was not

1 living there. No.

2 Q. And the fact that you paid the bills, to say
3 that you're the financial provider of your family,
4 that's an understatement. You're the only provider
5 for the family, aren't you?

6 A. Well, I mean, in the capacity of my SSI check,
7 I was, yeah.

8 Q. And it had been the case --

9 A. But they were getting -- they were getting a
10 thousand dollars a month in food stamps and 571, I
11 believe, in welfare.

12 Q. The SSI, as you just put it, I believe, is when
13 you said you found the house in Cassatt; correct?

14 A. Yes.

15 Q. And you getting arrested certainly doesn't help
16 the financial situation, does it? Your SSI has been
17 terminated because you've been arrested, hasn't it?

18 A. It's been terminated because I'm in jail, yes,
19 after a year of getting it.

20 Q. That's right. You don't receive that money
21 anymore, do you?

22 A. No. And you're getting at?

23 Q. It's a question, sir. You don't receive the
24 SSI money anymore, do you?

25 A. I got the bill.

1 Q. And as to the house in Maplewood, you weren't
2 working. You were getting that SSI check, but you
3 weren't working. So you're home during the day?

4 A. No. I was getting my pension back then.

5 Q. Well, you were getting a pension back then
6 because you had not yet been convicted of a federal
7 crime, the felony that took your pension away. So
8 you were getting a pension, but you weren't
9 physically working outside of the home. So you were
10 there during the daytime; correct?

11 A. Correct.

12 Q. And you were there during the nighttime;
13 correct?

14 A. Correct.

15 Q. Now, you mentioned your involvement in the
16 Navy. Tell us, how long were you in the Navy?

17 A. Ten months.

18 Q. So you were in the Navy ten months. And once
19 you left the Navy, it still --

20 A. I got an early out. Navops 113.

21 Q. And even decades later, it qualifies you for
22 the financial assistance such as the VRAP that
23 allows you to attend Midlands Technical College;
24 correct?

25 A. Correct.

1 Q. And your testimony during direct examination is
2 that when **Minor 2** was helping care for you after
3 your surgery due to the diabetes -- and it's the
4 diabetes that led to you becoming a disabled vet;
5 correct?

6 A. Correct.

7 Q. That when **Minor 2** cared for you, you said, she
8 took care of me, she did a good job.

9 A. And she did.

10 Q. And your testimony was that the reason you put
11 those particular excerpts in that letter is because
12 you, quote, gave up. You said, the feds had been
13 trying to get me in prison, and it's happened so
14 many times, you gave up?

15 A. Oh, yeah. Because now I figured they were
16 behind my children coming out and saying what they
17 did.

18 Q. Mr. Kreis, you're testifying in this courtroom
19 that you think the feds have anything to do with
20 your daughter --

21 A. Yes, I do. Yes, I do. That's my intention.

22 Q. So your testimony is that whatever has happened
23 in the courtroom is the result of the feds having
24 something against you; correct?

25 A. It's the result of the government getting

1 involved with my family. Yes. That's my
2 contention.

3 Q. Mr. Kreis, in this state, in this country, you
4 agree that feds get involved when children -- the
5 State gets involved, the government gets involved,
6 the feds get involved when children are abused;
7 correct?

8 A. Correct.

9 Q. Especially when it's sexual abuse; correct?

10 A. I guess.

11 Q. That's no surprise to you, is it?

12 A. No.

13 Q. That it becomes a police matter?

14 A. Yeah, when it's for real.

15 Q. And let's go back to what you were saying
16 earlier during your direct examination concerning, I
17 believe you said her name is, Jen. Who is Jen?

18 A. My eldest daughter.

19 Q. Your eldest daughter?

20 A. The one I did the TV shows with.

21 Q. All right. Well, we know about the children
22 that you have with Karley Hollis --

23 A. Would you like to know why that was said?

24 Q. Let me finish my question.

25 The oldest of your children with Karley Hollis

1 being **Minor 2** and then six younger siblings.

2 A. Uh-huh.

3 Q. So Jennifer Kreis would be a child with another
4 person?

5 A. Correct; my first wife.

6 Q. And you say that Jennifer also made allegations
7 of sexual abuse against you; correct?

8 A. Yes.

9 Q. But you said they were only allegations.
10 Mr. Kreis, you're aware that case was reported and
11 investigated by the Pennsylvania state police;
12 correct?

13 A. Correct.

14 Q. And it didn't only involve your daughter
15 Jennifer, but also your daughter Amy; correct?

16 A. Yes. Yes. She said she was laying on the
17 floor in the living room and he touched my breasts.
18 Yeah.

19 But now for the rest of the story, like Paul
20 Harvey says, I was in a very bad divorce with my
21 wife. I got the children, including my
22 eight-year-old son at the time. What she did was
23 she used the government to get them to put a PFA
24 against me without any evidence or anything. And
25 they put a PFA against me and they kidnapped my son

1 from school.

2 THE COURT: What's a PFA?

3 THE DEFENDANT: Protection from abuse.

4 THE COURT: Go ahead.

5 THE WITNESS: Yeah. And that was the rest of
6 it.

7 BY MS. MAYES:

8 Q. All right. That protection from abuse was
9 actually a restraining order; correct? And, in
10 fact, there's a restraining order that prevents you
11 from having any contact with the parent of those
12 daughters, Jennifer and Amy; correct?

13 A. Well, there was. I mean, she got a PFA against
14 me, yes, back then. I mean, we're talking, you
15 know, in the '90s.

16 Q. Okay. And you're the one that brought it up on
17 direct examination is why I'm following up on
18 exactly who Jen is and what that was --

19 A. I don't care. I don't mind.

20 Q. Now --

21 A. My whole life is on the internet.

22 Q. If your whole life is on the internet,
23 Mr. Kreis --

24 A. Yeah, except for this. Well, maybe even this
25 now.

1 Q. You chose, again, to put your life on the
2 internet and make your viewpoints public; correct?

3 A. Well, somebody has to.

4 Q. And those words, I'm so sorry, I hurt the only
5 ones I love and loved me, you and our children,
6 those are your words; correct?

7 A. Correct.

8 MS. MAYES: Nothing further.

9 THE COURT: Redirect, if any.

10 MR. SHEALY: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. SHEALY:

13 Q. The investigation involving Jen and Amy, did it
14 result in criminal charges against you?

15 A. No. No.

16 Q. Were you --

17 A. The only way I found out was that she made out
18 about four or five affidavits and some antiracist
19 action people got ahold of it and started making
20 copies and sending it around the country trying to
21 demean me, just like all this is doing.

22 Q. Right before all these allegations, did you
23 become aware that **Minor 2** visited Jen?

24 A. (Nonverbal response.)

25 Q. Did **Minor 2** visit Jen before these allegations?

1 A. Yes. Yes. Probably about -- well, I don't
2 know now. I've been in jail almost two years.

3 Q. Okay.

4 A. Probably a year before this supposedly
5 happened.

6 MR. SHEALY: Thank you, Your Honor. That's all
7 I have.

8 THE COURT: Thank you.

9 MR. SHEALY: Your Honor, if I may, I need to
10 confer with my client just a second.

11 Your Honor, the Defense rests.

12 THE COURT: The Defense rests?

13 MR. SHEALY: Yes, Your Honor.

14 THE COURT: Anything in reply?

15 MS. MAYES: Nothing from the State, Your Honor.

16 THE COURT: All right. Madam forelady, ladies
17 and gentlemen, that concludes all of the testimony
18 in the case. What we have left is, as I discussed
19 with you prior to the lunch break, is final
20 arguments my charge. I have to spend, I don't know,
21 15, 20 or 30 minutes with the lawyers on the charge,
22 so that takes us to about 4:30 after the break. And
23 I got word from the bailiff that y'all would like to
24 come back in the morning and finish it up. All
25 we'll have left in the morning is the final

1 arguments and my instructions. Is 9:45 okay?

2 THE FOREWOMAN: Yes, sir.

3 THE COURT: All right. We'll plan to start
4 right at 9:45. I want you to have a very pleasant
5 evening. Please do not -- even though there's been
6 some mention in here about internet and so forth,
7 don't do any type of research on the internet or
8 discuss the case or let anybody discuss it with you.
9 Do not start any deliberations. Y'all have paid
10 wonderful attention. I appreciate everything.
11 We'll finish it up tomorrow, and then that will
12 conclude your service this week. Thank you very
13 much. Have a pleasant evening.

14 (The jury is excused for the evening at
15 3:53 PM.)

16 THE COURT: Anything for the record before we
17 break for the evening?

18 MS. MAYES: Nothing from the State, Your Honor.

19 MR. SHEALY: No, Your Honor.

20 THE COURT: All right. I intend to charge my
21 normal standard charge on multiple indictments;
22 presumption of innocence, reasonable doubt, judge
23 and jury, credibility of witnesses, prior record of
24 the defendant, and then the three statutes on
25 criminal sexual conduct with a minor second degree,

1 lewd act, or attempted lewd act.

2 Anything else requested by the State?

3 MS. MAYES: Your Honor, the State would request
4 the Court's standard charges on both expert
5 witnesses and then direct and circumstantial
6 evidence.

7 THE COURT: I left those out. That's correct.
8 I have standard expert witness charge and the direct
9 and circumstantial.

10 Mr. Shealy, anything in particular you want?

11 MR. SHEALY: Just a couple questions, Your
12 Honor. First, if I'm -- the circumstantial
13 evidence, would that be the blanket issue or is
14 there some other circumstances I'm not aware of? I
15 don't know what other circumstantial evidence there
16 is.

17 THE COURT: Well, it's the normal one that
18 they've asked us to -- the direct and
19 circumstantial, give it same weight. But if you
20 come back in my chambers, I'll let you read it
21 verbatim.

22 MR. SHEALY: I'm sorry, Your Honor. I wasn't
23 clear. As to the trial, I was not aware that --
24 other than the blanket issue --

25 THE COURT: Oh, what circumstantial evidence

1 there is in this trial? I don't know.

2 MS. MAYES: The State's position is that he has
3 now denied the intentions of the letter. I believe
4 the letter would amount to circumstantial evidence
5 or, arguably, the jury could consider that as
6 circumstantial evidence in light of his testimony
7 and then in light of the content of the letter.

8 MR. SHEALY: I think the letter speaks for
9 itself, Your Honor.

10 THE COURT: I'll think about it. It's not a --

11 MR. SHEALY: The other question I have, Your
12 Honor, is if you could briefly outline your charge
13 on -- well, let me ask you. On reasonable doubt, is
14 it the charge about hesitating to act?

15 THE COURT: The kind of doubt that would cause
16 a reasonable person to hesitate to act, and then
17 there's very few things in this life that we know
18 with absolute certainty, but if you're firmly
19 convinced -- that charge.

20 MR. SHEALY: Thank you, Your Honor.

21 THE COURT: You can come back into my chambers
22 and read it.

23 MR. SHEALY: I've heard it before, Your Honor.
24 I just wanted to make sure it was the same.

25 THE COURT: Verdict form. There will be three

1 verdict forms; we find the defendant not guilty, we
2 find the defendant guilty, as to each indictment.
3 I'll have three separate verdicts forms. They're to
4 decide each indictment separate and apart from the
5 others. Anything else?

6 MS. MAYES: No, sir, Your Honor.

7 THE COURT: There's a charge sometimes they
8 give in criminal sexual conduct about corroboration.
9 You know the one I'm talking about?

10 MS. MAYES: Yes, sir, Your Honor.

11 THE COURT: I can't remember that code section.
12 If you give me that code section, I'll look at that
13 one as well.

14 MS. MAYES: I'll do so, Your Honor. And then
15 also, I believe, in the Court's standard charge on
16 criminal sexual conduct, it includes the language
17 that consent by the victim is not a defense.

18 THE COURT: That's correct. It's part of the
19 statute.

20 MR. SHEALY: The -- as to the corroboration
21 instruction, Your Honor, we do object as being a
22 comment on the evidence.

23 THE COURT: A comment on the evidence?

24 MR. SHEALY: Yes, Your Honor.

25 THE COURT: Do you have any case law to support

1 that? Because that's a statute, that's law. How
2 can that be a comment on the evidence?

3 MR. SHEALY: You're commenting that there's no
4 corroboration --

5 THE COURT: I'm not saying there's none. I
6 said that there's a statute -- statute such-and-such
7 says -- hand me the statute.

8 MS. MAYES: I believe that's going to be
9 16-3-650- -- 658 -- 16-3-657, Your Honor.

10 THE COURT: It simply says this: The testimony
11 of the victim need not be corroborated in
12 prosecutions under Section 16-3-652 through 658
13 which includes criminal sexual conduct with a minor
14 second degree.

15 I don't know how in the world charging that
16 statute would be a comment on the facts. But if you
17 give me some law on that, I'll be glad to look at it
18 over the evening.

19 MR. SHEALY: Your Honor, the --

20 THE COURT: I'll call your attention to maybe
21 State vs. Schumpert, that old case from 1993 out of
22 Newberry.

23 MR. SHEALY: Your Honor, that is one of the
24 cases. And I believe that -- well, I'm also looking
25 at State v. Rayfield, 369 SC 106, a 2006 case.

1 However, it held that you're not required to charge
2 that statute.

3 THE COURT: That's correct, I'm not required
4 to.

5 MR. SHEALY: But if you do charge it, it's
6 impermissible error from the instructions, not duly
7 emphasized, and charge as a whole comports with the
8 law. Your Honor, we're asking that you not charge
9 it. Realizing under Rayfield that that's purely
10 within your discretion.

11 THE COURT: Well, at the present time, I will
12 charge it. But I will invite you to give me any
13 additional case law by tomorrow that would support
14 your position on that.

15 MR. SHEALY: Thank you, Your Honor.

16 THE COURT: Anything else, ladies and
17 gentlemen?

18 MS. MAYES: Nothing from the State, Your Honor.

19 THE COURT: We'll do the verdict forms and let
20 you look at them in the morning. They're very
21 simple.

22 Anything else by anybody?

23 MS. MAYES: Nothing from the State, Your Honor.

24 MR. SHEALY: Nothing from the Defense, Your
25 Honor.

1 THE COURT: All right. Everyone have a
2 pleasant evening. We'll stand at ease until 9:45 in
3 the morning.

4 (Court in recess for the evening at 4:01 PM.)

5 THE COURT: Anything by the State before we
6 start final arguments and charges?

7 MR. SAMELLAS: Just one quick thing, Your
8 Honor. When I was walking into the courtroom, one
9 of the jurors walked by me and talked to me. I just
10 kept my head down and kept going. I just wanted you
11 to be aware of that, and I let Mr. Shealy know as
12 well. I did not say a word.

13 THE COURT: Thank you. It's hard to pass in
14 the halls sometimes.

15 MR. SAMELLAS: Yes, sir.

16 THE COURT: All right.

17 Mr. Shealy, anything for the record?

18 MR. SHEALY: No, Your Honor. And -- well, just
19 so you know, I would have done the same thing.
20 That's the only way I know of to handle that.

21 THE COURT: Thank you.

22 Mr. Kreis, good morning.

23 THE DEFENDANT: Good morning.

24 THE COURT: All right. Are you going to open
25 on the law or waive opening?

1 MS. MAYES: The State waives opening, Your
2 Honor.

3 THE COURT: Mr. Shealy, are you ready?

4 MR. SHEALY: I am, Your Honor.

5 (The jury enters the courtroom at 9:57 AM.)

6 THE COURT: Madam forelady, ladies and
7 gentlemen, good morning. I hope everyone had a
8 pleasant evening. What we have left, as I told you
9 yesterday, we got everything done that we had to so
10 we could go straight into the arguments this
11 morning.

12 Mr. Shealy will start the closing arguments,
13 followed by the State. Once they've completed their
14 arguments, then I will instruct you on the law, and
15 then you'll be given the case to start your
16 deliberations.

17 Please bear in mind that the closing arguments
18 is simply like the opening statements; that is not
19 evidence in the case. You've heard all of the
20 evidence from which you'll make your decision.
21 Obviously, the attorneys will be advocating their
22 respective sides and arguing the evidence in the
23 light most favorable to their client. But the
24 argument is not evidence. You've heard the
25 evidence, as I've said. This is simply their

1 argument to you.

2 Mr. Shealy.

3 MR. SHEALY: Thank you, Your Honor. May it
4 please the Court.

5 THE COURT: Yes, sir.

6 MR. SHEALY: Good morning.

7 THE JURY: Good morning.

8 MR. SHEALY: As the Judge has told you, the
9 evidence portion of this case is over with. We've
10 done -- well, as soon as we get done with the
11 arguments, the lawyers are done. And the Judge's
12 part -- well, Judge has been working all throughout
13 the trial. But he will charge you and then he'll be
14 done. Then it all comes to you. And that's where
15 the rubber meets the road.

16 Before I get started, what, obviously, I'm
17 going to be talking about are the facts that came
18 out on the witness chair, and also the evidence.
19 Now, those facts as I relate them to you may or may
20 not be right, they may not be correct. Remember,
21 I'm an advocate. And sometimes I hear it the way I
22 want to hear it, and sometimes I hear it the way it
23 hurts us the most. It doesn't matter how I hear it.
24 What matters is what y'all recall of the facts that
25 came out and how y'all -- when y'all deliberate, how

1 y'all arrive at the truth and what facts are true
2 and what facts are not. So if I do misstate
3 something, I ask that you keep that in mind and that
4 you not hold that against my client, August.

5 Now, the burden of proof in this case is beyond
6 a reasonable doubt. And we'll talk about beyond a
7 reasonable doubt. But the burden of proof solely
8 rests on the State, on the solicitor. She and her
9 assistant, they're charged with proving my guilt --
10 my client's guilt beyond a reasonable doubt by
11 introducing witnesses and evidence.

12 August doesn't have to do a thing; he can just
13 sit there. We don't have to ask questions, we don't
14 have to present evidence, he didn't have to testify,
15 because he has the right to remain silent under the
16 Constitution, but he didn't. He readily admitted he
17 wrote this letter. And you've heard the letter.
18 You've heard the letter probably more than you
19 wanted to hear the letter. But you'll be able to
20 take that in and be able to read it. But the letter
21 is there and August has explained that to you --
22 that letter and what the circumstances and
23 backgrounds was.

24 He took the stand. He didn't have to. He took
25 the stand. He testified, he denied any confession

1 in the letter, and gave you the background and
2 circumstances of writing the letter and what the
3 context was. He also testified about his past,
4 about things that a lot of people may or may not
5 agree in, and may actually, when you heard that
6 testimony about the Ku Klux Klan and Aryan Nation,
7 the -- that might have gotten you upset, that might
8 have enraged you, that might have said, well, gee, I
9 don't like this guy, I want to hurt him for his
10 views. Well, that has nothing to do with what he's
11 charged with.

12 And that's what you've got to decide, is
13 whether or not he's guilty or not guilty of what
14 he's charged with, not of what his personal beliefs
15 were or are now. But, nevertheless, he told you
16 what they were. And when the solicitor asked him,
17 he went into great detail. He did not try to hide
18 any of the facts from you.

19 Now, remember in opening argument I asked you
20 to be skeptical. I asked you to use the demeanor of
21 the witnesses, to use your individual life
22 experiences as a group to determine what the truth
23 was and what testimony you believed and what
24 testimony you didn't believe. And this is important
25 because there is no other evidence other than the

1 testimony. I mean, we've got pictures and we've got
2 diagrams and things like that, we've got a letter.
3 But we don't have medical evidence, we don't have
4 the rape kit, whatever that is, we don't have any
5 independent evidence other than the testimony, both
6 for the State and for the Defense. So it's crucial
7 for you to consider credibility. That's what this
8 whole case boils down to.

9 And when August testified, he looked you in the
10 eye. He didn't mince words, he was very plain
11 spoken. He told you exactly what he knew and what
12 he did. He admitted his affiliations in the past,
13 and he also denied, several times, ever touching his
14 children inappropriately, to include placing his
15 penis in their mouth. He's denied having any sexual
16 contact with them.

17 He did tell you that he believed that he was
18 being pursued by the federal government because of
19 his beliefs, and he went into some detail about that
20 along with the solicitor asking him questions. Once
21 again, he did not hide that from you.

22 He told you that **Minor 2** did a good job taking
23 care of him, tending his wounds. He didn't have to
24 tell you that. He could have trashed **Minor 2**
25 Because of the things he said about him, he could

1 have easily retaliated. But he told you the truth
2 and that she was effective in taking care of him and
3 his wounds, the wounds arising from his diabetes.

4 He told you about his regrets raising the
5 children exposing them to the things he believed in
6 while they were growing up, and yet he always
7 supported them. Every person that testified talked
8 about him paying the bills. Every person. He
9 didn't have much money; in fact, he told you about
10 being convicted and losing his pension. He didn't
11 have much money, but he still supported his family.

12 When they were persecuted in Tennessee, he went
13 up there and got them. He was a student. He didn't
14 have a job. He was -- by that time -- at that time,
15 he was handicapped. But he still went and did his
16 fatherly duty to his family; he went up and he
17 brought them down here and set them up a place to
18 live. And the children all acknowledged that.

19 He also told you that he loved his children.
20 And I'll show you what's been marked as State's
21 Exhibit 2, a picture of that family. And you'll get
22 to look at that. That's a picture of a very proud
23 father of his family. And they're all sitting there
24 looking at the camera. And they're -- for all
25 intents and purposes in this picture, appear to be

1 very, very happy. And that's the description of the
2 family life that he gave you when he testified. He
3 was totally unaware that **Minor 1** was scared of him,
4 didn't like him; he was totally unaware of all these
5 other feelings that his daughters testified to.

6 Now, let's look at the testimony. **Minor 2** I
7 ask you to observe her demeanor. Throughout her
8 testimony, she rolled her eyes, she moved her hands,
9 she bounced in the seat, she was back and forth, she
10 rambled on answering the questions. Sometimes she
11 didn't even answer the questions; she said something
12 different. A lot of times it appeared she was
13 making things up as she went along and then she
14 would correct herself. There were three beds and
15 then there were two beds. It was normal, but by
16 normal, I don't mean normal, but it was normal. At
17 points in time, although there were times that she
18 cried, there were also times she appeared to be
19 really enjoying herself.

20 The testimony, she talks about these sexual
21 encounters happened many, many times, a whole bunch
22 of times, but she could only recount two. One dealt
23 with the penis that she said that he tried to put
24 his penis in her mouth, and she resisted, he failed,
25 and she got away from him and he didn't pursue. And

1 the other was touching her private parts -- I'm
2 sorry, about the failed attempt with the condom.

3 **Minor 1** she testifies almost exactly like her
4 sister about many, many times, but she could only
5 recall two events. The two events, one of them
6 involved him trying to place his penis in her mouth,
7 but she resisted and he failed and he didn't pursue
8 it. Then she talks about him touching her. But
9 those are the only two incidents. And they sound
10 awfully close to what **Minor 2** testified. A
11 relationship --

12 THE COURT: All my jurors with me? Young ma,
13 you with me? Open your eyes. Thank you.

14 MR. SHEALY: The relationship with her father.
15 **Minor 2** said she was his little buddy. Everything
16 was okay back then. He never threatened her to keep
17 quiet, never told her not to tell. His health was
18 failing, he started having bones taken out of his
19 feet. She complained that he never took care of
20 himself, that his diabetes got worse and worse, and
21 she implied, at least that's what I thought, that
22 she was concerned about his health. She said that
23 he went to one soccer game and that it became about
24 him because he fainted from what I took to be
25 diabetes, but his health gave out on him.

1 She cared for him. She dressed his wounds,
2 gave him medications. I submit to you, at that
3 point, she was the dominant one. He was at her
4 mercy. She could have revealed things then. She
5 was older. We're not talking about a 12-year-old
6 child now. But she didn't reveal anything.

7 Now, **Minor 1** told you she was scared of him,
8 claimed he yelled and was violent. August told you
9 he didn't realize that. But she never testified a
10 single time that he ever yelled at her or was ever
11 violent with her or that he ever hurt her, other
12 than the allegations that she made, which August
13 denied. There were no threats, even with **Minor 1**
14 Never threatened, never told to keep quiet.

15 Both girls at very early ages, according to
16 their testimony, was concerned about bills. They
17 both viewed August as their sole source of support.
18 And they acknowledged that he met that goal. And he
19 did that even when he was not living with them.

20 They also talked about the family being broke,
21 not have -- broken up, not having a father or a
22 mother, yet they didn't explain, why would this
23 affect the mother? If this incident took place, why
24 would the mother leave? I could understand about
25 the father leaving, but why would the mother leave?

1 There's no basis for that.

2 The reasons they gave for not telling, I submit
3 to you, are not reasons formulated by 10-, 11-, 12-,
4 13-year-old girls. I submit to you that these
5 reasons were developed after this revelation by
6 **Minor 2** after the argument with her mother. And
7 they knew they had to justify the delay in talking,
8 so they came up with reasons. And because the
9 reasons are so close, I mean, they use virtually the
10 same words, I submit to you that they have discussed
11 it, what they testified to.

12 Now, **Minor 3** testimony also flowed very well,
13 and it tracked **Minor 2** and **Minor 1**. It was like
14 the same two incidents with all three girls, and yet
15 all of them had multiple incidents that none of them
16 could recall they couldn't tell you about
17 specifically. So now we have three girls saying the
18 exact same thing, the -- and saying it happened more
19 times, but they can't recall.

20 Now, remember, the proof is on the State to
21 prove my client guilty. And I submit to you the
22 proof is in the details of the testimony of the
23 facts that were presented. And the burden is on the
24 State to bring those details out; not the burden of
25 August, not the burden of the Defense.

1 And all three girls would testify that one
2 moment August was touching their private parts.
3 Then all of a sudden, there's movement -- I'm sorry.
4 The next moment, he's trying to put his penis in
5 their mouth. They never talked about how that was
6 done, except **Minor 1** And who asked **Minor 1** the
7 question? The Defense did. The State didn't ask
8 her. **Minor 1** how did he do this?

9 What do you mean?

10 Well, how were y'all situated?

11 Well, that caught her by surprise, and
12 eventually she said, well, I was on my back.

13 Well, how was August situated?

14 Well, he was on his -- he was beside me on his
15 side.

16 I submit to you that any configuration where
17 she's on the back and he's on the side, any
18 configuration, there's no way you're going to get
19 his penis in her mouth that way. One of them would
20 have to be on top of the other or have to straddle
21 one. It would have to be a different way. So
22 that's just simply not believable.

23 Also, they resist. This is a pretty aggressive
24 act, a very aggressive act. And yet all three of
25 them resist. All three of them very small, very

1 young, and he doesn't pursue it, he stops. That's
2 just not believable either. If it's gotten to that
3 point, he obviously would have wanted satisfaction.
4 I mean, he's already gambled, but he doesn't pursue
5 it. That just doesn't make any sense. The State
6 never asked how they were situated, the State never
7 asked how he put the penis in their mouth.

8 **Minor 3** testimony is just like her sister, with
9 that one exception, the issue with the blanket, the
10 blanket when Eddie supposedly came in. Again, we
11 have no details there. Were they clothed? Where
12 were their hands? He didn't said there was movement
13 under the blanket, but he didn't testify whether he
14 saw their hands. He didn't testify if they were
15 clothed, he didn't testify if they were laughing or
16 talking, he didn't testify to any of that. All he
17 said was he felt uncomfortable. And yet it was --
18 and he admitted it was not unusual for all of them
19 to be in bed together watching a movie or whatever.
20 And August testified that that was true, that they
21 would often all spend time like that, just like a
22 father would with his children.

23 Both **Minor 3** and Eddie were coached. Remember I
24 asked you to watch as they testified. They would
25 answer the questions before they were asked. There

1 would be yes, ma'am, no, ma'am before -- they were
2 anticipating the question. They knew what the
3 question was and, in fact, the answer did line up
4 with the question by the solicitor. So they must
5 have known, they must have talked about it. And you
6 may or may not, and it's what y'all saw, not what I
7 believe I saw, but when I was questioning them,
8 often -- and sometimes when the solicitor was
9 questioning them, often they would look either at
10 the solicitors' table or at the people behind the
11 solicitors' table. I don't know why. I submit
12 that -- and when I say I submit, I'm arguing. I'm
13 arguing that they're looking for reassurance,
14 they're looking for guidance.

15 Now, Eddie testified that he told his mom what
16 happened with the blanket. Okay. Well, what
17 happened then? Nothing. All of a sudden that whole
18 line of questioning dried up. And where was she?
19 Where was Karley, the children's mother, during this
20 trial? Where -- August's wife. But she didn't
21 testify. Why not? Why didn't she explain why
22 didn't something happen whenever Eddie told her? I
23 submit to you that as to the facts, that she did not
24 testify and that you should draw whatever conclusion
25 from that that you feel is appropriate.

1 Now, let's look at Ms. Smith's expert
2 testimony. What did she testify to? The State
3 presented her; we did not. She testified children
4 can lie. She said that. I submit to you adults can
5 lie too. The -- she also went into a lot of
6 technical stuff. She talked about studies,
7 disclosures. At first she talked about delayed
8 reporting, and then she brought it along about when
9 there's delayed reporting, usually, if asked,
10 initially they will deny anything happened. That
11 didn't happen here. Then she said -- and then they
12 will tentatively say things that indicate something
13 did happen because they want to gauge the reaction,
14 and that over -- she called it a process, a
15 disclosure process, that over a length of time, that
16 they would eventually elicit or give out facts as
17 they grew more confident or more secure and they
18 understood what was happening, they would eventually
19 make those disclosures. They're going to start off
20 tentative, be partial, until the child got more
21 comfortable.

22 Here, we have delayed disclosure, we have the
23 question -- even though Karley wasn't here to
24 testify to it, there was testimony that probably was
25 hearsay but that wasn't objected to that Karley

1 said, has he done anything to you? Yes. And then
2 the story comes out. There's no denial, there's no
3 tentativeness, there's no disclosure process. And
4 that, she testified, is unusual.

5 She also talked about secretive environment.
6 The children will be told not to tell, they will
7 fear the person who told them not to tell, there
8 would be threats or something like that. Every
9 single witness testified that he never told anybody
10 not to tell. He never threatened them. So that's
11 inconsistent.

12 Now, as a practical matter, this is State's
13 Exhibit 13. This is the house that August -- that
14 the charges that y'all are deliberating on in just a
15 little bit, this is the house where those charges
16 allegedly took place. Now, August denies that they
17 took place, and y'all have heard his denial. But,
18 nevertheless, now we've got to get to the practical
19 side of this case. This is a small house.
20 Everybody admits that it's a small house. There's
21 pictures in evidence. You can look at the house and
22 see how small it is. I believe the testimony is it
23 was like a doublewide, meaning a doublewide trailer.

24 The floor plan of the house is open. It's
25 open. You can see throughout most of the house.

1 It's open to the dining room, it's open to the
2 kitchen, except for where the fireplace is. The
3 doors -- the hallway door goes into the living room.
4 The master bedroom door goes into the living room.
5 It's open. There are nine people living in a
6 three-bedroom house, nine people. And maybe, maybe
7 this could happen once without all one or more of
8 the nine stumbling in on it; maybe it could happen
9 twice, maybe it could happen four times. But I'd
10 submit to you it couldn't happen many, many, many
11 times, times two, and nobody know about it, nobody
12 ever find out about it.

13 And what reinforces that? Well, what
14 reinforces it is when they live in St. Andrews. If
15 you're living nine people in a small place -- Eddie
16 said he walked in on some. Well, how is it that
17 August could make that simple mistake then and never
18 make that mistake in this house? And this house is
19 much more open than their two-story apartment.

20 So why are they making these allegations? He's
21 been away. He told you the discipline was slipping;
22 that, for financial reasons, he was going to have to
23 go back and live with them. And he let them know
24 that Ryan, the boyfriend, had to go. He told you he
25 suspected Ryan and **Minor 2** of stealing Eddie's

1 medicine, and he's got to go. And **Minor 2** since
2 she's over 18, she needed to leave the house as
3 well, get a job, and support herself. Up until
4 then, he believed that the money he was sending them
5 was going to their support. And he wanted it
6 stopped and he wanted Ryan to go. **Minor 2** has an
7 argument that we never really got to what the
8 argument was about. But there's an argument, and
9 then **Minor 2** all of a sudden reveals this, talks
10 about Jen -- that came from my client's testimony
11 and the solicitor jumped on it, and that got
12 explained to you. The -- and then all these other
13 allegations came out. And that's because **Minor 2**
14 was now in control and did not want August back in
15 the household.

16 Also, I have pets, people have pets, people are
17 very fond of their pets. And that -- I know that --
18 that when one of my dogs died, I cried as much as
19 when my family member died. So I know what it means
20 to be attached to pets. And there was testimony,
21 both from **Minor 1** and August, about her pets. She
22 had three cats and a dog. And August didn't like
23 the dog because the dog growled at him. He let it
24 be known they couldn't afford these pets. They had
25 to go. They didn't have the money and he didn't

1 like the dog. The pets had to go. So now **Minor 1**
2 has a reason to try to keep August from moving back
3 in.

4 Also, **Minor 1** had dropped out of school, but yet
5 she was unemployed. He wanted to tighten up on this
6 discipline, he wanted to get the house in some sort
7 of financial situation, and there was a rebellion,
8 and it wound up in an argument, the allegation.
9 Once the allegation is made, everybody is locked in.
10 **Minor 2** said it, **Minor 3** told you that she said it.
11 Between that time, **Minor 1** came along.

12 And that brings us down to, is August Kreis
13 guilty of what he's charged with? There's three
14 charges, and he told you that he's not. They say
15 he's -- I've gone over all of the testimony that I
16 know to go over. So what it boils down to is
17 reasonable doubt.

18 If there's reasonable doubt, regardless of how
19 you feel about August's background, the issue is
20 whether he did these things. And if there's
21 reasonable doubt that he did them, then you have a
22 duty to acquit him and find him not guilty of each
23 and every charge. You can find him guilty of one
24 charge, you can find him guilty of all three, you
25 can find him not guilty of all three. It's up to

1 you. Each charge is separate. But we submit that
2 he's not guilty of any of these charges.

3 And the Judge is going to tell you what
4 reasonable doubt is. Because reasonable doubt is a
5 curious concept. It's the highest proof known to
6 the law. It doesn't mean beyond all doubt, but it
7 means beyond any doubt a reasonable person would
8 have. One of the ways to describe reasonable doubt
9 is it's that doubt that makes one hesitate to act in
10 the normal affairs -- of his own personal affairs.
11 So what does that mean?

12 Well, I submit to you that it means a customer
13 goes into a grocery store. He wants to buy a steak,
14 but he doesn't have a whole lot of money. So he
15 goes over to the meat department, and he looks and
16 there's, what I call, distressed meat. It's meat
17 that's past it's sell-by date. But it's marked
18 down. It looks a little funny color, not too sure
19 about it. He picks it up, he looks at it, and he
20 thinks to himself, is this still good, should I
21 spend the money on this? The price is good, but
22 should I buy it?

23 The result is, it doesn't matter. It doesn't
24 matter if he buys it or doesn't buy it. It doesn't
25 matter what the decision is whether to buy it or

1 not. What matters is that he hesitated to act. Not
2 that he acted, but he hesitated to act. We submit
3 to you that there's more than enough here to
4 hesitate to act. And we're convinced that when you
5 go back and deliberate and you discuss all these
6 things, that you, too, will see that hesitation and
7 come back and find -- is there reasonable doubt
8 here? You bet. We strongly believe that you will
9 come back and acquit August Kreis. Thank you.

10 MS. MAYES: May it please the Court.

11 THE COURT: Yes, ma'am.

12 MS. MAYES: So now we no longer have to
13 imagine, but have seen firsthand what it's like to
14 live a life where day after day you're betrayed by
15 your own father, you're under his manipulation and
16 control. And now, along with that voice, three
17 voices of his children, comes a mountain of
18 evidence, undeniable evidence in this case.

19 And what do we know about this defendant,
20 August Kreis? This is a man who spent his whole
21 life trying to manipulate and control others; to
22 manipulate others on the outside, those who are
23 weak-minded, those who are vulnerable, those who
24 might buy into his message of hatred and bigotry.
25 And just as he tried to manipulate weak-minded

1 people on the outside, he spent just as much effort
2 manipulating and controlling his own children in
3 their own home where he kept them in a prison of
4 silence.

5 They've broken that silence, as you saw here on
6 this witness stand. And as we talk about that, I
7 want to address, first of all, one of the primary
8 pieces of evidence in this case, his own words, his
9 own letter, where, again, he's trying to manipulate
10 and control them. And you heard -- as Detective
11 Dykes read that letter, you heard exactly what he
12 stated.

13 Here's what we know: When he wrote that
14 letter, where is he at? He's at the Alvin S. Glenn
15 Detention Center. Why is he there? Because this
16 officer and another officer go to Midlands Technical
17 College, where we know he's antigovernment, but
18 he'll sure take their money, thousands and thousands
19 and thousands of dollars through the years. And
20 he's at Midlands Technical College where he's living
21 off of government money to get an education.

22 And when Detective Dykes goes to Midlands
23 Technical College and makes contact with him, he
24 knows full well this is an investigation for
25 criminal sexual conduct with a minor. He's arrested

1 for criminal sexual conduct with a minor, and he's
2 sitting in jail for criminal sexual conduct with a
3 minor and he writes this letter to his wife Karley
4 at the home she lives in with the children: I
5 realize you most likely regret even knowing me now.

6 And here's where it really gets interesting:
7 I'm not asking for bail and I've already told the
8 lawyer they gave me it's not going to trial. Does
9 that sound like the words of an innocent man? Of
10 course not. He knew full well he'd been caught.
11 It's not going to trial. I'll stay here until
12 sentenced to prison. I deserve whatever happens to
13 me. But I'm so sorry I hurt the only ones I love
14 and loved me. He comes first, me, you and our
15 children.

16 And here's where it gets interesting: We know
17 he wrote this letter when he'd been caught. He knew
18 all three girls were talking. He knew he couldn't
19 overcome that, because he knew they told the secret
20 he thought they'd never tell. So he says: I'm not
21 going to trial until, as he testified from the
22 witness stand -- until -- what was it? Oh, he
23 didn't like the plea offer. He didn't like the plea
24 offer. And now, all of a sudden, his own words
25 where he acknowledges his guilt --

1 MR. SHEALY: Objection, Your Honor. May we
2 approach?

3 THE COURT: Yes.

4 (Sidebar conference.)

5 MS. MAYES: The defendant's own words: The
6 plea offer was stupid. So now where are we? All of
7 a sudden his acknowledgment of guilt and it's not
8 going to trial, he decides he's going to use that as
9 a weapon. And why is that? Because in his mind,
10 these are still little girls.

11 And you heard **Minor 2** testimony: But I'm not
12 that scared little girl anymore, that scared little
13 girl that he remembers. But in his mind, he sees
14 **Minor 3** Remember **Minor 3** when she was 12 years old and
15 she went for that forensic interview and you heard
16 the forensic interviewer say she had to stop the
17 interview because **Minor 3** was so scared she curled up
18 in the fetal position, too afraid to talk? That's
19 who he thought he was dealing with, and that all
20 those old tactics would still work.

21 He thought that he could use a trial as a
22 weapon to keep them silent, because they'd never
23 come in a courtroom full of people, in front of 12,
24 13, 14 strangers, and talk about something so
25 shameful and embarrassing. He thought that like a

1 bullet, it would silence them. But he failed.
2 Fear, oppression, and weakness died, and in its
3 place came strength, hope, and courage. And that's
4 what has brought us here today. That's what this
5 case is really about.

6 So let's look at the evidence and let's look at
7 the law. Criminal sexual conduct with a minor in
8 the second degree, this crime applies to **Minor 2**
9 **Minor 2** And you may wonder, well, we know we have
10 charges here on **Minor 2** and we know we have charges
11 on **Minor 1** but what about **Minor 3** And that's the way
12 the law is devised so that it's done
13 jurisdictionally.

14 So we know in Lexington County at [REDACTED]
15 [REDACTED] when **Minor 2** was around 11 or 12, she was
16 assaulted in the home here in Lexington County. We
17 know that **Minor 1** was around 10 or 11 here at
18 Maplewood Drive when she's assaulted in the home.
19 But **Minor 3** is outside of Lexington County; she's in
20 Richland County at the apartment in St. Andrews and
21 she's in Kershaw County at the home in Cassatt. So
22 that's why **Minor 3** charges are not before you, but
23 the ones in Lexington County involving **Minor 2** and
24 **Minor 1**

25 We know these kids lived in about 12 different

1 houses in six different states before **Minor 2** was
2 even 14 years old. They've moved all around. Why
3 is it that he plucks that family up and moves them
4 before they can get many contacts on the outside?
5 And Mr. Shealy spoke about the house. As **Minor 2**
6 and **Minor 1** both explained, these are happening in
7 the middle of the night. The girls are all cramped
8 together in a small room where three girls have two
9 bunk beds. And then he says to **Minor 2** well, why
10 in the world would you sleep in the living room if
11 your father can get you there? Because, as she
12 explained, it doesn't matter where she is, he'll get
13 her anywhere. He's come in her bedroom and moved
14 her from that place. She's been assaulted in
15 basically every room of that house.

16 And **Minor 2** is the oldest, and then **Minor 1** is
17 the second degree oldest, so all of the kids in that
18 house are under the age of 10. What are they
19 supposed to know or see in the middle of the night?
20 And even if they do, who is in control in that
21 house?

22 So when we talk about the crimes against
23 **Minor 2** criminal sexual conduct with a minor in the
24 second degree includes sexual battery with a minor.
25 Now, the term sexual battery will be defined by the

1 Judge when I'm done speaking and when he charges you
2 on the law. But sexual battery is defined as any
3 intrusion, however slight, into a bodily opening.
4 So some of the things that she described that are
5 defined as sexual battery under our statute are
6 fellatio, which is when he is performing oral sex on
7 her; also, him putting his mouth on her private
8 part, him putting his private part in her mouth.
9 And then she also talked about vaginal penetration
10 being the insertion of his finger into her vagina,
11 and that that also occurred in that home when she
12 was between the ages of 11 and 14. So as to the
13 first element, sexual battery on a minor, I submit
14 the State has proven that element beyond a
15 reasonable doubt.

16 As to this element, 14 years of age, but at
17 least 11 years of age, we know that is **Minor 2** age
18 when she was in the home and that she testified it's
19 occurring repeatedly. And then here, finally, the
20 age of **Minor 2** is the final element. And we know
21 that she fits within the age of 11 to 14. So as to
22 this charge, criminal sexual conduct with a minor in
23 the second degree, the State has met its burden of
24 proof beyond a reasonable doubt as to this offense.

25 Now, also before you are two counts of lewd act

1 upon a child. And this offense, these indictments,
2 apply to both **Minor 2** and **Minor 1**. So we have two
3 separate counts, **Minor 1** and **Minor 2**. What the law
4 sets forth for lewd act upon a child is that the
5 defendant must be over the age of 14. Well, we know
6 that, so that' has been proven beyond a reasonable
7 doubt. Next, that he willfully, lewdly committed or
8 attempted a lewd and lascivious act upon or with the
9 body of a child under the age of 16 years. Well,
10 it's not in any dispute whatsoever that both girls
11 were under the age of 16 while living at [REDACTED]
12 [REDACTED]. And then finally, that the touching is
13 done with the intent of arousing, appealing to, or
14 gratifying the sexual desires of the person. What
15 other reason would he commit these crimes? They
16 were clearly sexual in nature.

17 But we ask you to keep in mind, these are more
18 than just crimes against the body; these are crimes
19 against a child's mind and a child's soul. He spent
20 his whole life trying to poison the mind of these
21 children with his beliefs and his actions. And then
22 he carries out the worst crime of all, these crimes
23 that are unspeakable.

24 One thing Mr. Shealy said is, well, it doesn't
25 make sense to me. And I submit, his recount of the

1 testimony is absolutely erroneous. He's the one
2 that asked **Minor 1** where were you?

3 I was on my back.

4 Where was he? Was he on his side?

5 No.

6 She made it absolutely clear what was happening
7 when she was on her back and he was attempting to
8 put his private part in her mouth. And, as she
9 stated, she held her lips together, she would not
10 cooperate, and he still pressed against her and she
11 felt it touching her teeth. Those are the details
12 of a child that experienced it firsthand.

13 At the close of this case, the Judge will
14 charge you on exactly what the types of evidence
15 are. But as to direct evidence, we're talking about
16 something that a child or a witness experienced
17 firsthand; they saw it, they felt it. And the
18 testimony of **Minor 2** and **Minor 1** on these crimes is
19 undeniable.

20 So you may wonder, well, why did you hear from
21 **Minor 3** And it's because under the law, it's
22 recognized as what we call common scheme or plan;
23 that he carried out a similar pattern against all
24 three of those children. It's a method of attack
25 that worked with **Minor 2** and then it worked with

1 **Minor 1** And once **Minor 2** was out of that house, as
2 we know she was at the time they were living at
3 St. Andrews apartment and at Cassatt, we know **Minor 1**
4 wasn't cooperating with him anymore, so that only
5 left **Minor 3** And she's right there about the same age
6 group; she's right there at 11 or 12 when he's doing
7 those crimes against **Minor 2** at Maplewood and about
8 the same age that **Minor 1** was when he moved on to her
9 at Maplewood.

10 And what is so similar about this pattern?
11 He's got the same relationship with all three girls.
12 He's in the position of father, and he abuses that
13 position to carry out these crimes. They all occur
14 in the family home, they all occur when no one else
15 is around, and it's all the same or similar type of
16 touching, vaginal touching. We know he committed
17 fellatio against **Minor 2** and attempted it with
18 **Minor 1** and then attempted it with **Minor 3** You heard
19 **Minor 3** talk about how he would take her hand and then
20 make her hand touch his private part and she'd yank
21 it away.

22 Let us not believe for one minute that his
23 current condition makes him any less of a danger.
24 This crime against **Minor 3** was committed as the little
25 girl just lay in bed next to him, just laying there.

1 And yet he's still able to carry out this crime
2 against her. He will always be a danger to the
3 community and he'll always be a threat to children,
4 because he's a sex offender.

5 Eddie talked about walking in on it. And when
6 he walked in, as soon as he did, he knew it didn't
7 look like -- something was strange, and so he left.
8 Even as young as he was -- he would have been about
9 ten at the time -- he knew that what he was seeing
10 didn't add up and didn't feel right.

11 And we may never know by that point how many
12 signs were in that house, how many hints or signs
13 their mom may have known or seen from that point
14 along the way. But what we do know is that on
15 January 21st, 2014, by the time **Minor 2** laid the
16 truth bare, not just for her own sake, but she also,
17 by that action, saved her sisters. And by that
18 point, it's like the floodgates. How can they keep
19 it a secret anymore? They can't.

20 And so from that point on, we know that their
21 mother took them to the police. We know the girls
22 have been consistent over and over again about what
23 happened. And, as I stated before, their testimony,
24 their credibility is paramount. Everything they
25 testified to has been corroborated by each other, by

1 his own words in that letter, and by little Eddie.

2 What about his credibility? What we know about
3 him is he's a convicted felon, a convicted felon for
4 lying, false statements to federal authorities. He
5 has no credibility. But what was true were his own
6 words in that letter when he still thought he could
7 control those girls. But he was wrong.

8 You have before you the most noble of
9 opportunities; the chance to strike back against
10 injustice and deliver a verdict that speaks the
11 truth. Let this be the last time that August Kreis
12 commits this crime or these offenses in this state
13 and in this county. It must be the last time. The
14 correct verdict is guilty of criminal sexual conduct
15 with a minor and guilty of two counts of lewd act
16 upon a child. Thank you.

17 THE COURT: Madam forelady, ladies and
18 gentlemen of the jury, my charge is 12, 15, 18
19 minutes long. Everybody okay bathroom-wise?

20 All right. First of all, let me remind you in
21 this case that the fact that the defendant was
22 arrested, charged, and indicted on these three
23 indictments, as I told you a couple times, is not
24 evidence in the case and cannot be considered by you
25 as evidence of guilt in the case and does not create

1 any presumption or inference of guilt. These
2 indictments are simply the legal formal written
3 instruments which contain the charges made against
4 the defendant; it's the way these cases come into
5 the courtroom. So don't infer anything from the
6 fact that he has been indicted and charged and
7 arrested. That's simply how we get into the
8 courtroom.

9 Each of the three indictments carries a
10 separate and distinct offense, and you must decide
11 each indictment separately on the evidence and the
12 law applicable to it uninfluenced by your decision
13 as to any other indictment. He can be convicted or
14 acquitted or found not guilty on any or all of the
15 charges, and you'll be asked to write a separate
16 verdict of guilty or not guilty for each indictment.
17 In other words, he can be guilty on one indictment,
18 not guilty on the other two, not guilty on all,
19 guilty on all, guilty on two, not guilty on one, any
20 combination. You have to decide each indictment
21 separate and apart from the other.

22 The defendant has pled not guilty to the
23 indictments. And a plea of not guilty, obviously,
24 as I told you earlier, puts the burden on the State
25 to prove the defendant guilty to you beyond a

1 reasonable doubt. A person charged with committing
2 a criminal offense in our state or criminal offenses
3 is never required to prove himself innocent. I
4 instruct and charge you that it is an important
5 constitutional rule of law that a defendant in a
6 criminal trial, no matter how serious the charges
7 may be, will always be presumed to be innocent of
8 the crime for which the indictments were issued,
9 unless guilt has been proven to you beyond a
10 reasonable doubt.

11 This presumption of innocence does not end when
12 you begin your deliberations, but it stays with the
13 defendant throughout the trial until you reach a
14 verdict of guilt based on evidence satisfying you of
15 that guilt beyond a reasonable doubt. The
16 presumption of innocence is not a mere legal theory,
17 it's not just a legal phrase; it is a substantial
18 right to which every defendant is entitled unless
19 you, the jury, are satisfied from the evidence of
20 the defendant's guilt beyond a reasonable doubt.

21 What is a reasonable doubt? Our appellate
22 courts have defined the term reasonable doubt many
23 times in the past. A reasonable doubt is the kind
24 of doubt that would cause a reasonable person to
25 hesitate to act. It's the kind of doubt that would

1 cause a reasonable person to hesitate to act. Proof
2 beyond a reasonable doubt is proof that leaves you
3 firmly convinced of the defendant's guilt. There
4 are very few things in this world that we know with
5 absolute certainty. And in criminal cases, the law
6 does not require proof that overcomes every possible
7 doubt.

8 If, based on your consideration of the
9 evidence, you are firmly convinced that the
10 defendant is guilty of the crimes charged, you must
11 find him guilty; however, on the other hand, if you
12 think there's a real possibility that he is not
13 guilty, you must give him the benefit of that doubt
14 and find him not guilty.

15 Let me remind you -- as I did when I started
16 the case and when I first selected the jury and told
17 you what your responsibilities were and what my
18 responsibilities, let me remind you once again that
19 during the trial of this case, I've had certain
20 responsibilities to perform and, obviously, you have
21 certain responsibilities to perform.

22 My position as judge makes me the judge of the
23 law in this case. So you have taken an oath to
24 accept the law as I give it to you. You are the
25 most important judge, the judges of the facts. And

1 because you're the judge of the facts and I'm the
2 judge on the law, I have no right to invade your
3 province. So I can't have any opinion on the facts.
4 I try cases all over the state. So I cannot have an
5 opinion about the facts.

6 So if I've done anything throughout the trial
7 of this case, smile, frown, raise my eyebrows, took
8 my glasses off, whatever, I can't have an opinion
9 about the facts. So disregard anything that I may
10 have done which makes you think I have an opinion
11 about the facts, because I can't have it. So you're
12 the factfinders, you determine what the true facts
13 are, and you accept the law from me. So if you
14 think I've displayed anything that would indicate
15 that I've got some opinion about the facts, please
16 set that aside.

17 When we try cases, there are two types of
18 evidence which are generally presented during a
19 trial. One is called direct evidence, and that's
20 the testimony of the person who claims to have
21 actual knowledge of a fact such, as something they
22 see as an eyewitness. And then the other type of
23 evidence is circumstantial evidence, which is a
24 proof of chain of facts and circumstances indicating
25 the existence of a fact. It is evidence which

1 immediately establishes collateral facts from which
2 the main fact may be inferred.

3 The law makes absolutely no distinction between
4 the weight or value given to either direct or
5 circumstantial evidence nor is any greater degree of
6 certainty required of circumstantial evidence than
7 of direct evidence. You should weigh all of the
8 evidence in the case. And after weighing all of the
9 evidence, if you're not convinced of the guilt of
10 the defendant beyond a reasonable doubt, you must
11 find the defendant not guilty.

12 A lot of times we explain direct evidence and
13 circumstantial evidence by an example. I walked
14 outside yesterday afternoon and it was pouring down
15 rain. I got wet, I could see the rain, that's
16 direct evidence that it's raining. I got up this
17 morning, got the paper about 5:30, mud puddles
18 everywhere, still cloudy. It's not raining, but I
19 can infer from the circumstances that it had rained.
20 The circumstantial evidence, the puddles, the
21 cloudy, the wet leaves, everything in the yard, that
22 it had rained last night. So that's sort of the
23 difference. But give it both the same weight you
24 think it deserves. There's no rule or distinction
25 between the two types of evidence.

1 Now, as I told you when we started, by being
2 the judges of the facts or the finders of the facts,
3 you have to determine and judge the credibility of
4 the witnesses who have testified in this case. And
5 I told you when we started that if this case is like
6 most cases I try, you can hear testimony that will
7 be from one side of the prism to the other side.
8 And we had that in this case; we've got two distinct
9 stories being told in this case. That's not
10 unusual. You hear that in everyday life when you
11 talk to people. But in this case, we've got,
12 obviously, one version of the facts and another
13 version of the facts, and they're very far apart.
14 So you have to determine who is telling the truth.

15 Credibility simply means believability. It
16 becomes your duty as the judges of the facts to
17 analyze and to evaluate the evidence and determine
18 which evidence convinces you of its truth. Now, in
19 determining the believability or the credibility of
20 the witnesses who have testified in this case, you
21 have the right to believe one witness over several,
22 several over one; you can believe everything a
23 witness says, you can disbelieve everything a
24 witness says, you can believe a part of what he or
25 she says and disregard the other part. You may

1 consider whether a witness has exhibited to you any
2 interest, bias, prejudice, or other motive in the
3 case, and you can also consider the appearance and
4 manner of a witness while in the witness stand.

5 As I told you when we started, all of you
6 throughout life have dealt with children, family,
7 friends, husbands, wives, employees, employers,
8 strangers, and friends. You know how to judge when
9 someone is telling the truth. Use that same common
10 sense in judging the credibility and the
11 believability of the witnesses who have testified in
12 this case.

13 And once you have determine what the true facts
14 are, you are to take those true facts and apply it
15 to the law as to the various charges in the
16 indictment, and you'll be in a position to render a
17 true and just verdict. That's what the word verdict
18 means, from the Latin word *verdicto*, to speak the
19 truth. So that is what you have to do. You have to
20 determine who you believe, what the true facts are,
21 and apply it to the law as I give it to you.

22 We had -- as I told you earlier, we had a
23 witness or two that I qualified as an expert
24 witness. Normally our rules of evidence do not
25 allow witnesses to testify as to opinions or

1 conclusions. There's an exception to that rule for
2 witnesses we call expert witnesses. A person, who
3 by education and experience, has become an expert
4 in some art, science, or profession or calling may
5 state an opinion as to relevant and material matter
6 in which the witness claims to be an expert, and may
7 also state the reasons for an opinion. You should
8 consider any expert opinion received into evidence
9 in this case and, like any other evidence, give it
10 the weight, if any, you think it deserves.

11 If you decide that the opinion of an expert
12 witness is not based on sufficient education or
13 experience, or if you conclude that the reason given
14 in support of the opinion is not sound or that the
15 opinion is outweighed by other evidence, you can
16 disregard that opinion in its entirety. An expert
17 witness' testimony is to be given no greater weight
18 than that of any other witness simply because I
19 qualified him or her as an expert. Further, you're
20 not required to accept an expert's opinion even
21 though it is not contradicted.

22 In this case you heard evidence that the
23 defendant had been convicted of a crime in the past
24 other than the one for which he's on trial for here
25 today. The evidence may be considered by you if you

1 conclude it as true, only in deciding whether the
2 witness' testimony is credible and believable, and
3 for no other purpose. You cannot consider his prior
4 record as any evidence of the defendant's guilt of
5 the charges we are trying here today. So the
6 evidence that he has a prior record can only be
7 considered by you if you decide to -- in judging his
8 credibility. It cannot be used as evidence against
9 him for the crimes charged. Does that make sense?

10 Likewise, you heard testimony that the
11 defendant committed other bad acts, which were not
12 subject of these criminal charges currently here
13 today, the testimony from outside of Lexington
14 County. This testimony, if you conclude it as true,
15 may only be considered by you on the question of
16 common scheme or plan and for no other reason and no
17 other purpose.

18 You may give this evidence the weight and
19 value, if any, which you find it should have on the
20 sole issue of the common scheme or plan. And you
21 can't consider that evidence, the other bad acts, in
22 the charges currently pending against him today. It
23 can only be for the common scheme or plan on that
24 evidence concerning the Kershaw County and Richland
25 County. It can't be used to convict him on the

1 charges in Lexington County. Use it for determining
2 common scheme or plan or credibility.

3 Now, madam forelady, ladies and gentlemen, I
4 charge what just I charged in most all cases we try.
5 Those are propositions of criminal law that go to
6 all cases. Those are general propositions of
7 criminal law. Let's now go to the second part of
8 the charge which we'll talk about the three
9 indictments. I'm going to talk about -- I have to
10 select some order, so I'll talk to you about them in
11 the order they come in the code book.

12 In one indictment, the defendant is charged --
13 that's indictment -2034. He's charged with the
14 offense of criminal sexual conduct with a minor in
15 the second degree. In order to convict the
16 defendant of this charge, the State must prove to
17 you beyond a reasonable doubt that the defendant
18 engaged in a sexual battery with the victim in this
19 case, **Minor 2**.

20 Sexual battery is defined by our state
21 legislature as sexual intercourse and/or cunnilingus
22 and/or fellatio and/or anal intercourse and/or any
23 intrusion, however slight, of any part of a person's
24 body or of any object into the genital or anal
25 openings of another person's body.

1 And the State must prove beyond a reasonable
2 doubt that the victim was less than 16 years old,
3 but at least 14 years old, and that the defendant
4 was either in a position of familial, custodial, or
5 official authority to coerce the victim or the
6 victim was at least 11 years old, but not more than
7 14 years old, at the time of the sexual battery.
8 Consent, willingness, indifference, or ignorance on
9 the part of the victim, if any, as to what was
10 taking place does not affect in any way the charges
11 of the crime of criminal sexual conduct in the
12 second degree.

13 I might add there's a statute also that says,
14 enacted by our legislature, that in a prosecution
15 under this particular section, 16-3-655, II and III,
16 that the testimony of the victim need not be
17 corroborated in prosecutions under these code
18 sections.

19 The other two indictments deal with the lewd
20 act on a minor or the attempting to perform a lewd
21 act on a minor. Those also deal with **Minor 2**
22 and **Minor 1**. That is codified in section
23 16-15-140. In that, the defendant is charged with
24 committing a lewd act on a minor. The law defines a
25 minor as a person under the age of 18.

1 The State must first prove beyond a reasonable
2 doubt that the defendant was over the age of 14.
3 Next, the State must prove beyond a reasonable doubt
4 that the defendant willfully and lewdly committed or
5 attempted to commit a lewd or lascivious act on or
6 with the body or its parts of a child under the age
7 of 16 with the intent to arouse, appeal to, or
8 gratify the lust, passions, or sexual desires of the
9 defendant or the child.

10 Willfully means voluntarily and intentionally
11 with the specific intent to do something against the
12 law. Lewd means obscene, lustful, indecent or
13 lecherous. Lascivious means tending to incite lust,
14 lewd, indecent, obscene or tending to deprave the
15 morals in respect to sexual relations. And the word
16 attempt is defied by the laws -- our morals in our
17 state and legislature. An attempt is simply what it
18 is; it's an effort to accomplish a crime which does
19 not succeed. An attempt includes a specific act to
20 do a particular criminal act along with an act
21 falling short of the act intended.

22 Now, when you go to your jury room, I told you
23 you'll have all three indictments to decide separate
24 and apart from the other. You will have three
25 verdict forms as to each indictment. And it's a

1 simple formula; it's either not guilty or guilty.
2 Your decision has to be unanimous, all 12 of you
3 must agree. Once you've reach a unanimous decision,
4 whether it be not guilty or guilty, then you check
5 the appropriate box, Madam Forelady, and sign your
6 name. You do all three of them separate and apart.

7 You have an awesome civic responsibility in
8 this case. We're not here to reward any friends or
9 punish any enemies. You're to deliberately evaluate
10 the evidence, determine what evidence you are
11 convinced is true, apply those true facts to the
12 law, and then reach a verdict that speaks the truth.

13 I'll let you go back in your jury room in just
14 a few minutes. I ask that you do not start
15 deliberating. I have to ask the lawyers if I've
16 left anything out. Once I do that, we'll gather the
17 evidence, we'll send it back to the jury room for
18 you to look at, along with the verdict forms, and
19 then you may start your deliberations. I think your
20 lunches will be here about quarter to 12:00, so when
21 your lunch comes, you can sit right there and eat
22 your lunch and talk or if you want to take a break,
23 that's up to y'all.

24 Once you've reached a decision, knock on the
25 door, and the bailiff will receive the verdict,

1 bring you back into the courtroom and we'll publish
2 the verdict. If you have any questions during your
3 deliberations, the protocol is this: Write the
4 question out and knock on the door and the bailiff
5 will hand it to me. Sometimes I can answer it,
6 sometimes I can't, depending on what the question
7 is. But I'll let you know where we stand with that
8 question when you send it out.

9 I'm going to send you back to the jury room.
10 Don't start deliberating quite back until we send
11 everything back.

12 Please, Mr. Bailiff, separate my two
13 alternates.

14 (The jury retires to the jury room at
15 11:08 AM.)

16 THE COURT: All right. Any objections,
17 requests to delete, additions, or any complaint on
18 the charge from the State?

19 MS. MAYES: None from the State, Your Honor.

20 THE COURT: Mr. Shealy?

21 MR. SHEALY: Just to reiterate my objection to
22 the corroboration issue. But other than that, none.

23 THE COURT: You're protected on the record on
24 that. Respectfully denied.

25 All right. Please come forward, y'all agree on

1 the exhibits, review the verdict form, so I can send
2 it back to the jury, please.

3 MS. MAYES: Yes, sir, Your Honor.

4 THE COURT: Let the record reflect both sides
5 have reviewed all evidence and the proposed verdict
6 form and are in agreement. Is that correct?

7 MS. MAYES: Yes, sir, Your Honor.

8 MR. SHEALY: Yes, Your Honor.

9 THE COURT: All right. I'm sending the
10 exhibits and verdict forms back to the jury. They
11 can commence their deliberations. Please separate
12 out the two alternates and tell them to sit tight.

13 (The jury begins deliberations at 11:14 AM.)

14 (Court Exhibit No. 1 marked for
15 identification.)

16 (The jury enters the courtroom at 3:59 PM.)

17 THE COURT: Sorry it took us a little long. I
18 was in the middle of a witness with that second
19 jury. They came back at 1:00. So I had to get them
20 out and find the testimony on the playback.

21 Now, I think **Minor 2** is about an hour and a
22 half and Mr. Kreis' is about an hour. You got
23 notepads that you wanted. If you get to where
24 you've heard everything you need without having to
25 listen to all of it, raise your hand; however,

1 you're in control of this I'm going to start playing
2 it. And if we get to the point where you've heard
3 what you want to hear, let me know; if not, we'll
4 listen to it all. Fair enough?

5 (The testimony of **Minor 2** was played back
6 for the jury.)

7 THE COURT: The next one is about an hour.
8 Let's take a quick bathroom break before we start
9 that one.

10 (Short break.)

11 THE COURT: All right. Bring the jury back in,
12 please.

13 (The jury enters the courtroom at 4:08 PM.)

14 THE COURT: All right. Let's play the second
15 part of the testimony you wanted.

16 (The testimony of August Kreis, III was played
17 back for the jury.)

18 THE COURT: That's not good conduct.

19 THE DEFENDANT: I just said vote Trump.

20 THE COURT: This is not the appropriate forum.
21 Thank you.

22 All right. Madam forelady, ladies and
23 gentlemen of the jury, the fact that I had to call
24 down the defendant for displaying a Trump political
25 sign in the courtroom, please don't hold that

1 against him at all in your deliberations. Your
2 deliberations should only concern evidence that was
3 presented in this courtroom. I just don't allow
4 untoward behavior in my courtroom, and this is
5 certainly not the correct place for that. But don't
6 hold that against him in your deliberations, because
7 that has nothing to do with this trial.

8 We've had a long day. It's 5:00. Normally I
9 would let you continue on with your deliberations,
10 but I've got court personnel with children in
11 daycare and other things, so we'll have to come back
12 tomorrow. What time would suit y'all to start in
13 the morning? My other jury is coming in at 9:00, so
14 I'll probably ask you to come in at 9:30. That
15 gives me a chance to get in here early, get them
16 going, then y'all can come in behind them. Is that
17 fair enough?

18 THE FOREWOMAN: Yes, sir.

19 THE COURT: Please put your name on your notes
20 and leave them in your chair. They'll be collected
21 by the bailiff and put under lock and key tonight.
22 No one will look at them. Tomorrow morning when you
23 come back, they'll be in the jury room to be
24 dispersed. Obviously, using notes, you can look at
25 your notes and refer to them. Please be cognizant

1 of everyone else's views and their notes, and y'all
2 have full deliberations. I'll see you in the
3 morning at 9:30.

4 Don't discuss the case with anyone, don't let
5 anyone discuss it with you. Don't do any internet
6 research. Thank you. Have a pleasant evening.

7 (The jury is excused for the evening at 5:03
8 PM.)

9 THE COURT: All right. We'll stand at ease
10 until 9:30 in the morning.

11 MS. MAYES: Thank you, Your Honor.

12 (Court in recess for the evening at 5:03 PM.)

13 (Juror 78, William Fort, enters the courtroom
14 at 10:05 AM.)

15 THE COURT: All right. It has come to my
16 attention, Mr. Fort, William Owen Fort --

17 JUROR: Yes, sir.

18 THE COURT: Do you have a social security
19 number [REDACTED]?

20 JUROR: Correct.

21 THE COURT: Were you arrested and convicted in
22 February of 2070 [sic] in Richland County for drugs?

23 JUROR: No. No, sir.

24 THE COURT: That's not you?

25 JUROR: No, sir. That's my son.

1 THE COURT: 1970?

2 JUROR: 1970. Oh, I thought you said 2007.

3 Yes, sir.

4 THE COURT: Why didn't you tell me that when I
5 asked that question?

6 JUROR: Because you said if it had not been
7 expunged or pardoned.

8 THE COURT: Have you --

9 JUROR: Governor Riley --

10 THE COURT: Sir?

11 JUROR: Yes, sir. Governor Riley pardoned it.

12 It was a youthful offender sentence and Governor
13 Riley issued a pardon. It's been 48 years.

14 THE COURT: I know how long it's been. But
15 I -- can we check the pardon?

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

17 JUROR: I've still got it.

18 THE COURT: Still got your --

19 JUROR: Paperwork.

20 THE COURT: You got it at home?

21 JUROR: Yes, sir.

22 THE COURT: We're not being -- it's just come
23 to our attention that you had the record that would
24 disqualify you.

25 JUROR: Right. I thought about that at first,

1 but then you said that if it has not been pardoned
2 or expunged.

3 THE COURT: Well, if it has been pardoned or
4 expunged, it would not disqualify you.

5 JUROR: Yes, sir. That's why I did not say
6 anything.

7 MS. MAYES: May we approach?

8 (Sidebar conference.)

9 JUROR: I live ten minutes away. I can run
10 home and get it. I have the original papers, all
11 signed by Governor Riley.

12 THE COURT: How long will it take you to get
13 it?

14 JUROR: Ten minutes.

15 THE COURT: How about take him, that way you
16 can get back.

17 (Juror 78, William Fort, exits the courtroom at
18 10:08 AM.)

19 THE COURT: All right. While we're on the
20 record, yesterday, at the conclusion of court, the
21 custodian, the janitor -- I have not read this nor
22 looked at it other than this looks like something
23 that was left on defense counsel's table, and the
24 very top just simply says those people. I have not
25 read it. The custodian gave it to Ms. Hope; she's

1 not read it. I assume it's Mr. Kreis'.

2 MR. SHEALY: It probably is, Your Honor. He's
3 been writing some prayers lately.

4 THE COURT: It was just handed to me this
5 morning. All I've looked at was the very beginning,
6 read those people, realized, obviously, it's not
7 mine.

8 MR. SHEALY: Thank you, Your Honor.

9 THE COURT: And I am returning it to Mr. Kreis.
10 It was unread by anyone --

11 MR. SHEALY: And I apologize for not policing
12 up our table.

13 THE COURT: -- other than maybe the custodian.
14 But we've not read it up here.

15 Is that yours, Mr. Kreis?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Let's get my jury panel
18 up here --

19 THE DEFENDANT: I'll refrain from any outbursts
20 today. I apologize.

21 THE COURT: Your apology is accepted.

22 THE DEFENDANT: Thank you.

23 THE COURT: Now, what are we going to do if
24 he's not been pardoned?

25 MS. MAYES: Unfortunately, Your Honor, by

1 statute, he'd be disqualified. In conferring with
2 Mr. Shealy this morning -- we actually attempted to
3 discuss it last night when we became aware of it
4 after court proceedings. And we were unable to
5 reach him by phone.

6 But we've conferred with him this morning. He
7 has conferred with his client, and our understanding
8 is that the client wishes to go forward with 11
9 jurors.

10 THE COURT: Well, the rule allows that. But
11 let's cross that bridge if we have to.

12 Let's get the jury in and talk to them.

13 (The jury enters the courtroom at 10:13 AM.)

14 THE COURT: Good morning.

15 THE JURY: Good morning.

16 THE COURT: We've got a matter that we need to
17 resolve before you can continue deliberating. I'll
18 tell you all about it when we finish up. And we
19 should have it resolved within about 15 or 20
20 minutes. So I'm going to ask you to go back to your
21 jury room, but don't continue any deliberations
22 until I send word. It will be about 15 or 20
23 minutes.

24 So if any of you want to walk out and get a
25 breath of fresh air, you're welcome to do that. But

1 I should have it done in about 15 minutes. But I'll
2 send word as to continue, stop, or what to do. It's
3 something beyond everybody's control. We've got a
4 little situation we've got to resolve. So don't
5 continue deliberating until I let you know.

6 Don't discuss the case with anybody, don't
7 deliberate, don't let anybody discuss the case with
8 you.

9 (The jury retires to the jury room at
10 10:15 AM.)

11 THE COURT: All right. We're going to continue
12 on with our other trial. If he brings in his pardon
13 papers, I'm going to let him go on back down with
14 the jury and continue on; if he does not have them,
15 I'm going to disqualify him, and then I'll have to
16 go on the record with Mr. Kreis as to whether or not
17 he wishes to go -- I don't know why we can't do that
18 now.

19 THE DEFENDANT: I agree to go forward with it
20 anyway.

21 THE COURT: Mr. Kreis, the rules allow, if
22 we -- the rule says that the jury shall be composed
23 of 12 members, but at any time before the verdict,
24 the parties may agree in writing with my approval
25 that it consist of a number less than 12. So if

1 he's not pardoned, he'll disqualified and that
2 leaves us with 11. Obviously, we dismissed the
3 alternates.

4 So we'd have to do one of two things; number
5 one, it could be mistried and it would have to start
6 all over again from fresh, or we could agree to go
7 to verdict with less than 12; i.e., 11. I'll give
8 you an opportunity to talk with Mr. Shealy about it
9 so y'all can make an intelligent decision --

10 MR. SHEALY: Your Honor, we've already had the
11 discussion. I've advised him of all the
12 ramifications and that the safe thing to do would be
13 to ask for a mistrial. I also pointed out that we
14 may get a better or worse jury. This jury is
15 obviously considering everything very, very
16 carefully. He's agreed with me. In fact, he's
17 pointed out some of these things himself. And it's
18 been his hope to get this matter over with.

19 THE COURT: So he's agreeable to go with 11?

20 MR. SHEALY: Yes, sir.

21 THE COURT: All right. We need to get that
22 reduced to writing, and I'll approve it. But we
23 don't need to cross that bridge until we get there.

24 MR. SHEALY: Yes, sir.

25 THE COURT: All right. Let's stand at ease.

1 I'm going to continue on with the other trial, but
2 everybody stay on standby.

3 MS. MAYES: Thank you, Your Honor.

4 (The jury continues deliberations at 10:36 AM.)

5 THE COURT: Okay. We've got a verdict. Are
6 y'all ready to receive the verdict?

7 MS. MAYES: Yes, sir, Your Honor. We'll have
8 to bring the victims in. And we'll have to have the
9 Court advise once again, as you did Monday,
10 regarding any behavior from --

11 THE COURT: Where are they?

12 MR. SAMELLAS: They're out in the hallway, Your
13 Honor. We have them with some deputies. I was just
14 wanting you to address them because we've been
15 having some issues this morning --

16 THE COURT: With them?

17 MR. SAMELLAS: Yes, sir. What we're going to
18 do -- there's a bunch of people, Your Honor, that
19 want to hear the verdict. The victims that are in
20 the case, what we'd like to do is have them seated
21 up here like we have been. The other people -- but
22 we'd like you to address them --

23 THE COURT: Who are the other people?

24 MR. SAMELLAS: Family members. His daughter
25 Jennifer is down here from Pennsylvania. We've

1 already told them that the only two who would be
2 allowed to speak would be **Minor 2** and **Minor 1** --

3 THE COURT: Hold on a second. Now, what kind
4 of problems are you having out in the hall?

5 MR. SAMELLAS: They've just never been happy
6 with us because they -- like he says, there's anger,
7 violence. But we just want you -- we know you
8 control the courtroom. But I'm going to put the
9 other ones in the very back.

10 THE COURT: Bring them in.

11 All right. While they're bringing them in, let
12 me put on the record that I received -- that we
13 discussed it in -- I'm going to put on the record as
14 a Court's exhibit, a Certificate of Pardon signed by
15 Grady Wallace, who was the head of Probation Pardon
16 & Parole Corrections Board January 6th, 1982,
17 pardoning Mr. Fort from the offenses that we talked
18 about in here today. So he'd be a qualified juror.
19 I've shared that with y'all in the hall. So I just
20 want to make that part of the record and make it a
21 court exhibit.

22 MS. MAYES: Yes, sir, Your Honor.

23 (Court's Exhibit Nos. 1-6 marked for
24 identification.)

25 THE COURT: All right. Bring the jury in.

1 (The jury enters the courtroom at 11:03 AM.)

2 THE COURT: Is the State ready to receive the
3 verdict?

4 MS. MAYES: Yes, sir, Your Honor.

5 THE COURT: Mr. Shealy, are you ready to
6 receive the verdict?

7 MR. SHEALY: Yes, Your Honor.

8 THE COURT: All right. Ladies and gentlemen,
9 first of all this is not lover's lane, so get your
10 hands from around that lady. Listen very carefully,
11 the jury has informed me that they've reached a
12 verdict in the case. I have no idea what it is.
13 Obviously, it's one of two things, either guilty or
14 not guilty.

15 I have had nothing but excellent behavior
16 throughout this trial, except for one small
17 incident, which did not include any of the family
18 members or the defendant or alleged victims, and he
19 was removed from the courtroom.

20 Now, fair warning: If you are unable to
21 control your emotions, please leave now. Fair
22 warning: If I have anyone who exhibits any behavior
23 that is not dignified and acceptable in this
24 courtroom, such as an outburst, crying, screaming,
25 clapping, shouting, cussing, anything, you'll be

1 immediately apprehended and I'll hold you in con
2 tempt of court and you'll be subject to a six-month
3 incarceration.

4 You're welcome to be here. It's an open
5 courtroom. But no, no untoward behavior will be
6 allowed or tolerated. So if you cannot comply with
7 those instructions, fair warning, leave now.

8 Bring the jury in.

9 And, officers, if there's any exhibits of any
10 untoward behavior, immediately apprehend the person,
11 escort them out of the courtroom, hold them in the
12 holding cell until I can deal with them.

13 (The jury enters the courtroom at 11:07 AM.)

14 THE COURT: Madam Forelady, have y'all reached
15 a verdict?

16 THE FOREWOMAN: Yes, Your Honor, we have.

17 THE COURT: Hand it to the bailiff, please.

18 Madam Clerk, You may publish the verdict.

19 THE CLERK: The State of South Carolina vs.
20 August Byron Kreis, III, Indictment 2015-GS-32-2034,
21 as to the offense of criminal sexual conduct with a
22 minor second degree with **Minor 2** we the jury
23 find the defendant guilty.

24 Indictment 2015-GS-32-2030, the State vs.
25 August Byron Kreis, III, as to the offense of

1 attempting or committing a lewd act upon a child
2 with **Minor 2**, we the jury find the defendant
3 guilty.

4 Indictment 2015-GS-32-2036, State of South
5 Carolina vs. August Byron Kreis, III, as to the
6 offense of lewd act upon a child with **Minor 1**,
7 we the jury find the defendant guilty.

8 Ladies and gentlemen of the jury, if this is
9 still your verdict, please indicate so by raising
10 your right hand.

11 All hands are raised.

12 THE COURT: Anything further for the jury
13 before I dismiss them by the State?

14 MS. MAYES: Nothing from the State, Your Honor.

15 THE COURT: Mr. Shealy?

16 MR. SHEALY: No, Your Honor.

17 THE COURT: Mr. Shealy, I'm going to hold
18 sentencing in abeyance until later on this afternoon
19 at the conclusion of this trial that I'm trying.

20 MR. SHEALY: Thank you, Your Honor.

21 THE COURT: Ladies and gentlemen of the jury, I
22 can't thank you enough on behalf of the court system
23 in Lexington and the state of South Carolina. It's
24 not a pleasant task to sit on a jury. It's an
25 awesome task, awesome civic duty. I'm proud of the

1 jurors that I have throughout the state. They all
2 pay close attention and take responsibility very
3 serious, and y'all have certainly upheld that
4 standard that they have set throughout the state.

5 I thank you for your service. And I agree with
6 your decision. You know, I have to sit up here and
7 not be a finder of fact, but this was an interesting
8 situation.

9 This morning we had a little hitch. The juror
10 that I had to speak with, we had some questions
11 about his qualification, but he cleared that right
12 up immediately. So there was no problem with that.
13 He's good to go and it was just a little
14 technicality. That was the hold-up on that.

15 So I'll release you now. You will not have any
16 further service this week. A check will be mailed
17 to you. And I thank you from everyone involved for
18 your service and the time that you've devoted to
19 this case, your punctuality, your professionalism.
20 And I thank you. At this time, my jury will be
21 excused. If anyone needs a work excuse --

22 THE BAILIFF: I'll hand it to you outside.

23 THE COURT: Thank y'all very much.

24 (The jury is excused at 11:12 AM.)

25 THE COURT: I'll impose sentencing on the three

1 indictments at the conclusion of the testimony in
2 the case I'm currently trying. It will be sometime
3 this afternoon. And I'll be able to give you a good
4 45 minutes leeway so you can inform the family
5 members. I thank you for your behavior. I give
6 that same instruction to everyone. I do that in all
7 emotional cases. You were wonderful. I thank you.

8 We will notify the victims and give you about a
9 45-minute leeway on when we impose sentence. I've
10 got to continue on with that other trial. So you
11 can leave now and you'll be notified when the
12 sentencing is. It'll be sometime this afternoon.

13 MS. MAYES: Thank you, Judge.

14 (Pause in the proceedings 11:13 AM - 3:11 PM.)

15 THE COURT: All right. Once again, I will give
16 the same admonishment that I gave when the verdict
17 was rendered. I once again compliment everyone in
18 the courtroom at that time for their wonderful
19 behavior. I expect it to last throughout the
20 sentencing phase.

21 Mr. Shealy, does he not want to sign the
22 sentence sheets?

23 MR. SHEALY: No, Your Honor. He declined. We
24 talked about that. I did --

25 THE COURT: You have. I see.

1 MR. SHEALY: We had that conversation.

2 THE COURT: Very well.

3 All right. I will hear from the State.

4 Obviously, we've heard all of the facts in the case.

5 I need prior records, any victims, victim impact, as

6 well as anything in connection with what the State

7 needs to put on the record.

8 MS. MAYES: Yes, sir, Your Honor. May it

9 please the Court --

10 MR. SHEALY: Your Honor, before we get started,

11 can I do my posttrial motions?

12 THE COURT: I'm sorry. Well, I'll tell you

13 what. I'll be glad to let you do them now or I'll

14 give you ten days to file written motions. It's

15 your choice.

16 MR. SHEALY: Your Honor, I'll just do them now.

17 THE COURT: All right. I'll be glad to hear

18 from you.

19 MR. SHEALY: First off, I'm precluded from

20 doing a motion for directed verdict even after our

21 case because I did not do a motion for directed

22 verdict, and I explained that, I believe. But,

23 nevertheless, you found there was adequate evidence

24 for it to go --

25 THE COURT: Well, I'll let you make it nunc pro

1 tunc, if that will protect you on the record.

2 MR. SHEALY: Thank you, Your Honor. We would
3 ask for a directed verdict based on -- the evidence
4 as a whole, the evidence presented by the State, was
5 not sufficient to prove my client's guilt beyond a
6 reasonable doubt.

7 I understand that it did not have to be
8 corroborated by the statutes of South Carolina.
9 There was no other independent evidence other than
10 what was testified to and, in fact, we submit that
11 the standard -- the items that the jury was asked to
12 view and determine credibility and, specifically,
13 the expert witness who testified, indicated that the
14 testimony against my client was not believable.

15 And based on that, Your Honor, we would submit
16 that the -- we're entitled to have a directed
17 verdict on the evidence that was presented. Thank
18 you, Your Honor.

19 THE COURT: Well, a couple things: Number one,
20 obviously, we had a trial where we had two victims
21 and an alleged victim of bad acts who all testified.
22 And if you believe their testimony, obviously, it
23 would support a verdict of lewd act and/or criminal
24 sexual conduct with a minor in the second degree.

25 Against that, you had your client's testimony

1 who told a different story; he denied the conduct
2 and, therefore, it was a question of credibility,
3 who the jury believed. And they did their jury as
4 the finders of fact in determining what evidence
5 convinced them of its truth.

6 We had several pretrial matters where it was my
7 rule, and everybody agreed, that this case would be
8 tried simply on what was going on with these
9 children and their dad, and that your client's
10 previous involvements in various activities were
11 precluded from being testified in this courtroom,
12 that that was not part of this case. However, as
13 under the rules of evidence, when that door is open,
14 obviously that can be subject to cross-examination.

15 Your client chose to take the stand, he chose
16 to reveal his prior activities and, obviously, was
17 cross-examined on it properly. That may or may not
18 have had something to do with the decision on
19 credibility. I don't know.

20 But it was simply a case of jury being the
21 factfinders in determining the credibility of
22 witnesses, and the testimony and evidence is there
23 to support the verdict; therefore, I respectfully
24 deny the motion.

25 MR. SHEALY: Thank you, Your Honor. I have one

1 other motion that I think you've already anticipated
2 in your comments. But the argument would be to --
3 the motion would be to vacate the jury decision and
4 order a new trial, based on both what I've already
5 said about the credibility, but also, as you
6 indicated, the information that was testified to,
7 plus the incident involving the presidential
8 election; that those matters, we would submit,
9 inflamed the prejudices of the jury and did
10 improperly influence their verdict.

11 THE COURT: Well, your client is the one who
12 chose to display the Donald Trump sign in the middle
13 of replaying the testimony that was required by the
14 jury. That was towards the end. I did admonish him
15 for that type of behavior in the courtroom.

16 But at the conclusion or before the jury
17 started their deliberation, I made it clear that the
18 fact that he did that and the fact that I had to
19 admonish him was not to be considered by them at all
20 in their deliberations, that it had nothing to do
21 with the case, that was something outside of the
22 evidence presented. And I don't think I could have
23 given a more curative or stronger curative
24 instruction that -- your client just sort of decided
25 he wanted to display his presidential preferences

1 right now with the presidential election. And this
2 isn't the proper place to do it. I told him it
3 wasn't, and I told the jury not to consider that. I
4 don't know what else I could have done.

5 And the fact that your client was very nice
6 this morning, he said, Judge, you won't have to
7 worry about me displaying any requests for votes
8 today. He was good-natured about it.

9 THE DEFENDANT: I've been known to lie though;
10 right?

11 THE COURT: I'm not going to comment on that.

12 MR. SHEALY: Thank you, Your Honor.

13 MS. MAYES: Yes, sir, Your Honor.

14 As you've heard during the course of this
15 trial, the facts of this case are extremely
16 disturbing. The defendant had assaulted his oldest
17 daughter, **Minor 2**, for as long as she can
18 remember, beginning as a very small child. In
19 Lexington County, there were numerous assaults of
20 sexual battery that left her traumatized. As she
21 stated in her testimony, the emotions were
22 overwhelming; feelings of shame, confusion, and
23 disgust.

24 Essentially, Your Honor, these crimes amounted
25 to psychological warfare. Crimes committed against

1 the child physically, mentally, and emotionally that
2 will affect her for years in the future.

3 As for his daughter **Minor 1**, she stated
4 during testimony that she did not feel safe in her
5 own home. She did not feel safe at any time she
6 could remember with her father. Once again, we see
7 that although these crimes were committed in the
8 past, these scars will remain for years.

9 At the outset of court proceedings on Monday,
10 Your Honor, the defendant made a request for the
11 Court to give him a life sentence, if convicted of
12 these charges. He has been convicted by the jury of
13 all three charges, and the State would ask for the
14 maximum sentence, pursuant to his request, and which
15 is fitting of these crimes.

16 Your Honor, as for victim impact statements,
17 the victim **Minor 2** who is now 21 years of
18 age -- as the Court heard during testimony, these
19 offenses occurred in Lexington County when she was
20 between 11 and 13 years age. **Minor 2** does
21 wish to address the Court at this time, Your Honor.

22 THE COURT: **Minor 2**
23 **Minor 2**: Yes, Your Honor. A lot of
24 this is just emotions and thoughts. And it starts
25 out with -- I was going to read it in pieces because

1 it's all over the place, but I'm just going to go
2 ahead and throw it all out there. There's a poem
3 that I'm going to start with that my oldest sister
4 wrote and --

5 THE COURT: Wait a minute. Your oldest sister.
6 I thought you were the oldest.

7 **Minor 2**: I'm sorry. Jennifer.

8 MS. MAYES: And, Your Honor, just to clarify,
9 she is the oldest child with Karley Hollis. The
10 defendant has two older daughters, who are Jennifer
11 and Amy, with another partner.

12 **Minor 2** We sat together and added a
13 little onto the end. And I'm going to go ahead
14 and --

15 THE COURT: Sure.

16 **Minor 2**: I break down and hit my
17 knees, cry for what I never had and hope no one
18 sees. Pretend the memories are flashes of fake,
19 protect my soul so it's not his to take. Days turn
20 into months and months into years, and every night
21 is full of this child's worst fears. Looking to the
22 stars and wishing for a different life, this pain
23 pierces through me like a jagged-edged knife.

24 As the years pass by and time attempts to heal,
25 the wounds continue to bleed and the pain is still

1 so real. Put on a smile but can't feel the
2 happiness inside, tell everyone I'm fine and hope
3 they don't know that I just lied. Trust no one is
4 my motto, especially a man. Go through life
5 watching behind me and hold onto my heart with one
6 hand.

7 Still not able to feel peaceful at night, only
8 able to fall asleep when the sun turns the dark to
9 light. My soul cries at the mention of your name.
10 Why did you have to hurt me with your sick and
11 perverted games?

12 My head held high, chin up, don't cry. We all
13 knew he'd sit on the witness stand and lie.
14 Watching the clock pass, the time with my sister,
15 strong, brave and by my side, no longer allow you,
16 monster, to steal her pride. After 37 years of
17 victimizing your daughters, the nightmare is finally
18 over. The five of us will now move on and heal and
19 consider this victory as our closure.

20 And now, Chip, I don't know what to call you
21 anymore. I remember when I was younger, I could
22 never imagine calling you anything other than Daddy.
23 I've been having a lot of feelings lately due to
24 this trial. I could make a huge list of how I feel,
25 but I don't think you deserve to know how I feel.

1 I have a lot of questions for you, but I feel
2 like they would be pointless to ask you. I wonder
3 why constantly, but I have come to terms with the
4 fact that why doesn't matter. It happened, and now
5 this is where we are.

6 I need you to know anymore that I'm not that
7 little girl anymore. I need you to know that. And
8 I think you should know that if you hadn't done the
9 things that you did, you would have been proud to
10 see the incredible woman I'm becoming, the
11 phenomenal women we are becoming.

12 I can't help but to feel sorry for you,
13 honestly. We lost a father because of the things
14 you did. You lost your whole family. And,
15 actually, I never really lost a father because I
16 never really had one, did I? A father is supposed
17 to love and protect his little girls, which you
18 ruined all of that, and you know it. You have to
19 know how horrible the things you did were.

20 What I'm having the hardest time trying to
21 figure out is why after so long you can't just
22 man-up for once in your life. Your disgusting
23 little secret is out. I can't imagine how you're
24 feeling about that either. I honestly can't
25 understand why after doing what you did for so long

1 you would try to deny it.

2 Jennifer, Amy, **Minor 1** **Minor 3** and I all know that
3 you know how true it is. You molested not just me,
4 but all five of your daughters; the five girls that
5 were supposed to be your world. You were supposed
6 to be our protector, a man that we could look up to,
7 the one that would always be there. I can't
8 understand why you would try to deny it, why you
9 felt the need to go through with a trial, why you
10 would you want to even try to lie. Why don't you
11 realize that after all this time, it's time to come
12 clean? It's time for everyone to know what you did
13 to me and your other four daughters, because what
14 you did was wrong, and I believe you have to know
15 that.

16 I added this because I have flashbacks. And I
17 remember when you would stop doing what you were
18 doing, and you would cry and you would beat your
19 hands against your head. You can't not know that
20 you're not supposed to do those kinds of things to
21 your little girls, which is why you are exactly
22 sitting where you are now. I know it's not where
23 you want to be, but you know it's where you belong.
24 You can't deny what you did any longer and you can't
25 take it back. But it's time to be honest about it.

1 And I guess that was my feelings, a little
2 unfinished, a little all over the place. My sister
3 and I sat and talked, and this is more that we
4 wanted for him to hear: You know what you did to
5 all five of your daughters. When you got away with
6 it after Jennifer and Amy reported you, you just
7 continued your sick mission. We knew that you would
8 not ever admit to the truth because that's who you
9 are. Turning sister against sister was your way of
10 trying to ensure your secrets remained just that.
11 But, guess what, it didn't work. What you did to us
12 made us closer. You did not destroy us. You are
13 not the victor, but rather the man that will now
14 have day after day and night after night to think
15 about his sins. If you believe in hell, know that
16 is -- that there is a place waiting for you.

17 I also want you to know that you have not
18 destroyed my mother. You may have controlled her,
19 scared her before, but not anymore. My siblings and
20 I have now broken the cycle of abuse and racism.
21 Nightly molestations of all five of us is now
22 something of our past. However, I can only hope
23 that you are haunted until the day you die for the
24 things you've done.

25 Consider this justice served for hurting all

1 five of your daughters. Your secret is out you'll
2 never be able to do this again.

3 THE COURT: Thank you. You're a brave young
4 lady.

5 **Minor 2**: Thank you.

6 THE COURT: Anyone else?

7 MS. MAYES: Your Honor, his daughter **Minor 1**
8 **Minor 1** who is now 19 years of age -- she was 10
9 through 11 years of age when these offenses occurred
10 in Lexington County -- we've spoken with her, Your
11 Honor. She does not wish to address the Court at
12 this time.

13 As for prior record, false statements to
14 federal authorities. Your Honor, that conviction is
15 from December of 2011. He was convicted in federal
16 court and sentenced to 190 days. I believe that was
17 ultimately suspended to supervised release for 24
18 months, of which he was on U.S. federal probation.

19 THE COURT: Thank you. Anything else on behalf
20 of the State?

21 MS. MAYES: Nothing further, Your Honor.

22 THE COURT: Mr. Shealy?

23 MR. SHEALY: Thank you, Your Honor.

24 THE DEFENDANT: No.

25 MR. SHEALY: Let me go ahead and say this.

1 Okay?

2 THE DEFENDANT: All right.

3 MR. SHEALY: Your Honor, August Kreis is 61
4 years old. He turned 61 on Monday when this trial
5 started. He was a cabinetmaker by trade when he
6 could work. And, obviously, he's in poor health.
7 He has diabetes, **Minor 2** told you this, high blood
8 pressure and the things that go along with it. He's
9 lost both of his legs. Your Honor, he did serve in
10 the Navy, and there was a lot of talk about his
11 service. He served off the coast of Vietnam in the
12 when destroyer Bainbridge.

13 Your Honor, he is a very interesting person.
14 He has testified as to his past, and a lot of people
15 would find that repulsive. But, nevertheless, he's
16 one of the most interesting people that I've ever
17 met. I started off with some preconceived notions
18 about him because I inherited this case. And when I
19 received this case, it was full of things about
20 being in the Aryan Nation and things like that.

21 And I thought I was going to run into a very
22 closed-minded, very difficult person to deal with.
23 And we had our difficulties; that became evident
24 when he testified. I told him not to talk about
25 certain thing s, and he talked about them and it

1 opened the door. And he understood that. But he
2 understood it and he made those decisions knowingly
3 and intelligently.

4 Despite his publicized past, people tend to
5 think that Mr. Kreis is firmly rock-steady in his
6 beliefs. And yet in talking to him, I've found that
7 over the years, his beliefs have adjusted and
8 they've changed. I'm not saying that he's renounced
9 everything that he's believed, I'm saying that he's
10 a thinking person. He has considered new evidence
11 on some things, and some things he's changed his
12 mind on; for instance, this thing about Al Qaeda,
13 which he testified to.

14 There's other things about racism. He's -- in
15 talking to him that -- huge conversations, Your
16 Honor. You heard testimony about him going up and
17 getting his family from Tennessee when they were
18 being persecuted because of his views that were
19 leaked to the neighbors. There was one person that
20 went with him, and he was fellow veteran, a black
21 man, a friend.

22 You also heard where he moved to -- forgot the
23 name of the neighborhood. But the neighborhood that
24 he lived in, not only was it predominantly black,
25 but it was heavily black. When I went and did my

1 interviews with the Alston Wilkes representative, it
2 turns out he was very well liked in that community.
3 He also expressed, at least indirectly, a hatred for
4 Jews, yet one of his best friends is Jewish. And
5 this friend's child associates with his children, or
6 at least they did at one point.

7 So he's a very, very complicated, I believe, a
8 very, very intelligent man. I think it's a shame
9 that he started to achieve his education so late in
10 life. But, nevertheless, I don't understand --
11 Mr. Kreis, he doesn't fit any of my stereotypes.
12 And I wish I didn't have stereotypes, but I do. But
13 he's a thinking person.

14 The entire time I have represented him, he has
15 maintained his innocence. And we've gone round and
16 round about that letter. And everything that you
17 heard on the stand is consistent with everything
18 that he told me.

19 The -- you also heard him testify. He was very
20 plain spoken and he did not mince words. And he
21 knew when he said things that hurt him, and yet he
22 went ahead and said them because they were -- well,
23 I submit to you they were the truth. Whenever the
24 cross-examination came, he knew he opened the door,
25 because we had discussed that. But he felt like the

1 jury needed to know who he was, what he was, and
2 get, as he put it, the whole truth. In fact, I
3 think he told the jury that as he started the trial.

4 Your Honor, he is very to the point. He called
5 things as he saw them, and he held nothing back. I
6 can tell you that he has consistently told me about
7 his love for his family. That love, I think, was
8 demonstrated by his care for them and support for
9 them even when he had little or nothing.

10 And, Your Honor, we'd ask that you be as
11 lenient as you possibly can. We'd also ask that
12 because -- well, for other reasons. But this is --
13 we're talking about the same period of time that you
14 would consider concurrent sentencing.

15 Thank you, Your Honor.

16 THE COURT: Mr. Kreis, anything you want to
17 tell me?

18 THE DEFENDANT: I want to thank Mr. Shealy for
19 his best efforts. And I pretty much knew how it was
20 all going to come out. I had my say. And I -- and
21 even though he doesn't agree, I'm -- they want to
22 put me away for the rest of my life. Even if you
23 gave me 16 or 20 years, it's still going to be the
24 rest of my life. So I'd rather hear you say life
25 than listen to them.

1 You know, to me, they're the enemy, they'll
2 always be the enemy. That's ZOG sitting at that
3 table. I hate the Jew. I'll always hate the Jew
4 until my death, period. This government is run by
5 an evil group of people. And, please, vote for
6 Trump.

7 THE COURT: I can't give you life. The statute
8 will not allow me.

9 THE DEFENDANT: Well, give me enough that it
10 will mean life anyway.

11 THE COURT: I can do that.

12 THE DEFENDANT: I mean, I don't have any legs.

13 THE COURT: I can do that.

14 THE DEFENDANT: I'm happy with it.

15 THE COURT: Very well. I'll go along with your
16 wishes.

17 As to Indictment 2015-GS-32-2034, an indictment
18 for criminal sexual conduct with a minor in the
19 second degree, the sentence of the Court is that you
20 be committed to the state department of corrections
21 for a period of 20 years.

22 As to indictment 2015-GS-32-2036, lewd act upon
23 a child, committing or attempting, the sentence of
24 the Court is that you be committed to the state
25 department of corrections for a period of 15 years.

1 As to indictment 15-GS-32-2030, lewd act upon a
2 child, the sentence of the Court is that you be
3 committed to the state department of corrections for
4 a period of 15 years. They're all to run
5 consecutive. You'll be required to register on the
6 sex offender registry. If you ever get out,
7 mandatory GPS. Mr. Kreis, good luck to you.

8 THE DEFENDANT: Thank you.

9 MS. MAYES: Your Honor, can we also ask for the
10 DSS Central Registry of Abuse and Neglect? That was
11 at the request of DSS.

12 THE COURT: Yes, ma'am.

13 THE DEFENDANT: What difference does all that
14 make if I'm going to die in prison anyway? What
15 difference?

16 Have a good life. I will.

17 MR. SHEALY: Thank you, Your Honor.

18 THE DEFENDANT: Fuck you.

19 MS. MAYES: Thank you, Your Honor.

20 THE COURT: Kreis family, I appreciate your
21 behavior. And, young lady, that's quite a
22 statement. And if it's not an imposition in your
23 personal matter, I'd like to have a copy of that
24 poem. If you'll let Ms. Mayes make a copy of it,
25 please.

1 **Minor 2** : Yes, Your Honor.

2 THE COURT: I wish the best for you and your
3 family and hope --

4 **Minor 2** : I also wanted to thank the
5 Court and everybody that has, you know, done their
6 job in this trial. Ms. Suzanne, Kevin, Chris,
7 Detective Dykes, you've all -- it means so much to
8 the family. And thank you.

9 THE COURT: Well, I hope you can get peace now.
10 And you're a very bright, smart young lady, you and
11 your sisters. And use that intelligence in a good
12 way, a positive way. And I think you can overcome
13 your childhood. Good luck.

14 MS. MAYES: Thank you, Your Honor.

15 -- END OF TRANSCRIPT OF RECORD --

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24

25

C E R T I F I C A T E

1
2 STATE OF SOUTH CAROLINA

3 COUNTY OF LEXINGTON
4

5 I, the undersigned, Bethanie K. Creppon, Circuit
6 Court Reporter for the Second Judicial Circuit of
7 the State of South Carolina, do hereby certify that
8 the foregoing is a true, accurate and complete
9 transcript of record of all the proceedings had and
10 the evidence introduced in the trial of the
11 captioned cause, relative to appeal in the Criminal
12 Court for Lexington County, South Carolina, on the
13 2nd, 3rd, 4th, 5th days of November, 2015.

14 I do further certify that I am neither of kin,
15 counsel, nor interest to any party hereto.
16

17 January 18, 2016
18

19 s/Bethanie K. Creppon

20 Bethanie K. Creppon
21 Circuit Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AUGUST BYRON KREIS, III,

APPELLANT

APPELLATE CASE NO. 2015-002340

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1.

Whether the court committed reversible error by instructing the jury that “the testimony of the victim need not be corroborated” since this was an impermissible instruction, and appellant is entitled to the benefit of State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016) on direct appeal?

2.

Whether the court erred by admitting the testimony of daughter #3, and Eddie Kreis regarding alleged subsequent bad acts committed by appellant since they were not admissible under State v. Lyle, or Rule 404, SCRE, they were dissimilar, and even if this evidence was relevant, the probative value of it was substantially outweighed by its unfair prejudice?

STATEMENT OF THE CASE

Appellant was indicted by the Lexington County Grand Jury for committing a lewd act upon a minor, attempting to commit a lewd act upon a minor, and criminal sexual conduct with a minor in the second degree. R. 391-399. His case was called to trial on November 2, 2015 before the Honorable Doyet A. Early, III, and a jury. Thomas Shealy represented appellant. Suzanne Mayes and Christopher Samellas were the assistant solicitors. R. 1.

On November 5, 2015 the jury found appellant guilty on all three counts. R. 356, l. 19 – 357, l. 7. Judge Early sentenced appellant to twenty years imprisonment for criminal sexual conduct with a minor in the second degree, fifteen years imprisonment for committing a lewd act upon a minor, and fifteen years imprisonment for attempting to commit a lewd act upon a minor. He ordered the sentences served consecutively for a total sentence of fifty years. R. 377, ll. 4-5.

This appeal follows.

ARGUMENT

1.

The court committed reversible error by instructing the jury that “the testimony of the victim need not be corroborated” since this was an impermissible instruction, and appellant is entitled to the benefit of *State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016) on direct appeal.

Introduction

When arguing why the probative value of allowing the testimony of the youngest daughter should be admitted under *State v. Lyle*, 125 S.C. 406, 118 S.E.2d 803 (1923), Assistant Solicitor Mayes urged: “[H]ere there’s no physical evidence in this case, there’s no medical evidence, there’s no forensic evidence. *It’s a case that simply comes down to the testimony of these three children* who - - at least they were children at the time, who all experienced nearly identical assaults by the father in the family home.” R. 129, ll. 15-22. (emphasis added).

In ruling that the proffered alleged *Lyle* evidence could be admitted, the judge observed: “We have, as we have in so many of these cases, *it’s a he said/she said.*” R. 134, ll. 13-22. (emphasis added). These statements from the solicitor and the judge, supported by the trial record, show why charging the jury that the “victim’s testimony did not have to be corroborated” - - that unconstitutional charge on the facts - - could not be harmless error.

Trial facts

Minor 1 was twenty-one years old at the time of the trial. She was appellant’s oldest daughter. She was living in Bethune, South Carolina with her fiancé at the time of the trial. R. 17, l. 1 – 18, l. 16.

She testified that the family moved to six different states when she was a child. R. 20, ll. 7-13. She noted that when she was between the ages of ten and thirteen appellant was not

working. He was disabled and receiving a government pension. At the time of the trial appellant was in a wheelchair since both of his legs had been amputated. She said appellant was “mobile” when he allegedly molested her. R. 22, l. 4 – 24, l. 5.

She testified that: “[M]y father and I actually didn’t have a horrible relationship during the day.” R. 23, ll. 20-24. Her accusation was that the molestation occurred at night when appellant had oral sex with her. She said that she was thirteen-years-old the last time it happened. R. 27, l. 22 – 31, l. 13.

She offered that she did not report these alleged incidents to anyone because her mother did not have a job, and appellant was living “off of his pension off of the government.” R. 31, ll. 11-21. She also maintained that when she brought her allegations to the attention of her mother, the mother asked her younger sister “if anything had happened, and she [the younger sister] said yes.” R. 39, ll. 20-25.

Minor 2, younger sister, was nineteen-years-old at the time of the trial. R. 81, l. 9 – 82, l. 23. She maintained that appellant “put his finger inside me.” She also said appellant tried to get her to perform oral sex but she kept her mouth shut. She recalled another alleged incident where appellant tried to grab her, and get her on the bed, she ran away, and she claimed appellant laughed when she ran away. R. 85, l. 12 – 88, l. 23.

She recalled that her older sister, Minor 1, often fought with appellant. Minor 2 said that she did not like these violent disagreements. R. 93, l. 16 – 96, l. 8; R. 99, ll. 22-24.

As will be seen in issue two infra, the judge also allowed the testimony of fourteen-year - old Minor 3, another one of appellant’s daughters to be heard by the jury over defense objections. She was fourteen at the time of trial. R. 136, l. 14 – 137, l. 11; R. 139, ll. 19-23.

Minor 3's claim was that she was in the master bedroom watching the Wizard of Oz, "and he [appellant] pulled me up on the bed and then he touched my lower area." R. 141, l. 9 – 145, l. 12; R. 147, ll. 12-14.

Her brother, Eddie Kreis testified that he went into the bedroom and he said his father, appellant, and his younger sister, Minor #3, were "under the covers and the blanket was moving." R. 158, ll. 12-25. Eddie testified: "There was something wrong with that." R. 159, ll. 8-10.

In essence, the remainder of the testimony was three different forensic interviewers and law enforcement officials giving time and place reporting for the two daughters that were the subject of the indictments, and the third daughter that was the alleged Lyle witness. R. 170, l. 20 – 248, l. 17

Appellant took the stand in his own defense. Appellant denied that he ever harmed or sexually touched his daughters. "If they would have told me they didn't want anything to do with me or didn't want me there, I would have left a long time ago. I could have started enjoying myself a lot easier." R. 261, l. 23 – 264, l. 11. Appellant explained the letters he wrote from the jail to his family. These letters were not admitting guilt but rather just telling his family that he loved them, apologized for the turmoil in the family, and his "anti-government actions that contributed to the turmoil through the years." R. 264, l. 7 – 273, l. 5.

The solicitor cross-examined appellant at length about his "anti-government beliefs," and the "fringe" organizations he belonged too. R. 275, l. 5 – 280, l. 18; R. 285, l. 18 – 286, l. 14.

Charge conference

During the charge conference, Defense Counsel Shealy objected to the judge instructing the jury that the victim's testimony did not have to be corroborated. Defense counsel correctly

stated that such a jury instruction would be a charge on the facts since it was “a comment on the evidence.” The judge stated that he did not see how it would be a charge on the facts. R. 294, l. 7 – 296, l. 18.

Jury charge

In his charge on the law the judge instructed: “I might add there’s a statute also that says, enacted by our legislature, that in a prosecution under this particular section, 16-3-655, II and III, *that the testimony of the victim need not be corroborated in prosecutions under these code sections.*” Tr. 399, ll. 13-18.(emphasis added). After the jury instruction, Defense Counsel Shealy again reiterated his objection to the “no corroboration” instruction. R. 342, ll. 16-22.

Discussion

In State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016), our Supreme Court held that the jury instruction involved in this case, “that the testimony of the victim need not be corroborated” under the statutes was an impermissible charge on the facts, and therefore unconstitutional. The Court therefore abrogated its majority opinion in State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006).

As seen above, both the solicitor and the judge acknowledged this case was a swearing contest a - - “he said/she said.” Consequently, the error cannot not be harmless.

Appellant offered a defense, and he testified in his own defense. It was clear this was a dysfunctional family. Appellant complained that if he knew his daughters did not like him he would have left “earlier.” It seemed apparent that appellant’s anti-government activities unfortunately caused friction in the family, and they were embarrassing for his young daughters. Appellant explained that his letters from the jail were genuinely written to say that he loved his family -- “still does” -- and that he wanted to provide for them economically in the future. It

respectfully cannot be said that this unconstitutional charge on the facts - - the “no corroboration instruction” -- was harmless beyond a reasonable doubt in this “he said/she said” case.

Moreover, since this case is on direct appeal appellant is entitled to the benefit of the Supreme Court’s decision in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). Appellant should be granted a new trial.

2.

The court erred by admitting the testimony of daughter #3, and Eddie Kreis regarding alleged subsequent bad acts committed by appellant since they were not admissible under *State v. Lyle*, or Rule 404, SCRE, they were dissimilar, and even if this evidence was relevant, the probative value of it was substantially outweighed by its unfair prejudice

Relevant Facts

Prior to trial, the judge noted that the state wanted to offer the testimony of the third daughter, Minor #3, alleging that “there are charges similar to [what] occurred outside of this jurisdiction.” The judge stated that the solicitor contended that this evidence was admissible under *State v. Lyle*, and Rule 404, SCRE. Defense Counsel Shealy noted he understood the state wanted to call the third daughter as a witness even though there had not been any criminal charges regarding her allegations. The solicitor incorrectly stated “her charges are nearly identical to the situation involving both Minor 1 and Minor 2.” R. 4, l. 16 – 5, l. 7. The judge asked the solicitor to explain the allegations against the two witnesses involved in the indictments. R. 5, l. 8 – 7, l. 11.

Defense counsel argued that the alleged incidents involving the third daughter, Minor 3, occurred after the incidents in that case, and they could therefore not be “*prior* bad acts.” He argued that the third daughter’s allegations about being touched above and below her clothes were not identical to the other allegations, and “are less graphic than what’s alleged in the first two cases.” R. 7, l. 14 – 8, l. 19.

The solicitor responded, as she would later during the trial, claiming that the cases were similar, and a legal “common scheme” because it involved “a pattern’ of appellant molesting his daughters. R. 8, l. 21 – 9, l. 12. The judge stated he was not going to rule before the trial started

so he did not want any mention of the third daughter prior to a proffer being offered during the trial. R. 9, l. 12 – 10, l. 2.

The proffer

As seen above, the allegations of Minor 3 were not similar to the other allegations of Minor 1 and Minor 2. Minor 3 said she was watching the Wizard of Oz, and “he tried to grab me up onto the bed, like, next to him, next to him, he starts touching me.” She said appellant touched her underneath her clothes on “my lower part” with “his hand.” R. 106, l. 8 – 107, l. 22.

Minor 3 also said she did not think that anyone saw this alleged event but that her brother Eddie, claimed he opened the door, and saw them both underneath the blankets on the bed. Eddie, as seen above, said he knew something improper must have been happening. R. 108, l. 15 – 111, l. 13. Minor 3 also alleged that on another date appellant attempted oral sex with her “but I wouldn’t let that happen.” R. 111, l. 14 – 113, l. 3.

Defense counsel again argued State v. Lyle involved “prior bad acts” which constituted a common scheme or plan with the later charged offense. The acts here were subsequent, and were “dissimilar” since none of the other allegations involved an incident under the covers on a bed during a movie. R. 124, l. 4 – 126, l. 8.

The solicitor argued the facts were “substantially similar” because “what we know [the] similarities are that all three girls are the biological daughters of August Kreis; as a result, he shared the same relationship with all three girls. He had access to them in the family home as a result of that relationship, and he abused his parental role and authority in each of these cases by carrying out these planned sexual assaults against his three daughters.” The solicitor also said the girls “were at similar ages” and, as seen above, she noted there was no forensic or other evidence outside the word of the girls that the assaults occurred. She urged the “he said/she

said” nature of this case was another reason Minor 3’s allegations should be allowed before the jury. R. 126, l. 10 – 130, l. 6.

Defense counsel added that even if the judge found the incident with Minor 3 was relevant, that it should be excluded given that its unduly prejudicial effect outweighed its probative value. R. 130, ll. 8-24. Counsel also noted that the subsequent bad act in this case involved a different alleged victim, and not the same alleged victim the solicitor urged while citing case law. R. 130, ll. 8-24.

The judge ruled that the evidence was relevant. He also ruled that the probative value of the evidence outweighed its prejudicial effect. The judge cited the State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009), factors on similarities, and found the Minor 3 incident sufficiently similar. In addition, as seen above, the judge noted this case was a “he said /she said,” and the jury had to decide the credibility of the witnesses. These were the reasons the judge ruled this evidence was admissible. R. 132, l. 7 – 134, l. 22.

As seen above, the proffered testimony was substantially similar to the testimony given by Minor 3, and Eddie in the presence of the jury.

Discussion

Evidence of other bad acts are not admissible to prove the defendant’s guilt but they can be admissible to show motive, identity, evidence of a common scheme or plan, absence of mistake or accident, or intent. State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1923); Rule 404 (b), SCRE.

In State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009), the Supreme Court held that when analyzing bad acts evidence the trial court must first determine whether the evidence is relevant pursuant to Rule 401, SCRE. If the trial court determines the evidence is relevant, it

must then decide whether the bad act evidence fits within an exception of Rule 404 (b), SCRE. “Common scheme or plan” evidence is admissible if the similarities between the evidence outweigh the dissimilarities.

Some of the factors to be considered on similarities are the: (1) age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) manner of occurrence, for example, the type of sexual battery. State v. Wallace, 384 S.C. 428, 433-434, 683 S.E.2d 275, 278 (2009).

The Court in Wallace cited State v. McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984), which involved a signature crime where the defendant would enter the stepdaughter’s bedroom at night, wake them up, and take one of them to his bedroom. McClellan would explain the biblical verse that children were to honor their father, and he would also indicate he was teaching them how to be with their husbands. The method of attack was common in all three daughters.

The same can be said of the original case, State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1923), where the prior bad acts evidence removed all doubt as to the defendant’s intent although it obviously is also often cited for a common scheme or plan case.

The major problem is this: The solicitor here essentially argued that all three girls were minors, they were appellant’s daughters, and that appellant improperly touched, or molested all three of them in some manner. He “abused” his parental role, he had access to the girls, and he was a bad person for abusing his role and a parent.

While the two older sisters which were the subject of the indictments against appellant had allegedly similar experiences, the same was not true of Minor 3. The alleged common scheme or plan proffered involving Minor 3 was that appellant allegedly forced her under the

covers during a movie, and touched her lower body. There was also another alleged attempt at oral sex which the third daughter said she successfully repelled. This was not sufficiently consistent with the testimony of Minor 1 or Minor 2.

Minor 1 alleged a continuous – and always at night history – of appellant having oral sex with her that she did not realize was improper for a long time. Minor 2 alleged that appellant “put his finger inside me.” He also tried to get her to perform oral sex but she kept her mouth shut. Another alleged time appellant tried to grab her, and get her on the bed, she ran away, and appellant laughed as she ran. R. 85, l. 12 – 88, l. 23. The allegations of Minor 3 were simply not similar to the indicted charges for which appellant was on trial for Minors 1 and 2.

The term “sexual assault” is a very broad term. It encompasses a lewd act of touching a victim outside of her clothing in an improper manner to the other extreme of forced sexual intercourse. The similarities here were simply insufficient here to allow the proffered evidence. The solicitor’s contention was that all three minors were appellant’s young daughters, and he was sexually lewd or improper with all three of them in one way or another, he abused his parental role, and that was good enough for the admission of the proffered evidence. Respectfully, if that is enough, then the exception swallows the rule of Lyle on a common scheme or plan.

However, even if this evidence was relevant under Lyle and Rule 404, SCRE, it should also have been excluded under Rule 403, SCRE which was the evidentiary rule which controlled defense counsel’s objection and the court’s ruling. Defense counsel correctly argued that even if the judge found the evidence relevant that its unduly prejudicial effect dictated that Minor 3’s proffered testimony should be excluded. Unlike Wallace, the sex acts were not similar, they did not necessarily occur when the mother was absent since she did not work, they did not always

happen at night as they allegedly did to Minor 1, there was no admonishment to each of the alleged victims not to tell.

Further, defense counsel argued that the allegations regarding daughter 3 occurred *after* the allegations involved in the allegations which were indictments of Minors 1 and 2. Counsel correctly argued this was an additional reason to exclude them since they were not “prior bad acts” in the true sense to show that the indicted charges were part of a common scheme or plan. That was a *factor* for the trial court to weigh heavily. Evidence of *subsequent bad acts* are much more apt to be *impermissible propensity evidence* pursuant to Rule 404 (a), SCRE, since they constitute evidence that “he continues to do it therefore that proves he is a pervert” who needs to be removed from society regardless of proof beyond a reasonable doubt of the indicted charges. See Rule 403, SCRE. See State v. Scott, 405 S.C. 489, 508, 748 S.E.2d 236, 247 (Ct. App. 2013) (Acts occurring *prior* to the crimes charged were not too remote and were sufficiently similar, and were admissible under a Rule 403, SCRE analysis also).

The solicitor took full advantage of Minor 3’s dissimilar allegations of a “sexual assault.” She brought in a different forensic interviewer for each daughter to give the largest illusion of strong evidence of appellant’s guilt. The admitted proffered evidence regarding the third daughter was gratuitous, inadmissible, and it should not have been allowed. State v. Lyle, *supra*. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed, and this case remanded to the Lexington County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of March, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 2, 2017



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Doyet A. Early, Circuit Court Judge

THE STATE,

RESPONDENT,

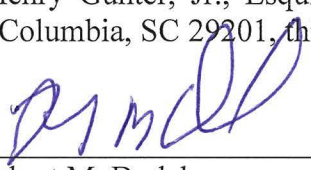
V.

AUGUST BYRON KREIS, III,

APPELLANT

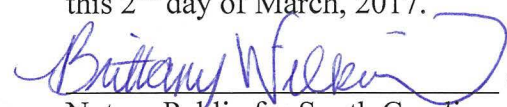
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon V. Henry Gunter, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of March, 2017.



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of March, 2017.



(L.S)

Notary Public for South Carolina

My Commission Expires: November 3, 2026.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of General Sessions

The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2015-002340

THE STATE,

Respondent,

v.

AUGUST BYRON KREIS, III,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial judge's error in charging the jury pursuant to S.C. Code Ann. § 16-3-657 that the Victim's testimony need not be corroborated was harmless in light of the compelling evidence of guilt presented during Appellant's trial and the corroborated nature of the victims' testimony.

II.

The trial judge properly admitted evidence of Appellant's prior sexual abuse of Victim 3 where the testimony of the witness constituted evidence of a common scheme or plan due to the significant similarity to the testimony of Victim 1 and Victim 2, including the age of the victims when the abuse occurred, the relationship between Appellant and his victims, the location where the abuse occurred, and the manner in which the abuse occurred, and the probative value was not substantially outweighed by the risk of unfair prejudice.

STATEMENT OF THE CASE

Appellant was indicted during the August 2015 term of the Grand Jury for Lexington County for criminal sexual conduct with a minor in the second degree (2015-GS-32-02034), attempting or committing a lewd act upon a child (2015-GS-32-02030), and lewd act upon a child (2015-GS-32-02036). Appellant proceeded to a trial by jury from November 2-5, 2015, in Lexington, South Carolina. At the conclusion of trial, Appellant was found guilty as indicted. He was sentenced by the Honorable Doyet A. Early, III, to imprisonment for a term of twenty years for criminal sexual conduct with a minor in the second degree, imprisonment for a term of fifteen years for attempting or committing a lewd act upon a child, and imprisonment for a term of fifteen years for lewd act upon a child, with all sentences running consecutively for an aggregate sentence of fifty years' imprisonment. Appellant timely filed a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

Appellant and Mother have seven children together: Victim 1, Victim 2, Son 1, Son 2, Victim 3¹, Son 3, and Son 4. In January of 2014, Victim 1 disclosed to her mother that Appellant sexually abused her in the past. R. p. 35. Upon Victim 1's disclosure, Mother asked Victim 2 whether Appellant engaged in any inappropriate behavior with her. R. p. 39. Victim 2 ran away to a neighbor's house, then came back and admitted to Mother that something happened to her as well. R. pp. 39-40. Mother subsequently asked Victim 3 whether Appellant ever "did stuff" to her and Victim 3 replied in the affirmative. R. pp. 148-149.

At the time of trial, Victim 1 was twenty-one years old. R. p. 17. Victim 1 testified that during her childhood, her family lived in Pennsylvania, New York, Florida, Tennessee, Kentucky, and South Carolina. R. p. 20. The family lived in Lexington from the time Victim 1 was ten years old until she was thirteen years old. R. p. 20. Victim 1 testified she and her father had a normal parent child relationship during the day; however, Appellant would "do stuff at night," then the next day would act as if nothing happened. R. pp. 23-24. When asked when Appellant abused her, Victim 1 stated:

There wasn't a lot of opportunity during the daytime. And, you know, at night when everybody is sleeping, he would come in either - - if I was in the bedroom, he would come in and pick me up and take me to the couch while nobody was in the living room, or if I was sleeping on the couch that night, he would just come out of his bedroom and on the couch.

R. p. 25. In addition to the living room, Appellant sexually assaulted Victim 1 in the bedroom she shared with her sisters, the master bedroom, and the master bathroom. R. 26. Victim 1 testified Appellant would, "put his mouth on my vaginal area," and that particular act occurred every time he abused her. R. p. 28. In addition, Victim 1 disclosed Appellant "would try to put

¹ While she is referred to Victim 3 in the Brief of Respondent, Appellant was not indicted for any incidents with respect to Victim 3 in this particular case. At the time of trial, Appellant had pending charges in Richland and Kershaw counties for sexually assaulting Victim 3. Supp. R. p. 1.

his penis in my mouth.” R. p. 28. “He would touch me, touch my breasts, touch my vagina.” Victim 1 clarified Appellant forced her to perform oral sex on him on multiple occasions. R. p. 28. Victim 1 also clarified Appellant digitally penetrated her on multiple occasions. R. p. 29. Victim 1 stated Appellant had been sexually abusing her for as long as she could remember. R. pp. 64-65. Victim 1 “would always pretend like I was sleeping and just let it happen. Like I said, it was a normal occurrence.” R. p. 30. The last occasion where Appellant attempted to assault Victim 1 was when she was thirteen years old. R. pp. 29-30. On the final occasion, Appellant had a condom with him and attempted to insert his penis into Victim 1’s vagina. R. pp. 29-30. Victim 1 resisted and struggled until Appellant gave up. R. p. 30. Victim 1 described Appellant as an angry, violent man who taught his children, “violence solves everything.” R. p. 37. Victim 1 was nineteen years old at the time she disclosed Appellant’s abuse. R. p. 35. She stated she did not disclose the abuse earlier because she did not want a broken family. R. p. 77.

Victim 2 was nineteen years old at the time of trial. R. p. 81. Victim 2 and her family lived in Lexington County from the time Victim 2 was nine years old until she was eleven years old. R. p. 82. Victim 2 described her relationship with Appellant as, “I mean, he’s my father. But I never really liked being around him much.” R. p. 83. Victim 2 also described her father as “violent and mean.” R. p. 91. Victim recounted an incident where she was asleep on the couch and Appellant came out of his bedroom and pulled her onto the floor. R. p. 84. Appellant subsequently tried to put his penis into Victim 2’s mouth. R. p. 84. Victim 2 noted that she kept her mouth shut but, “could feel it on my lips and teeth.” R. p. 86. Appellant also digitally penetrated her. R. pp. 86-87. The only other incident involving Appellant that Victim 2 recalled was an incident where Appellant tried to pull her onto the bed in the master bedroom when no one else was home. R. pp. 87-88. Victim 2 ran away from Appellant because she “knew what he

was trying to do.” R. p. 88. Victim 2 revealed she did not disclose Appellant’s abuse at the time because he was the one who paid the bills and did not know what would happen to the family if he was gone. R. p. 89.

Following Victim 2’s testimony, the State proffered the testimony of Victim 3. R. pp. 101-20. The State’s proffer of Victim 3’s testimony followed a pre-trial discussion concerning the admission of Victim 3’s testimony as Lyle evidence. R. pp. 4-9. During the pre-trial, hearing, the trial judge delayed ruling on the issue, instructing the parties, “But when you get to the third daughter outside of Lexington County, we’ll do a proffer to see exactly what she’s going to say and what we’ve got already in evidence, and I’ll make a ruling on it at that time.” R. p. 9.

At the time of trial, Victim 3 was fourteen years old. R. p. 106. While living at an apartment in Richland County and an apartment in Kershaw County, Victim 3 recalled Appellant doing things that made her uncomfortable. R. pp. 105, 138-39. Victim 3 recounted a specific incident where she and Appellant were on the bed together watching *The Wizard of Oz* and Appellant began touching her. R. p. 106. Victim 3 elaborated that Appellant touched her vagina with his hand. R. pp. 106-07. While Appellant was touching Victim 3’s vagina, Son 3 walked into the room. R. p. 110. Victim 3 testified that when Son 3 walked in the room, Appellant stopped touching her. R. p. 111. Son 3 corroborated Victim 3’s testimony, testifying he walked into Appellant’s bedroom and saw Appellant and Victim 3 on the bed. R. p. 117. Son 3 stated Appellant and Victim 3 were under a blanket and that he saw “movement.” R. p. 118. Son 3 immediately walked out of the room because “something was strange,” meaning that it was “not right.” R. pp. 118-19. Victim 3 also recounted an occasion where Appellant attempted to force her to perform oral sex on him. R. p. 112. Victim 3 resisted, testifying, “I rolled over. I didn’t open my mouth.” R. p. 112. Victim 3 also noted Appellant previously took her hand and

attempted to make her hand touch his genitals. R. p. 113. Victim 3 was eleven or twelve years old at the time of Appellant's abuse. R. p. 114.

Following the proffer of Victim 3 and Son 3's testimony, Defense Counsel stated, "Your Honor, prior to starting my argument, I'd like to put it on the record that my client has asked me not to contest the children testifying." R. p. 122. Appellant told the Court he had no objection to the Lyle evidence coming in and that he would "rather have it all come out now." R. p. 123. Defense Counsel noted he disagreed with Appellant's decision and that he was prepared to argue the issue. R. pp. 123-24. Following argument by Defense Counsel and the solicitor, the trial judge ruled:

So what all I have to look at here is, obviously, the age of the victims. They were all close in age, they were young children at the time it occurred. The relationship is the same, they were all biological, natural children. The alleged perpetrator is their dad. The location is all in the home; different homes, but in the home where the children lived. I don't think there's any evidence of any coercion or threats other than - - no evidence of threats. The manner of occurrence, all are similar in that it was digital penetration, attempted or forced fellatio, oral sex. The children's descriptions were pretty much mirror images of each other. So I find that the similarities outweigh the dissimilarities, and that the bad acts or the testimony of [Victim 3] and [Son 3] should be admitted under a 403 analysis, which is required. . . . And, even though this is not part of my analysis, the defendant is - - has consented to the testimony of [Victim 3] and [Son 3]. He's advised me that he wishes to take the witness stand. He advised me he wishes, you know, the whole story come out and tell his side, and wants any allegations that [Victim 3] or [Son 3] may testify, he consents to their testimony. So I'll allow the testimony with that ruling.

R. pp. 133-35. Victim 3 and Son 3's subsequent trial testimony matched their testimony during the proffer. R. pp. 137-61.

Following Appellant's arrest, Mother provided Detective Shannon Dykes of the Lexington County Sheriff's Department with a letter written by Appellant that was addressed to Mother. R. pp. 191, 198-201. In the letter, Appellant makes a variety of incriminating statements. Appellant wrote, "I realize you most likely regret even knowing me now." R. p. 204. Appellant

also wrote, "Just for your knowledge, I'm not asking for bail and have already told the lawyers that they gave me it's not going to trial. I'll stay here until sentenced to prison." R. p. 205. Appellant also stated, "Although I'm sure you want nothing to do with me, I'd like to know you got my things from the house. . . . I hate myself more than anyone else could." R. pp. 205-06. Further, Appellant admitted, "I deserve whatever happens to me, but I'm so sorry I hurt the only ones I love and love me, you and our children." R. p. 207.

After the State rested its case, Appellant chose to testify in his own defense. R. pp. 250-90. On direct examination, Appellant noted he was on a domestic terrorism watch list. R. p. 269. On cross-examination, the State asked Appellant why he was on a domestic terrorism watch list. R. p. 275. Appellant responded that he is a member of a number of organizations the United States government considered to be a threat. These organizations included the Ku Klux Klan, the Christian Sheriff's Posse Comitatus, and the Aryan Nations. R. p. 275. In fact, Appellant was the international leader of the Aryan Nations. R. p. 277. Appellant described his goal of spreading the word of the Aryan Nation, even going as far as appearing on the Jerry Springer Show. R. p. 277. Appellant testified he wrote the incriminating letter to Mother because he "gave up" because the federal government, which he referred to as a "Zionist Occupational Government," was out to get him. R. 280-81. When reminded that his children were the ones accusing him of illicit acts and they were not affiliated with the federal government, Appellant responded, "No. But they've been taken through a bunch of psychobabblists, pseudoscientist pieces of shit that don't know anything but to - - couldn't find their - - no. They're being used. They're being used. In my eyes, they're being used, ma'am." R. p. 281. Appellant later admitted he was investigated by the Pennsylvania State Police while living in Pennsylvania for sexually abusing his two daughters from a prior marriage. R. p. 287. Appellant had a "protection from abuse" order

entered against him in Pennsylvania where he was prohibited from contacting the parent of his two daughters from the prior marriage. R. pp. 287-88.

During the charge conference, the trial judge indicated he intended to give the jury a non-corroboration charge. R. pp. 294-96. The trial judge subsequently instructed the jury, "I might add there's a statute also that says, enacted by our legislature, that in a prosecution under this particular section, 16-3-655, II and III, that the testimony of the victim need not be corroborated in prosecutions under these code sections." R. p. 339.

Following the jury's guilty verdict, Appellant addressed the Court during sentencing.

Appellant stated:

I want to thank Mr. Shealy for his best efforts. And I pretty much knew how it was all going to come out. I had my say. And I - - and even though he doesn't agree, I'm - - they want to put me away for the rest of my life. Even if you gave me 16 or 20 years, it's still going to be the rest of my life (sic). So I'd rather hear you say life than listen to them.² You know, to me, they're the enemy, they'll always be the enemy. That's ZOG³ sitting at that table. I hate the Jew. I'll always hate the Jew until my death, period. This government is run by an evil group of people. And please, vote for Trump.

R. pp. 375-76.

² Appellant earlier requested the trial judge sentence him to life imprisonment in the event he was found guilty. R. p. 3.

³ Appellant earlier explained to the trial judge that "ZOG" was an abbreviation for "Zionist Occupational Government." R. p. 280.

ARGUMENT

I.

The trial judge's error in charging the jury pursuant to S.C. Code Ann. § 16-3-657 that the Victim's testimony need not be corroborated was harmless in light of the compelling evidence of guilt presented during Appellant's trial and the corroborated nature of the victims' testimony.

Appellant contends the trial court committed reversible error by instructing the jury that “the testimony of the victim need not be corroborated.” Appellant further avers the error could not be harmless because it was a “he said/she said” case. Appellant's argument that any error could not be harmless is wholly without merit. Any error by the trial judge in giving the non-corroboration charge was harmless in light of the compelling evidence of guilt presented during trial and the corroborated nature of the victims' testimony.

As noted in Respondent's Statement of Facts, the trial court, pursuant to the South Carolina Supreme Court's decision in State v. Rayfield, 369 S.C. 106, 117-18, 631 S.E.2d 244, 250 (2006), instructed the jury that a rape victim's testimony need not be corroborated.⁴ This instruction, previously found appropriate and consistent with the legislative's remedial intent, was found confusing and unconstitutional by the South Carolina Supreme Court in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016).

In Stukes, the trial court instructed the jury on the no-corroboration requirement. While deliberating, the jury sent the trial court a note, asking: “[T]he South Carolina law that the victim's testimony in CSC . . . does not need to be corroborated, . . . does that law imply that the victim's testimony must be accepted as being true?” Rather than respond directly to the jury's question, the trial court recharged the general law on credibility. The jury immediately returned a guilty verdict. Stukes, 416 S.C. at 497. The Supreme Court observed “it is inescapable that

⁴ S.C. Code Ann. § 16-3-657 provides: “The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658.”

this charge confused the jury” as “illustrated by the jury’s query as to whether our law implies a victim’s testimony must be accepted as being true.” Id. at 499-500. Turning to the trial court’s reaction to the jury note, the Supreme Court lamented, “In our view the trial court’s decision to merely recharge credibility, as opposed to answer the question in the negative, did nothing to inform the jury on this issue.” Id. at 500. Reviewing for harmless error, the Supreme Court found the instruction was prejudicial because the case hinged on credibility: the victim claimed to be raped, and the defendant claimed it was consensual. Id.

Notwithstanding the trial judge’s error in giving the no-corroboration charge, said error is harmless in Appellant’s case. As a general rule, the appellate court will decline to set aside a conviction due to insubstantial errors not affecting the result. State v. Chavis, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015). Determining whether an error is harmless depends on the circumstances of the particular case and no set rule governs this finding. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). Instead, the materiality and any prejudicial character of the alleged error must be determined from its relationship to the entire case. Id. An error is harmless when it could not reasonably have affected the result of the trial. Id.; see also State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (“When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.”). Abundant evidence supports that the assaults on Victim 1, Victim 2, and Victim 3 were part and parcel of Appellant’s common scheme or plan of sexually assaulting every single one of his daughters. Appellant’s sexual abuse of Victim 1 and Victim 2 was corroborated by the properly admitted Lyle testimony of Victim 3 and Son 3. Victim 3 detailed instances of abuse nearly identical to that of Victim 1 and Victim 2, and Son 3 walked in during one of the specific instances of abuse

described by Victim 3 at trial and corroborated that he walked into Appellant's bedroom and saw Appellant and Victim 3 under a blanket where "something strange" was going on that made him leave the room immediately. Appellant also made a series of statements in a letter to Mother that were quasi-confessional. Appellant's statements such as, "I deserve whatever happens to me, but I'm so sorry I hurt the only ones I love and love me, you and our children" and "I hate myself more than anyone else could" are demonstrative of Appellant's knowledge of his own guilt. Appellant also made statements in the letter resigning himself to a life in prison. Aside from the evidence and testimony presented by the State at trial, Appellant's primary defense offered at trial was that a "Zionist Occupational Government" somehow coerced his daughters into fabricating sexual abuse allegations in order to ensure he went to prison.

All the above leads to the natural conclusion that the trial judge's error in giving the no-corroboration charge was an insubstantial error not affecting the result of trial. First, the no-corroboration charge was harmless because the victims' allegations were corroborated. Second, the non-corroboration language was not prejudicial to Appellant because it could not have had any impact on the verdict in light of the evidence of Appellant's guilt presented during trial. The State presented compelling evidence of Appellant's guilt while Appellant only offered an anti-Semitic conspiracy theory that his daughters were somehow puppets of an entity he referred to as the "Zionist Occupational Government." Furthermore, Appellant's case is distinguishable from Stukes, as the prejudice in Stukes was the jury appeared to misunderstand the instruction based on its note to the trial court. In the instant case, there is no evidence the jury misunderstood the trial court's correct statement of law. Therefore, there is no showing of prejudice. Appellant's convictions and sentences should be affirmed.

II.

The trial judge properly admitted evidence of Appellant's prior sexual abuse of Victim 3 where the testimony of the witness constituted evidence of a common scheme or plan due to the significant similarity to the testimony of Victim 1 and Victim 2, including the age of the victims when the abuse occurred, the relationship between Appellant and his victims, the location where the abuse occurred, and the manner in which the abuse occurred, and the probative value was not substantially outweighed by the risk of unfair prejudice.

Appellant asserts the trial judge erred in finding Victim 3's testimony admissible as evidence of a common scheme or plan. Specifically, Appellant contends the abuse of Victim 3 was not sufficiently similar to the indicted charges with respect to Victim 1 and Victim 2. Appellant also contends the trial court erred in finding Victim 3's testimony more probative than prejudicial under Rule 403, SCRE. These arguments lack merit, as there was an exceptionally close degree of similarity between Appellant's prior sexual abuse of Victim 3 and his sexual abuse of Victim 1 and Victim 2. Furthermore, the evidence of the prior bad act had significant probative value that was not substantially outweighed by the risk of unfair prejudice.

Evidence of Appellant's Prior Sexual Abuse of Victim 3 was Admissible to Show a Common Scheme or Plan

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for a prejudicial abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). An abuse of discretion occurs when the trial judge's conclusions either lack

evidentiary support or are controlled by an error of law. State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

In an appeal from a decision regarding the admission of prior bad act evidence, the appellate court is limited to determining whether the trial judge abused his discretion. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). “If there is any evidence to support the admission of bad act evidence, the trial judge’s ruling cannot be disturbed on appeal.” State v. Martucci, 380 S.C. 232, 253, 669 S.E.2d 598, 609 (Ct. App. 2008).

Generally, evidence of prior bad acts is not admissible to prove a defendant’s guilt for the charged crime. State v. Pagan, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006). However, under Rule 404(b), SCRE, evidence of prior bad acts may be admissible “to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” See also State v. Lyle, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923) (recognizing evidence of other crimes is competent to prove a charged offense if it tends to establish: (1) motive; (2) intent; (3) the absence of mistake or accident; (4) common scheme or plan; or (5) identity).

In determining whether to admit evidence of prior bad acts, the trial judge must first determine if the evidence is relevant. State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009). “Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears.” State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (defining relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence”). If a piece of evidence could assist the jury in arriving at the truth of an issue, it is relevant and should be admitted during trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986).

After determining the prior bad act evidence is relevant, the trial judge must next determine if the prior bad act evidence falls within one of the permissible exceptions of Rule 404(b), SCRE. Wallace, 384 S.C. at 433, 683 S.E.2d at 277. One such exception is the common scheme or plan exception, which necessitates a close degree of similarity or connection between the prior bad act and the charged offense. State v. Cutro, 332 S.C. 100, 103, 504 S.E.2d 324, 325 (1998). Regarding the common scheme or plan exception, this Court has instructed:

Such evidence is relevant because proof of one is strong proof of the other. When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity. Where the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b).

Although not a complete list, in this type of case, the trial court should consider the following factors when determining whether there is a close degree of similarity between the bad act and the crime charge: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery. We emphasize that these factors are set out merely for guidance and that other factors may be relevant in weighing the similarities and the dissimilarities between the crime charged and the bad act evidence.

Wallace, 384 S.C. at 433-434, 683 S.E.2d at 277-278 (citations omitted). Thus, the required connection between prior bad acts and a charged offense is established by a close degree of similarity, and no further connection is required for admissibility. Id. at 434, 683 S.E.2d at 278. “Requiring a ‘connection’ between the crime charged and the bad act evidence is simply a requirement that the two be factually similar and does not add an additional layer of analysis.” Id. at 434, n. 5, 683 S.E.2d at 278.

In the current case, all five factors enumerated in Wallace weigh in favor of admitting the evidence due to the substantial degree of similarity between Appellant’s abuse of Victim 1 and Victim 2 and Appellant’s abuse of Victim 3. As to the first factor, the age of the victims when

the abuse occurred, the abuse began when the Victims were at a pre-teen age. In her direct testimony, Victim 1 testified the abuse had been occurring as long as she could remember; however the instances of abuse in Lexington County occurred from the age of ten until she was around thirteen. Victim 2 testified she was between the ages of nine and eleven when the family lived in Lexington and Appellant sexually abused her. While Victim 2 did not testify to her specific age when the incidents occurred, she did testify that it was in “the middle” of when the family lived in Lexington County. R. pp. 88-89. During her proffer, Victim 3 testified she was eleven or twelve years old at the time of the abuse. R. p. 114. Victim 3 later testified during cross-examination that she was twelve years old at the time of the abuse. R. pp. 151-52. All three victims were pre-teens and aged within a few years of each other at the time of Appellant’s abuse. While it is unclear when Appellant’s abuse of Victim 1 began, the instances of abuse Victim 1 recounted at trial all occurred when she was between the ages of ten and thirteen. Identically, Victim 2 was around ten years old at the time of the instances of abuse she testified to at trial. Similarly, Victim 3 was eleven or twelve years old at the time of the instances of abuse she testified to at trial. The ages of Appellant’s victims at the time of the abuse, thus, are strikingly similar.

As to the second factor, the relationship between the victims and the perpetrator, the relationship between Appellant, the relationship between Appellant and each victim is strikingly similar. Appellant was the biological father of Victim 1, Victim 2, and Victim 3. Appellant’s victims all shared the unfortunate circumstance of being in a familial relationship with him.

As to the third factor, the location where the abuse occurred, all of the sexual abuse occurred within the home. Victim 1 testified Appellant sexually abused her on the couch in the living room, in the bedroom she shared with her sisters, the home’s master bedroom, and the

master bathroom. Victim 2 testified she was sexually abused on the couch and recounted an occasion where Appellant attempted to sexually assault her in the master bedroom. Victim 3 was sexually abused by Appellant in the master bedroom. Not only did all the abuse occur within the home for all three victims, Appellant either assaulted or attempted to assault all three Victims in the master bedroom. The location where the abuse occurred is therefore extremely similar for all three victims.

As to the fourth factor, the use of coercion or threats, there is a high degree of similarity between the crimes charged and the prior bad act where Appellant did not expressly threaten Victim 1, Victim 2, or Victim 3. The absence of coercion or threats is therefore identical for each victim. Interestingly, all three victims reported a fear of reporting the abuse because Appellant was the financial provider for the family. See R. pp. 31, 81, 152. The victims' reluctance to report Appellant's abuse was therefore not rooted in express threats by Appellant, but an implicit threat to the family's financial well-being.

As to the fifth factor, the manner of the occurrence, the type of sexual battery was similar for Victim 1, Victim 2, and Victim 3. Appellant used the exact same manner of abuse for Victim 2 and Victim 3, as both victims were subjected to digital penetration and Appellant attempted to force them to perform oral sex on him. Victim 1 was also subjected to digital penetration and forced to perform oral sex on Appellant; however, Appellant also performed oral sex on Victim 1 and attempted penile penetration of her vagina on one occasion.

All five of the aforementioned factors demonstrate the significant degree of similarity between Appellant's prior abuse of Victim 3 and Appellant's abuse of Victim 1 and Victim 2. The victims were of similar ages at the time of the abuse, all three victims were in a biological familial relationship with Appellant, the abuse all occurred within the home and usually occurred

in the bedroom or in the living room, all three victims were not expressly threatened by Appellant but noted a reluctance to disclose because of Appellant's status as the family's financial provider, and all three victims were digitally penetrated by Appellant and Appellant either performed or attempted to perform oral sex on them. The trial judge properly admitted the prior bad act evidence due to the significant similarities outweighing the minimal dissimilarities.

The Probative Value of the Prior Instances of Sexual Abuse by Appellant Was Not Substantially Outweighed by the Threat of Unfair Prejudice

Evidence of prior bad acts must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. See Rule 403, SCRE; State v. King, 334 S.C. 504, 513, 514 S.E.2d 578, 583 (1999). Prejudicial evidence is still proper unless it amounts to undue or unfair prejudice. See State v. Beck, 342 S.C. 129, 136-37, 536 S.E.2d 679, 683 (2000) ("We find that evidence of the [prior bad act], although certainly prejudicial to Appellant, is not unduly so under our previous decisions.). "'Unfair prejudice' within its context means an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991).

The determination of the prejudicial effect of prior bad act evidence must be based on the entire record and the result generally hinges on the facts of each specific case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007). "Where the evidence of the bad acts is so similar to the charged offense that the previous act enhances the probative value of the evidence so as to outweigh its prejudicial effect, it is admissible." State v. Mathis, 359 S.C. 450, 463, 597 S.E.2d 872, 879 (2004). "Stated differently, evidence which is 'logically relevant to establish a material element of the offense charged is not to be excluded merely because it incidentally

reveals the accused's guilt of another crime.'" State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (quoting State v. Green, 261 S.C. 366, 371, 200 S.E.2d 74, 77 (1973)).

Due to the extensive similarities between the prior bad acts and the charged offenses, the evidence had significant probative value. The evidence of prior instances of Appellant's sexual misconduct where Appellant previously performed the same sexual acts with another biological child enhances the probative value of the evidence as to outweigh its prejudicial effect. There were striking similarities in regards to the age of the victims when the abuse occurred, the manner in which the abuse occurred, the nature of the abuse, the timing of the abuse, the location of the abuse, and other important factors. Cf. Wallace, 384 S.C. at 434, 683 S.E.2d at 278 ("Here, the similarities between the acts include petitioner's relationship to the victims (his stepdaughters), abuse beginning at about the same age, abuse occurring in the family home when the mother was absent, and an admonishment not to tell because no one would believe it. In sum, there are similarities in the class of victim, timing, place, and warning that outweigh any dissimilarity."). Any potential prejudicial effect of the evidence comes from the evidence's legitimate probative value, and that prejudicial effect does not substantially outweigh the evidence's probative value. The trial judge, thus, properly declined to exclude the evidence under Rule 403, SCRE.

Even if the trial judge erred in admitting Victim 3's testimony, Appellant suffered no prejudice because he expressly stated he wanted the Lyle evidence admitted at trial. Appellant asked Defense Counsel to not contest Victim 3 testifying and later told the Court he had no objection to the Lyle evidence coming in because he would "rather have it all come out now." R. p. 123. The trial judge's ruling, therefore, gave Appellant the exact result he desired. Appellant's convictions and sentences should be affirmed.

CONCLUSION

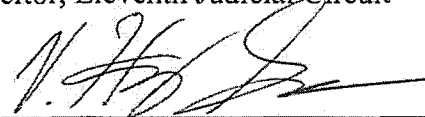
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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March 8, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2015-002340

THE STATE, ...RESPONDENT

v.

AUGUST BYRON KREIS, III, ...APPELLANT.

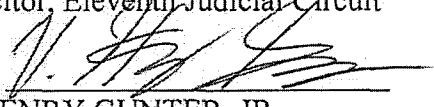
CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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March 8, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions
The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2015-002340

THE STATE, ...RESPONDENT,

v.

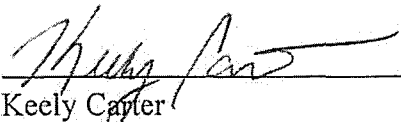
AUGUST BYRON KREIS, III, ...APPELLANT.

PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 8th day of March 2017.



Keely Carter
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-7239

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

August Byron Kreis, III, Appellant.

Appellate Case No. 2015-002340

Appeal From Lexington County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2018-UP-052
Submitted November 1, 2017 – Filed January 31, 2018

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Vann Henry Gunter, Jr., both of
Columbia; and Solicitor Samuel R. Hubbard, III, of
Lexington, all for Respondent.

PER CURIAM: August Kreis, III, appeals his convictions of second-degree criminal sexual conduct with a minor and lewd act on a minor, arguing the trial court erred by (1) instructing the jury that the victims' testimony need not be

corroborated and (2) admitting evidence of a prior bad act. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

As to Issue 1: *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) ("An appellate court will not reverse the trial [court's] decision regarding a jury charge absent an abuse of discretion."); *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." (quoting *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012))); *State v. Stukes*, 416 S.C. 493, 496, 498, 787 S.E.2d 480, 481, 482 (2016) (holding the trial court erred in charging the jury that the victim's testimony need not be corroborated by additional evidence because it was "an impermissible charge on the facts and therefore unconstitutional"); *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009) ("[E]rroneous jury instructions[] are subject to harmless error analysis."); *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) ("When considering whether an error with respect to a jury instruction was harmless, [this court] must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" (quoting *State v. Kerr*, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998))).

As to Issue 2: *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002) ("The admission of evidence is within the discretion of the trial court and will not be reversed [on appeal] absent an abuse of discretion."); *Hawes*, 411 S.C. at 191, 767 S.E.2d at 708 ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." (quoting *Black*, 400 S.C. at 16, 732 S.E.2d at 884)); *State v. Martucci*, 380 S.C. 232, 252, 669 S.E.2d 598, 609 (Ct. App. 2008) ("If there is any evidence to support the admission of bad act evidence, the trial [court]'s ruling cannot be disturbed on appeal."); *State v. Wallace*, 384 S.C. 428, 433, 683 S.E.2d 275, 277-78 (2009) ("When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity."); *id.* at 433-34, 683 S.E.2d at 278 ("[T]he trial court should consider the following factors when determining whether there is a close degree of similarity between the bad act and the crime charged: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or

threats; and (5) the manner of the occurrence, for example, the type of sexual battery.").

AFFIRMED.¹

WILLIAMS, THOMAS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

County of Lexington)

August Byron Kreis, III, #365998, SON/ADA-Not)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018CP3200864

APPLICATION FOR

POST-CONVICTION RELIEF

2018 MAR -9 PM 2:59
ELISA M. CONNER
CLERK OF COURT
LEXINGTON SC

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Corr. Inst./ALU-143-A/430 Coldwater Rd./Pelzer, So. Car.
29669-9363.
2. Name and location of Court which imposed sentence Lexington Co. Ct. Hq., 205 E. Main
St., 3rd Floor, Ste 146, Lexington, So. Car 29072-3557
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-G-32-2030-1/16-15-0140 - Grand Act Under 16 (June 4, 1976) / See pg.
 - (b) 2015-G-32-2034/16-03-0655 (BJU)/C.S. C.W.M. 2nd degree, 11 to 14 yrs / See pg.

488

(c) 2015-GS-32-2636/16-15-0140 - Convict Act under 16 (June 4, 1996) See ps.

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Nov. 5, 2015 - 15 yrs. consecutive to 2015-GS-32-02036. See ps.

(b) Nov. 5, 2015 - 20 yrs. 15 yrs.

(c) Nov. 5, 2015 - 15 yrs. consecutive to 2015-GS-32-02034. See ps.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(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. S.C. Ct. of Appeals - 2015-002340

ii. S.C. Sup. Ct. - to hear Jan. 31, 18 denial & set it aside, see ps. 128 to 162.

iii. to hear Prob's memorandum Brief ps. 85 to 127;

(b) the result in each such Court to which you appealed:

i. denial Jan. 31, 18, "unpublished opinion" NO: 2015-UP-052 - (overruled).

ii. S.C. Sup. Ct. (18) (NO ruling NOT acknowledge).

iii. _____

(c) the date of each such result:

i. Jan. 31, 18 & remittitur (2-16-18) see ps. 128 to 162, &

ii. (18) (NO ruling NOT acknowledge).

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. "unpublished opinion" NO: 2015-UP-052, see pages 128 to 162, &

ii. () (none)

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) NA

(b) NA

(c) NA

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See pages 5 to 227 et. al.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See pages 5 to 227, et. al.

(b) _____

(c) _____

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 suits.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO, Not Yet, but will once S.C. Sup. Ct. rules.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO Yet.

(d) any other petitions, motions or applications in this or any other Court? Yes

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. Suits 17-CP-28-131

ii. Suits 17-CP-46-1181

iii. Suits 3:17-344-TLW-PJC, 3:11-646-J3:16-373-JFA (Forged by Both Drake),

iv. Suits. NO Number Lexington blocked by Kosloski (3-3,17),

v. mandamus to transfer all South Cases & Appeal to North 3:17-444-CCE-JEP

(b) the name and location of the Court in which each was filed: Forged blocked it

i. Kershaw Co. Ct Hg, P.O. Box 1707, Camden, S.C. 29020,

ii. Richland Co. Ct Hg, P.O. Box 27464, Columbia, S.C. 29202,

iii. U.S.D. Ct, 300 E. Main St, Rm 239, Greenville, S.C. 29601,

iv. Lexington Co. Ct Hg/205 E. Main St/3rd Floor, Ste. 146, Lexington, S.C. 29072-3557,

v. U.S.D. Ct, 324 W. Market St, Rm 401, Greensboro, N.C. 27401,

(c) the disposition thereof:

- i. illegally got hid of by Defs - L.C. Manning - J., conspirator,
- ii. illegally got hid of by Defs. Gm. McFadden - J., conspirator,
- iii. illegally got hid of by Forger Beth. Drake & R.F. Daly, U.S. Attys., conspirators,
- iv. illegally got hid of by Defs - Keosha, J., conspirator
- v. illegally got hid of by Forger Beth. Drake

(d) the date of each such disposition:

- i. 7-24, 17
- ii. 6-8-17
- iii. 7-21, -17
- iv. 3-3 -17
- v. 7-19-17

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. order issued on (piece of Defs. Filings) a sham one by Defs. & its Void!
- ii. order issued on (piece of Defs. Filings) a sham one by Defs. & its Void!
- iii. dismissed without services & without prejudice by Forgers Defs. its Void!
- iv. not allowed Filed & ordered Unfiled by Defs. & its still good as Filed!
- v. said Filed in wrong Dist. (Iied), it was to transfer out of S. Ct. hands.

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?

Yes - Prose's memorandum Brief - Drake & Defs. Judges blocked Fast!
See pages (128 to 162) to Unpublished it to ensure cover up of Filings!

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. See pages 5 to 227 but blocked by Drake & Gentel & Judges
- ii. were not allowed heard by S.C. Ct. of Appeals
- iii.

(b) the proceedings in which each ground was raised:

- i. Appeal 2015-002340 - Blocked by S.C. Ct. of Appeals ps. (128 to 162),
- ii. S.C. Sep. Ct. Appeal Jan 31/18 illegal order of 18 Drake-Def's acts;
- iii. Law suits & mandamus to transfer out of S. Ct. to N. Ct.
U.S. Dist. Jurisd. neutral Judges;

Major Issues for PCR Reliefs & Felony Acts & Court Lack Subject Matters

- 1) State threaten K. Hollis - Mother with arrest, if she didn't get accusers to frame ProSe (Nov. 2-5, 15) see pages (14, 15) as proof;
- 2) Big Major secrets withheld that would have impeached Jols & SLED & Atty. Gen. & stopped any trial; see pages 16 & 17 & issues 30 pgs. 120 to 123;
- 3) Direct Appeal tampered with & gotten rid of by Deps. 2015-002340. see pages; 128 to 162
- 4) Court judges Deps. & Duder - Deps. & Hunter - Dep. Refusal to Remove R.M. Duder & his office, & appoint Street Atty. to conceal felonies in ProSe's Memorandum Brief, #3 pgs.; see pgs. 181 to 209, & 41 to 83, &
- 5) State used Kershaw's Untriable False-Mixed Ind. 2015- -28-215 & Warr/No. 2014-A-28-10100113 (No Ind.) for 1st & 2nd Degree charges, to frame ProSe in Lexington (Nov. 2-5, 15); see pgs. 33 to 40
- 6) State used Kershaw's Ind. 15-65-28-215 & Warr/No. 2014-A-28-10100113 as Richlands non-existing charges; see pgs. 33 to 40
- 7) Kershaw & Richland Cty. charges were one & the same false charges used Nov. 2-5, 15); see pgs. 33 to 40
- 8) State has no evidence to support convictions by Kershaw & Richlands False charges are - were Nolle Prossessed (Jan. 2, 2017 & March 31, 17); see pgs. 20 to 32
- 9) 25 Major Issues that void (Nov. 2-5, 15) Judges "Court lack jurisdn." over ProSe; that proves ineff. assist conflict conspiracy acts by R.M. Duder & V.H. Hunter, & judges, on ProSe's appeals by blocking ProSe's Memorandum Brief. #3 pgs., now pgs. 84 to 127, as follows;
- 10) Court erred by allowing K. Hollis letter used, violated Crawford see pgs. 90 #1 & pgs. 99 to 100; &

- 11.) Court erred by allowing jury to rehear Barbara's & Prose's testimonies was a form of Vouching for all state wits. (3-times triple) was reversible error, see pgs. 90 #2 & pgs. 100 to 102, ¶
- 12.) Court erred by allowing Sol. Hayes to put up Voucher state wits to manipulate juries into believing none existing evidence (Insufficient Evid.); see pgs. 90 #3 & pgs. 102 to 103, ¶
- 13.) Court erred by failing to dismiss Barbara's Inds. by she was an adult at 18 years, by (statute of limitations) & she was 19 yrs. 8 mths. 26 days old when she reported said false (revenge-mad) charges; see pgs. 90 #4 & pgs. 103 to 105, ¶
- 14.) Court erred by giving third & second degree charges to jury, when Prose not charged with 3rd degree; see pgs. 91 #5 & pgs. 105 to 106, ¶
- 15.) Court erred by not dismissing Ind. 15-2030, for 16-15-140 lewd act upon a child, when Barbara's age was 11 yrs. 1 mth. 12 days old, May 8, 05, & 14 yrs. 6 mths. 5 days old on Oct. 1, 2008, fell under 2nd degree statute & overlapped into Ind. 15-2034; see pgs. 91 #6 & pgs. 106 to 107, ¶
- 16.) Court erred by not dismissing Ind. 15-2034, for 16-03-655(B)(1) C/S/4 w/M 2nd degree, when Barbara's age was 11 yrs. 1 mth. 12 days old May 8, 05 & 14 yrs. 6 mth. 5 days old on Oct. 1, 08, on to 3rd degree; see pgs. 91 #7 & pgs. 107 to; ¶
- 17.) Court erred by not dismissing Ind. 15-2036, for 16-15-140 lewd act upon a child under 16 yrs. old 16-3-655(C) (1976), when Amanda's age 8 yrs. 2 mths. 14 days old May 8, 05, & 12 yrs. 7 mths. 7 days on Oct. 1, 08, fell under 1st degree statute & 2nd degree, not lewd act one; see pgs. (91 #8 & pgs. 93) & 108, ¶
- 18.) Court erred by not dismissing all Inds. for per. Inds. delay, violated 180 days set by Chief Justice Tenney May 5, 1999; see pgs. 92 #9 & pgs. 108 to 109, ¶
- 19.) Court erred by holding a Blair Hearing, see pgs. 92 #10 & pgs. 109 to 110, ¶

- 20.) Court erred by allowing Sol. Mayes to tell jury in closing arguments that (Prose admitted he's guilty), & violated Crawford & his 5th Amend. rights to remain silent by Miranda, & was reversible error, see pgs. 92 #41 & pgs 110 to 112, ¶
- 21.) Court erred by allowing Sol. Mayes, to vouch for State Wits. during trial & closing arguments; see pgs. 93 #12 & pgs 112 to 113, ¶
- 22.) Court erred by sentencing Prose to a life & death sentence by his 61 yrs. age by the S. Car. sentencing table 10 yrs. is the expected life in SCDC prison, & violated 8th Amend. cruel punishment; see pgs. 93 #13 & pgs 113 to 114, ¶
- 23.) Court erred by allowing Sol. Mayes, to argue Prose's (Non-belief's) of hatred & bigotry & anti-government, which he wasn't Ind. nor on trial for, was reversible error & unconstal.; see pgs. 93 #14 & pgs. 114 to 115, ¶
- 24.) Court erred by allowing Sol. Mayes, to make it look like Barbara & Amanda & Abby were little children & was vouching & manipulating the jury calling on juries passion, was reversible error; see pgs. 94 #15 & pgs 116, ¶
- 25.) Court erred by not allowing Prose a "Public Trial," his 6th & 14th Amend. rights; see pgs. 94 #16 & pgs 116 to 117
- 26.) Court erred by allowing untried Abby K. pending mixed charges for Richland & Kershaw Cty's, & Amanda's, to be used to vouch Lexington Cty. false charges, in violation of Old Chief (1997) see pgs. 94 #17 & pgs 117, ¶
- 27.) Court erred by allowing Jennifer K.'s letter-poet to be read by Barbara K., before sentencing, was hearsay & proves bias judge, & violated Crawford holdings, & prejudice Prose; see pgs. 94 #18 & 95, & pgs 118, ¶
- 28.) Court erred by not "consolidating," all Richland & Kershaw charges & Lexington's, once Sol. Mayes, sought to use them to vouch her cases, court was to dismiss all but one charge, per 3-Kreis, see pgs. 95 #19 & pgs 118 to 119, ¶

- 29.) Court erred by not dismissing all Inds. by all related, violated Blockburger, holdings; see pgs. 95 #20 + pgs. 119 to 120, ¶
- 30.) Court erred by not forcing Sol. Mayes, atty. Gen., SLED, all Sols. to turn over Impeachment Evid. Crimes of SLED agents that would have stopped any trials it was withheld from Prose, grand & trial juries; see pgs. 95 #21 + pgs. 120 to 123, ¶
- 31.) Jeopardy Clause bars any use of (Nov. 2-5, 15) at any other trials state may try to frame Prose on later; see pgs. 96 #22 + pgs. 123 to 124, ¶
- 32.) Court erred & gave Unconstal. charge to jury on "being unanimous"; see pgs. 96 #23 + pgs. 124, ¶
- 33.) Trial Atty. Shealy was Ineff. assist on Prose's behalf, before, during & after trial, by above facts & crimes did to false imprison Prose; see pgs. 96 #24 + pgs. 124 to 125, (84 to 127 Brief pgs. 20 to 40, & 163 to 180) ¶
- 34.) All Lexington judgts. are void, by Kershaw's & Richland's false charges being Nolle Prosequed for lack of evidence to support; see pgs. 20 to 32, & 97 #25 + pgs. 125, ¶
- 35.) Appellate Counsel Ref. Duder, was Ineff. assist & aided state & his cases, by refusing to file & argue Prose's Memorandum Briefs issues above & his refusal to remove himself, see pgs. 182 to 209, ¶
- 36.) Duder-Ref. on appeals & in lawsuits to, "did maintain a low profile on Prose's appeal," & actively supported a conflict of interest, & hired W.H. Davidson-Refs. to defend himself against Prose; see pgs. (41 to 83, ¶) proof, as judges & atty. Gen. did & Sols. & all Refs. also did.;
- 37.) Judges L.C. Manning, & H.M. McFaddin, "did enter into conspiracy with Refs." & Atty. W.H. Davidson & B.M. Briggs, & R.M. Duder, & V.H. Hunter, & A.M. Wilson, to get rid of Auits 17-CP-40-1181 & 17-CP-28-131 off Refs. & themselves; by allowing Davidson & Briggs, to file (pieces of filings) to courts (6-8-17) & (7-24-17), & paid bribes out to get good rulings, when cases were in defaults, & attys. & Clerks & Judges were committing frauds, perjuries & conspiracy acts to stop their own arrests & Refs. & cover up these PCR felony issues therein (12 pgs. & 273 pgs.) Prose arguments put up

in writing (6-8-17 + July 24, 17), + Judges G. Lockman + W.P. Keesley + W.D. Beatty, also joined defs. + Davidson + Briggs conspiracies; see pgs. 41 to 83 + pgs. 10-11 - Judicial Complaint, + pg. 9 #40, 41

38.) ProSe makes out his illegal 50 yrs. sentences (Sept. 15 or Oct. 1, 2018). See pgs. 175 to 180, as proof, which Clerk rejected + refused to put before the court (Nov. 1, 15), nor would Atty. Shealy, nor Judge Early, trial judge, correct-clarify his time to build + it falls to PCR Court to do so because no. SCDC staff are trained to do so since 1995 + keep all IM's times wrong, to keep SCDC open wrongly; ProSe seeks for his PCR counsel to get this done also.

39.) And proof Judge Keesley joined defs. conspiracies to cover up ProSe's PCR issues, he blocked the lawsuit (March 3, 2017) + said it wasn't filed properly, when Kershaw + Richland + Clerk R.L. Blume + Fed. judges by forgery Beth Drake, all filed the same copies 17-CP-40-1181 + 17-CP-131 + 3:17-344-TLW-PJG; his acts were felony to stop defs. arrests + ProSe's release + to protect his co-workers + friends + cover-up SLED felonies that effects millions of framed ProSe's So. Car. + nation-wide + SCDC - killing death row IM by Tom Clark IM acts, + all IMs whom SLED lied at trial + got those put to death; see pgs. 75 to 83 he also hired Atty. Davidson Atty. to help cover-up PCR felony acts, as did A.M. Wilson, + V.M. Hunter.

See; Labelle, 243 F. Supp. 2d 508 (4th Cir. 2001) Conspiracy exist when 2 or more enter into it to harm or kidnap or aid in crimes or help conceal them, + are guilty of a felony; S.C. Code 16-9-340(a)(2) (2003) + 16-7-100 + 410;

40. Defs. even got Lesley M. Caggiola - Judicial Conduct, to cover-up their felony acts, see proofs 17-DE-L-0241 to 0251-Elvern, + 17-DE-J-0192 on L.C. Manning; + 13-DE-L-1767 + 16-DE-J-0252 + 0253 + 17-DE-L-0273 to 0282 (Ten) got rid of by Caggiola, G. Richardson, W.C. Campbell (Oct. 30, 17) + (March 3, 2017) to cover-up felonies ProSe raises on his PCR pgs. 227 + suits that were illegally blocked First - S.C. Code 16-7-100 + 410 + 16-9-340(a)(2) (2003) applies, + Caggiola is defs. involved in covering up States + defs. crimes did to ProSe + others. + pgs. 10 to 14, 41

41.) There was a conspiracy at fact to frame ProSe, + then to block his appeals + suits by above or below felony acts; see PCR pages 84 to 127, 8.20 to 32, 8.33 to 40 + 14 to 15 + 163 to 174.

The State of South Carolina Judicial Misconduct over Judges
 Judicial Ethics Complaints (27 pgs)
 17-DF-J-0192-L.C. Manning-Judge. (26/17)

To Judicial Conduct over Judges - C. Simmons or one there near?

1) Prose August B. Kreis, III, 365,998, double amputee, files Judicial Complaints upon L.C. Manning Def. Conspirator Judge for conspiracy-felony-acts on his own law suits & crimes he committed since (7-24-17 & 9-12-17 & 11-14-17 & 12-14-17) upon J. Hasty-Clark 9A17-CP-28-131 & J. W. McBride 9A17-CP-40-1181 & for ethics violations & cover up felonies of Deps. on his to stop arrests & removal, & he did knowingly & willingly enter back into his & Deps. conspiracies, to conceal Prose's raised issues on Deps. Sam & David Johnson - Sols. of new 6,011 conspirators, which (he was one of these), & refused (7-24-17) to recuse himself once Prose served him 176 pgs (Prose Oral Argument put up in writing) at Kershaw Cty. hearing & Davidson a copy, & he read The Motion to Recuse (7-24-17) still issued illegal orders to protect himself & Deps. on (7-24, 17, & 8-14-2017) two;

2) Then Def. Judge K. McMahon conspirator set hearing on 17-1181 cases & Prose served 18 pgs on him & Davidson & McBride, to recuse himself on (9-6-17), & he Manning re-entered that case & dismissed it of himself, & Sam & David Johnson & R.M. Audel & A.H. Wilson, Briggs, Hunter, et al. on (9-12-17) by Judge sheet & voided the (9-21-17) & he once McMahon allowed Judges A.R. Lee, or J.E. Kinard, or E.W. Miller, to handle these related Kershaw & Richland & Lexington suits served in Counties where felonies took place as required by law I do all 3 suits were one & the same & 3:17-344-TZW-RTE Forged by Beth Spake-U.S. Atty, & 7:17-413 & 414 J.E. Peake Nor. Car. cases to transfer, which Deps. W.H. Davidson & A.H. Wilson & R.M. Audel & Judges S.H. McFadden & J.A. Teal, & McMahon, got Manning to do these criminal acts again as he did on 03-CP-40-4328 (Nov. & Dec. 2003) for Deps, he took bribes & protected his Races main reason in J. Rock's cases.

3) Manning has violated his oath of office & 455(b)(5)(i) & 15-55-10 & 16-17-100 & 4104 & 16-9-340(2)(a) (2003) & 16-3-910 & Deps. therein joined in his & Judges & Davidson & Briggs & R.M. Audel & Wilson & Hunter - A-Hens & Sols. Def. felonies.

See; Hurst, 681 F.2d 246 (4th Cir. 1982) 18-45C-1341. It's a felony to send false orders or documents by mail or by a conspiracy act to harm someone & cover up felonies or deprive someone of their monies;

See; Labella, 243 F. Supp. 2d 508 (D.S.C. 2001) Conspiracy exists when 2 or more join & agree with intent to do unlawful act or do one that's lawful by unlawful means, To inquire a person & the proof of civil or criminal conspiracy;

See; Lickup, 510 U.S. 540 (1994) Mandatory-mandated Judge recuse if bias, Deps. Rac-

(1-0F17
10-

(2622)

(2677 AK)

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28

ists, join into a felony or conspiracy even if it appears there might be bias or a conflict & S.C. Code 14-4 Rules of Judicial Conduct Appellate Court Rules, recused when prejudice or has interest in case related to parties);

4) Pro Se notices L. M. Caggiola - judicial is deft, & needs to transfer to neutral judge to handle not involved, would be judges Simmons Jr. & C. L. Lee & G. E. Kinard, & C. W. Miller, that are not involved in App. #107 Judges cover-ups; See felony acts of H. B. Richardson & Caggiola on No# 13-DE-L-1767 and others in these numbers Caggiola & G. Richardson & 16-DE-L-0252 & 0253 & 17-DE-L-0273 to 0282 (ten) & 17-DE-L-0241 to 0251 (Eleven) got rid of, & G. H. Toal ordered Shearouse to destroy 78 pgs. (8-24-04) off himself & judges & Sol. & magistrates, & Richardson did the same with 72 pgs. copy (11-2-6-04) which Clerk Ricch S.C. Ct. of Appeals had stamped filed, & Toal & Shearouse & Caggiola & his staff destroyed over 200 Complaints, that SLED agent Michael Anderson said (12-9-05) was a felony, but these defts. & H. Sanford & E. N. McMaster & others threatened to fire him & have him arrested. IF he investigated these crimes & Pro Se's J. Rock 171519 Kidnap status & ones A. Kreis raises to, in his suit Argument 21 attached to Recusal (6-8-17) of 23 pgs. of 125 pgs, & (7-24-17) of 100 pgs. of 176 pages in 17-CP-40-1181 & 17-CP-28-131 & 6-17-344 FLW-PJ6, cases & its new 10 to 110527; & (Caggiola's 20 to 21 of 27 pgs) & 7.

5) Pro Se seeks Full Impeachment & Investigations & Removal of Defs. & Manning & arrests & for S.C. State Grand jury & Sol. Proce. to be notified & Shad McBride Anderson City Sheriff to come see Pro Se & J. Rock to go over these felonies & ones we have in above cases & 10-CD-37-1446 & 14-CP-40-05372 & 05322 & 63-4328 that Defs. & Manning are involved in blocking to cover up felonies & these felonies-conspiracy acts are facts are sworn to under penalty of perjury as true & happening daily by (18 USC-1621-1622-1623-1746) ex Sept. 27, 2017, & served upon all Defs. to ensure others have knowledge & for warrants & Subs. later, & Transfer judges above to do investigations, & order McBride-Sheriff to do it.

Dated: Sept 26, 2017,

Respectfully Submitted,
August B. Kreis, III, #365998

Perry Cor. Unit. A11-173A/430 Oaklawn Rd. / Pelys, South Carolina 29669-9363

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) seorges call have but refused to hear not rule out covered up
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes, Federal Jail Home longer FRak,
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. T. E. Shealy - Assist. Public Defender, 401 W. Main St, Lexington, SC, 29052,
- ii. R. M. Dudek, Appellate Defender, S.C. Ct. App., P.O. Box 11588, Columbia, SC, 29211-1588,
- iii. Robert L. Bank, Jr., Pub. Def. Richland Cty. Judicial Ct., 1701 Main St, Columbia, SC, 29201,
- iv. (C. Aaron Blakey, C. Aaron Law Firm, LLC, P.O. Box 23303, Columbia, SC, 29224, 8502 tur Natch Rd, Ste. C, Columbia, SC, 29223)
- (b) the proceedings at which each such attorney represented you:
- i. Shealy - plea / trial / sentencing / Filed Intent to Appeal,
- ii. R. M. Dudek - Appeal 2015-002410.
- iii. Bank - Richland Plm hearing & Family Ct. hearings & Bail?
- iv. Blakey - Kershaw Plm - hearing & Family Ct. hearings & Bail?

- 1.) State threatened Karley Hollis - Mother with arrest, if she didn't get accusers to frame Prose (Nov. 2-5-15) see proof pgs. 14 to 15 as proof.
- 2.) Big Major Secrets withheld by Atty. Gen., State, judges, Jols, trial Atty. - J. A. Shealy of framing millions by SLED agents, falsifying evid., perjuries in all So. Car. & nation-wide State & Fed. Courts, to get false convictions, & U.S. Atty. R. I. G. Lloyd, W. N. Nettles, E. A. Holder, L. Lynch, Beth Drake, R. F. Daley, forging 1000's of Fed. Ct. judges Orders & 18 civil rights Atty., & all Gov. agencies letter-orders & destroying U.S. Postal Sers. & Marshals & FBI-CIA agents & HQ giving U.S. Atty. all mails (that A.M. Wilson, V. H. Hunter, & H. L. Kirkland, & K. D. Maroney, & K. E. May, & R. Bolchay) allowed & covered up these felony conspiracy acts; see pgs. (16 to 17), & pgs. 120 to 123, &
- 3.) Atty. Gen. A. M. Wilson, & V. H. Hunter, & R. M. Duder, (Tampered with Prose Direct Appeal 2015 - 002340); by allowing (Def. Duder) in lawsuits 17-CP-40-1181 & 17-CP-28-131 & 3:11-646 & 3:16-3731-JFA & 3:17-344-TLW-PJG, to file a track-brief to protect himself & Defs. from disbarments & arrests, to coverup Prose's Memorandum Brief Argument 21 felonies he & his coworkers, & Atty. Gen., & judges 107, were involved in; see pgs. 41 to 83 & 181 to 209 of Conflict of Interest-Conspiracy Acts. &
- 4.) Prose's Memorandum Brief of 32 pgs. was blocked by Duder & Hunter & judges who were Defs. in appeals & suits; reason appeal tampered with & Court refused to remove Duder & appoint Prose street lawyers; see Brief, pgs. 84 to 127, & Court Refusal pgs. 181 to 209 &
- 5.) State used Kershaw's untriable false charges Inds. 2015-GS-28-215 & Warr/No: 2014-A-28-10100113 (No. Ind.), mixed 1st & 2nd degree charges that were void, to frame Prose in Lexington (Nov. 2-5-15); see pgs. 34 to 40, &
- 6.) State used Kershaw's Ind. 15-GS-28-215 & Warr/No: 2014-A-28-10100113 - as Richland non-existing charges, see J.W. McBride (Jan 13, 17) letter so stating there were no charges in Richland County on record; pg. 29, until Prose filed suits 17-CP-40-1181 & 17-CP-28-131 & 3:17-344-TLW-PJG on Dan Johnson, et al. then he made some up & had them Nolle Prosequi (3-31-17), see pgs. as proof 30 to 32, &

I also wanted to let you know that the girls and I are meeting with the prosecutor in Lexington on August 6th to discuss the criminal case against August.

Have a blessed day and I hope to hear from you!

Karley :

Actions:

Face to Face with Mother

Face to Face with child/client

Recipients:

0001548136 - Hollis, Karley - [REDACTED]

0001548144 - Kreis, Edward - [REDACTED]

0001548142 - Kreis, Gideon - [REDACTED]

0001548141 - Kreis, Julius - [REDACTED]

0001548140 - Kreis, Amanda - [REDACTED]

0001548139 - Kreis, Aiden - [REDACTED]

Action Date: 7/28/2015

Action Time: 10:30 PM

Time Spent: 1.25

Input Date: 7/28/2015

Input Time: 5:07 PM

Worker: VISEL, MICHAEL

Service ID: 0001558168

Program Service Type: Child Protective Services Treatment

Authorization:

Support Service ID:

Dictation:

PM 5:07:10 7/28/2015

ACTIVITY & PURPOSE:

Unannounced HV made by CM's Visel and Singleton. Karley was present along with her children, Edward, Gideon, Julius ("Zack"), Aiden. Also present was Karley's adult daughter Amanda. Abbagale was not present at the time of this visit and was at a friend's home, per Karley.

Karley invited CM's into the home. This was CM Visel's first FF meeting with the family. The home is spacious in size and was clean at the time of this visit. All of the children with the exception of Edward were sleeping. Aiden was sleeping on the living room couch. Gideon and Julius were sleeping on the floor in the bedroom they share and stirring around. They only said, "Hi" to worker when their mother told them to get up. Small talk was made with Edward. He seemed somewhat shy but was also trying to keep the family dog corralled to another room. Minor 1 said that she will be looking for other work as she just quit her babysitting job.

EDUCATION/VOCATIONAL:

Edward - [REDACTED] He will begin school this year at the CLC. He has an IEP.

Abbagale - [REDACTED] IEP (North Central Middle)

Gideon - [REDACTED] (North Central HS)

Aiden - [REDACTED] (Mid-Way)

Julius - ATEC for GED

MENTAL HEALTH/ BEHAVIORAL HEALTH:

Per Karley,

Abbagale- Counselor is "Amy" at the ALPHA Center every week. Next appointment is 8/07/15.