

1 seated.

2           Was there further evidence the  
3 State would like to present in this case,  
4 Ms. Timmins?

5           MS. SCHAEFER: Not at this time.  
6 At this time, Your Honor, the State would  
7 rest.

8           THE COURT: That was a quick  
9 turnaround.

10           Ladies and gentlemen, the State is  
11 resting at this time. We need to take  
12 just a few matters, legal matters, up  
13 outside your presence. It should be just  
14 shortly, and we'll come back for the start  
15 of the defense case.

16           (In open court, outside the  
17 presence of the jury, in the presence of  
18 the Court, the Defendant, and counsel at  
19 1:55 p.m.)

20           THE COURT: Please be seated  
21 everybody.

22           The record should reflect that we  
23 are outside the presence of the jury. The  
24 State has rested at this point.

25           Ms. Schaefer, is there record you

1 want to make?

2 MS. SCHAEFER: Yes, Your Honor.

3 At this time the defense would make  
4 a motion for judgment of acquittal and  
5 state at this time that the State has not  
6 presented sufficient evidence to support  
7 any of the three counts set forth in the  
8 Trial Information for submission to the  
9 jury.

10 With regard to Count I,  
11 specifically the only evidence that the  
12 State has offered to support the Sexual  
13 Abuse in the Third Degree are the  
14 statements of Kxxxxxx [REDACTED]. There was  
15 no video evidence to support some of the  
16 allegations she made. There was no  
17 physical evidence to support any of the  
18 allegations she made. There was no  
19 witnesses to corroborate any of the  
20 allegations she made. These are just  
21 merely statements and are insufficient to  
22 support a verdict of guilty to Count I.

23 With regard to Count II, there has  
24 been no evidence specifically that the  
25 Defendant was in any way a therapist or

1 counselor to these students. He was  
2 merely the owner of the Midwest Academy  
3 and did engage in some staff  
4 representation of students, but there has  
5 been no evidence that he was a counselor  
6 or a therapist.

7           Furthermore, there has been no  
8 evidence that any of the activities,  
9 specifically the unsubstantiated claims of  
10 Ms. [REDACTED] as well as the evidence of  
11 taking the upper level students shopping  
12 to Victoria's Secret or the body imaging  
13 exercise or the sexual survey, there has  
14 been no evidence that any of those were  
15 done for the purpose of satisfying or  
16 arousing his sexual desires or those of  
17 anyone else.

18           With regard to Count III, there has  
19 been no evidence that the Defendant  
20 knowingly acted in any manner that created  
21 a substantial risk to the child,  
22 specifically to Bxxxxxx [REDACTED] and Axxxxx  
23 [REDACTED]. In fact, there's substantial  
24 testimony that he never placed anyone in  
25 OSS and was there on a periodic basis to


1 provide positive support for the students  
2 that were in OSS.

3           For all of those reasons, Your  
4 Honor, we would ask for the Court to grant  
5 the motion for judgment of acquittal on  
6 all three counts.

7           THE COURT: Thank you.

8           Response by the State?

9           MS. TIMMINS: Your Honor,  
10 considering the evidence in the light most  
11 favorable to the State, the State would  
12 ask that the Court overrule the  
13 Defendant's motion.

14           In regards to the arguments of  
15 Count I, the statements of Kxxxxxx  
16  are credible. They are also  
17 corroborated by surrounding evidence that  
18 has been provided to the jury.

19           In Count II, the statute  
20 contemplates that the Defendant can  
21 purport to be a counselor. He doesn't  
22 have to be a licensed counselor to be  
23 convicted under this statute, and evidence  
24 has been presented that he acted in a  
25 manner as a therapist would; that he

1 presented himself in that manner at times;  
2 that he was Kxxxxxxx's family  
3 representative at the time that only  
4 counselors could be a family  
5 representative. If the Court finds that  
6 the Defendant committed sex acts with  
7 Kxxxxxxx, which there is substantial  
8 evidence to support that, it can easily be  
9 inferred that that was done with the  
10 intent to arouse the sexual desire of  
11 either party.

12           And in Count III with Child  
13 Endangerment, we have an abundance of  
14 evidence that these locked rooms were used  
15 improperly, excessively, and done so to  
16 the extent that it harmed the physical,  
17 emotional, and mental well-being of  
18 Bxxxxxxx [REDACTED] or Axxxxxx [REDACTED].

19           For those reasons, we would ask the  
20 Court overrule the Defendant's motion.

21           THE COURT: In a motion for  
22 directed verdict, there must be presented  
23 such evidence as could convince a rational  
24 trier of fact that the Defendant is guilty  
25 of the crime charged beyond a reasonable

1 doubt in each of Counts I, II, or III.

2           The Court does examine the evidence  
3 in the light most favorable to the State  
4 and against the moving party. The Court  
5 does consider the entire record and all  
6 legitimate inferences from that record.

7           As to the Sexual Abuse in the Third  
8 Degree charge in Count I, it was correctly  
9 pointed out that there is an element of  
10 believability as to the allegations. In  
11 this particular case, the Court does find  
12 that there is sufficient evidence that a  
13 rational fact finder could find the  
14 Defendant guilty of a sex act, and also  
15 that it was against the force or will of  
16 Ms. [REDACTED] again, considering her  
17 testimony. It's appropriately for the  
18 jury to decide issues regarding  
19 credibility and whether there is  
20 sufficient other circumstances to validate  
21 her statements.

22           As to Count II, Sexual  
23 Exploitation, the counselor or therapist,  
24 again, as we discussed a couple times the  
25 Edouard case out of Marion County. That

1 was the issue in the case, and that it  
2 involved a pastor. The facts and  
3 circumstances in this case would show that  
4 a rational trier of fact could find that  
5 the Defendant in this case was a counselor  
6 or therapist. Again, he was a family rep.  
7 He controlled the entire facility. The  
8 statements attributed to him would  
9 indicate the same. The scheme of conduct  
10 shown by the testimony of Ms. [REDACTED]  
11 would also support that contention. So  
12 the Court does find that a rational trier  
13 of fact could find the Defendant guilty  
14 beyond a reasonable doubt based upon those  
15 circumstances.

16 Finally, on the Child Endangerment,  
17 the OSS rooms, there was extensive  
18 testimony about what they are, the  
19 possible harms they could cause, and what  
20 the kids were doing in there and how they  
21 were affected by that. So the Defendant--  
22 again, there is evidence in the case that  
23 he controlled the entire facility. It  
24 would appear that nothing got done without  
25 his say-so, so a rational trier of fact

1 could find that to be the case, so the  
2 Court will overrule the motion on that  
3 ground, too.

4 Is there anything else by the  
5 State?

6 MS. TIMMINS: No, Your Honor.

7 THE COURT: Ms. Schaefer?

8 MS. SCHAEFER: No, Your Honor.

9 THE COURT: Bring the jury back in.

10 (In open court, in the presence of  
11 the jury, the Court, the Defendant, and  
12 counsel at 2:03 p.m.)

13 THE COURT: Please be seated  
14 everyone. The jury has now been seated.

15 Ladies and gentlemen, if you  
16 recall, Ms. Schaefer reserved her opening  
17 statement at the beginning of the trial.

18 Ms. Schaefer, do you wish to give  
19 that opening statement at this time?

20 MS. SCHAEFER: Yes, Your Honor.

21 THE COURT: Okay. You may proceed.

22 MS. SCHAEFER: May it please the  
23 Court.

24 THE COURT: Ms. Schaefer.

25 MS. SCHAEFER: Ms. Timmins.