

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM SPARTANBURG COUNTY SC Court of Appeals

General Sessions Court
Honorable Grace Knie, Circuit Court Judge

Appellant Case No 2021-000599
Lower Case Nos. 2020GS4200001, 00002, 00003, 2019GS4201035

The State Respondent,

vs.

Mark Anthony Gilbert Appellant

RECORD ON APPEAL
VOLUME I

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State of South Carolina	)	
	)	
County of Spartanburg	)	
State of South Carolina,	)	2018A4210102630;
	)	2019-GS-42-1035;
Plaintiff,	)	2020-GS-42-0001;
	)	2020-GS-42-0002;
v.	)	2020-GS-42-0003
	)	
Mark Gilbert,	)	
	)	
Defendant.	)	Transcript
	)	
	)	of
	)	
	)	Trial
	)	
	)	
	)	

Date: May 25 - 28, 2021

Time: Start: 2:48 p.m. May 25, 2021

End: 2:07 p.m. May 28, 2021

Location: Spartanburg County Courthouse 180 Magnolia
Street, Spartanburg, SC 29306

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable Grace Gilchrist Knie

For the Plaintiff: Wendy Hallford, Esq.
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180 Magnolia Street
Spartanburg, SC 29306

For the Plaintiff: Candace Clark, Esq.
Assistant Solicitor
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For the Defendant: Matthew Shealy, Esq.
The Shealy Law Firm
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Also Present: Tanya Camp, Ashley Searcy
Members of the Jury

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1 PROCEEDINGS

2 JURY QUALIFICATION

3 THE COURT: (To The Jury Pool) Good
4 afternoon, ladies and gentlemen of the jury.
5 Again, I'm Judge Knie. Thank you for being
6 here today. Apparently, we are waiting for a
7 person that is en route. Thank you for your
8 patience, and I will get this started
9 hopefully in the next -- no later than the
10 next ten minutes. I'm also waiting on some
11 procedural matters that I need to take up with
12 the lawyers, okay? Thank you.

13 (Off the record from 2:50 p.m. until
14 2:55 p.m.)

15 THE COURT: Mr. Shealy, has your client been
16 arraigned on these charges?

17 MR. SHEALY: Not these charges.

18 THE COURT: What is your client's wish?

19 MR. SHEALY: He'll waive arraignment, Your
20 Honor. He pleads not guilty of the charges
21 and requests a jury trial.

22 THE COURT: Is that correct, sir?

23 DEFENDANT GILBERT: Yes, ma'am.

24 THE COURT: All right. How does he wish to be
25 tried?

1 MR. SHEALY: By a jury, Your Honor.
2 THE COURT: Okay. All right. All right.
3 Thank you.
4 MR. SHEALY: I'm sorry, Judge. If you wanted
5 the "by God and by -- by country" --
6 THE COURT: Okay. Yeah. I think --
7 MR. SHEALY: Oh, did you -- you did want that?
8 THE COURT: I do. Well --
9 MR. SHEALY: That's not -- that's the way I've
10 done it with Judge Cole, but Judge Couch
11 always said, "Don't do that," so . . .
12 MS. HALLFORD: I couldn't hear what he said,
13 so I don't know what we're talking --
14 THE COURT: Wait a minute. Let me get my --
15 y'all stay right here.
16 MS. HALLFORD: Okay.
17 MR. SHEALY: Did he say, "By God, by country?"
18 MS. HALLFORD: Oh. Oh, okay.
19 MR. SHEALY: Some judges like it and some
20 judges -- I've been laughed at before.
21 MS. HALLFORD: Just go ahead and say it.
22 MR. SHEALY: All right.
23 THE COURT: Okay.
24 THE COURT REPORTER: (To The Court) Still on
25 the record?

1 THE COURT: Still on the record.

2 THE COURT: Okay. And, again, Mr. Gilbert,
3 sir, how do you wish to be tried?

4 MR. SHEALY: By God and by country, Your
5 Honor.

6 DEFENDANT GILBERT: Do I say that?

7 MR. SHEALY: Yes.

8 DEFENDANT GILBERT: By God and by country.

9 THE COURT: Thank you, sir. God grant you a
10 speedy delivery. All right. You may be
11 seated.

12 DEFENDANT GILBERT: Thank you.

13 THE COURT: And, sir -- thinking down the
14 road. Sir, I'm going to place you under oath.

15 Do you swear or affirm that the testimony
16 you give will be the truth?

17 DEFENDANT GILBERT: Yes, ma'am.

18 THE COURT: And is everything that you just
19 told me true and correct?

20 DEFENDANT GILBERT: Yes, ma'am.

21 THE COURT: All right.

22 (Off the record from 2:56 p.m. until
23 3:01 p.m.)

24 THE COURT: Okay. Ladies and gentlemen of the
25 jury, it is now the time to begin with the

1 trial of our next case. And we need to select
2 a jury for that case.

3 The title of the case is the "State of
4 South Carolina vs. Mark Gilbert." This is a
5 criminal case, and Mr. Gilbert has been
6 accused of the crime of criminal sexual
7 conduct with a minor in the second degree.

8 The -- this incident or incidences are
9 alleged to have arisen on or about January the
10 5th of 2016 to March 30th, 2018, in the County
11 of Spartanburg, State of South Carolina, with
12 a minor female who was 14 years of age or
13 less, but who was at least 11 years of age at
14 that time.

15 Now, as to those allegations, Mr.
16 Gilbert, the defendant, has entered a plea of
17 not guilty. That plea of not guilty,
18 therefore, places upon the State the burden to
19 prove Mr. Gilbert's guilt to the satisfaction
20 of a jury beyond a reasonable doubt before any
21 verdict of guilty can be returned. Every
22 person accused of a crime is presumed to be
23 innocent. The burden is upon the State,
24 because they brought the charge to prove the
25 defendant's guilt beyond a reasonable doubt.

1 We will be selecting 14 of you to
2 participate in the trial of the case. And by
3 way of your participation, you will be called
4 upon to listen to the testimony that will be
5 provided by way of witnesses and to consider
6 any other evidence that might be introduced in
7 the trial of the case. After all of that
8 evidence has been received and I have
9 instructed you on the applicable law, it is at
10 that time that you will go back to your jury
11 room to deliberate.

12 Now, before we can do that, I have some
13 questions to ask you. The purpose of the
14 questions is to determine if, for some reason,
15 why anyone of you jurors should not be
16 selected to serve in this case. So, as these
17 questions are asked, if you need to respond to
18 them, I am, again, going to ask you to please
19 stand, and I will address any matter with you
20 individually.

21 Now, I know as of yesterday our panel was
22 found to be qualified, and so I am now going
23 to introduce to you the defendant and his
24 legal counsel. Mr. Mark Gilbert, who is
25 seated to my left, and your right.

1 Mr. Gilbert, sir, if you will please
2 stand and face the jury panel, so they can see
3 who you are. And then also seated is Attorney
4 Matthew Shealy. He is an attorney in -- with
5 offices in the Upstate of South Carolina,
6 primarily, I believe, in Spartanburg, and he
7 resides in Greenville County. He will be
8 representing Mr. Gilbert in the trial of the
9 case. Thank you. You both may be seated.

10 Presenting the case on behalf of the
11 State, seated to my right, and to your left,
12 is Assistant Solicitor Wendy Hallford. And
13 sitting next to her is Assistant Solicitor
14 Candace Clark. Both are with the Seventh
15 Judicial Circuit Solicitors Office. Thank you
16 all.

17 Now, I am going to list for you -- or
18 recite for you a list of potential witnesses.
19 And as I recite this list, I'm going to recite
20 it all at one time. And after I do that --
21 and, again, these are potential witnesses --
22 if you know anyone involved in the case, that
23 would be your time to stand, whether it be the
24 lawyers that I have just introduced to you,
25 the defendant, or any of these folks that I'm

1 getting ready to recite their names.

2 Robert Ambrusano (phonetic.) Did I say
3 that correctly, Mr. Shealy?

4 MR. SHEALY: Angrisanio, Your Honor.

5 THE COURT: Angrisanio, who resides in
6 the Wellford area of Spartanburg County. And
7 I have Child 1, Nicholas, Megan
8 Bennett, with the Spartanburg County Sheriff's
9 Office. I believe she --

10 MS. HALLFORD: Can you stand up?

11 THE COURT: She may be here with us.
12 That would be Ms. Gilbert.

13 MR. SHEALY: Ms. Bennett, Your Honor.

14 THE COURT: I'm sorry. Ms. Bennett --
15 Megan Bennett. Dr. Lynn McMillan of USC
16 Upstate, Dr. Nancy Henderson, Prisma Health,
17 Sara Bell, Averee Duclos -- Averee Duclos.
18 Any additional witnesses or potential
19 witnesses, Counsel?

20 MS. HALLFORD: Nothing from the State.

21 MR. SHEALY: No, Your Honor.

22 THE COURT: Okay. Now, you may know
23 these folks -- these potential witnesses, or
24 you may think that you know someone with a
25 similar name. If you're not sure, I encourage

1 you to stand up, and let's just go ahead and
2 clear that up now, so that there's not an
3 issue later, okay? And if you need more
4 information, we will certainly try to get that
5 from Counsel.

6 So I've identified everyone. Is there
7 any member of the jury panel who has any
8 connection by blood, marriage, friendship,
9 professional association, or social contact
10 with any of the persons that I have just
11 listed whether they be attorneys or potential
12 witnesses? If you know that, I want you to
13 please stand at this time for me.

14 (No response.)

15 Okay. Thank you. There is no response.
16 And, again, the next questions that I ask you
17 may seem redundant to you, but I believe that
18 they're worded so that you need to listen
19 carefully to make sure that -- that they are
20 not misinterpreted.

21 Has any member of the jury panel or any
22 member of your immediate family ever been
23 employed by any law enforcement agency, jail,
24 detention center, correctional facility, or
25 the Department of Social Services? If you

1 will please stand. Okay.

2 And so, again, we will have our bailiffs
3 with the microphones and I believe yesterday I
4 started on my left, and so why don't I start
5 over here on the right today.

6 Yes, ma'am. If you would please give
7 your juror number and your name.

8 MS. FOSTER: Juror Number 54, Anisha Foster.

9 THE COURT: Yes, ma'am?

10 MS. FOSTER: My sister is a police officer in
11 Greenville County.

12 THE COURT: Ma'am, would that interfere with
13 your ability to be fair and impartial in this
14 case?

15 MS. FOSTER: No, ma'am. It would not.

16 THE COURT: Okay. Thank you.

17 And y'all are really going to have to
18 talk loudly for me. I don't know why, but it
19 seems like every time I start asking a
20 question the air clicks on behind me, okay?

21 Yes, sir?

22 MR. DAVIS: My name is Daniel Davis, Juror
23 Number 38. And I have a cousin that is a
24 Spartanburg City police officer.

25 THE COURT: One second, Mr. Davis. And, sir,

1 would that interfere with your ability to be
2 fair and impartial in this case?

3 MR. DAVIS: No, ma'am.

4 THE COURT: Thank you, sir.

5 Yes, sir?

6 MR. HEDGEPATH: Juror 75, Matthew Hedgepath.

7 THE COURT: Yes, sir. Mr. Hedgepath?

8 MR. HEDGEPATH: I have a brother-in-law that
9 works for Spartanburg County.

10 THE COURT: Yes, sir. And his name?

11 MR. HEDGEPATH: Zach Featherston.

12 THE COURT: Wendy?

13 MS. HALLFORD: I didn't catch the last name.

14 THE COURT: The last name, please?

15 MR. HEDGEPATH: Featherston.

16 THE BAILIFF: Featherston -- Zach Featherston.

17 THE COURT REPORTER: Featherston.

18 THE COURT: (To Ms. Hallford) Does he have
19 any involvement in this case? Okay.

20 All right. Sir, would that in any way
21 affect your ability to be fair and impartial
22 in this case?

23 MR. HEDGEPATH: No, ma'am.

24 THE COURT: Thank you. Please be seated.

25 Yes, ma'am?

1 MS. FEBUS: Juror 49, Olga Febus.
2 THE COURT: One moment. Ms. Febus?
3 MS. FEBUS: Yes, ma'am.
4 THE COURT: Yes, ma'am?
5 MS. FEBUS: I have an uncle -- none of my
6 family members work for South Carolina, but I
7 had a uncle who was a warden for a
8 correctional facility in Connecticut and in
9 Florida. And my aunt was a caseworker for New
10 Jersey. This -- the Division of Youth and
11 Family Services.
12 THE COURT: Ma'am, would that affect your
13 ability to be fair and impartial in this case?
14 MS. FEBUS: No, ma'am.
15 THE COURT: Thank you, ma'am. Please be
16 seated. And the young lady behind you?
17 MS. TIDWELL: 166, Kimberly Tidwell.
18 THE COURT: Hold on one second, Ms. Tidwell.
19 Okay. Kimberly Tidwell, 166. Yes, ma'am?
20 MS. TIDWELL: My brother-in-law works for the
21 Town of Campobello and my husband, in the
22 past, was a highway patrolman.
23 THE COURT: One more time.
24 MS. TIDWELL: My husband was a highway
25 patrolman. No more.

1 THE COURT: And, ma'am, would that interfere
2 with your ability to be fair and impartial in
3 this case?

4 MS. TIDWELL: No, ma'am.

5 THE COURT: Thank you.

6 MR. REDLIN: Juror Number 140, Greg Redlin.

7 THE COURT: Gregory Redlin --

8 MR. REDLIN: Yes --

9 THE COURT: -- Juror Number 140?

10 MR. REDLIN: Yes, ma'am.

11 THE COURT: Yes, sir?

12 MR. REDLIN: I am retired from law
13 enforcement.

14 THE COURT: Out of what state?

15 MR. REDLIN: Ohio.

16 THE COURT: How long ago?

17 MR. REDLIN: Twelve years.

18 THE COURT: Sir, would that interfere with
19 your ability to be fair and impartial in this
20 case?

21 MR. REDLIN: Not at all.

22 THE COURT: All right. Thank you, sir.

23 Yes, ma'am? Or -- I'm sorry. I'm
24 looking at Ms. Joan, but I'm -- she's holding
25 the microphone for a gentleman. Yes, sir?

1 MR. LONG: Juror 102, Deonte Long.
2 THE COURT: One more time.
3 MR. LONG: Juror 102, Deonte Long.
4 THE COURT: Okay. Mr. Deonte R. Long. Yes,
5 sir?
6 MR. LONG: Mother's a retired detention
7 officer with Spartanburg County.
8 THE COURT: And how long has she been retired?
9 MR. LONG: Six or seven years.
10 THE COURT: And her name, sir?
11 MR. LONG: Doretha Long (phonetic.)
12 THE COURT: One more time.
13 MR. LONG: Doretha Long. Doretha Long.
14 THE DEPUTY: Doretha Long.
15 THE COURT: Doretha --
16 MR. LONG: Yes.
17 THE COURT: -- Long? Okay. Sir, would that
18 interfere with your ability to be fair and
19 impartial in this case?
20 MR. LONG: No.
21 THE COURT: Thank you, sir. Be seated.
22 MS. WHEELER: Juror 179.
23 THE COURT: Andrea Wheeler?
24 MS. WHEELER: Yes, ma'am.
25 THE COURT: Yes, ma'am?

1 MS. WHEELER: My husband was a prison guard in
2 Charlotte, North Carolina.
3 THE COURT: And how long ago?
4 MS. WHEELER: About 20/25 years ago.
5 THE COURT: Anyone else?
6 MS. WHEELER: No, ma'am.
7 THE COURT: Ma'am, would that affect your
8 ability to be fair and impartial in this case?
9 MS. WHEELER: No, ma'am.
10 THE COURT: Thank you, ma'am. Please be
11 seated.
12 Yes, ma'am?
13 MS. LYTLE: 105, Lisa Lytle.
14 THE COURT: Your number one more time, Ms.
15 Lytle?
16 MS. LYTLE: 105.
17 THE COURT: Okay. One moment. Yes, ma'am?
18 MS. LYTLE: Did you say immediate family,
19 or . . .
20 THE COURT: You can -- if it's a family
21 member. Immediate or --
22 MS. LYTLE: It's kind of far back. I just
23 wanted to be upfront. I just had a great
24 grandfather who was a police officer, but he
25 died before I was born, so . . .

1 THE COURT: And that was in Spartanburg
2 County?

3 MS. LYTTLE: Yes.

4 THE COURT: Okay. Ma'am, would that interfere
5 with your ability to be fair and impartial in
6 this case?

7 MS. LYTTLE: No.

8 THE COURT: All right. Thank you, Ms. Lytle.
9 You may be seated. Yes, sir?

10 MR. LION: Melvin Lion, 104.

11 THE COURT: Melvin R. Lion. Yes, sir?

12 MR. LION: Dad retired from Greenville City,
13 and my cousin's a state trooper.

14 THE COURT: Where is he a state trooper?

15 MR. LION: In Greenville, Highway 85.

16 THE COURT: One more time.

17 MR. LION: In Greenville.

18 THE COURT: In Greenville. Okay. Sir, would
19 that affect your ability to be fair and
20 impartial in this case?

21 MR. LION: No.

22 THE COURT: All right. Thank you, sir.

23 Okay. Is any member of the jury panel or
24 member of your immediate family active in or a
25 member of or contributor to any club, agency,

1 or organization that promotes or supports law
2 enforcement, criminal prosecution, or victim's
3 rights? That would include agencies such as
4 MADD or any other type agencies supporting law
5 enforcement or victim's rights. If this
6 applies to any of you, please stand. I think
7 they're racing to get to you.

8 UNKNOWN FEMALE: I won.

9 MR. LEACH: Juror 99, Tyler Leach.

10 THE COURT: One moment, sir. Mr. Tyler D.
11 Leach. Yes, sir?

12 MR. LEACH: Yes, I work for Consolidate
13 Insurance, which provides life insurance for
14 first responders; that includes law
15 enforcement. And, also, I work with the First
16 Responder Benefit Association which provides
17 money for fallen first responders, which
18 includes law enforcement.

19 THE COURT: Okay. Are y'all able to hear him?

20 THE COURT REPORTER: He's a little low.

21 THE COURT: Okay. All right.

22 THE COURT REPORTER: He's a little low.

23 THE COURT: Okay. But you got it?

24 THE COURT REPORTER: He said he provides for
25 first responders --

1 MR. LEACH: So I work for two organizations,
2 Consolidate Insurance, which is life insurance
3 for first responders, which includes law
4 enforcement and then the First Responder's
5 Benefit Association, which is a nonprofit and
6 we provide money for fallen families of first
7 responders.

8 THE COURT: And, sir, would that affect your
9 ability to be fair and impartial in this case?

10 MR. LEACH: No, ma'am.

11 THE COURT: All right. Thank you. Please be
12 seated, Mr. Leach.

13 Yes, ma'am?

14 MS. FERGUSON: Well, good afternoon.

15 THE COURT: Good --

16 MS. FERGUSON: I'm Juror 50, Theresa C.
17 Ferguson.

18 THE COURT: One moment, ma'am. Theresa C.
19 Ferguson, Number 50. Yes, ma'am?

20 MS. FERGUSON: Yes, ma'am. I was a guardian
21 ad litem for here -- a guardian ad litem for
22 the Spartanburg County. It was probably 2010
23 through 2014.

24 THE COURT: Ma'am, are you still active in
25 that capacity --

1 MS. FERGUSON: No, ma'am.

2 THE COURT: -- or on-call? Okay. And so,
3 ma'am, would that affect your ability to be
4 fair and impartial in this case?

5 MS. FERGUSON: Yes, ma'am.

6 THE COURT: All right. Ms. Ferguson, due
7 to -- you -- you were a lay guardian ad litem
8 for DSS cases, right?

9 MS. FERGUSON: Yes, ma'am.

10 THE COURT: And you would have trained with
11 DSS?

12 MS. FERGUSON: Yes, ma'am.

13 THE COURT: And then you would have been
14 representing them, but -- I mean, you would
15 have been testifying in DSS cases, but have an
16 attorney guardian ad litem there with you,
17 correct?

18 MR. FERGUSON: That is correct.

19 THE COURT: Okay. Due to the close proximity
20 of Ms. Ferguson's relationship with the
21 Department of Social Services, I'm going to
22 excuse her from this case. Thank you, ma'am.
23 Juror Number 50 is going to be excused from
24 this case.

25 Anyone else?

1 (No response.)

2 Has any juror or juror's family member or
3 close, personal friend been represented by
4 defense counsel, Mr. Matthew Shealy, or by
5 Assistant Solicitor Ms. Hallford, Assistant
6 Solicitor Ms. Clark, or any member of the
7 Seventh Circuit Solicitors Office? If so,
8 please stand. No response.

9 Has any juror or juror's family member or
10 close, personal friend been a party to an
11 investigation or action involving the South
12 Carolina Department of Social Services or any
13 equivalent agency? And, Juror Number 50, you
14 will not need to stand again, okay?

15 Again, has any juror, juror's family
16 member, or close, personal friend been a party
17 to any investigation or action involving the
18 South Carolina Department of Social Services
19 or any equivalent agency? Okay.

20 And I neglected to tell you all this, at
21 the beginning, like I did yesterday, but if
22 you would feel more comfortable to come
23 forward and talk to me about this at the end
24 because there will be some other questions
25 that I'm about to ask. Do not forget to come

1 forward at the end, okay?

2 Has any juror, juror's family member, or
3 close, personal friend been arrested for,
4 accused of, convicted of, or a victim of any
5 violent crime; such as, murder, manslaughter,
6 armed robbery, criminal sexual conduct, or any
7 similar crime? Again, if this applies to you,
8 and you want to come forward at the end, I'm
9 going to give you that opportunity, okay?

10 Has any juror, juror's family member, or
11 close, personal friend been arrested for,
12 accused of, or convicted of any crime
13 involving a minor child as a victim or
14 witness? If so, please stand. But, again, if
15 you want to come forward at the end, I will
16 allow you that opportunity, okay?

17 Has any juror, juror's family member, or
18 close, personal friend been a victim of a
19 crime either as an adult or a minor? Again,
20 you can stand now, or you can come down at the
21 end.

22 Has any juror, juror's family member, or
23 close, personal friend been seen at the
24 Spartanburg Children's Advocacy Center or any
25 similar center in any other county or state?

1 If that applies to you, I want you to come
2 down at the end, okay?

3 Is any juror, juror's family member, or
4 close, personal friend currently or previously
5 ever been prosecuted or is being prosecuted by
6 the Seventh Circuit Solicitors Office or any
7 other prosecuting agency in any other county
8 or state? If that applies to you, please
9 stand.

10 Is any juror or juror's family member or
11 close, personal friend currently or previously
12 involved in a case handled by the Spartanburg
13 County Sheriff's Office; currently or
14 previously? If that applies to you, please
15 stand.

16 Is any juror, your family member, or
17 close, personal friend a member of any
18 organization that does not recognize the
19 Government of the United States or the State
20 of South Carolina? If that applies to you,
21 please stand.

22 Has any member of the jury panel or
23 member of your immediate family or close,
24 personal friend ever been the victim of or
25 accused or convicted of assault? If so,

1 please stand.

2 (To Unknown Juror) And, ma'am, do you
3 want to come down at the end? Okay.

4 Has any member of the jury panel or
5 member of your immediate family ever suffered
6 sexual abuse either as a minor or as an adult?
7 And if that applies to you, I want you to come
8 down and talk to me over here, okay?

9 Has any member of the jury panel or
10 member of your immediate family ever been
11 accused of improper sexual conduct towards a
12 minor child or adult? If that applies to you
13 in any way, you can talk to me about it over
14 here.

15 Is there anyone in the panel that
16 believes that decisions made by law
17 enforcement, regarding their law enforcement
18 duties, should not be questioned? If that
19 applies to you, please stand. Okay. No
20 response.

21 So, first, let me ask the lawyers
22 something before I ask you all to come down.

23 (Sidebar)

24 THE COURT: Okay. I'm sorry. So if any of
25 the prior questions that I ask of you -- if

1 any of you all need to speak with me privately
2 with counsel present, you can meet me over
3 here in the corner, okay? We'll form a line.

4 THE BAILIFF: Juror -- Juror 49.

5 THE COURT: Ms. Febus.

6 MS. FEBUS: Juror 49.

7 THE COURT: Okay. This is Juror Number 49.

8 Yes, ma'am?

9 MS. FEBUS: Okay. So my brother, who is doing
10 life in prison Florida -- I would be very fair
11 and just and biased on that. But I was
12 sexually assaulted when I was younger, and I
13 was sexually molested when I was a young kid
14 by my stepfather. Honestly, I don't think I
15 could be biased. I'm not even gonna lie.

16 THE COURT: And so you think this would affect
17 your ability?

18 MS. FEBUS: Uh-huh.

19 THE COURT: Okay. I -- I am going to excuse
20 Juror Number 49.

21 THE COURT: Ashley, you're making my list?

22 MS. SEARCY: Gotcha.

23 THE COURT: 49. Okay.

24 The next juror, please.

25 THE BAILIFF: Juror 22.

1 MR. BROWN: I have experienced --
2 THE COURT REPORTER: I can't hear.
3 THE COURT: Yes. Yes, sir.
4 MR. BROWN: When I was younger, I was touched
5 by my grandpa. And so I feel like that has an
6 impact on me being able to be fair throughout
7 the trial.
8 THE COURT: What's your name?
9 MR. BROWN: Justin Brown.
10 THE COURT: Mr. Brown, and what's your number?
11 MR. BROWN: 22.
12 THE COURT: Okay. I am going to excuse Juror
13 Number 22 from this case. Thank you, sir. 22
14 is excused.
15 MS. CLARK: He's excused, Your Honor?
16 MS. SEARCY: Yes.
17 THE COURT: (To The Bailiff) All right.
18 THE BAILIFF: Juror 53.
19 MR. FLOURNOY: How you doing? How you doing?
20 THE COURT: Hey. It's nice to see you again.
21 MR. FLOURNOY: You too. Yes, ma'am.
22 THE COURT: Okay.
23 MR. FLOURNOY: 53, Douglas Flournoy, Jr.
24 THE COURT: Yes.
25 MR. FLOURNOY: Okay.

1 THE COURT REPORTER: I need to get your name.
2 MR. FLOURNOY: Douglas Flournoy, Jr. Okay.
3 My sister worked for DSS a long time ago. And
4 my stepson was accused of mis-sexual
5 (verbatim) conduct, and what he did was
6 dropped to a assault.
7 THE COURT: How long ago?
8 MR. FLOURNOY: I'd say about seven years ago.
9 THE COURT: And what is your sister's name?
10 MR. FLOURNOY: April Flournoy.
11 THE COURT: Wendy?
12 MS. HALLFORD: I don't recognize that name.
13 MR. FLOURNOY: It has been a while.
14 THE COURT: Okay. Would that affect your
15 ability to be fair and impartial in this case,
16 Mr. Flournoy?
17 MR. FLOURNOY: No. No, Your Honor.
18 THE COURT: Thank you, sir. I'm going to let
19 you --
20 MS. HALLFORD: Let me --
21 THE COURT: -- stay with us.
22 MS. HALLFORD: Let me make sure I understand.
23 It was his -- his sister's stepson or his
24 stepson?
25 MR. FLOURNOY: No. My stepson. My sister

1 works at DSS.

2 MS. HALLFORD: Okay.

3 THE COURT: Thank you. All right. 53 is

4 staying. Okay.

5 (To The Bailiff) Yeah.

6 THE BAILIFF: Juror 34.

7 MS. COLLINS: How are you doing?

8 THE COURT: You're Ms. Collins?

9 MS. COLLINS: Yes.

10 THE COURT: Juror Number 34. Uh-huh?

11 MS. COLLINS: My brother was convicted of

12 criminal sexual conduct.

13 THE COURT: How long ago? You said that's

14 been a few years ago?

15 MS. COLLINS: Uh-huh. It's been about eight

16 or nine.

17 THE COURT: And was that in Spartanburg

18 County?

19 MS. COLLINS: I think it was Spartanburg and

20 in Cherokee, I want to say, or Chesnee; one of

21 those.

22 THE COURT: Uh-huh.

23 MS. COLLINS: It may have been both. I'm not

24 sure.

25 THE COURT: Okay. Would that affect your

1 ability to be fair and impartial in this case?
2 MS. COLLINS: No.
3 THE COURT: Okay. I'm going to let you stay.
4 MS. COLLINS: All right.
5 THE COURT: Thank you. Juror 39.
6 THE BAILIFF: Juror 75.
7 THE COURT: And she's staying.
8 MS. SEARCY: Okay.
9 THE COURT: Yes. Mr. --
10 MR. HEDGEPATH: 75, Matthew Hedgepath.
11 THE COURT: Mr. Hedgepath. Yes, sir?
12 MR. HEDGEPATH: My stepfather was arrested for
13 seducing my 8-year-old sister.
14 THE COURT: How long ago was that?
15 MR. HEDGEPATH: Ma'am?
16 THE COURT: How long ago?
17 MR. HEDGEPATH: Maybe 30 years ago.
18 THE COURT: Sir, would that affect your
19 ability to be fair and impartial in this case?
20 MR. HEDGEPATH: Yes, ma'am. Absolutely.
21 THE COURT: Okay. I -- I'm going to excuse
22 Juror 75. Thank you.
23 THE BAILIFF: Juror 18.
24 MR. BLACK: John Black.
25 THE COURT: I need to get your name down. Mr.

1 Black?

2 MR. BLACK: Yes, ma'am.

3 THE COURT: Okay. And your juror number?

4 MR. BLACK: 18.

5 THE COURT: Okay. Yes, sir?

6 MR. BLACK: My fiancée was -- she was

7 inappropriately touched when she was a little

8 -- when she was younger. It was her cousin.

9 THE COURT: In this county, or --

10 MR. BLACK: Yeah. I think it -- it was in

11 Greenville County, I think.

12 THE COURT: Okay.

13 MR. BLACK: I -- I don't remember at what age

14 she was or what age he was. I think -- I

15 think, like -- I think he was probably, like,

16 in his early teens.

17 THE COURT: And, sir, was there any law

18 enforcement involvement?

19 MR. BLACK: No, ma'am.

20 THE COURT: Would that affect your ability to

21 be fair and impartial in this case?

22 MR. BLACK: Yes, probably.

23 THE COURT: So I have to get a yes or a no.

24 MR. BLACK: Yes, ma'am.

25 THE COURT: Okay.

1 MR. BLACK: Because I -- I am not supporting
2 any of that. Unh-unh.
3 THE COURT: Okay. Thank you, sir.
4 THE COURT: Juror Number 18 is going to be
5 excused. Okay.
6 MR. BLACK: Yes, ma'am.
7 THE BAILIFF: Juror 82.
8 THE COURT: Yes, ma'am. Your name?
9 MS. HOFFMAN: Jillian Hoffman.
10 THE COURT: Ms. Hoffman. Yes, ma'am?
11 MS. HOFFMAN: It's never been any -- anything
12 filed about it, but I was sexually assaulted
13 when I was about 13.
14 THE COURT: And so there was no prosecution?
15 MS. HOFFMAN: (Shakes head "no.")
16 THE COURT: Okay. How long ago was that?
17 MS. HOFFMAN: Ten years.
18 THE COURT: All right. Ma'am, would that
19 affect your ability to be fair and impartial
20 in this case?
21 MS. HOFFMAN: It would. I'm sorry. Yeah.
22 THE COURT: Okay. Juror Number 82 is excused
23 from this case. Thank you.
24 THE BAILIFF: Juror 166.
25 MS. TIDWELL: Hey.

1 THE COURT: Ms. Tidwell --
2 MS. TIDWELL: Yes, ma'am.
3 THE COURT: -- right?
4 THE COURT: Okay.
5 MS. TIDWELL: My mother was sexually abused as
6 a child by a family friend. No charges were
7 filed. The -- they didn't believe her, so
8 nothing happened. No -- no charges. No
9 trial. It was in the 60s.
10 THE COURT: Ma'am, would that affect your
11 ability to be fair and impartial in this case?
12 MS. TIDWELL: I believe so.
13 THE COURT: Okay. Thank you, ma'am. I will
14 excuse you. 166 is excused. Thank you.
15 THE BAILIFF: Juror 174.
16 THE COURT: Hi.
17 MS. WANSER: Hi.
18 THE COURT: Okay. Let's see. Ms. Wasser?
19 MS. WANSER: Wanser.
20 THE COURT: Wanser. Yes, ma'am?
21 MS. WANSER: I was a foster parent for a child
22 for DSS about four years ago, and he was
23 returned back to his parents.
24 THE COURT: Okay. And that was in Spartanburg
25 County?

1 MS. WANSEER: Yes, ma'am.

2 THE COURT: Okay. Ma'am, would that affect
3 your ability to be fair and impartial in this
4 case?

5 MS. WANSEER: No.

6 THE COURT: Okay. I'm going to let you stay
7 with me.

8 MS. WANSEER: Okay.

9 THE COURT: Thank you. (To Ms. Searcy) She's
10 staying. 174 is staying.

11 MS. SEARCY: Okay.

12 THE BAILIFF: Juror 38.

13 THE COURT: Mr. Davis, right?

14 MR. DAVIS: Yes, ma'am.

15 THE COURT: Okay. Yes, sir. We need to get
16 it on the record, okay?

17 MR. DAVIS: As a child I was molested by a
18 family member.

19 THE COURT: Okay.

20 MR. DAVIS: I do not think I can be on this
21 case.

22 THE COURT: I'm going to excuse Juror 138.
23 Thank you, sir.

24 MS. SEARCY: Just 38, Judge?

25 THE COURT: Is it 138?

1 MS. HALLFORD: 38.
2 MR. SHEALY: No. It's 38.
3 THE COURT: I'm sorry. 38. Thank you.
4 THE BAILIFF: Juror 145.
5 MS. RUPERT: The first question I'm going to
6 ask is my grandson --
7 THE COURT REPORTER: Can you get a little
8 closer, please?
9 MS. RUPERT: I'm sorry.
10 THE COURT: And what is your name again? I'm
11 sorry.
12 MS. RUPERT: Juanita Rupert.
13 THE COURT: Ms. Rupert. Yes, ma'am?
14 MS. RUPERT: My grandson -- DSS was called for
15 neglect because my son-in-law didn't take good
16 care of him.
17 THE COURT: How long ago?
18 MS. RUPERT: Well, that was last year.
19 THE COURT: Has that been resolved?
20 MS. RUPERT: Yes.
21 THE COURT: And that was in Spartanburg
22 County?
23 MS. RUPERT: Greenville County.
24 THE COURT: Would that affect your ability to
25 be fair and impartial in this case?

1 MS. RUPERT: No.

2 THE COURT: Okay. Thank you.

3 MS. RUPERT: I have a separate one, I --

4 sorry.

5 THE COURT: Okay.

6 MS. RUPERT: There was -- when I was four

7 years old a neighbor fondled -- fondled me.

8 That only happened one time. That was back in

9 1958.

10 THE COURT: Was there any law enforcement

11 involved?

12 MS. RUPERT: No.

13 THE COURT: Okay. Ma'am, would that affect

14 your ability to be fair and impartial?

15 MS. RUPERT: No.

16 THE COURT: Okay.

17 MS. RUPERT: It wouldn't.

18 THE COURT: Thank you. 145 is staying.

19 MR. SHEALY: Judge, I'm going to challenge her

20 for cause, but I don't think we can do that

21 here.

22 THE COURT: Well --

23 MS. HALLFORD: I could --

24 THE COURT: It -- well, it's okay. We'll come

25 back to it, okay?

1 MR. SHEALY: Yes, ma'am.

2 THE COURT: Okay.

3 THE BAILIFF: Juror 160.

4 THE COURT: Mary?

5 MS. SWINDLER: Maryjane.

6 THE COURT: Maryjane --

7 MS. SWINDLER: Swindler.

8 THE COURT: -- Swindler. Okay. And it's 160.

9 Yes, ma'am?

10 MS. SWINDLER: Yes. My mother-in-law was a

11 victim of criminal sexual assault.

12 THE COURT: How long ago?

13 MS. SWINDLER: It's been over 20 years. She's

14 no longer living. And they didn't catch the

15 person that did it until after her death.

16 THE COURT: Where -- where did this happen?

17 MS. SWINDLER: This was in the state of Ohio.

18 THE COURT: Ma'am, would that affect your

19 ability to be fair and impartial in this case?

20 MS. SWINDLER: No. It would not.

21 THE COURT: Okay. Thank you. You can stay

22 with us. 160 is staying with us.

23 THE BAILIFF: Juror 158.

24 THE COURT: Yes?

25 MR. STONE: Steven Stone. My stepbrother was

1 convicted of armed robbery by intimidation, I
2 believe. And that was like 20 years ago in
3 Georgia.

4 THE COURT: Sir, would that affect your
5 ability to be fair and impartial in this case?

6 MR. STONE: No.

7 THE COURT: Okay. Thank you, Mr. Stone. 156,
8 right?

9 MR. STONE: 158.

10 THE COURT: I'm sorry. I can't read my
11 writing. Okay. 158 -- thank you -- is
12 staying with us.

13 THE BAILIFF: Juror 100.

14 THE COURT: Tammy Lewis?

15 MS. LEWIS: Yes, ma'am.

16 THE COURT: Yes, ma'am?

17 MS. LEWIS: My daughter was raped at one years
18 old between 1999 and 2001. And I don't think
19 I can be fair to him.

20 THE COURT: Okay. I'm going to excuse you.
21 Thank you, Ms. Lewis.

22 MS. LEWIS: Thank you.

23 THE COURT: Juror 100 is excused.

24 THE BAILIFF: Juror 112.

25 THE COURT REPORTER: I can't hear.

1 THE COURT: I'm sorry. Is it Meloy?
2 MR. MELOY: Yes.
3 THE COURT: The lighting is just really bad.
4 I mean, it's great except it's bad for close
5 under the light.
6 112. Yes, sir?
7 MR. MELOY: My wife was sexually abused by a
8 stepfather as a minor.
9 THE COURT: Okay. How long ago, sir?
10 MR. MELOY: I would say 45 years.
11 THE COURT: Okay.
12 MR. MELOY: Possibly more.
13 THE COURT: Sir, would that affect your
14 ability to be fair and impartial in this case?
15 MR. MELOY: No.
16 THE COURT: Thank you. I'm going to let you
17 stay with us, okay?
18 MR. MELOY: Okay.
19 THE COURT: Okay.
20 MR. SHEALY: Judge, I'd like to challenge him
21 for cause, as well.
22 MS. HALLFORD: I can't hear you.
23 MR. SHEALY: Oh, I'm sorry. I would charge --
24 would challenge him for cause, as well. His
25 wife being --

1 THE COURT: Okay.

2 MR. SHEALY: -- molested.

3 THE COURT: Okay. I'm just making a note.

4 MR. SHEALY: Yes, ma'am.

5 THE COURT: Okay.

6 THE BAILIFF: Juror 168.

7 THE COURT: Hello. You're Mr. Tolbert?

8 MR. TOLBERT: Yes, ma'am.

9 THE COURT: Yes, sir?

10 MR. TOLBERT: I had a cousin that was the

11 victim of sexual abuse by her father when she

12 was a child. She's actually passed away now.

13 THE COURT: How long ago would the sexual

14 abuse have occurred?

15 MR. TOLBERT: Fifteen years, roughly.

16 THE COURT: Sir, would that affect your

17 ability to be fair and impartial in this case?

18 MR. TOLBERT: Yes, ma'am.

19 THE COURT: Okay. I'm going to excuse Juror

20 Number 168 from this case. Thank you, sir.

21 MR. TOLBERT: Yes, ma'am. Thank you.

22 THE BAILIFF: Juror 93.

23 MR. KIMLEY: Good afternoon, Your Honor.

24 THE COURT: And you're -- it's just so hard to

25 read the names. It's Steven Kimley?

1 MR. KIMLEY: Yes, ma'am.

2 THE COURT: Yes, sir?

3 MR. KIMLEY: I'm an associate with the fire
4 department, and I've had to respond to calls
5 for child abuse and sexual abuse. And, also,
6 my wife was abused as a child. And then
7 physically abused in her first marriage. And
8 she's 50-something years old now, and it still
9 has an effect on her.

10 THE COURT: Sir, would that affect your
11 ability to be fair and impartial in this case?

12 MR. KIMLEY: Yes, Your Honor. Yes. It would.

13 THE COURT: Okay. Thank you, sir. I'm going
14 to excuse you.

15 MR. KIMLEY: Thank you.

16 THE COURT: From this case.

17 MR. KIMLEY: Thank you.

18 THE BAILIFF: Juror 180.

19 THE COURT: Yes, sir?

20 MR. WHEELER: My nephew --

21 THE COURT: And your is name Mister -- Mr.
22 Wheeler?

23 MR. WHEELER: Yes, ma'am.

24 THE COURT: Yes, sir?

25 MR. WHEELER: My nephew was convicted of

1 unlawful sexual conduct.

2 THE COURT: Step a little closer, so she can

3 take this down. Your nephew --

4 MR. WHEELER: My nephew --

5 THE COURT: -- was convicted?

6 MR. WHEELER: -- was convicted --

7 THE COURT: Okay.

8 MR. WHEELER: -- for criminal sexual conduct.

9 And my grandmother was a victim of rape.

10 THE COURT: Okay. Sir, with your nephew, how

11 long ago was that?

12 MR. WHEELER: About six years ago.

13 THE COURT: Your grandmother, how long ago was

14 that?

15 MR. WHEELER: That was 15, probably.

16 THE COURT: Okay. Sir, would that affect your

17 ability to be fair and impartial in this case?

18 MR. WHEELER: Yes, ma'am.

19 THE COURT: Okay. I'm going to excuse you

20 from this case, sir. Thank you.

21 MR. WHEELER: Thank you.

22 THE COURT: Thank you very much. 180 is

23 excused.

24 THE BAILIFF: Juror 101.

25 MR. LINCOLN: I'm Lincoln.

1 THE COURT: Mister -- what's --
2 MR. LINCOLN: Jeffrey Lincoln.
3 THE COURT: Lincoln?
4 MR. LINCOLN: Yes.
5 THE COURT: Yes, ma'am -- yes, sir?
6 MR. LINCOLN: I have a first cousin who's
7 actually in prison, as we speak, in Florida
8 for rape. It was first offense. It was when
9 he was 19 and it was my 12-year-old cousin.
10 And then when I was three, I was molested by
11 my babysitter.
12 THE COURT: Sir, would that affect your
13 ability to be fair and impartial in this case?
14 THE COURT: I have an 11-year-old daughter,
15 and I think I would be to be honest with you.
16 THE COURT: Okay. I'm -- I mean, I'm just --
17 I'm trying to make a record, so if you can say
18 yes or no.
19 MR. LINCOLN: Oh, yeah, yeah. Yes. I'll be
20 good with it.
21 THE COURT: All right. I'm going to excuse
22 Juror 101 from this case.
23 MR. LINCOLN: Okay.
24 THE COURT: Thank you.
25 THE BAILIFF: Juror 117.

1 THE COURT: Sir, I need your last name, again?
2 I'm sorry.
3 MR. MOSER: It's Moser.
4 THE COURT: Mr. Moser.
5 THE COURT REPORTER: Can you repeat that?
6 THE COURT: Moser.
7 THE COURT REPORTER: Okay.
8 THE COURT: Yes, sir?
9 MR. MOSER: In the fall of 2013, my daughter
10 was grabbed on campus at USC. Campus police
11 reported it to Richland County. Richland
12 County couldn't find any video evidence, so
13 they -- they charged her with filing a false
14 police report. Her record was expunged. She
15 did pretrial intervention and everything's
16 been cleared. And the --
17 THE COURT: Okay.
18 MR. MOSER: And I'm sorry.
19 THE COURT: Okay. So can you be fair and
20 impartial in this --
21 MR. MOSER: Yeah.
22 THE COURT: -- case?
23 MR. MOSER: Yes.
24 THE COURT: Okay. I'm going to let you stay
25 with us, all right?

1 MR. MOSER: Thank you.

2 THE COURT: Thank you, Mr. Moser.

3 MS. CLARK: What was his number again?

4 THE COURT: 117. You need to copy Amber's

5 notes.

6 THE BAILIFF: Juror 138.

7 MR. PRICE: It was -- what are you asking?

8 THE COURT: Your number?

9 MR. PRICE: 138.

10 THE COURT: 138 --

11 MR. PRICE: Yes, ma'am.

12 THE COURT: -- Mr. Price.

13 MR. PRICE: Yes, ma'am.

14 THE COURT: Yes, sir?

15 MR. PRICE: Okay. My -- we had -- in my

16 church, there was a couple with a lot of young

17 people -- it was a big family and -- and

18 there's a kid that -- children were abused by

19 their father. And he actually was convicted

20 about eight years ago. And -- and they --

21 when it all happened, they all left our church

22 and -- but he was convicted about eight years

23 ago. And as far as I know, he is still in

24 prison.

25 THE COURT: And you were close to the family?

1 Is that --
2 MR. PRICE: Yes.
3 THE COURT: -- what it was?
4 MR. PRICE: Yes.
5 THE COURT: Okay.
6 MR. PRICE: Pretty close.
7 THE COURT: Sir, would that affect your
8 ability to be fair and impartial in this case?
9 MR. PRICE: Yes, ma'am. Yes, ma'am. I think
10 it would.
11 THE COURT: Okay. All right. I'm going to
12 excuse Juror 138. Thank you, sir.
13 MR. PRICE: Thank you.
14 THE COURT: (To The Bailiff) Okay.
15 THE BAILIFF: Juror 28.
16 THE COURT: Yes?
17 MR. CAMPFIELD: Your Honor, I have a brother
18 that's currently --
19 THE COURT: Hold on.
20 MR. CAMPFIELD: Sorry.
21 THE COURT: It's Mister --
22 MR. CAMPFIELD: 28.
23 THE COURT: Campbell?
24 MR. CAMPFIELD: Campfield.
25 THE COURT: Campfield. I'm sorry. Campfield.

1 THE COURT REPORTER: Can you spell that,
2 please?
3 MR. CAMPFIELD: C-a-m-p-f-i-e-l-d.
4 THE COURT: Yes, sir. Thank you.
5 MR. CAMPFIELD: Yes. I have a brother that's
6 in prison for sexual charges against a minor.
7 THE COURT: How long ago did that happen?
8 MR. CAMPFIELD: I'm not exactly sure. I know
9 it's been some years. It's like, maybe, less
10 than ten years.
11 THE COURT: Okay. Would that affect your
12 ability to be fair and impartial in this case?
13 MR. CAMPFIELD: No.
14 THE COURT: Thank you. I'm going to let you
15 stay with us, okay?
16 MR. CAMPFIELD: Okay.
17 MS. HALLFORD: I challenge for cause.
18 THE COURT: Okay. Thank you. I'm just trying
19 to make notes of that, so . . .
20 THE BAILIFF: Juror 70.
21 THE COURT: What's your name?
22 MS. HARDY: Kristin Hardy.
23 THE COURT: Ms. Hardy.
24 MS. HARDY: Uh-huh.
25 THE COURT: Yes, ma'am?

1 MS. HARDY: Yeah. I've got two cousins that's
2 been incarcerated, but they got time served.

3 THE COURT: Okay. And --

4 MS. HARDY: And --

5 THE COURT: -- was that in Spartanburg County?

6 MS. HARDY: Yes, ma'am.

7 THE COURT: How long ago?

8 MS. HARDY: One got released this year, and
9 another one last year. I have one more cousin
10 that is in jail now for manslaughter and armed
11 robbery.

12 THE COURT: And that's in -- for Spartanburg
13 County?

14 MS. HARDY: Uh-huh.

15 THE COURT: Is he at the detention -- has
16 been --

17 MS. HARDY: Yeah.

18 THE COURT: -- tried or pled?

19 MS. HARDY: He's just -- yeah. He's been
20 doing some time. He's been in there about
21 over ten years.

22 THE COURT: Okay. So there was a resolution
23 to the case, right?

24 MS. HARDY: I believe.

25 THE COURT: Okay. All right. Anything else?

1 MS. HARDY: Assault. I was assaulted back in
2 2004 -- May of 2004.
3 THE COURT: Okay. Anything else?
4 MS. HARDY: That's it.
5 THE COURT: Okay. How old were you in 2004?
6 MS. HARDY: Twenty-four.
7 THE COURT: Would that affect your ability to
8 be fair and impartial in this case?
9 MS. HARDY: No, ma'am.
10 THE COURT: Okay.
11 MS. HALLFORD: May we inquire? That was a
12 sexual assault or --
13 MS. HARDY: No, ma'am.
14 MS. HALLFORD: -- physical? Like --
15 MS. HARDY: Yeah. Assault and battery.
16 MS. HALLFORD: Okay. Gotcha.
17 MS. HARDY: I was -- I was the victim.
18 MS. HALLFORD: Right.
19 THE COURT: You look 24 now, and that's the
20 reason. I just wanted --
21 MS. HARDY: No, I'm actually 40.
22 THE COURT: Okay.
23 MS. HALLFORD: Oh, my goodness. That's not
24 fair.
25 THE COURT: Okay. All right, ma'am. And so I

1 will let you stay with us. Thank you.

2 (To The Bailiff) Is that it?

3 (To The Jury) Okay. Is there any member
4 of the jury panel who thinks that you have
5 heard, seen, or read anything about this
6 particular case? That could have been in any
7 news outlet, newspaper -- now, I guess, we can
8 get news at -- you know, the Internet, the
9 radio, television. If you think you have been
10 exposed to any information, at all, about this
11 particular case, if you would please stand.

12 No response.

13 And has any member of the jury panel
14 already formed an opinion or made up your mind
15 as to how this case ought to come out based
16 upon what you have heard up until this point
17 or based upon any consideration? If that
18 applies to anyone, I want you to please stand.

19 No response.

20 Is there any member of the jury panel
21 that knows of any reason whatsoever why you
22 think you could not be fair and impartial if
23 you were called upon and serve as a juror in
24 this particular case? If you have any reason
25 at all to think you could not be fair and

1 impartial, I would ask you to please stand.

2 All right. Thank you. There is no
3 response.

4 Counsel, if you all would talk to me for
5 just a minute.

6 (Sidebar)

7 THE COURT: Okay. Everyone, while the -- our
8 Deputy Clerk is going to be compiling our
9 list, I am going to take up the matter with
10 the lawyers in what they call the "green
11 room," okay? All right.

12 JUROR: Your Honor, can we go to the bathroom?

13 THE COURT: Yes. And so why don't you all
14 stand up, stretch, get a sip of water, and go
15 to the restroom. And don't leave the
16 building, all right?

17 (Off the record from 3:57 p.m. until
18 3:58 p.m.)

19 THE COURT: All right. Wendy, I'll take up
20 the State's --

21 MS. HALLFORD: Okay. So Ms. Clark got two
22 others. So Number 28 said that his brother is
23 in prison for criminal sexual conduct with a
24 minor. I know he said he can be fair and
25 impartial, but you -- he has his brother in

1 prison for the exact same thing that this
2 individual is charged with; and he would be
3 charged with determining whether this guy is
4 guilty. I just don't see how we can take his
5 word that he could be fair and impartial.

6 Just . . .

7 THE COURT: Okay. Yes, sir.

8 MR. SHEALY: I have no particular objection to
9 -- to that strike. I mean, I -- I am okay
10 with that as a challenge for cause, because I
11 don't know if he might believe that he did it.
12 His brother did it --

13 THE COURT: Okay.

14 MR. SHEALY: -- and all those guys should go
15 to jail forever.

16 THE COURT: Okay. So that was Mister -- all
17 right. So let me -- it's -- it's hard for me
18 to make notes and pull it back on my notes,
19 but -- all right. So we got Juror Number 28,
20 Tracy Campfield. And that's the State's
21 strike for cause.

22 Okay. Wendy, let me hear the next one.

23 MS. HALLFORD: Number 39. No. Number 39 is
24 what I want. Did I write that down wrong?

25 MR. SHEALY: I got 34. It was the Cherokee

1 and Spartanburg and brother was convicted.
2 MS. HALLFORD: Oh, yeah. 34 -- 34.
3 MR. SHEALY: I had him as 34.
4 THE COURT: Ms. Collins -- Ms. --
5 MS. HALLFORD: Uh-huh.
6 THE COURT: -- NaTonya Collins (phonetic.)
7 MS. HALLFORD: It would be the same issue,
8 a -- a sibling being charged with and
9 convicted of the same crime. I mean, she
10 seems like a nice upstanding woman. She might
11 also think he deserved it. I don't know. But
12 I -- I just have concerns for both sides.
13 MR. SHEALY: I have no objection of that
14 particular strike, either --
15 THE COURT: Was this the -- the -- the young
16 lady with the real pretty braids?
17 MR. SHEALY: Yeah. The one who was 40?
18 MS. HALLFORD: I think -- yes. The one --
19 MR. SHEALY: Okay.
20 MS. HALLFORD: -- that was --
21 MR. SHEALY: No.
22 THE COURT: Uh-huh.
23 MS. HALLFORD: Oh, this isn't the young
24 looking one?
25 MR. SHEALY: No. She was Number 70.

1 MS. SEARCY: That was Number 70.

2 THE COURT REPORTER: Yeah. That was Ms.
3 Hardy.

4 THE COURT: Are we talking about the right
5 one, then? Wait a minute. All right.

6 Christina Hardy, born in 1980, and Juror
7 Number 34 was born --

8 MS. HALLFORD: '91. Okay. So, no. We're not
9 talking about the -- we're not talking about
10 the one that looked so young?

11 MS. CLARK: She was towards the end. This one
12 was earlier.

13 THE COURT: Okay. So you're sure it was Juror
14 Number 34?

15 MS. HALLFORD: Uh-huh. Her brother was
16 convicted of CSC eight to nine years ago.

17 MS. SEARCY: Eight to nine -- uh-huh.

18 THE COURT: Okay.

19 Okay. Matt, your position?

20 MR. SHEALY: I have no objections about
21 either.

22 THE COURT: Okay. I'm not saying "okay" that
23 I agree, because what I'm worried about is
24 getting a jury. But let --

25 MS. HALLFORD: Uh-huh.

1 THE COURT: -- me hear from Matt now.

2 MS. HALLFORD: Oh, I have two.

3 MR. SHEALY: Yeah. I think I've got two.

4 THE COURT: You've got four?

5 MS. HALLFORD: Yes. I -- when I came in, I

6 said that she had called out two more to me.

7 THE COURT: Okay. You know that if I -- if I

8 grant this, we're not going to be able to get

9 a jury.

10 MS. HALLFORD: Well, never mind, then.

11 THE COURT: No. I mean, I'm not -- I'm not

12 saying that to tell you not to do it, but

13 based on -- all right. Let's do the math

14 again. If I take them out, and we've got how

15 many left, 42, right now?

16 MR. SHEALY: My understanding was there's a 43

17 that they -- that Tonya said we had 43 people

18 left.

19 THE COURT: Okay. (To Mr. Shealy) And so you

20 have two strikes for cause, and (To Ms.

21 Hallford) you have four strikes for cause?

22 MS. HALLFORD: Uh-huh.

23 THE COURT: So that gets us to 37 if I grant

24 them all?

25 MR. SHEALY: Yes, ma'am.

1 MS. SEARCY: They normally draw 35.
2 THE COURT: Okay. And we've got 15 strikes.
3 MR. SHEALY: Yes, ma'am.
4 THE COURT: Ten and five.
5 MS. HALLFORD: That's --
6 MR. SHEALY: All right.
7 MS. HALLFORD: -- assuming that we use all of
8 them, though, right?
9 THE COURT: I know.
10 MS. HALLFORD: Yeah.
11 THE COURT: I know. But -- okay. Ten and
12 five. So that gets us down to 22, right? Am
13 I -- is my math right?
14 MS. HALLFORD: Uh-huh.
15 MR. SHEALY: Yeah. Twenty-one or 22. Yes,
16 ma'am.
17 THE COURT: Thirty-seven minus ten.
18 MR. SHEALY: Oh --
19 THE COURT: Twenty-seven minus two. All
20 right. So that's 22. And then there are --
21 MS. SEARCY: Three and three.
22 THE COURT: -- another six. So that gets us
23 down to 16 for the alternates --
24 MR. SHEALY: Yes, ma'am.
25 THE COURT: -- right? If we do two. All

1 right. So -- okay. So --
2 MS. SEARCY: That's right.
3 THE COURT: So we need 14 and we would --
4 MS. SEARCY: Uh-huh.
5 THE COURT: -- have 16. Okay. I didn't mean
6 for all of that to be on the record. I sound
7 like I'm in the first grade.
8 MS. HALLFORD: Sound better than I do because
9 y'all lost me on the first -- the first
10 subtraction.
11 THE COURT: Okay. Well, it's because you
12 normally -- and, you know -- and you're
13 normally thinking five and five, but then --
14 okay.
15 (To All) So we're okay if I run long?
16 All right. So let's keep going.
17 MS. HALLFORD: So Number 53, his stepson was
18 accused of criminal sexual conduct. I just
19 have CSC, but I thought he said CSC with a
20 minor about seven years ago.
21 THE COURT: That would be --
22 MS. HALLFORD: Douglas Flonor (as spoken.)
23 MR. SHEALY: Flournoy.
24 MS. SEARCY: Flournoy.
25 MS. HALLFORD: Flournoy.

1 THE COURT: Okay. Matt?

2 MR. SHEALY: Well, Judge, I think that that

3 one was just an accusation. He ultimately

4 pled out to an assault, I'm sure. I don't see

5 any reason to --

6 THE COURT: Was it his stepson.

7 MR. SHEALY: It's his stepson --

8 MS. HALLFORD: Uh-huh.

9 MR. SHEALY: -- and I just don't know --

10 THE COURT: And his sister worked for DSS?

11 MR. SHEALY: Yes, ma'am.

12 THE CLERK: Yes.

13 THE COURT: Okay. All right. So, Matt,

14 what's your position?

15 MR. SHEALY: Well, I just don't -- I think he

16 can -- I don't see any reason why he could not

17 be fair and impartial. I don't see any --

18 THE COURT: All right. Wendy, the next one?

19 MS. HALLFORD: 117. This is the individual

20 who said that his daughter got grabbed on

21 campus and because there wasn't video evidence

22 of it, she got --

23 MR. SHEALY: I will consent to that one. I

24 don't believe there's an argument.

25 THE COURT: Mr. Moser?

1 MS. HALLFORD: Uh-huh.

2 THE COURT: Okay. Matt, tell me yours.

3 MR. SHEALY: Your Honor, my first one is 145.

4 DSS was called for neglect because of her son-

5 in-law last year. But the bigger concern I

6 have is when she was a four-year-old, a

7 neighbor had fondled her. While she said it

8 was a long time ago, she was four years old.

9 She, obviously, still remembers it. And I

10 don't think that time heals that particular

11 wound. I -- I --

12 MS. HALLFORD: I don't think time heals that

13 particular wound, either.

14 MR. SHEALY: So, I mean, it'd be my position

15 that -- that I appreciate that she believes

16 she can be fair and impartial, but . . .

17 THE COURT: Wendy?

18 MS. HALLFORD: I don't disagree with him.

19 THE COURT: Okay. And the next one?

20 MR. SHEALY: Number 112. His wife was abused

21 by her stepfather. Again, I think that was 45

22 years ago, but as we saw, I think two people

23 afterwards were not --

24 MS. HALLFORD: Wait, wait, wait. What's the

25 number?

1 MR. SHEALY: Number 112, 1-1-2.

2 MS. HALLFORD: Timothy Meloy?

3 MR. SHEALY: Yeah. I believe that's the name.

4 I think his . . .

5 THE COURT: 112. Okay.

6 MR. SHEALY: And I -- we saw the -- I think
7 the -- two after that fellow crying when he
8 was talking about how his wife had been abused
9 in the same situation. I -- I mean, I
10 understand people handle things differently,
11 but I think that a wife abused by a
12 stepfather, particularly given the -- the
13 similarity to the facts here -- it's not an
14 actual -- it's not a stepfather in this case,
15 it's an actual father. I believe that -- that
16 there will be at least an unconscious bias
17 there.

18 MS. HALLFORD: So on this one, I disagree.
19 This is his -- he is not the victim; the
20 person being asked to pass judgment is not the
21 victim as in the case before. It was also
22 years and years ago, and his reaction to it
23 was completely different from the individual
24 who started crying. He said he couldn't be
25 impartial, and this one said that he could, so

1 I -- I don't -- I consented to the other one.
2 I agreed with him on the other one, but I
3 disagree on this one.

4 THE COURT: Okay. Let me make my notes, and
5 y'all make your notes, okay, so that we don't
6 get tangled up.

7 All right. As to Juror Number 28, I will
8 grant the State's motion to strike for cause.

9 As for Number 34, I will grant the
10 State's motion to strike for cause. Okay.
11 This is granted and this is granted.

12 With regard to Juror Number 53, Mr.
13 Flournoy, I am denying the State's motion to
14 strike for cause. (To Ms. Hallford) Doesn't
15 mean you can't strike him, but --

16 MS. HALLFORD: Yeah.

17 THE COURT: Okay. Denied. I believe -- I
18 believe that they -- I believe that he is
19 sincere that he could be very impartial.

20 Okay. With regard to Juror Number 117,
21 Mr. Moser, you -- you did not --

22 MR. SHEALY: I consented to that. I -- I'm
23 fine with that one.

24 THE COURT: All right. Mr. Moser. I will
25 grant the State's motion.

1 With regard to Mr. -- or Ms. -- 145, Ms.
2 Rupert. I will grant the Defendant's motion
3 to strike for cause.

4 And with regard to Mr. Meloy or Meloy,
5 Number 112, I am going to deny the defendant's
6 motion to strike for cause.

7 Okay. And so we need to let --

8 MS. SEARCY: I'll let Tonya know.

9 THE COURT: -- Tonya know that we are taking
10 out 28, 34, 117, 145. Just making sure
11 because we know things have gotten confused in
12 the past. Okay. All right. Not by us, but
13 we've heard stories about it.

14 MR. SHEALY: Okay.

15 THE COURT: All right. Anything else before
16 we go back out?

17 MS. HALLFORD: Nothing. Can we have just a
18 minute to go to the bathroom?

19 THE COURT: Sure.

20 MS. HALLFORD: Thank you.

21 THE COURT: Y'all take -- take a minute. Take
22 a breath.

23 THE COURT REPORTER: Okay.

24 (Off the record from 4:12 p.m. until
25 4:20 p.m.)

1 THE COURT: Mr. James is everyone back in?

2 MS. JOAN (BAILIFF): Yes, Your Honor.

3 MS. DILL (BAILIFF): Yes.

4 THE COURT: Thank you, Ms. Dill. Ms. Joan.

5 Thank you.

6 All right. Counsel, is there anything
7 else before we draw the jury?

8 MS. HALLFORD: Nothing from the State.

9 MR. SHEALY: No, Your Honor.

10 THE COURT: Okay. And I guess I should have
11 put this on the record at the very beginning,
12 but this jury panel was sworn on yesterday,
13 and that, of course, continued with them
14 today, all right?

15 All right. So sworn as to answering my
16 questions, all right. Okay. All right. And
17 so -- one moment. One more thing. The
18 lawyers, if y'all will come up.

19 (Sidebar)

20 THE COURT: And so, Matt, was your question
21 answered?

22 MR. SHEALY: It was, yes, ma'am.

23 JURY SELECTION

24 THE COURT: Okay. All right. Okay.

25 And so now I will call on our clerk. And

1 -- I'm sorry -- when -- when your name is
2 called, you need to come down and stand right
3 here next to where Mr. James is. Mr. James,
4 raise your hand, okay?
5 MR. JAMES: (Complied).
6 THE COURT: Yeah. Right here. And you'll
7 need to bring your belongings with you. If
8 you are selected, then you will be seated over
9 to your left; my right, all right? Thank you.
10 THE CLERK: Juror Number 27, Scott Caldwell.
11 THE COURT REPORTER: I can't hear.
12 THE CLERK: Juror Number 27, Scott Caldwell.
13 What says the State?
14 MR. CALDWELL: Scott Caldwell.
15 MS. HALLFORD: Please excuse the juror from
16 the service of this case.
17 THE CLERK: Juror Number 57, William Fowler.
18 What says the State?
19 MS. HALLFORD: Please present the juror.
20 THE CLERK: What says Defense?
21 MR. SHEALY: We present this juror.
22 THE CLERK: Juror Number 72, Molly Haulbrook.
23 What says the State?
24 MS. HALLFORD: Please present the juror.
25 THE CLERK: What says Defense?

1 MR. SHEALY: Please excuse this juror from
2 this case.
3 THE CLERK: Number 161, Rio Tate-Smith. What
4 says the State?
5 MS. HALLFORD: Please excuse the juror from
6 the service of this case.
7 THE CLERK: Number 48, Jonathan Eubanks. What
8 says the State?
9 MS. HALLFORD: Please present the juror.
10 THE CLERK: What says Defense?
11 MR. SHEALY: Please excuse this juror from
12 this case.
13 THE CLERK: Number 142, Matthew Ridlehoover.
14 What says the State?
15 MS. HALLFORD: Please present the Juror.
16 THE CLERK: What says Defense?
17 MR. SHEALY: Please excuse this juror.
18 THE CLERK: Number 90, Brian Kelly. What says
19 the State?
20 MS. HALLFORD: Please present the juror.
21 THE CLERK: What says Defense?
22 MR. SHEALY: Please seat this juror.
23 THE CLERK: Number 81, Elizabeth Higgins.
24 MR. SHEALY: Can you repeat that number?
25 THE CLERK: 81.

1 MR. SHEALY: Okay.

2 THE CLERK: What says the State?

3 MS. HALLFORD: Please present the juror.

4 THE CLERK: What says Defense?

5 MR. SHEALY: Please seat this juror.

6 THE CLERK: Number 94, Richard Kitterman.

7 What says the State?

8 MS. HALLFORD: Please present the juror.

9 THE CLERK: What says Defense?

10 MR. SHEALY: Please seat this juror.

11 THE CLERK: Number 96, Angelina Kozub. What

12 says the State?

13 MS. HALLFORD: Please present the juror.

14 THE CLERK: What says Defense?

15 MR. SHEALY: Please seat this juror.

16 THE CLERK: Number 148, Jason Shackelford.

17 What says the State?

18 MS. HALLFORD: Please present the juror.

19 THE CLERK: What says Defense?

20 MS. HALLFORD: Please excuse this juror from

21 this case.

22 THE CLERK: Number 43, Zachary Dowds. What

23 says the State?

24 MS. HALLFORD: Please present the juror.

25 THE CLERK: What says Defense?

1 MR. SHEALY: Please excuse this juror.
2 THE CLERK: Number 112, Timothy Meloy. What
3 says the State?
4 MS. HALLFORD: That was 112?
5 THE CLERK: Yes, ma'am.
6 MS. HALLFORD: Please present the juror.
7 THE CLERK: What says Defense?
8 MR. SHEALY: Please excuse this juror for this
9 case, subject to grant previous issue.
10 THE CLERK: Number 179, Andrea Wheeler. What
11 says the State?
12 MS. HALLFORD: Please present the juror.
13 THE CLERK: What says Defense?
14 MR. SHEALY: Please excuse this juror.
15 THE CLERK: Number 54, Anisha Foster. What
16 says the State?
17 MS. HALLFORD: Please present the juror.
18 THE CLERK: What says Defense?
19 MR. SHEALY: Please excuse this juror from this
20 case.
21 THE CLERK: Number 77, Myranda Henderson.
22 What says the State?
23 MS. HALLFORD: Please present the juror.
24 THE CLERK: What says Defense?
25 MR. SHEALY: Please seat the juror.

1 THE CLERK: Number 53, Douglas Flournoy. What
2 says the State?
3 MS. HALLFORD: Please excuse the juror.
4 THE CLERK: Number 105, Lisa Lytle. What says
5 the State?
6 MS. HALLFORD: Please present the juror.
7 THE CLERK: What says Defense?
8 MR. SHEALY: Please seat this juror.
9 THE CLERK: Number 158, Steven Stone. What
10 says the State?
11 MS. HALLFORD: Please present the juror.
12 THE CLERK: What says Defense?
13 MR. SHEALY: Please excuse this juror.
14 THE CLERK: Number 4, Breanna Alston. What
15 says the State?
16 MS. HALLFORD: Please present the juror.
17 THE CLERK: What says Defense?
18 MR. SHEALY: Please seat this juror.
19 THE CLERK: Number 41, James Dillinger. What
20 says the State?
21 MS. HALLFORD: Please excuse the juror.
22 THE CLERK: Number 174, Kimberly Wanser. What
23 says the State?
24 MS. HALLFORD: Please present the juror.
25 THE CLERK: What says Defense?

1 MR. SHEALY: Please seat the juror.
2 THE CLERK: Number 1 -- I'm sorry. Number
3 104, Melvin Lyon. What says the State?
4 MS. HALLFORD: Please present the juror.
5 THE CLERK: What says Defense?
6 MR. SHEALY: Please excuse this juror.
7 THE CLERK: Number 35, Kendal Conley. What
8 says the State?
9 MS. HALLFORD: Please present the juror.
10 THE CLERK: What says Defense?
11 MR. SHEALY: Please seat this juror.
12 THE CLERK: Number 140, Gregory Redlin. 140.
13 What says the State?
14 MS. HALLFORD: Please present the juror.
15 THE CLERK: What says Defense?
16 MR. SHEALY: Please seat this juror.
17 THE CLERK: Number 102, Deonte Long. What
18 says the State?
19 MS. HALLFORD: Please present the juror.
20 THE CLERK: What says Defense?
21 MR. SHEALY: Please seat this juror.
22 THE CLERK: Number 134, James Peeler.
23 THE COURT: Are we going into the alternates
24 now?
25 THE CLERK: Yes, ma'am. This is for the

1 alternates.

2 THE COURT: The first.

3 THE CLERK: Yes, ma'am.

4 THE COURT: Okay. And can you repeat that

5 name, please?

6 THE CLERK: For the first alternate is 134,

7 James Peeler. What says the State?

8 MS. HALLFORD: Please excuse the juror.

9 THE CLERK: Number 155, Raymond Smith. What

10 says the State?

11 MS. HALLFORD: Please present the juror.

12 THE CLERK: What says Defense?

13 MR. SHEALY: Please seat this juror.

14 THE CLERK: Number 52, Sandra Finley. What

15 says the State?

16 MS. HALLFORD: Please present the juror.

17 THE CLERK: What says Defense?

18 MR. SHEALY: Please excuse this juror.

19 THE CLERK: Number 160, Mary Swindler. What

20 says the State?

21 MS. HALLFORD: Please present the juror.

22 THE CLERK: What says Defense?

23 MR. SHEALY: Please excuse this juror.

24 THE CLERK: Number 6, James Austin. What says

25 the State?

1 MS. HALLFORD: Please present the juror.

2 THE CLERK: What says Defense?

3 MR. SHEALY: Please seat this juror.

4 THE CLERK: Your Honor, jury selection is
5 complete.

6 THE COURT: Okay. Give me just one moment,
7 okay? Counsel?

8 (Sidebar)

9 THE COURT: Any objections to the jury by the
10 State?

11 MS. HALLFORD: Nothing from the State.

12 MR. SHEALY: I do, Your Honor. Number 112
13 requests for strike for cause. That was where
14 I used one of my preemptory challenges on him.
15 He was my sixth preemptory challenge. Had I
16 not been forced to use that on Number 112, I
17 would have struck Number 140.

18 THE COURT: Yes, sir.

19 MR. SHEALY: And called immediately
20 thereafter, and so that would be my objection.
21 So I renew my objection to Number 112 as a
22 strike for cause.

23 THE COURT: Yes, sir. And I have already
24 ruled on that, and that will continue to be my
25 ruling. Are there any other objections to

1 jury selection?

2 MR. SHEALY: No, Your Honor.

3 THE COURT: All right. Thank you.

4 (To The Jury Pool) Okay. Those of you
5 who were not selected to serve on this jury, I
6 am going to release you at this time. I would
7 ask that you take your belongings and exit
8 quietly. Thank you for your patience today.
9 I am also requesting that you call back after
10 six o'clock p.m. for a status, okay?

11 (To The Clerk) That is correct, right?

12 THE CLERK: Yes, ma'am.

13 THE COURT: (To The Jury Pool) On the number
14 that you have been provided. Thank you all.
15 Have a nice evening.

16 THE CLERK: Can you ask them to turn their
17 badges in?

18 THE COURT: Oh. And you need to turn your
19 badges in. I forgot to tell you all that one
20 time. Turn your badges in. Thank you. What
21 time is it?

22 (Whereupon, the jury pool left at
23 4:42 p.m.)

24 THE COURT: Matt? Wendy?

25 (Sidebar)

1 THE COURT: (To The Jury) All right. Ladies
2 and gentlemen of the jury, thank you again for
3 your service.

4 In just a moment, I'm going to let you go
5 for the evening. Before I do that, I want to,
6 again, stress to you as you heard me stress --
7 I think y'all heard me stress yesterday not to
8 do any independent research, but let me -- let
9 me go over that again.

10 You are not to do any independent
11 investigations or discuss this case with
12 anyone: your spouse, your roommate, your
13 children, your brothers, your sisters, your
14 neighbors, anyone. To do so would be
15 extremely unfair to everyone involved in this
16 case. Every bit of information that you
17 derive -- that you learn, about this case
18 needs to come from the courtroom.

19 I'm also going to caution you not to
20 begin discussing this case, even among
21 yourselves. You will not begin deliberating
22 until I tell you to, and that will be after
23 you have received all of the evidence; and I
24 have instructed you on the law; and you will
25 go into your jury room; and you will have the

1 benefit of the exhibits and a lot more
2 knowledge. At this point, you really know
3 nothing about this case, and it would, again,
4 be very unfair to begin discussing it among
5 yourselves. You can discuss the weather or
6 great restaurants or this wonderful auditorium
7 that's being used for this purpose. Do not
8 discuss the case.

9 Also, you see these folks that are seated
10 here with me, and they will be coming in and
11 out of the courthouse, as well. And if you
12 see them, do not speak with them. Do not
13 speak with anyone at the courthouse about this
14 case. If they don't speak to you, it's not
15 that they're being rude, they know that they
16 should not. And I'm going to instruct them,
17 not to approach any of you. You know, there
18 are hallways, bathrooms. I think, right now,
19 we're limited, basically, to maybe one
20 entrance -- or one down in magistrate's court
21 and one on the main level; and so there is a
22 chance you may run into folks involved in this
23 case.

24 And right now, the witnesses that were
25 called, they're not even here -- or all of

1 them are not here today. You don't even know
2 what they look like, okay? And so, please, do
3 not, even in polite conversation, talk to
4 someone, which may cause us to have a problem
5 later on in the case, okay?

6 Again, no independent research. No
7 discussion of the case. I sincerely
8 appreciate your willingness to serve on the
9 jury, and I am going to release you until
10 10:30 in the morning, not 9:30, but 10:30 in
11 the morning. I have some legal matters I need
12 to take up with the lawyers in the morning,
13 and I want to be as efficient with your time
14 as I can.

15 You all will report to 180 Magnolia
16 Street. Do not come here. Come to the
17 Spartanburg County Courthouse, which is about
18 a block away. The bailiffs, wearing the red
19 jackets, are going to inform you of where
20 you're going to park. It's a parking garage,
21 a little bit further up from Subway. And they
22 will be giving you, either, a voucher or
23 stamping your ticket so that you will not be
24 charged for that parking, okay?

25 The temperature in the courthouse varies.

1 If you want to bring a sweater or a jacket,
2 something that you can take off and on, that
3 might be wise, all right?

4 Ten-thirty -- and -- and, also, I will do
5 my best for us to start on time. We will
6 break after about an hour and a half for
7 bathroom. We will have a lunch break in the
8 middle of the day for, at least, one hour
9 maybe an hour and a half. There will be an
10 afternoon break of about 15 minutes, and I
11 will do my best to get you all out by five
12 o'clock each day. I hope that helps you for
13 planning purposes.

14 Thank you again. Have a -- yes, sir?
15 THE BAILIFF: Your Honor, what time do they
16 need to be there?

17 THE COURT: Ten-thirty in the morning. Not
18 9:30 --

19 THE BAILIFF: Right.

20 THE COURT: -- 10:30, okay? Thank you. The
21 Spartanburg County Courthouse. Thank you very
22 much.

23 THE BAILIFF: We're going to assemble in the
24 lobby. We're going to -- we need to get some
25 information from you right now.

1 (Whereupon, the jury was excused at
2 4:48 p.m.)

3 (Off the record from 4:48 p.m. until
4 5:01 p.m.)

5 THE COURT: Okay. And so now we do need to
6 put a few things on the record.

7 First of all, we -- it is already -- it
8 has already been established before jury
9 selection that Mr. Gilbert waived arraignment
10 on these charges; is that correct, Mr. Shealy?

11 MR. SHEALY: It is, Your Honor.

12 THE COURT: And that he requested to be tried
13 by jury?

14 MR. SHEALY: Yes, ma'am.

15 THE COURT: All right. And I know that we're
16 going to take up other motions in the morning
17 at the courthouse at 9:30, but there's one
18 very important matter that needs to be taken
19 up now that -- that even though the jury has
20 not been sworn, the trial has commenced with
21 the drawing of the jury, okay?

22 MR. SHEALY: Yes, ma'am.

23 THE COURT: For all practical purposes. And
24 so, Mr. Gilbert, sir, for your benefit,
25 this -- we're at a crossroads because you are

1 not in -- in custody. At this time, I need to
2 hear from Mr. Shealy about why you don't need
3 to be taken into custody tonight, okay?

4 DEFENDANT GILBERT: Yes, ma'am.

5 THE COURT: Pending trial -- the beginning of
6 trial in the morning. In other words, why the
7 bond should not yet be revoked, okay?

8 DEFENDANT GILBERT: Yes, ma'am.

9 THE COURT: And I do have a copy of Judge
10 Kelly's bond order; y'all just gave me that,
11 didn't you?

12 MS. HALLFORD: Sorry.

13 THE COURT: Okay. And Mr. Shealy, Ms.
14 Hallford, and Mr. Gilbert, sir. I do have a
15 copy of that bond order of July 31st, 2019,
16 signed by the Honorable Judge Keith Kelly.
17 The conditions of bond are that you are out on
18 a \$35,000 surety. The bonding company is
19 Sinkler Bonding in Spartanburg.

20 And you would have -- the other
21 conditions are no contact with the alleged
22 victim or witnesses. You must main -- remain
23 in contact with your legal counsel; you must
24 reside in the state of South Carolina; you
25 must not have any unsupervised contact with

1 children under the age of 16; and you were to
2 be placed on GPS monitoring without home
3 detention. I'm assuming that GPS is still in
4 place?

5 MR. SHEALY: It is, Your Honor.

6 THE COURT: Okay. Is that through the
7 Spartanburg County Sheriff's Department and --

8 DEFENDANT GILBERT: Yes, ma'am.

9 THE COURT: -- the detention facility?

10 DEFENDANT GILBERT: Yes, ma'am.

11 THE COURT: Okay. All right. And so, Mr.
12 Shealy, sir, I'm happy to hear from you before
13 I hear from Ms. Hallford, okay?

14 MR. SHEALY: Thank -- thank you, Your Honor.
15 This is Mark Gilbert. As you see, he's
16 reported here --

17 THE COURT REPORTER: Mr. Shealy, can you speak
18 up, please?

19 MR. SHEALY: Oh, sorry. He has reported here
20 to the auditorium now, twice. He's actually
21 also reported to the courthouse once during
22 this week, so he is not -- so he has not
23 attempted to abscond his bond, yet.

24 He's been on bond since July of 2019.
25 There was an issue with his ankle bracelet

1 last year. He had told them -- he tells me
2 that it was running down. They called him to
3 tell him to try to charge it. It didn't.
4 They told him to come down here. He was on
5 his way. I think -- I believe he was arrested
6 within the bounds of Spartanburg County on his
7 way into Spartanburg County. Obviously, he
8 was reinstated to that home detention. He has
9 had no problems since. If I may just . . .
10 DEFENDANT GILBERT: Sorry, Your Honor.
11 MR. SHEALY: And, Your Honor, he tells me they
12 changed it a month later because of the
13 malfunction.
14 Your Honor, Mr. Gilbert -- I've forgotten
15 exactly how old he is, but he's -- he's not in
16 the best of health. He does receive, I
17 believe -- he's got a 60 percent disability
18 rating.
19 DEFENDANT GILBERT: Seventy.
20 MR. SHEALY: Seventy percent disability rating
21 that is service connected, Your Honor, through
22 the VA. He was a machine gunner in the
23 Marines, and a veteran of the Gulf War --
24 DEFENDANT GILBERT: Yes.
25 MR. SHEALY: -- Your Honor. So -- I have

1 spoken with Sinkler Bail Bonding. They tell
2 me that they're happy to stay on his bond, and
3 that they don't see any reason that -- that
4 they will continue on that and they have no
5 reason for you to not allow him go back.

6 Now, he has contacts in Florida. That's
7 his father, and that is indeed where he was
8 arrested. However, he has -- once they -- he
9 didn't know that there were charges. They
10 arrested him down there. They extradited him
11 up here. I told him he would have to stay up
12 here until the pendency of these cases, and
13 that's what he's done. He's got a girlfriend
14 here, who I've met with -- with whom I believe
15 he lives.

16 And as this trial -- and, well,
17 correct -- well, Your Honor's corrected, this
18 is technically begun, this trial, there's been
19 no testimony. There's no reason for him to
20 believe that he's going to get convicted any
21 more earlier today than now. In other words,
22 there's -- there's no reason why he would not
23 show up tomorrow. It's not like the trial's
24 going poorly for us at this point.

25 So, Judge, we would ask that you allow

1 him to remain on bond.

2 THE COURT: Is he working?

3 MR. SHEALY: He is, Judge --

4 DEFENDANT GILBERT: No. I'm -- I'm disabled.

5 But --

6 MR. SHEALY: -- but he's --

7 DEFENDANT GILBERT: But I just had my fourth

8 heart attack, so . . .

9 MR. SHEALY: He's -- as I've said, he's in bad

10 health. He was delivering meat, Your Honor,

11 but because of the fourth heart attack he's --

12 THE COURT: For who?

13 DEFENDANT GILBERT: For Vaughn's. Excuse me.

14 Vaughn.

15 THE COURT: Vaughn, V-a-u- --

16 DEFENDANT GILBERT: -- g-h-n-s, yes, ma'am.

17 THE COURT: Okay. What is the girlfriend's

18 name?

19 MR. SHEALY: Her name is Sharon Blanton, Your

20 Honor.

21 THE COURT: And she resides in Spartanburg

22 County?

23 MR. SHEALY: I believe she resides in Taylors

24 in --

25 DEFENDANT GILBERT: Greenville, yeah.

1 MR. SHEALY: -- in Greenville County, but --
2 THE COURT REPORTER: I'm sorry. Can you guys
3 speak up just a little bit. That machine up
4 there, it's a bit loud.
5 MR. SHEALY: She -- she resides in Greenville
6 County, Your Honor, but I believe it's in
7 Taylors.
8 DEFENDANT GILBERT: Yes, sir.
9 THE COURT: And how long has Mr. Gilbert lived
10 in South Carolina?
11 MR. SHEALY: If you'll bear with me just one
12 second?
13 THE COURT: Yes, sir.
14 MR. SHEALY: More than 20 years, Your Honor.
15 THE COURT: Okay.
16 MR. SHEALY: And he has an advanced degree.
17 He's an electrician. He was union-trained up
18 in New York as an -- a plumber -- plumber. I
19 knew it was a trade.
20 THE COURT: Okay. All right. Thank you.
21 Yes, ma'am?
22 MS. HALLFORD: Your Honor, the State does
23 object to him being allowed to remain out on
24 bond. Unfortunately, the one time, I had a
25 trial where the judge did not revoke bond, and

1 take the individual into custody absconded.
2 And I fear that, that would happen again.
3 Yes. It's easy to say he's not facing --
4 facing any more right now than he was earlier
5 today, but when you go home and start thinking
6 about what you are actually facing, the
7 temptation to leave is certainly very strong.
8 It's standard procedure to take individuals in
9 -- into custody once a trial begins, and we
10 have in fact -- we paneled a jury, so the
11 trial has technically started.

12 Also, he does have that prior escape, and
13 I was looking for notes on that and I don't
14 have them, but it -- it wasn't just that he
15 failed to charge his ankle monitor. They also
16 tried, repeatedly, to get in contact with him.
17 They're supposed to be able to get him by
18 phone, and they couldn't, so . . .

19 MR. SHEALY: Judge, I will say that people are
20 not always taken into custody, even these
21 types of cases, so long as the bonding company
22 is willing to stay on. My experience,
23 particularly with Judge Cole, is, generally,
24 he allows them to stay out. Again, so long as
25 that bonding company is okay with it. So I --

1 I would object it being standard operating
2 procedure.

3 THE COURT: Yes, sir. And I don't -- I don't
4 believe it is standard operating procedure,
5 but the escape, I did see the word and it did
6 give me pause, as I'm sure you all understand.

7 MR. SHEALY: Just, again. That -- there are
8 escapes and there are escapes. He was -- he
9 was arrested with the monitor still on his
10 leg. He was arrested in Spartanburg County.
11 And the judge that heard the motion to get him
12 back out, immediately let him back out and set
13 the escape bond as a blanket bond, as I
14 recall, with the -- in other words, he -- I
15 don't believe he had to pay another bond. If
16 he did, it was a nominal bond that did not
17 require home detention, which, again, if they
18 were going -- if they were concerned about it,
19 I would suggest to you they would have
20 upgraded his home -- his incarceration from
21 GPS without home incarceration to GPS with
22 home incarceration.

23 MS. HALLFORD: May I just speak? If Your
24 Honor is inclined to grant it, could we put
25 them on notice that the trial could proceed in

1 his absence?

2 THE COURT: Oh, absolutely. I mean, it -- of
3 course, if he's not here, it's -- I mean,
4 we're going forward. And so . . .

5 And, sir, you -- you need to address me
6 through your lawyer, okay?

7 MR. SHEALY: Your Honor, the substance of that
8 was that the -- they were trying to call him
9 at two o'clock in the morning. It was very
10 early. And --

11 THE COURT: Okay.

12 MR. SHEALY: -- again, he denies the escape.

13 THE COURT: All right.

14 MR. SHEALY: That it was an escape.

15 THE COURT: This is a very difficult decision
16 for me, but, Mr. Shealy, I think that he needs
17 to be taken into custody, okay? All right.

18 Thank you.

19 DEFENDANT GILBERT: Yes, Your Honor.

20 MS. HALLFORD: Thank you, Your Honor.

21 MR. SHEALY: Thank you.

22 THE COURT: All right. Counsel and Mr.
23 Gilbert, I will see everyone in the morning,
24 all right?

25 (Whereupon, Day 1 concluded at 5:10

1 p.m.)

2 DAY 2 OF TRIAL

3 PRE-TRIAL MOTIONS

4 THE BAILIFF: All rise and come to order. The
5 Honorable Grace Knie presiding. Be seated,
6 please.

7 THE COURT: Okay. Good morning, everyone. We
8 are now on the record with regard to the
9 matter of "The State versus Mark Gilbert." We
10 have drawn a jury -- selected a jury in this
11 matter. They have not yet been sworn. They
12 are going to be arriving at 10:30 this
13 morning.

14 Present today in the courtroom is our
15 court reporter Amber Payne. The deputy clerk
16 of court, who is Tanya Camp. My
17 administrative assistant, Ashley Searcy.

18 Counsel, it was my understanding
19 yesterday, after we concluded jury selection,
20 that there were motions that needed to be
21 heard, and at that point, it was after five
22 o'clock. And so I am going to hear those
23 motions. You all did let me have a little bit
24 of insight as to what they would pertain to.
25 I believe there are three written motions and

1 an oral motion.

2 Why don't we take up the motions by the
3 State first? Ms. Hallford, assistant
4 solicitor. Yes, ma'am?

5 MS. HALLFORD: Thank you, Your Honor. My
6 first motion is a Rape Shield Motion. This
7 would require that the Defense have provided
8 us notice that they intended to introduce
9 evidence of alleged sexual activity by the
10 victim, and he has not provided me with any
11 notice, so I assume that this is a non-issue.

12 MR. SHEALY: Judge, there would have been no
13 relevant information that we can provide or
14 that we could present with respect to that,
15 that would have allowed us to pierce that Rape
16 Shield Motion. So --

17 THE COURT: Okay.

18 MR. SHEALY: -- that's what -- it's a non-
19 issue.

20 THE COURT: Okay. And so you all are in
21 agreement that that is a non-issue?

22 MR. SHEALY: Yes, Your Honor.

23 THE COURT: Okay.

24 MS. HALLFORD: And because of that ruling,
25 that means there cannot be any questioning of

1 her about sexual activity with anyone other
2 than this defendant?

3 THE COURT: Mr. Shealy?

4 MR. SHEALY: That would be true unless they,
5 obviously, open the door or something.

6 THE COURT: Yeah. Yes. Unless somebody open
7 the door, and this --

8 MS. HALLFORD: Right.

9 THE COURT: -- of course, is pursuant to South
10 Carolina Rules of Evidence 402 and 403. All
11 right.

12 MS. HALLFORD: Your Honor, the second motion
13 is a motion to exclude any reference to third-
14 party guilt. I also spoke with Mr. Shealy
15 about this yesterday. This is a -- I have no
16 information that he intended to try to say
17 someone else did this. This is a motion that
18 I routinely file in child sex abuse cases
19 because that is frequently a tactic, but I
20 believe that this is also a non-issue.

21 MR. SHEALY: Judge, obviously, it's our
22 contention my client did not commit this
23 crime, so if someone did, then it would be
24 somebody other than my client. I do not
25 intend to name some other person as having

1 done it, but we do still say that my client
2 did not. And, therefore, should there be
3 proof that something happened, I suppose by
4 implication, it's a third-party guilt; but I
5 don't have a particular person that I would
6 name.

7 THE COURT: Okay. And so you all are in
8 agreement that per "State v. Gregory," this is
9 not an issue, correct?

10 MR. SHEALY: Yes, ma'am.

11 MS. HALLFORD: Yes, ma'am.

12 THE COURT: All right. Thank you.

13 MS. HALLFORD: Your Honor, the State's third
14 motion, is a motion to exclude any prior
15 allegations of sexual abuse. In the motion,
16 it says that the State is unaware of any
17 allegations -- prior allegations -- that this
18 victim has made. I -- Mr. Mnealy -- I'm
19 sorry. Mr. Shealy.

20 MR. SHEALY: You should be ashamed of
21 yourself, ma'am.

22 MS. HALLFORD: Deeply.

23 Mr. Shealy has not made me aware of any,
24 but this is, again, a motion that I routinely
25 file in this type of case because that is

1 frequently an issue. So I believe that we can
2 agree that --

3 MR. SHEALY: Judge, I'm unaware of any. I
4 expected that had the State any information,
5 they would have provided that to me in
6 discovery. Again, that would have been
7 discoverable. So I am unaware of any third --
8 any allegations or prior allegations, made by
9 this alleged victim.

10 MS. HALLFORD: Yes. We would have turned that
11 over if we were aware of any, and we have no
12 knowledge of any.

13 THE COURT: Okay. All right. And so pursuant
14 to the "State v. Boiter" and "State v.
15 Sprouse," this is also not an issue, correct?

16 MR. SHEALY: Yes, ma'am.

17 THE COURT: All right. Anything else from the
18 State?

19 MS. HALLFORD: That concludes the State's
20 motions, Your Honor.

21 THE COURT: All right. Mr. Shealy?

22 MR. SHEALY: Thank you, Your Honor. Judge, to
23 begin, I'll start with the ones that I believe
24 will be consented to by the State.

25 We have a motion in limine regarding any

1 conversation or discussion about a Go-Pro or
2 there's also a flash-drive-alleged camera.
3 There's a lot of discussion throughout the
4 files -- well, it's a CAD video about a Go-Pro
5 being found in a bathroom.

6 THE COURT: Explain to me exactly what that
7 is.

8 MR. SHEALY: A Go-Pro, Judge, is -- is a small
9 camera that is generally marketed as something
10 that people were doing things, like jumping
11 out of airplanes and such, would wear on their
12 body, or otherwise hold. So it's a very small
13 camera, but it's -- it's used, generally, in
14 that kind of way.

15 In this case -- again, there are a lot of
16 dark insinuations that there were possibly
17 videos made with this Go-Pro or this flash
18 drive camera, which the allegation -- or that
19 the discussion in the file says a -- something
20 that looks like a flash drive, but may have
21 been a camera, ultimately, gets broken or
22 something. It's our contention that -- all of
23 that, while they're dark insinuations, there's
24 no video ever recovered or anything. There's
25 no evidence that these things, if they were

1 there, were ever even turned on.

2 It's simply confusing. It's confusing.
3 I know it's -- would be confusing to the jury
4 because it was confusing to me exactly what
5 the allegation is, as well as the fact that
6 there is no corroboration here.

7 My understanding in talking with the
8 State, they have agreed to limit any -- well,
9 that there would be no testimony regarding
10 that particular incident. Again, because of
11 the issues, we believe that there are no
12 videos recovered or anything like that.

13 MS. HALLFORD: That is correct. We're not
14 planning on bringing that up at all. It was
15 confusing as to whether it was ever used in --
16 in this case, so, no.

17 THE COURT: Okay. All right. Next motion.

18 MR. SHEALY: Judge, as to my -- there was also
19 -- my client -- we have a motion in limine
20 regarding what the State could have intended
21 to use as evidence of alleged flight.

22 My client was arrested in Florida. He
23 was extradited from Florida. It has been
24 argued in this courtroom before that, that
25 should be allowed to be entered into evidence

1 as evidence of flight, which is then an
2 evidence of guilty knowledge.

3 We believe that we'd be able to rebut any
4 of those arguments, but in talking with the
5 solicitor, because of when my client moved to
6 Florida, which was well before -- well,
7 several months before any report to law
8 enforcement, the State has agreed that they
9 don't believe they can use that as evidence of
10 flight. And that's my understanding.

11 THE COURT: Ms. Hallford?

12 MS. HALLFORD: That is correct. The way
13 the -- the whole factual scenario played out;
14 it would be hard to make an argument that he
15 moved to Florida to avoid prosecution since he
16 had been forced to leave his house. He did
17 try to live with a friend for a while, and
18 then that individual kicked him out. He had a
19 father in Florida, so he moved to live with
20 his father, and then well after that, the
21 warrants were obtained.

22 So I did consider it, but weighing it in
23 the balance, I felt like it was not strong for
24 the State's case, and rather than using issues
25 and bringing in something that could end up

1 causing trouble on appeal, I am not going to
2 use that.

3 MR. SHEALY: All right. And so, Judge, the --
4 my real last motion here is a motion to quash
5 with respect to each of these indictments.
6 Your Honor, each of these indictments allege
7 the same crime. They allege that on or about
8 -- well, between -- excuse me -- if you'll
9 bear with me a second. They allege that the
10 defendant, Mr. Gilbert, in Spartanburg County
11 on or between dates, and these -- this date
12 range is the same for each indictment from
13 January 5th, 2016 to March 30th, 2018, commit
14 the crime of sexual -- criminal sexual conduct
15 with a minor in the second degree, in that the
16 defendant did engage in sexual battery.

17 The only difference is this "to wit"
18 section. In each and every indictment, it
19 describes a different kind of sexual battery.
20 This particular indictment, which I believe is
21 Indictment 19 -- I think it's 19-GS-42-1035,
22 and that could be incorrect.

23 To -- is "to wit, penetration of the
24 vagina with an object" -- and then it goes on
25 again with the same language as -- as in each

1 other indictment -- "with a minor, Child 1.
2 who was 14 years of age or less, but
3 who was at least 11 years of age at the time
4 of said incident, occurred in Spartanburg
5 County. Violation of the statute 16-3-655(B),
6 code of law in South Carolina as amended."

7 Your Honor --

8 THE COURT: Do y'all have the original
9 indictments? I've got copies, but I know we
10 had the original indictments yesterday at the
11 auditorium.

12 MR. SHEALY: I -- I don't have them.

13 MS. HALLFORD: I've turned them over to Ms.
14 Camp before.

15 THE COURT: Thank you. I just want to follow
16 along with the originals.

17 MR. SHEALY: Yes, ma'am.

18 MS. HALLFORD: Yes, ma'am.

19 THE COURT: Okay. And so, Mr. Shealy, why
20 don't we go -- I've got 20-GS-42-0001, 20-42-
21 0002, 20-0003, 19-1035, and just to be sure, I
22 think -- let me just compare my copies because
23 we didn't make my copies front and back. We
24 made them separate pages. I just want to make
25 sure that I have put them back together

1 correctly, okay?

2 MR. SHEALY: Yes, ma'am.

3 THE COURT: Okay. Okay. Yeah. Mine are
4 correct.

5 Okay. And so -- so now, sir, if you --
6 if you want to take them one by one, that's
7 fine. If you want to argue as a group, that's
8 fine.

9 MR. SHEALY: Well, Judge, I'd just assume -- I
10 mean, I can argue each one.

11 THE COURT: Is it the same argument as to
12 each?

13 MR. SHEALY: It is, Your Honor.

14 THE COURT: Okay.

15 MR. SHEALY: It's -- these are multiple --
16 what are called "multiplicitous indictments."
17 I've -- this is the first time I've ever dealt
18 with that, frankly. There are two kinds of
19 indictments like this: There's duplicitous,
20 wherein a single indictment alleges two
21 crimes, and then they are multiplicitous where
22 they allege the same crime over and over and
23 over again.

24 So, Judge, in these kinds of cases --
25 and, quite frankly, there aren't very many

1 cases with respect to multiplicitous
2 indictments in the state of South Carolina.
3 They happen a lot, apparently, in the federal
4 system.

5 Again, each of these are alleging the
6 same crime, again, with a different kind of --
7 well, a different sort of sexual battery. The
8 problem with multiplicitous is it may suffer
9 multiple penalties for the same offense, so,
10 in this case, because there are four counts,
11 in theory he's -- he -- my client would be
12 facing 80 years for committing, again, the
13 same crime, which the legislature, obviously,
14 has intended to be -- or to be punished by up
15 to 20 years in prison.

16 And, Judge, it also may improperly
17 prejudice a jury by suggesting that a
18 defendant has committed several crimes, when,
19 again, he's only committed the one.

20 Your Honor, I'm going to hand up "State
21 versus" -- well, the "United States versus
22 Zalapa," which discusses multiplicitous
23 indictments. If I may approach.

24 THE COURT REPORTER: Excuse me.

25 THE COURT: Can you give a copy to Ms.

1 Hallford.

2 MR. SHEALY: Yes, ma'am.

3 THE COURT: Thank you.

4 THE COURT REPORTER: Judge, can he spell the
5 name of the case?

6 MR. SHEALY: Sure.

7 THE COURT REPORTER: Zalapa?

8 THE COURT: Ms. Payne.

9 MR. SHEALY: It's --

10 THE COURT: Ms. Payne is very detail-oriented,
11 and we're so thankful for that, but . . .

12 THE COURT REPORTER: Thank you.

13 THE COURT: Yes, ma'am.

14 Okay. Yes, sir. The Zalapa case.

15 MR. SHEALY: In Zalapa, Your Honor, Mr. Zalapa
16 plead guilty to a number of counts:
17 Possession of ammunition by a convicted felon,
18 possession of an unregistered machine gun, and
19 possession of an unregistered firearm with a
20 barrel less than 16 inches long.

21 Your Honor, the -- after some discussion,
22 the Ninth Circuit in 2007, concluded that
23 Zalapa's convictions on sentences -- in
24 sentences on firearm counts were
25 multiplicitous because they were based on the

1 same act, the same statute, based upon a
2 single act or transaction.

3 Your Honor, in this case, the State's
4 alleging a single transaction. Had they
5 changed that date range -- if it was a
6 different date -- if they said, on -- for
7 instance -- March 18th, a particular kind of
8 sexual battery occurred, and then on April
9 27th, a specific kind of sexual battery
10 occurred, then I think they'd be allowed to do
11 that because those are different acts,
12 different transactions.

13 In this case, they've not argued that;
14 they've not alleged that. They've alleged
15 that during an entire period of time, a
16 certain course of action occurred, to wit,
17 sexual battery.

18 Your Honor, if I understand also that the
19 State intends on arguing that each kind of
20 sexual battery is somehow a separate offense.
21 In other words, that there are -- what they,
22 essentially, are arguing is that sexual
23 battery actually can be 12 different things or
24 a number of different things, and that the
25 jury has to find unanimously that a particular

1 kind of sexual battery occurred.

2 Your Honor, there's a case out of the
3 South Carolina Court of Appeals; it's a 2020
4 case, in which, quite frankly, that argument
5 is -- is -- I mean, overruled. Your Honor, in
6 "State versus Adams," 430 S.C. 420 -- I can
7 hand that up and hand Ms. Hallford a copy, as
8 well.

9 THE COURT: (To The Deputy) Tommy, just show
10 that to Amber, and make sure we get the
11 correct case name.

12 (To Mr. Shealy) "State v. Adams?"

13 MR. SHEALY: "State v. Adams," Your Honor.
14 430 S.C. 420.

15 THE COURT: Thank you.

16 THE COURT: Okay. Mr. Shealy, anything else?

17 MR. SHEALY: Your Honor, would you like me to
18 argue my point on Adams?

19 THE COURT: Yes, sir.

20 MR. SHEALY: Okay. Thank you, Your Honor.

21 As to Adams, in Adams, the -- there was
22 an argument as to the unanimity charge given
23 by the judge. Your Honor, the Court of
24 Appeals point out that this -- these
25 indictments or this indictment was

1 duplicitous, meaning that it made two separate
2 allegations within the same argument, in the
3 same indictment.

4 Your Honor, I think the -- the holding is
5 pretty well described here, where it says,
6 "The difficulty arises when the evidence" --
7 this is Page -- I've lost my start page. I
8 apologize. It's 430 S.C. 432 into 433. "The
9 difficulty arises when the evidence before the
10 jury includes several ways or means by which
11 the defendant could have committed the crime.
12 For example, in a trial for murder, evidence
13 may be that the defendant killed the victim
14 with either a knife or a gun. As long as the
15 jury unanimously agrees that the State had
16 proven that the defendant killed the victim
17 with malice aforethought, they do not require
18 unanimity as to what the defendant -- what
19 weapon the defendant used."

20 In this case, again, because the way that
21 the statute reads, discusses sexual battery,
22 not any particular kind of sexual battery, we
23 don't have to have unanimity as to what kind
24 of sexual battery occurred. They just have to
25 agree that sexual battery did, in fact, occur.

1 So there is absolutely no reason for the --
2 this multiplicitous indictment, quite frankly,
3 Your Honor.

4 I believe that also this -- the fact that
5 there will be many of them, again, with
6 prejudice. My client suggested to the jury
7 that he has committed four crimes, as opposed
8 to a single crime, as well as being vague and
9 unclear as to what their -- what kind of
10 evidence they're looking for, what kind of
11 evidence they need to be listening for.

12 So, Judge, my -- my argument is the -- at
13 this point, we would move to quash each and
14 every one of them. Thank you, Your Honor.

15 THE COURT: Thank you. Ms. Hallford?

16 MS. HALLFORD: Your Honor, first of all,
17 "State v. Adams," they -- the single
18 indictment had two different types of sexual
19 battery within a single indictment. So that
20 case is distinguishable.

21 I do think -- when I read "State v.
22 Adams," back when it first came out, I was
23 like, "Oh, okay." So they say that if there's
24 a single indictment, we're not going to -- and
25 -- and it doesn't have "to wit" language. It

1 just says a sexual battery, and then the State
2 introduces evidence of different types of
3 sexual battery; then, according to this case,
4 we don't have to do a special verdict form.

5 But I think -- my opinion is that that's
6 going to be addressed by the supreme court,
7 and they will find that there will have to be
8 unanimity for each type of sexual battery.
9 That's my speculation. Maybe not. But
10 regardless, the indictment in Adams had the
11 two sexual batteries under one indictment,
12 which then could be very confusing to a jury.

13 When this case first came to me, there
14 was a single indictment. Well, actually,
15 there were two indictments. She was under the
16 age -- she was 14 and under when all of this
17 occurred. The prosecutor who had it before me
18 got two indictments. One for 11 to 14, and
19 one for 14 to 15, which was not necessary. It
20 also had some -- had the wrong statutory code
21 on the front of it. So I was sending it back
22 to the grand jury, and -- because it's my
23 policy to separate out the different types of
24 sexual battery to avoid confusing a jury.

25 Since I was sending it back, I went ahead

1 and got -- amended 19-GS-42-1035 to fix the
2 code section from (B) (2) to (B) (1) on 16-3655,
3 which is the correct code section for 11 to
4 14. And then I added the "to wit" language,
5 "sexual intercourse." Sexual intercourse is a
6 type of sexual battery. It is a separate
7 crime from the indictment for 2000-GS-42-0001,
8 digital penetration of the vagina. That's a
9 separate crime. Then the one for penetration
10 of the vagina with an object and for fellatio.

11 Mr. Shealy's argument -- under his
12 argument, then, if we had someone who went to
13 a house 30 consecutive days in a row and
14 committed a different type of crime, then he's
15 saying all of those would have to be under one
16 indictment. They're separate crimes. The
17 separate type of battery is the separate
18 crime. So every time he had sexual
19 intercourse with her -- if we could pick out
20 certain dates, if she had kept a journal of
21 this, then I could have indicted him for that.
22 But sexual intercourse is this -- is a
23 separate crime. It's a separate sexual
24 battery. The fellatio is a separate sexual
25 battery. It's a separate crime. The digital

1 penetration. The penetration with an object.

2 So it is appropriate to indict for those.

3 I'm sorry that it makes his client -- he
4 thinks it makes his client look worse, but the
5 jury is going to hear all about this anyway.
6 It's not going to preclude me from having her
7 express to the jury all the different
8 violations of her body that this defendant
9 did.

10 So we believe that the indictments are
11 appropriate. Certainly, if Your Honor is
12 inclined to quash some of them, then we need
13 to amend one to include all of that language.
14 I would still do a separate verdict form
15 because I still think that's going to be an
16 issue.

17 THE COURT: Yes, ma'am. It is my practice to
18 do a verdict form, as opposed to using the
19 indictments, first of all. And we will -- you
20 all will be allowed to review my verdict form,
21 all right? And give me input to it if you
22 feel it necessary.

23 Mr. Shealy, anything else?

24 MR. SHEALY: Yes, Your Honor. Obviously, the
25 State can believe that the Supreme Court's

1 going to address this all she wants --

2 THE COURT: Yes. Yes, sir. And I'm -- and --

3 and I understand that that is something that

4 may happen, but that has not happened yet.

5 However, I think that Adams is distinguishable

6 from this case, okay? And I am -- anything

7 else? Anything else?

8 MR. SHEALY: I --

9 THE COURT: Not trying to cut you off.

10 MR. SHEALY: Yes, Your Honor. Obviously, it

11 would be our position -- I mean, and I

12 understand what you've just said regarding

13 Adams and that is controlling it also, Your

14 Honor, that it's incorrect to say that my --

15 to characterize my argument and saying that

16 had a person go -- gone to a single place 30

17 consecutive days and that, that would be

18 necessarily a single crime. My position is

19 that they made it into a single crime.

20 They could have alleged particular dates

21 and alleged particular sexual batteries. They

22 did not do that. In the case that she has

23 made an example of, they could have every day

24 accused him of or alleged that a sexual

25 battery occurred -- a different kind of sexual

1 battery occurred.

2 By setting this as a date range, they
3 have said that this is a continuing course of
4 conduct. And by decide -- by arguing that
5 this is a continuing course of conduct, they
6 have argued -- they have, themselves, turned
7 it into a single transaction. And by turning
8 it into a single transaction, that, in this
9 case, can only be punishable one time. That's
10 because they have decided to do that. I
11 didn't have any input in that indictment.
12 They decided to do it that way. And because
13 they did it that way, that's what makes it
14 multiplicative.

15 And because it's multiplicative, Your
16 Honor, they are now attempting to punish him
17 now for a -- four times longer than the state
18 legislature says he is allowed to be punished
19 for it, should Your Honor run them concurrent
20 -- consecutively and max them out. They've
21 decided to do that. It wasn't my --

22 THE COURT: Okay.

23 MR. SHEALY: As to the -- well, again, the
24 actual crime, the elements of the crime -- and
25 the problem with multiplicitous indictments is

1 they violate the elements test with respect to
2 Blockburger and double jeopardy.

3 The elements of the crime for which my
4 client is charged is a person's guilty of
5 criminal sexual conduct in the second degree
6 if the actor uses aggravated coercion to
7 accomplish sexual battery. There is no "to
8 wit" there. There is no separation of each
9 kind of sexual battery. It is simply sexual
10 battery. Had they alleged particular dates,
11 then, Judge, they could have punished him for
12 particular dates. They didn't do it.

13 And so, Judge, it would be our position
14 that these indictments should be quashed.
15 Thank you.

16 THE COURT: Anything else, Ms. Hallford?

17 MS. HALLFORD: Just briefly, Your Honor. That
18 statute has to be read in conjunction with the
19 statute that defines the type of sexual
20 battery, and it makes it clear that there are
21 different types of sexual battery: Vaginal
22 intercourse; anal intercourse; cunnilingus;
23 fellatio; and any intrusion, however slight,
24 into the body. And each of those is a
25 separate crime, and he should have to face the

1 consequences of having violated her body in
2 separate ways that are separate crimes.

3 THE COURT: Anything else?

4 MR. SHEALY: No, Your Honor.

5 THE COURT: Okay. Well, first of all, I will
6 say -- and I guess we need this part on the
7 record from yesterday.

8 At the auditorium, the way -- due to
9 COVID, and the way that we are selecting the
10 jurors, we did -- we were there and had a
11 court reporter set up in the orchestra pit in
12 front of the jury. And the jury was coming in
13 at 2:30. We were over there at 2:30, and
14 rather than come back over here to argue this
15 motion before selecting a jury, in which the
16 jury had to be given just some information
17 about the case in order to know whether or not
18 they had a conflict with any of the witnesses
19 or any of the subject matter, if they wanted
20 us to know something, counsel agreed that I
21 would just say that the defendant was charged
22 with criminal sexual conduct in the second
23 degree for the period of time alleged on the
24 indictments with a minor female victim of a
25 certain age.

1 We did not -- I did not use a plural. I
2 did not go into the specific acts, and all of
3 that was to preserve this -- the defendant's
4 right to have this motion timely heard this
5 morning.

6 And so, first, I want to say that the
7 defendant has raised, in a timely manner, the
8 sufficiency of the indictments. He has
9 challenged that timely. I -- I do find that
10 the offenses stated in all four of these
11 indictments are stated with sufficient
12 certainty and particularity to enable the
13 Court to know what judgment to pronounce and
14 the defendant to know what he is called upon
15 to answer and whether he may plead for
16 conviction or acquittal. And I'm quoting from
17 "State v. Gentry," okay?

18 And so I think that the indictments do
19 meet the sufficiency standard. Mr. Shealy,
20 sir, I do respect your research and your
21 efforts, but I am respectfully denying the
22 motion.

23 MR. SHEALY: Thank you, Your Honor. The other
24 motion we had was the -- was to sequester the
25 witnesses, Your Honor.

1 THE COURT: Ms. Hallford, any objection to
2 that? I normally grant that.

3 MS. HALLFORD: Yeah. No objection to it,
4 except, by statute, the victim, of course,
5 stays in and the victim's mother, although she
6 does not appear to be here. None of -- so I
7 have two people here who are on the witness
8 list, and they will go out. That's Averee
9 Duclos and Sara Bell. Sorry. I almost
10 forgot. And then the other individuals are
11 not on my witness list, with the exception of
12 Child1, who, of course, as the victim,
13 statutorily allowed to remain in the
14 courtroom.

15 THE COURT: The -- the lady seated behind you,
16 is she also a witness?

17 MS. HALLFORD: No. She's just a -- well,
18 she's actually Child1 mother.

19 THE COURT: No. No. The lady seated in the
20 chair -- in the chair --

21 MS. HALLFORD: Oh. Oh, she is the
22 investigating officer.

23 THE COURT: And she is a witness?

24 MS. HALLFORD: Oh, you are? You're on the
25 witness list.

1 But I don't plan to call her.

2 THE COURT: Okay. I just knew she was at the
3 auditorium --

4 MS. HALLFORD: Yes.

5 THE COURT: -- yesterday, and we had her
6 stand, and I just wanted to make sure.

7 Ms. Bennett?

8 MS. BENNETT: Yes, ma'am.

9 THE COURT: Okay. It may be Deputy Bennett or
10 I'm not sure.

11 MS. BENNETT: "Mrs." is fine.

12 THE COURT: Okay. I just -- all right.

13 So, Mr. Shealy, apparently, Ms. Bennett's
14 not going to testify.

15 MR. SHEALY: Oh, well, Judge, I mean, I know
16 things change in the course of --

17 THE COURT: Well, she won't be allowed to
18 testify if she's in here.

19 MR. SHEALY: Yes, ma'am.

20 THE COURT: I mean, let's just make that
21 clear.

22 MS. HALLFORD: Okay. I'm going to send her
23 out then.

24 THE COURT: Okay. Okay. And, of course, Mr.
25 Gilbert is going to be allowed to stay in. He

1 is the defendant. Anything else, Mr. Shealy?

2 MR. SHEALY: Your Honor, my client's
3 girlfriend is sitting outside. I'd ask that
4 she be allowed to come in.

5 THE COURT: Sure. She's not going to testify?

6 MR. SHEALY: She is not.

7 THE COURT: Okay. And this is a little
8 different from the trial that we started
9 earlier in the week where there were a lot of
10 folks, potential witnesses, a lot of family
11 members. But I would encourage you all to
12 spread out, and it looks like you're doing
13 that.

14 When -- if you -- after you testify and
15 you're not going to be recalled to the stand,
16 then you can stay in the courtroom, but,
17 again, I would really space out. The CDC
18 guidelines are just a moving pendulum right
19 now, but I don't know. Is it 3 feet today?

20 Okay. Just if you'll -- if you all can
21 please just keep distance. We want everyone
22 to remain safe, okay?

23 Okay. So, Mr. Shealy, I've granted your
24 motion for sequestering or sequestration of
25 witnesses, okay?

1 MR. SHEALY: Yes, ma'am.

2 THE COURT: Anything else?

3 MR. SHEALY: Just to put on the record. It's
4 my understanding and my belief that the
5 State's provided me everything that's
6 discoverable. I want to make sure that that's
7 -- that they're -- that they've given me any
8 records that they've pulled recently or
9 anything like that.

10 MS. HALLFORD: I have not pulled any recent
11 records. DSS is not involved in -- with the
12 family anymore. I have given him everything
13 that I am aware of.

14 THE COURT: Okay.

15 MR. SHEALY: I just like to put that on the
16 record, again, for P.C.R. purposes.

17 THE COURT: Sure. Okay. And, of course,
18 y'all are famous, and I know y'all, but when
19 y'all are addressing the Court, if you will
20 just remember to state your name when you
21 stand initially in front of the jury and
22 whatnot, okay? And I'll introduce y'all
23 again.

24 Okay. So with that, I am going to need
25 to talk to the lawyers one more time. The

1 jury is supposed to be coming in at 10:30. So
2 why don't we take about ten minutes to make
3 sure everybody gets here, and then the next
4 course of business will be we will bring them
5 in. I'm going to do a brief introduction to
6 them. I'm not going to read the indictments
7 verbatim, okay? But I am going to give them a
8 brief introduction and then tell them about
9 opening statements and then you all will be
10 called upon to give your openings, okay?

11 All right. But I do need to talk with
12 the lawyers one more time, okay? And if -- if
13 anyone needs to go to the restroom or get a
14 sip of water or something, you can exit out
15 that back door. If Mr. Gilbert needs to leave
16 the courtroom, these folks can help him get
17 there, out this door, okay?

18 So we'll come back in at 10:35.

19 (Off the record from 10:27 a.m. to
20 10:58 a.m.)

21 THE BAILIFF: Remain seated and come to order.

22 THE COURT: Counsel, can you all come up?

23 (WHEREUPON, a bench conference was
24 held.)

25 THE COURT: Okay. And so, unless there's

1 anything else, I'm going to have the jury come
2 in at this time and have the clerk swear them.
3 And then I'm going to send them back out to
4 elect their foreperson, okay?

5 MR. SHEALY: Yes, ma'am.

6 THE COURT: All right. And if everyone be
7 reminded when the jury is entering or exiting
8 this room, everyone will stand, all right?
9 Thank you.

10 THE BAILIFF: All rise.

11 (WHEREUPON, the jury came into open
12 court at 11:11 a.m.)

13 TRIAL BEGINS

14 THE COURT: Everyone be seated. Thank you.

15 Okay. Good morning. Thank you for being
16 here on time. I have been getting updates
17 from our bailiffs and courthouse staff all
18 morning. The attorneys and I have been here
19 working for a few hours this morning, already.
20 But, again, as I explained to you yesterday,
21 my goal is to make your time with us as
22 efficient as possible.

23 So you all found out where to park, for
24 the courthouse duty, and which door to enter
25 in, and also learned that these folks in the

1 red jackets will take really good care of you,
2 okay?

3 Again, my name is Judge Knie, and I
4 welcome you to this term of general sessions
5 court -- criminal court in the Seventh
6 Judicial Circuit, Spartanburg County. Now, I
7 -- I want to explain a few things to you. To
8 begin with, we have our alternates, Mr.
9 Raymond Smith.

10 JUROR SMITH: Do we stand up?

11 THE COURT: Yes, sir.

12 JUROR SMITH: Okay.

13 THE COURT: You're Mr. Smith?

14 JUROR SMITH: Yes.

15 THE COURT: And our alternate, Mr. Austin.
16 Okay. All right. Thank you. Now, you all be
17 seated. I just wanted to make sure I knew who
18 you are.

19 Now, with regard to alternate jurors,
20 each of you have been selected as alternates.
21 And the function of an alternate is for one or
22 both of you, you may be required to take the
23 place of a juror that has an emergency or
24 falls ill. Now, it's important that each of
25 you pay just as careful attention, as we

1 ask -- and you'll hear me ask all of you to
2 continue to do that throughout the trial. And
3 you will also view all of the evidence, and
4 you will be with us here in the courtroom up
5 until the time that I send the jury out for
6 deliberations. And if you're needed between
7 now and that time, the process is we put both
8 of your names in a hat, and we have -- and we
9 have one of the bailiffs draw it, and -- so
10 right now, you all are completely equal, all
11 right? There's not a first or second
12 alternate. You all are equal. And so thank
13 you. Thank you so much for your service.

14 Now, the rest of you, I'm going to go
15 into greater detail in just a few moments as
16 to everyone's responsibilities as jurors, but
17 I have one task for you before we do that.
18 And I'm -- I'm going to have you sworn in just
19 a minute, and then I'm going to send you back
20 out to do one thing. I need for you all to
21 elect your foreperson. And the reason that I
22 have identified the alternates, is the
23 alternates cannot serve as the foreperson.

24 Now, I don't like to pick the foreperson
25 because, right now, I don't know that much

1 about you all, and I -- just looking at your -
2 - some judges just pick and say, "Sir, can you
3 just -- you know, you'll be our foreperson,
4 okay?" But I'm going to let y'all do it. And
5 then whoever is elected is going to write
6 their name on a sheet of paper with a pen and
7 pencil -- a pen and paper that will be
8 provided to you by the bailiffs, and then that
9 becomes our -- our first exhibit in the trial
10 -- a Court's exhibit, okay?

11 Now, I don't want anyone to be
12 intimidated about what the foreperson's
13 responsibilities are. The foreperson's job is
14 to alert me on behalf of the jury to any
15 issues that I need to know about, all right?
16 So we'll have one spokesman. The
17 foreperson -- what you do is you would
18 actually tell one of the bailiffs if there was
19 an emergency or an issue, if someone became
20 ill, and someone had to let the bailiffs know,
21 and they would let me know.

22 Also, you all will -- the foreperson
23 actually writes the verdict, signs it -- like,
24 completes a verdict form that you will receive
25 when you begin your deliberations. You'll

1 sign it and date that verdict form, okay?

2 And I also want to stress that although
3 the foreperson will have certain duties, they
4 don't have any -- their opinion has no more
5 weight than any other juror. All right?
6 Further, the foreperson will preside over the
7 deliberations when the time comes. And,
8 again, that won't be until the end of you all
9 hearing all of the evidence, but you and your
10 fellow jurors will begin deliberations, and
11 you will arrive at a decision. And so that
12 foreperson will be called upon to preside over
13 that, okay?

14 And so understanding all of that now, I'm
15 going to ask our Deputy Clerk, Ms. Camp, if
16 you all -- you're going to be sworn in.

17 THE CLERK: Please raise your right hand.

18 (WHEREUPON, the jury was sworn.)

19 THE CLERK: Thank you. You can be seated.

20 THE COURT: Okay. Unfortunately, due to the
21 circumstances at the courthouse right now --
22 and y'all know we're so excited. We're
23 getting a new courthouse. But there are some
24 construction issues going on and things, which
25 are the fault of no one. But there have been

1 some issues regarding a leak or leaks in the
2 building. And so you all would normally be
3 very close to the courtroom, but I believe --
4 Mr. James, which room are they going to be in
5 today? I know yesterday they were down in
6 family court. Where are they going to be
7 today?

8 MR. JAMES: Family court.

9 THE COURT: Okay. And so it -- it's a little
10 bit further for you to go, but it is very
11 important to go ahead and elect your
12 foreperson, and so I'm going to ask you to
13 follow Mr. James at this time, and then you
14 all will come back in -- (To The Bailiff) Is
15 there pen and paper in there?

16 THE BAILIFF 1: We will find out, ma'am.

17 THE COURT: I've got it if you need it.

18 THE BAILIFF 1: Okay.

19 THE COURT: Okay? One second.

20 THE BAILIFF 2: Your Honor, they are in Judge
21 Moss's courtroom.

22 THE BAILIFF 1: Thank you, Your Honor.

23 THE COURT: Okay. All right. All right. And
24 so if you all will follow the bailiffs back to
25 the family court. Your first official duty.

1 Thank you.

2 Please rise.

3 (WHEREUPON, the jury was excused at
4 11:18 a.m.)

5 THE COURT: We will be at ease for just a few
6 moments, okay?

7 (Off the record from 11:19 a.m. to
8 11:26 a.m.)

9 THE COURT: Okay, Counsel.

10 THE BAILIFF: Come to order, please.

11 THE COURT: Where is Matt?

12 MS. HALLFORD: Oh, here he is.

13 THE COURT: Okay. Counsel, the foreperson is
14 going to be William Nixon Fowler, 57.

15 MR. SHEALY: What was his number, Your Honor?

16 THE CLERK: Fifty-seven.

17 (Off the record from 11:28 a.m. to
18 11:29 a.m.)

19 THE BAILIFF: All rise, please.

20 (WHEREUPON, the jury came into open
21 court at 11:29 a.m.)

22 THE COURT: Be seated. Okay. Thank you all.

23 It's my understanding that you all have
24 chosen your foreperson, Juror Number 57,
25 William M. Fowler; is that correct?

1 JURY FOREMAN: Yes, ma'am.

2 THE COURT: Are you Mr. Fowler?

3 JURY FOREMAN: Yes, ma'am.

4 THE COURT: Mr. Fowler, sir, thank you for
5 your willingness to serve as foreperson. I
6 will now mark this as Court's Exhibit 1.

7 (WHEREUPON, Court's Exhibit No. 1 is
8 admitted into evidence.)

9 THE COURT: Thank you. (To The Court
10 Reporter) You will keep it.

11 THE COURT REPORTER: Okay.

12 THE COURT: And during the trial, if I do
13 pause, it is because our court reporter has to
14 take down everything that is being said in the
15 courtroom. And if she walks away from her
16 table, I stop talking. It's just habit, all
17 right?

18 Now, so, Mr. Fowler, sir, thank you,
19 again. Now, as I explained to you, it will be
20 your responsibility to serve as spokesperson
21 for the jury. If during the trial, something
22 comes up that needs to be brought to my
23 attention, whether it is difficulty of a
24 fellow juror or a problem or a question, you
25 let the bailiff know and they will let me

1 know.

2 You will be asked to preside over the
3 jury deliberations when that time comes, and,
4 of course, that will be much later after all
5 the evidence is received. And you will be
6 asked to actually write the verdict, to
7 complete the verdict form, and I will go over
8 it with all of you before I get it to you, all
9 right?

10 JURY FOREMAN: Yes, ma'am.

11 THE COURT: And then you will sign that if --
12 once your verdict is unanimous. And so thank
13 you, again, sir.

14 All right. Anything else, Counsel,
15 before I do my introduction for the trial?
16 Anything from the State, Ms. Hallford?

17 MS. HALLFORD: Nothing from the State.

18 THE COURT: Mr. Shealy, sir?

19 MR. SHEALY: No, Your Honor.

20 THE COURT: All right. Thank you.

21 So before we begin the trial, I want to
22 tell you that this trial will probably be
23 different from what you might expect. Many
24 people do not have the opportunity to attend
25 actual court sessions as you all are doing

1 now, and they think from watching television
2 or movies or reading books that trials are
3 always full of high drama, intense action, and
4 riveting circumstances. And while all of
5 those things may be true at times, this trial
6 is not for entertainment. It is a fundamental
7 part of our democracy. The opposite,
8 probably, of what you've seen on television or
9 in movies or read in books.

10 The courtroom is a place of honor. It is
11 dedicated to the protection and preservation
12 of citizens' rights through what many have
13 called the greatest justice system ever
14 created.

15 The attorneys appearing before you are
16 advocates for the parties they represent, but
17 first and foremost, they are officers of the
18 court, sworn to uphold the integrity and
19 fairness of our judicial system. You should
20 expect them to be professional, competent, and
21 ethical in the representation of their
22 clients' interest. And remember that you also
23 have taken an oath, and you are expected to be
24 professional, reasonable, and ethical, as
25 well. Thank you, again, for accepting this

1 important responsibility of jury service and
2 for your contribution today to our justice
3 system.

4 Now, again -- and you all heard me state
5 this briefly on -- yesterday. This is the
6 matter of the "State v. Mark Gilbert." As you
7 have previously been told, Mr. Gilbert is
8 accused of having committed the crime of -- or
9 crimes of criminal sexual conduct with a minor
10 in the second degree. This is alleged to have
11 occurred in Spartanburg County on or about the
12 dates of January the 5th of 2016 to March the
13 30th of 2018, with a minor who was over the
14 age of 11 but under the age of 14.

15 You also have been told that as to those
16 allegations and charges, Mr. Gilbert has
17 entered a plea of not guilty or pleas of not
18 guilty. And the pleas of not guilty place
19 upon the State the burden of proving the
20 allegations that have been set forth in the
21 indictments. The burden of proving each of
22 the essential elements that make the crimes,
23 and therefore, the burden is upon the State to
24 establish the defendant's guilt to the
25 satisfaction of you 12 jurors beyond a

1 reasonable doubt before any verdict of guilty
2 can be returned as to each particular
3 indictment.
4

5 Every person who is accused of a crime,
6 doesn't matter how serious the crime might be,
7 is presumed to be innocent. And that
8 presumption of innocence remains with any
9 defendant, as it does with this defendant from
10 the time that he is placed under arrest and
11 throughout the course of the criminal process,
12 and even throughout the course of the actual
13 trial and the case.

14 The presumption of innocence will be with
15 Mr. Gilbert, even when you go back to begin
16 your deliberations at the trial's conclusion.
17 That presumption of innocence will be with him
18 in the jury room, and it will remain with him
19 forever unless you 12 jurors determine that
20 he's no longer entitled to that presumption of
21 innocence.

22 After you jurors have carefully
23 considered all of the evidence in the case,
24 and from that evidence, you have decided what
25 you believe the facts to be, and after
deciding what those facts (verbatim), you

1 apply it to the law that I will provide to
2 you, and if you 12 jurors unanimously
3 determine that his guilt has been proven
4 beyond a reasonable doubt as to a particular
5 crime, then he will no longer be entitled to
6 that presumption of innocence. It is only if
7 and unless and until you 12 jurors are
8 satisfied of his guilt beyond a reasonable
9 doubt that a presumption of innocence is no
10 longer applicable.

11 Now, the way that the trial is going to
12 proceed is that in just a few moments, the
13 attorneys are going to begin what is called
14 "opening statements." There are two occasions
15 in a trial where the attorneys are allowed to
16 address you, and that will be during their
17 opening statements, and again, after all of
18 the evidence has been received, there will be
19 closing statements.

20 Please understand, however, that the
21 lawyers' statements are not evidence in the
22 case, and that's because they aren't witnesses
23 to anything in the case. They're not going to
24 tell you anything they know about the case of
25 their own personal knowledge like the

1 witnesses will. They're not going to testify
2 under oath from the witness stand. They're
3 not going to be subjected to direct and cross-
4 examination as witnesses will be.

5 And so what they tell you is not evidence
6 in the case, but you should listen to what
7 they have to say because their statements do
8 serve a purpose. The opening statements of
9 counsel serve to provide you with a basic
10 understanding as to what this case is about
11 from the perspective of the State and the
12 defendant so that you will have some context
13 in which to place the evidence that we will be
14 receiving shortly thereafter.

15 The closing statements allow the lawyers
16 an opportunity to discuss with you the
17 evidence that you have seen and heard during
18 the trial. Each will have an opportunity to
19 try to persuade you or to convince you that
20 the evidence does or does not support a
21 particular decision.

22 Now, as I've stated, again, those
23 statements are not evidence. The evidence
24 comes in between them. And as I stated, the
25 State has the burden of proof, so the State

1 will go forward first in their presentation of
2 the evidence.

3 The State has the obligation to prove to
4 your satisfaction, beyond a reasonable doubt,
5 the defendant's guilt. So they have to go
6 forward with evidence, and, therefore, they
7 will go first.

8 Once they have concluded with that
9 presentation, a defendant has the same
10 opportunity to present evidence by way of
11 testimony or otherwise. But a defendant is
12 under no obligation to testify in a case or to
13 call any witnesses or produce any evidence.
14 The burden is on the State to prove his guilt.
15 The burden is never upon a defendant to prove
16 that he is not guilty or to prove that he is
17 innocent because in some cases that would
18 never even be possible. But a defendant,
19 while he doesn't have to testify, he's not
20 obligated to testify. He will be given the
21 same opportunity to testify should he wish to
22 do so or to call witnesses if that is his
23 wish.

24 And after all of the evidence has been
25 received by you in this courtroom, I am then

1 going to instruct you on the law in the State
2 of South Carolina regarding the charges
3 against the defendant. Now, I will instruct
4 you fully on the law, and it will be at that
5 time that you all will be asked to go back to
6 your jury room and begin your deliberations.

7 You will, at that time, have an
8 opportunity to carefully examine all of the
9 evidence and discuss it, okay, and discuss the
10 facts, and apply those facts to the law as I
11 give it to you.

12 I'm asking that all of you pay careful
13 attention to all of the evidence that is
14 presented in the case. Anything, otherwise,
15 would be unfair to all parties. And as I
16 instructed you yesterday before you left for
17 the evening, any discussion regarding this
18 case, prior to my telling you to begin your
19 discussions, would be unfair to all parties in
20 this case. And so you can talk about the
21 weather. You can talk about lunch. You can
22 talk about whatever sporting event is allowed
23 to be played right now, your favorite sports
24 team, or your least favorite sports team, but
25 don't talk about the case until I tell you to

1 do so, all right?

2 Now, there will be witness testimony, and
3 you will have the opportunity to observe the
4 witnesses and you can decide which testimony
5 you accept, which you don't accept. You may
6 accept part of a witness' testimony and not
7 all of a witness' testimony. You may believe
8 one witness against another. But ultimately,
9 you all are to determine the facts, okay?

10 It is also important that you keep an
11 open mind during the course of the trial. And
12 by that, again, I mean, simply, do not make up
13 your mind about anything until you've heard
14 all of the evidence.

15 I want to thank you, again, in advance,
16 for your participation, as well as your
17 careful attention. I am also --

18 Before I have the openings, let me just
19 ask the attorneys if they can come up for just
20 one moment. Actually, I'll come down, and
21 we'll stand right here with the court
22 reporter, okay?

23 (WHEREUPON, a sidebar discussion was
24 held.)

25 Are there any objections or exceptions to

1 our comments to the jury?

2 MR. SHEALY: No, Your Honor.

3 MS. HALLFORD: No.

4 THE COURT: Thank you. Okay. Thank you.

5 (To The Jury) We will now have opening
6 statements, and I will call upon Ms. Hallford,
7 the assistant solicitor for the Seventh
8 Judicial Circuit, to make her opening. Thank
9 you.

10 OPENING STATEMENTS

11 MS. HALLFORD: When Child 1 { was growing
12 up, she lived with her mom and her dad and her
13 two brothers. Sounds great, doesn't it? And
14 then when she was 12, one night, she had a
15 nightmare, and she did what kids are prone to
16 do. They went to the -- she went to the place
17 that she felt she would be safe. She went to
18 her mom and her dad's bedroom, and she crawled
19 into their bed because she was afraid; and she
20 wanted to feel safe; and she wanted to be
21 comforted.

22 Instead, while she was in the bed between
23 her mom and her dad, her father, Mark Gilbert,
24 took his hand and put it on her vagina.
25 Touched her over her clothes, and he touched

1 her under her clothes. And she will tell you
2 that she didn't understand, and she was
3 afraid. And the next morning, Mark Gilbert
4 told her, "Oh, I thought you were your
5 mother." A 12-year-old -- a 12-year-old girl.
6 He couldn't tell the difference between her
7 and her mother with whom he had three
8 children?

9 **Child 1** will tell you that she didn't tell
10 anyone. She was afraid. Feeling emboldened,
11 Mr. Gilbert began to do more to her. It
12 progressed from just touching her on the
13 vagina, to things like sticking his finger in
14 her vagina, and then using sex toys on his
15 daughter. And then, when she was about in the
16 middle of seventh grade, he started to have
17 intercourse with her, the man who should
18 protect her, and she still didn't tell anyone.

19 She'll tell you that she wanted to, but
20 she didn't know what would happen, and
21 sometimes the devil we know is better than the
22 one we don't. But, eventually, she screwed up
23 her courage and she had a conversation with
24 her brother Nicholas. And you will hear from
25 Nicholas, as well.

1 And over the course of the conversation,
2 Nicholas came to understand what was happening
3 to his sister at the hands and penis of her
4 father. And he let her know that he was going
5 to take care of it, but he didn't know what to
6 do, either.

7 So they will explain to you, eventually,
8 they -- around March of 2018, they kicked Mark
9 Gilbert out of the house; and they didn't call
10 law enforcement; and you'll hear about why.

11 Then sometime around the middle of June,
12 DSS got involved with the family because there
13 had been an issue of the conditions at the
14 home. Mark Gilbert wasn't living there
15 anymore, and DSS came and asked them, "Has
16 there ever been any sexual abuse in this
17 family?" And they said, "No." So DSS
18 remained involved and had them clean up the
19 place.

20 And then, again, in July, they came back.
21 And this time with specific questions, "Is
22 there any sexual abuse in this family because
23 there had been a report." And **Child 1** will tell
24 you she's not sure who reported it, but this
25 time when she was asked, she told them what

1 Mark Gilbert had been doing to her.

2 Now, besides hearing from Child 1 and some
3 other witnesses, you're going to hear from Dr.
4 Lynn McMillan, and she is an expert in child
5 abuse dynamics. And what that means is she
6 will come and educate you on what is --

7 MR. SHEALY: Objection, Your Honor. She's not
8 been qualified that way, Your Honor.

9 THE COURT: Counsel.

10 (WHEREUPON, a bench conference was
11 held.)

12 THE COURT: Okay. I will allow Ms. Hallford
13 to rephrase, and we'll put this on the record
14 at the conclusion of openings, all right?
15 Thank you.

16 MS. HALLFORD: Thank you.

17 MR. SHEALY: Thank you, Your Honor.

18 MS. HALLFORD: You will hear from some
19 other -- from some other witnesses, and the
20 most important one, though, is going to be
21 Child 1. And Judge Knie told you that y'all are
22 to determine the facts, and you're to judge
23 the credibility of witnesses. So watch her.
24 Put her under a microscope. Look at this
25 courageous young lady who has to stand before

1 you and tell you of the despicable things that
2 her father did to her.

3 And at the close of this case, the State
4 will be asking you to render a verdict of
5 guilty. There are four counts of criminal
6 sexual conduct with a minor in the second
7 degree before him for having sexual
8 intercourse with his daughter, for putting sex
9 toys in his daughter's vagina, for putting his
10 fingers in his daughter's vagina, and for
11 forcing his daughter to perform oral sex on
12 him.

13 The State will ask you for a guilty
14 verdict, ladies and gentlemen, because that
15 man, Mark Gilbert, is guilty.

16 THE COURT: Thank you, Ms. Hallford.

17 Mr. Shealy, sir?

18 MR. SHEALY: Thank you, Your Honor. May it
19 please the Court.

20 My name is Matthew Shealy. I represent
21 Mr. Mark Gilbert. Obviously, you're here for
22 a trial, and you're going to hear a lot of
23 words that we don't usually talk about, and we
24 don't usually use in company like this, in
25 polite society. And I'm sorry that that's

1 going to happen, but, unfortunately, that's
2 what's going to have to happen here.

3 You're going to hear a lot about the
4 interior dynamics of a family that, again, we
5 generally try to keep hidden behind closed
6 doors. They're going to testify to a lot of
7 things. I anticipate that when you all use
8 your common sense and your common experience,
9 and you think about the things they say
10 happened and how they happened, you're going
11 to find that my 50-year-old client simply and
12 completely incapable of doing the things
13 alleged here. That they don't make sense.

14 You're going to hear, again, a lot of
15 information. But, quite frankly, if you use
16 your common sense and you listen to it
17 carefully and closely, I think that you're
18 going to find that it beggars belief that
19 these things could have happened.

20 In determining who's telling the truth,
21 which is part of your job is to determine the
22 credibility of the various witnesses, one of
23 the things we do is you need to look for
24 corroboration. You need to look for if they
25 say this thing happened, you need to be able

1 to corroborate it with this other thing,
2 right?

3 You've heard about sex toys. Well, that
4 would be an easy thing to corroborate, for
5 instance. If they found sex toys, for
6 instance, that would be corroborative.
7 There's a lot of information, but it's all
8 going to be testimony. And so you're going to
9 have to determine whether or not credibility
10 of these witnesses -- and that's going to be
11 all you have, is the way -- when y'all are
12 looking at them, whether you think they're
13 telling the truth or not because as -- well, I
14 don't anticipate there's going to be any DNA
15 evidence put in here. You're not -- you're
16 not going to see any CSI business with the
17 Luminol and all of that stuff. All you're
18 going to have is testimony, and so you need to
19 pay attention to that testimony, because it's
20 going to be the only thing upon which you can
21 base a verdict.

22 And, ladies and gentlemen, it's the
23 State's job, the government's job, to prove
24 beyond a reasonable doubt that this occurred.
25 A reasonable doubt is that doubt which would

1 cause a reasonable person to hesitate. Now,
2 my example for that is we've all been in the
3 Ingles or Bi-Lo or some kind of food place,
4 and you see a steak that says, "Reduced for
5 quick sale." Now, that usually pretty close
6 to its due date. And you look at it, and
7 maybe it doesn't look all that good, but it's
8 a nice cut of steak. You hesitate to purchase
9 it. Maybe you ultimately do; maybe you
10 ultimately don't, but you had a reasonable
11 doubt as to that -- whether you should
12 purchase that or not.

13 We do the same thing with other items.
14 Whether or not you purchase it, doesn't
15 matter. What matters is that you hesitated,
16 and you are all reasonable people, or we --
17 that's why you're here.

18 So, ladies and gentlemen, I'd ask that
19 you hold the State to their burden. Their
20 burden is to prove it to you. It is not our
21 burden to prove that it didn't happen because
22 it's impossible to prove something didn't
23 happen.

24 You're going to hear that there's a
25 massive date range here, that it happened

1 between 2016 and 2018. I can't present you an
2 alibi for each and every one of those days. I
3 can't argue that a thing didn't happen every
4 single one of those days. I couldn't do it
5 for myself. I certainly can't do it for Mr.
6 Gilbert. I can't do it for it any of you. I
7 doubt could do it (as spoken.)

8 And so, ladies and gentlemen, again,
9 we're asking that simply you listen to
10 everything that they testify to and hold them
11 to their burden. Make them prove it. And if
12 you do that, I am confident you will find my
13 client not guilty. Thank you, ladies and
14 gentlemen.

15 THE COURT: Okay. Thank you, Mr. Shealy.

16 Ms. Hallford?

17 MS. HALLFORD: The State calls Child 1

18 MR. SHEALY: Judge, may we approach?

19 THE COURT: Ms. Gilbert, ma'am, if you'll just
20 have a seat in the chair next to the bailiff.
21 And I -- I want to explain to everyone that we
22 have already wiped this area down. We sprayed
23 Lysol and used Lysol wipes, and our deputy --
24 our deputy -- I'm sorry -- deputy clerk is
25 going to continue in that role after every

1 witness, so we'll be as safe as possible.

2 And the attorneys are keeping their
3 distance from you all. Normally, they would
4 be a little bit closer to you, which would
5 actually be easier for them due to the layout
6 of the courtroom, but we've had these
7 discussions prior to this morning, and they're
8 standing back on purpose, all right?

9 Okay. So yes, sir? Mr. Shealy?

10 MR. SHEALY: May I approach?

11 THE COURT: Would you feel more comfortable if
12 we go out of the room?

13 MR. SHEALY: It may -- that -- that's fine.

14 (WHEREUPON, a bench conference was
15 held.)

16 THE COURT: Okay. And because we started a
17 little late this morning, because I had to
18 take up the motions with counsel -- some
19 motions and matters -- legal matters, with
20 counsel and discuss some things, I thought
21 that we would break for lunch today at one,
22 and you all would come back at 2:15 or 2:30,
23 all right? So if you all can -- I'm trying to
24 keep y'all in the loop as much as possible. I
25 -- my personality is I like to be able to plan

1 my day, and so if that works for y'all,
2 that'll work for me, and I will keep looking
3 to our foreman to make sure, okay? All right.

4 All right. And so, now.

5 WHEREUPON,

6 Child 1 ,

7 After having been duly sworn, testified as follows:

8 THE COURT: Okay. Now, make yourself
9 comfortable, and I've got a bottle of water
10 right here if you need it, okay?

11 THE WITNESS: Thank you so much.

12 THE COURT: Okay. And this lady is the court
13 reporter, and she's going to be making a
14 record of everything that's said, and so I
15 just need for you to talk loudly, all right?

16 THE WITNESS: Uh-huh.

17 THE COURT: All right. And, Ms. Hallford,
18 when I said that we would break for lunch at
19 one o'clock, please don't think that you need
20 to rush or be limited on this testimony. Of
21 course, we can pick it back up after lunch if
22 -- if necessary.

23 MS. HALLFORD: Thank you, Your Honor.

24 THE COURT: Yes, ma'am.

25 DIRECT EXAMINATION

- 1 BY MS. HALLFORD:
- 2 Q Spell your name for the jury -- for the court
- 3 reporter, please.
- 4 A Child 1
- 5 Q Child 1 what year were you born?
- 6 A 2004
- 7 Q And, specifically, what's your birthday?
- 8 A January;
- 9 Q How old are you right now?
- 10 A Seventeen.
- 11 Q Are you going to high school anywhere?
- 12 A Yes, ma'am. I'm going to Dorman.
- 13 Q Are you doing online classes or -- how's that been?
- 14 A A little bit of both this past semester, but I'll
- 15 be a full-time student next semester.
- 16 Q What grade are you in right now?
- 17 A I'm a junior.
- 18 Q Favorite subject?
- 19 A A little bit of everything, but probably mostly
- 20 science right now.
- 21 Q Are you involved in any school activities this
- 22 year?
- 23 A Not this past year, but I've been in the marching
- 24 band and drumline.
- 25 Q What instrument do you play?

- 1 A Marimba.
- 2 Q Do you want to explain what that is?
- 3 A It's like a really big wooden xylophone.
- 4 Q You march with that?
- 5 A No. There's a section of the band called "the
6 front ensemble," and that's where ~~all~~ the auxiliary
7 instruments are.
- 8 Q Do you have any plans to attend college after you
9 graduate?
- 10 A Yes.
- 11 Q Do you have any idea what you want to major in?
12 What you want to do?
- 13 A Psychology.
- 14 Q Do you have career plans with that degree?
- 15 A Just to work with children and be a psychologist.
- 16 Q Where are you living currently?
- 17 A Like, with who, or -- in Roebuck.
- 18 Q Just the location.
- 19 A Roebuck.
- 20 Q How -- and that's in Spartanburg County, right?
- 21 A Yes.
- 22 Q And how long have you lived in the Spartanburg
23 area?
- 24 A Since I was three, so 2007.
- 25 Q Do you know Mark Gilbert?

- 1 A Yes.
- 2 Q What is his relationship to you?
- 3 A My biological father.
- 4 Q Do you see him in the courtroom?
- 5 A Yes.
- 6 Q Can you point him out?
- 7 A (Indicates.)
- 8 Q And are you pointing to the individual wearing a
- 9 kind of peach-ish colored shirt?
- 10 A Yes, ma'am.
- 11 Q Did Mark Gilbert live with you when you were
- 12 growing up?
- 13 A Yes, ma'am.
- 14 Q Until about March of 2018?
- 15 A (Nods head up and down.)
- 16 Q Where did you guys live when your family lived
- 17 together?
- 18 A Spartanburg SC
- 19 Q And is that residence in Spartanburg County?
- 20 A Yes, ma'am.
- 21 Q Around the time that you turned 12 in January of
- 22 2016, did Mark Gilbert start doing something to you
- 23 that he shouldn't have been?
- 24 A Yes, ma'am.
- 25 Q And what was that?

- 1 A Touching me sexually.
- 2 Q Do you know what grade you would have been in
3 around the time this started?
- 4 A Sixth grade.
- 5 Q Now, do you know these dates specifically, or are
6 you doing this just to the best of your
7 recollection?
- 8 A To the best of my recollection.
- 9 Q Child 1 tell the jury what your first memory is of
10 Mark Gilbert touching you sexually?
- 11 A Having a nightmare and going to my parent's bedroom
12 to spend the rest of the night.
- 13 Q Why did you go there?
- 14 A I felt comfortable.
- 15 Q Where -- where in the bedroom did you end up?
- 16 A In the bed with my parents.
- 17 Q And how were you in relation to where your parents
18 were sleeping?
- 19 A Between them.
- 20 Q At some point during the night, did something
21 happen to you?
- 22 A Yes, ma'am.
- 23 Q And what was that?
- 24 A Mark used his hands to touch me inappropriately.
- 25 Q So inappropriately to you might mean something

1 different to the rest of us, and I know this is
2 uncomfortable, but specifically . . .

3 A Touching my genitals with his hands.

4 Q Was that over the clothes? under the clothes? both?

5 A Both.

6 Q I think I said you were 12 in opening statement,
7 but when that happened, were you actually 11?

8 A Yes, ma'am.

9 Q I apologize.

10 A It's okay.

11 Q When that was going on, what did you think was
12 happening?

13 A I -- I knew what was happening. I just tried not
14 to think about it.

15 Q How did it make you feel?

16 A Very uncomfortable.

17 Q Did he say -- did Mark -- and let me back up.

18 I notice you're calling him "Mark." Is that
19 what you called him when you were growing up?

20 A No, ma'am.

21 Q What did you used to call him?

22 A (No response.)

23 THE COURT: Yes, ma'am. Just take a moment.
24 Ms. Hallford, do we need a break?

25 (To The Witness) Ma'am, do you need a

1 break?

2 THE WITNESS: No. That's okay.

3 THE COURT: Yes, ma'am. Please continue when
4 you can.

5 A I called him "Dad."

6 Q So the next day after this happened, did Mark
7 Gilbert say something to you?

8 A Yes, ma'am.

9 Q What did he tell you?

10 A He told me that he had thought that I was my
11 mother.

12 Q Are you and your mother -- or were you and your
13 mother, at that time, the same size?

14 A No, ma'am.

15 Q Is your mother a larger lady?

16 A Yes, ma'am.

17 Q At that point, how old was your oldest brother,
18 roughly, if you know?

19 A Fifteen.

20 Q So they had been together at least 15 years at that
21 point?

22 A Yeah. About 16 years.

23 Q Child 1 did you tell your mother what your dad --
24 what Mark had done to you?

25 A No.

- 1 Q Help us understand why you wouldn't.
- 2 A I didn't think that it would happen again, so I
- 3 just tried to let it go.
- 4 Q After the incident in the bed, did Mark Gilbert
- 5 begin to do other things to you?
- 6 A Yes.
- 7 Q I know it's been a long time, but do you know
- 8 approximately how long it was after the nightmare
- 9 incident that he began doing things again?
- 10 A It was not long. Less than a couple weeks
- 11 afterwards, he continued.
- 12 Q Would it be easier for you, just -- is it easier
- 13 for you if I ask you specific questions, or do you
- 14 just want to kind of tell?
- 15 A I'd rather you ask me specific questions.
- 16 Q Okay. When he first started doing things beyond
- 17 the -- the nightmare incident, what was the first
- 18 kind of stuff that he did?
- 19 A He just continued to touch me, to touch, you know,
- 20 me everywhere with his hands.
- 21 Q And I'm sorry. But when you say "everywhere" . . .
- 22 A I mean, my breasts, my vagina, and my butt.
- 23 Q At some point, did he do more to your vagina than
- 24 just touch it on the outside with his hands?
- 25 A Yes, ma'am.

1 Q Tell the jury what began to happen.

2 A He would insert his fingers into my vagina.

3 Q After he started putting his fingers into your
4 vagina, did he then progress to using something
5 else?

6 A Yes.

7 MR. SHEALY: Judge, I object -- I object to
8 the form.

9 THE COURT: Counsel.

10 (WHEREUPON, a bench conference was
11 held.)

12 Q After he used his hands on you for a period of
13 time, did he begin to use something else?

14 A Yes. He began to use toys, such as vibrators and
15 dildos.

16 Q Do you know where the dildos came from?

17 A He already had them, like, I assume from using them
18 with my mom.

19 Q Would he make you do anything with them before he
20 would use them on you?

21 A Yes. He would make me wash them before he used
22 them on me.

23 Q And I'm sorry. But, specifically, what was he
24 doing with the dildos?

25 A Inserting them in my vagina.

- 1 Q Do you have any idea what happened to those sex
2 toys?
- 3 A When, like . . .
- 4 Q. Like, where they went? After he left, did you ever
5 see them again?
- 6 A No, ma'am.
- 7 Q After he used the sex toys on you for a time, did
8 something else begin to happen?
- 9 A Yes.
- 10 Q What was that?
- 11 A He began to use his genitals, specifically his
12 penis, inside me.
- 13 Q Do you know approximately how old you were or where
14 you were in school when he started having sexual
15 intercourse with you?
- 16 A I was 12. I think it was sometime during seventh
17 grade.
- 18 Q Based on your birthdate, you would have turned 12
19 in the middle of seventh grade, correct?
- 20 A Yes, ma'am.
- 21 Q Did he ever use condoms?
- 22 A A couple times, but not every time.
- 23 Q Child¹ did you ever have to do anything to Mark
24 Gilbert's body?
- 25 A Yes. He would make me perform oral sex on him.

- 1 Q Explain to the jury how he made you do that.
- 2 A Can you be more specific?
- 3 Q What would happen that would make you put your
- 4 mouth on his genitals?
- 5 A He would kind of guide me, like, I guess, by my
- 6 head, to do those things to him.
- 7 Q Did the -- having to perform oral sex on him happen
- 8 once or more than once?
- 9 A More than once.
- 10 Q Did the using sex toys on you happen once or more
- 11 than once?
- 12 A More than once.
- 13 Q Did the penetration of your vagina with his fingers
- 14 happen once or more than once?
- 15 A More than once.
- 16 Q Did the vaginal intercourse happen once or more
- 17 than once?
- 18 A More than once.
- 19 Q Do you have any idea -- well, let me -- let me back
- 20 up.
- 21 Besides your mouth, did you ever have to do
- 22 anything else with your body to his body?
- 23 A He would make me kiss him.
- 24 Q And I'm sorry. But what kind of kissing are we
- 25 talking about? here on the cheek?

- 1 A No. Mouth to mouth, like, open mouth.
- 2 Q Did you have to do anything else with his genitals
- 3 besides give him oral sex?
- 4 A Not that I can think of.
- 5 Q Do you remember when you were interviewed at the
- 6 Child Advocacy Center and talking about having to
- 7 use your hand on his --
- 8 A Yes.
- 9 Q Can you describe what happened?
- 10 A He would take my hands and put them around his
- 11 genitals and use my hands to give him, like -- I
- 12 don't know how to explain, really. He would just
- 13 use my hands to give him pleasure until he
- 14 ejaculated.
- 15 Q So I saw that you kind of laughed about that? Is
- 16 this something that you find funny?
- 17 A No. I'm -- I'm really nervous.
- 18 Q Is that your reaction when you're nervous?
- 19 A (Nods head up and down.)
- 20 Q Child 1 did anything ever come out of Mark Gilbert's
- 21 penis when he was messing with you?
- 22 A Yes.
- 23 Q Can you tell the jury what would happen, what he
- 24 would do?
- 25 A When -- after he -- well, I guess during him

- 1 ejaculating, he would put his genitals to my face
2 or vagina or any other part of my body and
3 ejaculate onto that part of my body.
- 4 Q Did anything sexual ever happen with your butt or
5 attempt?
- 6 A Yes. He -- he attempted to have anal sex with me,
7 but he -- his penis did touch my butt, but it was
8 never directly inserted.
- 9 Q When he was doing these things to you, Child 1 did
10 you try to get him to stop?
- 11 A Yes.
- 12 Q And how would you do that?
- 13 A Sometimes I would pretend to be asleep, or I would
14 tell him that I was on my period, or that I just
15 was hurting.
- 16 Q Did he ever say anything to you while he was
17 sexually assaulting you?
- 18 A Yes.
- 19 Q What kind of things would he say?
- 20 A He would ask me if I wanted him to go harder or
21 faster, and he would ask me to tell him to go
22 harder and faster.
- 23 Q Did all this occur at the residence at
24 Spartanburg SC ?
- 25 A Yes.

1 Q Specifically, inside the house, where would these
2 events take place?

3 A In his bedroom on his bed, on the couch where he
4 slept sometimes, or in the shower.

5 Q So how would you end up being in the bedroom with
6 him?

7 A He would wake me up early to watch a movie with
8 him.

9 Q And then what would happen?

10 A And then he would start touching me.

11 Q And when you were in the bedroom with him, what
12 would you do to try to keep this from happening?

13 A Pretend to be asleep.

14 Q When you pretended to be asleep, what would he do?

15 A Wake me up.

16 Q How would you end up in the shower with Mark
17 Gilbert?

18 A He had surgery on his shoulder, which made it
19 difficult for him to move that arm, so he would ask
20 me to help him wash his body in the shower.

21 Q And what would happen while you were in the shower
22 with him?

23 A He would make me give him oral sex.

24 Q You said that sometimes he would sleep on the
25 couch. Why would that be?

- 1 A After he had his surgery, it was difficult for him
2 to sleep in the bed, so he would sleep on the
3 couch?
- 4 Q And how would you end up on the couch with him?
- 5 A I didn't really have a bed, so I usually slept on
6 the other couch.
- 7 Q Did you have a bedroom?
- 8 A I did.
- 9 Q But no bed?
- 10 A No.
- 11 Q Did Mark Gilbert ever make you watch porn?
- 12 A Yes.
- 13 Q Do you know approximately how many times that
14 happened?
- 15 A Less than ten but more than once.
- 16 Q When he would make you watch porn, what would you
17 do?
- 18 A Pretend to be asleep or just close my eyes.
- 19 Q What would happen to you if you closed your eyes?
- 20 A He would make me open my eyes.
- 21 Q How would he make you open your eyes?
- 22 A He would just open them for me.
- 23 Q After y'all -- he made you watch porn with him,
24 would he ever ask you to do something?
- 25 A Yes.

- 1 Q Explain that to the jury.
- 2 A He would ask me to do those specific things that
3 were happening in the video and ask me if I could
4 do them and try to make me do them.
- 5 Q And what would happen when he would try to make you
6 do them?
- 7 A I would just tell him that it was not a comfortable
8 position.
- 9 Q So you were living with Mom and your two brothers
10 and Mark Gilbert at the time. When all this was
11 going on, where would the other people be?
- 12 A My mom was usually at work. She worked a lot, and
13 there were points where one of my brothers was in
14 jail, so he wasn't there for a period of time. And
15 my other brother did, you know, like, marching band
16 and everything, so he was usually at school or
17 practice or sleeping.
- 18 Q Did Mark work?
- 19 A No.
- 20 Q While all of this was going on, was there some
21 renovation happening at your house?
- 22 A Yes.
- 23 Q What did that consist of?
- 24 A The walls were ripped out on the inside of the
25 house, like in my bedroom and the living room.

- 1 Q So when you say "the walls were ripped out," you
2 mean the studs and everything or just the drywall?
- 3 A No. The -- the studs were there, but the drywall
4 and insulation were not there.
- 5 Q Did the bathroom, where you would have to help him
6 shower, have walls?
- 7 A Yes.
- 8 Q Where were your brothers -- where did your brothers
9 sleep, generally?
- 10 A Upstairs in their room.
- 11 Q If they were upstairs in their bedroom and you were
12 downstairs on the couch, would they have been able
13 to see?
- 14 A No.
- 15 Q Did you ever refuse to do what Mark Gilbert wanted
16 you to do sexually?
- 17 A Yes.
- 18 Q What would happen if you would refuse him?
- 19 A He would either hit me or punish me by making me
20 stay up during the night and clean the house.
- 21 Q When this first began happening, how -- and I know
22 this is a long time, but how often would he mess
23 with you sexually?
- 24 A Multiple times a week. Like, between four and
25 seven.

- 1 Q At the beginning or at the end?
- 2 A Both times.
- 3 Q After he had been doing this to you for about six
4 months, did you try to tell your mother what was
5 going on?
- 6 A There were -- yes. There was a point where I
7 almost told her what was happening.
- 8 Q So why didn't you, and how did that play out?
- 9 A We, I think, had just gotten home from going
10 somewhere and she was planning on going back out
11 with -- to go get groceries or something and when
12 we got out of the car, I told her that I didn't
13 want to be at home alone with him and -- but I
14 couldn't explain because I was scared. And I
15 didn't know how to tell her, so I just told her
16 that I didn't want to be alone with him; and she
17 kept on asking what I meant. And I just -- I just
18 wanted her to know, but I couldn't tell her.
- 19 Q So if all of this was happening, why didn't you
20 tell some other adult that you trusted?
- 21 A There was another point where I almost told one of
22 my teachers what was happening in sixth grade,
23 because I was in class, and I was really upset,
24 because I never wanted to go home after school,
25 because I knew that I would be alone with him. And

- 1 so I was crying in class and I was waiting for my
2 teacher to see me and ask me what was wrong because
3 I was going to tell her and she didn't ask me.
- 4 Q What did you think would happen if you told someone
5 about what he was doing to you?
- 6 A I didn't know what would happen. I didn't think
7 anything would change or that I would get taken
8 away from my family.
- 9 Q At some point in -- around March of 2018, did you
10 end up talking to Nicholas about what had been
11 going on?
- 12 A Yes.
- 13 Q Why did you decide to talk to Nicholas?
- 14 A I was closer with him than anybody else.
- 15 Q Do you remember specifically what you told him?
- 16 A Just that things had been happening to me by Mark
17 and -- but I didn't go into detail.
- 18 Q After you told Nicholas, did you go to your mom at
19 that point?
- 20 A No.
- 21 Q Why did you not go to her then if you've already
22 told Nicholas about this?
- 23 A I was still uncomfortable talking about it.
- 24 Q Did -- now, remember, you can't get into what the
25 argument was about, but did Nicholas end up

1 confronting Mark Gilbert in mid- to late-March of
2 2018?

3 A Yes.

4 Q And after that confrontation, did -- well, after
5 that confrontation, where did Mark Gilbert go?

6 A Well, he took my mom to the hospital because she --
7 there was an argument, and they were running around
8 the house. Like, Mark and my brothers were
9 breaking things, and my mom was running through the
10 house and tripped and broke her pinky, so he took
11 her to the hospital.

12 Q Did he come back to the house after he took her to
13 the hospital --

14 A Yes.

15 Q -- leaving her there? At that point, did he and
16 Nicholas have the conversation?

17 A Yes.

18 Q Were you there when Nicholas and he were having
19 this conversation?

20 A They were outside, and I was in the house, so, no.
21 I didn't hear the conversation.

22 Q Did he end up leaving the house and not coming
23 back?

24 A Yes.

25 Q A few days after he moved out, did you talk with

- 1 your mom about what he had been doing?
- 2 A Yes.
- 3 Q Do you remember the -- the specifics of what you
- 4 told your mother about him sexually assaulting you?
- 5 A I tried. I didn't really want to talk about it, so
- 6 I tried to say as little as possible and just let
- 7 her ask me questions.
- 8 Q To your knowledge, was your mother aware that any
- 9 of this had been going on prior to you telling her
- 10 about it?
- 11 A No.
- 12 Q Now, you can't say what she said because that is
- 13 hearsay, but based on your conversation with her,
- 14 did you believe or understand that she was going to
- 15 report the sexual assault to law enforcement?
- 16 A We didn't talk about that.
- 17 Q Did you, even at that point, want any outside
- 18 agencies, like law enforcement or DSS, involved?
- 19 A I didn't know. I didn't think about it. I just --
- 20 the only thing I cared about was being away from
- 21 Mark.
- 22 Q Around June -- middle of June of 2018, did a
- 23 caseworker from DSS come to your residence?
- 24 A Yes.
- 25 Q And, at that point, who was living there?

- 1 A Me, my mom, and my two brothers.
- 2 Q So let's just get into this for a minute. What --
- 3 kind of describe the condition of your home?
- 4 A There was a lot of trash, and our dog had recently
- 5 had puppies, so there were, like, dogs running
- 6 around the house; so it didn't look or smell very
- 7 clean.
- 8 Q To your knowledge, was that what they were there to
- 9 ask you about?
- 10 A Yes.
- 11 Q While the DSS caseworker was there, did she
- 12 specifically ask you if anyone had ever sexually
- 13 abused you?
- 14 A Yes.
- 15 Q What did you tell her?
- 16 A No.
- 17 Q You told her no? So you didn't tell her the truth?
- 18 A That's right.
- 19 Q So why didn't you tell her the truth about what
- 20 Mark Gilbert had been doing to you?
- 21 A I didn't know what would happen, because I knew
- 22 that she worked with DSS. And I didn't want her to
- 23 just take me away, because I didn't know what would
- 24 happen; but no one coerced me to lie to her.
- 25 Q At that point, when DSS came, did -- were you away

- 1 from him?
- 2 A Yes.
- 3 Q Was he a threat to you anymore?
- 4 A No. Not to my knowledge.
- 5 Q So were you and your brothers -- or your brother
- 6 who was under 18, move out of the house that day?
- 7 A Yes.
- 8 Q And why was it that you had to move out of the
- 9 house?
- 10 A The conditions of the house.
- 11 Q While you were gone -- well, let's back up a
- 12 second.
- 13 Who did you go stay with?
- 14 A Judy Conners (phonetic), a friend of my mom's.
- 15 Q So while you were living with Judy, what did you
- 16 guys do with the house?
- 17 A We came back every day and cleaned it until it was
- 18 ready for us to come back.
- 19 Q Did you get rid of a lot of stuff?
- 20 A Yes.
- 21 Q Where did y'all take the stuff that you got rid of?
- 22 A Just to the dump.
- 23 Q Did you see vibrators or dildos when you were doing
- 24 that?
- 25 A No. I didn't.

1 Q Do you have any idea what happened to them?

2 A No. I -- I have to assume that somebody else threw
3 them away.

4 Q Did you ever see them again after the big clean-
5 out?

6 A No.

7 Q Did you want to see them again after the big clean-
8 out?

9 A No.

10 Q So were you allowed to return to the residence
11 after you guys hauled all the junk away?

12 A Yes.

13 Q And who was living at the house after y'all were
14 allowed to move back in?

15 A My mom and my brothers and I.

16 Q So around the middle of July of 2018, did someone
17 from DSS come back to the residence again?

18 A Yes.

19 Q And what was the purpose of her visit that time?

20 A The sexual abuse.

21 Q Do you have any knowledge -- any personal knowledge
22 about who reported the sexual abuse to DSS?

23 A Just from what I've heard. I've been told that it
24 was my -- my aunt that is the one that reported it,
25 but I'm not 100 percent sure.

- 1 Q And how would your aunt have found out about it?
- 2 A My mom. I have to assume.
- 3 Q So when DSS comes out the second time, did she ask
- 4 you -- did the caseworker ask you about sexual
- 5 abuse?
- 6 A Yes.
- 7 Q What did you tell her?
- 8 A I told her yes.
- 9 Q So why did you decide to tell her this time, but
- 10 you didn't the time before?
- 11 A I knew that she already knew, and there wasn't
- 12 really anything I could do about it.
- 13 Q Do you remember specifically what you told the
- 14 caseworker about the sexual abuse?
- 15 A I just told her everything.
- 16 Q After you ended up talking to the caseworker from
- 17 DSS, were you interviewed at the Children's
- 18 Advocacy Center?
- 19 A Yes.
- 20 Q To your knowledge, did your mother -- and that's
- 21 Kelly Gilbert, right?
- 22 A Yes.
- 23 Q Was she arrested for neglect charges related to the
- 24 condition of your house?
- 25 A (Nods head up and down.)

- 1 Q And to your knowledge --
- 2 THE COURT: And, ma'am, I need you to answer
3 out loud.
- 4 MS. HALLFORD: Sorry.
- 5 THE WITNESS: Sorry.
- 6 THE COURT: Okay?
- 7 A Yes.
- 8 THE COURT: Thank you.
- 9 Q To your knowledge, was Kelly Gilbert also arrested
10 for neglecting you, because she failed to report
11 that Mark Gilbert had been sexually assaulting you?
- 12 A Yes.
- 13 Q To your knowledge, are those charges against your
14 mother still pending?
- 15 A Yes.
- 16 Q Were you aware that your mother continued to have
17 contact with Mark Gilbert after he moved out of the
18 house in March of 2018?
- 19 A Not until my brother told me.
- 20 Q Were you aware that she would meet up with him
21 sometimes?
- 22 A No.
- 23 Q Child 1 are you falsely accusing Mark Gilbert of
24 sexually assaulting you?
- 25 A No.

- 1 THE COURT: Yes, ma'am. Take your time.
- 2 Q Are the things that you told the jury today things
3 that actually happened to you?
- 4 A Yes.
- 5 Q Things that Mark Gilbert did to you?
- 6 A Yes.
- 7 Q Child1 what effect has being raped by your father
8 had on you?
- 9 A It's made it really difficult for me to have
10 relationships with people, like my family or
11 relationships in general with friends and other
12 people. And it's also given me some PTSD in
13 certain ways, and it also took me away from my
14 family for about a year that I was put in foster
15 care and was sent to different group homes and
16 couldn't really see my family or friends at all.
17 So it put me in a really depressed state for a long
18 time.
- 19 Q What effect does it have on you knowing that there
20 are people who know about this?
- 21 A It makes it hard to have relationships with those
22 people, because I feel like they just think of me
23 as a victim.
- 24 Q Did anyone tell you what to say today, Child1
- 25 A No.

1 Q Did you and your family cook this up to get Mark
2 out of the house?

3 A No.

4 Q Prior to Mark Gilbert sexually assaulting you, did
5 you love your dad?

6 A Yes.

7 MS. HALLFORD: I have no further questions.

8 THE COURT: Thank you.

9 Mr. Shealy?

10 MR. SHEALY: Thank you, Your Honor.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. SHEALY:

14 Q All right. Ms. Gilbert, you testified regarding
15 your family life. You moved, you said, to South
16 Carolina -- or what -- you moved to this house when
17 you were three? Where were y'all living before?

18 A Myrtle Beach.

19 Q Okay. And what -- did your parents work in Myrtle
20 Beach?

21 A As far as I know.

22 Q Do you know? Okay. And your mother, did she work
23 at Costco there?

24 A Yes.

25 Q Okay. And then why did y'all move to Spartanburg?

- 1 A I don't know.
- 2 Q You don't know. You don't know if your mother, for
3 instance, got a -- a transfer from that --
- 4 A Oh, yeah.
- 5 Q -- Costco to this Costco?
- 6 A She did.
- 7 Q Okay. So she was working at the Costco here in
8 town?
- 9 A Yes.
- 10 Q Okay. And your father, you've testified, didn't
11 work. Has he ever worked to your knowledge?
- 12 A He had -- there was like a -- one job that he had
13 that I can remember that he worked for not very
14 long. It was, like, a seasonal thing at this,
15 like, warehouse that sold, like, random stuff.
- 16 Q Okay. But he did draw a VA pension; is that
17 correct?
- 18 A Yes.
- 19 Q Okay. He was, I believe, 70 percent disabled from
20 a service-connected injury?
- 21 A Uh-huh.
- 22 Q Is that your -- your understanding?
- 23 A Yeah.
- 24 Q Okay. So do you have any idea as to that military
25 service? Did he -- did he serve in -- did he

1 deploy somewhere? Anything like that?

2 A Uh-huh.

3 Q Where did he deploy to?

4 A I think he was in Desert Storm.

5 Q Okay. So it's not that -- so he did actually bring

6 money into the house --

7 A Yes.

8 Q -- but he was 70 percent -- or some disability?

9 A (No response.)

10 Q Okay. And to your knowledge, did that money go

11 into kind of the operating account of the house?

12 In other words, he -- that money --

13 THE COURT: Oh, I'm sorry.

14 THE COURT REPORTER: Can she speak -- speak

15 up? I'm sorry.

16 THE COURT: Ma'am, if you can -- if you can

17 please -- yes or no.

18 THE WITNESS: Okay.

19 THE COURT: This lady just needs to take down

20 everything.

21 THE WITNESS: Okay.

22 THE COURT: Thank you. I'm sorry, Mr. Shealy.

23 Please continue, sir.

24 MR. SHEALY: Thank you, Your Honor.

25 Q All right. And so then you moved to Spartanburg SC

- 1 Street?
- 2 A Yes.
- 3 Q All right. You've testified that there was a
4 renovation going on. Do you have any idea as to
5 when that renovation began?
- 6 A No. Just a -- probably a couple years before we
7 moved.
- 8 Q Okay. So for your entire life in that house,
9 basically, it had no walls or insulation? It just
10 had the studs?
- 11 A No. It was only a few years at the end that it
12 didn't have those things.
- 13 Q Okay. All right. Obviously -- so you've testified
14 that you were living with Mr. Gilbert the entire
15 time. Had he suffered any health problems?
- 16 A He had diabetes and a couple of surgeries.
- 17 Q When you say "a couple of surgeries," what do you
18 mean by that?
- 19 A He had shoulder surgery, and I think he had a
20 surgery on his foot, too.
- 21 Q Okay.
- 22 A It's been a while.
- 23 Q Do you recall a hernia surgery, as well?
- 24 A Yes.
- 25 Q Okay. And do you also remember him having a couple

1 of heart attacks?

2 A Yes.

3 Q And that they had to put some stents into his --

4 into his heart --

5 A Uh-huh.

6 Q -- to, I guess, unblock those problems?

7 A Yes.

8 Q And did that -- all of that happen before this

9 began? after it began? during?

10 A I think a couple were during, and some of them were

11 before.

12 Q Were before. Do you have any idea as to which ones

13 were before, and which ones were --

14 A (Shakes head from side to side.)

15 Q No. Okay.

16 A I know the shoulder surgery was during, and there

17 was a point where I think they said he -- I don't

18 remember if it was the second heart attack or if it

19 was a heart attack that was about to happen, but

20 that occurred during him performing a sexual act on

21 me.

22 Q Okay. So he had a heart attack while performing a

23 sexual act on you?

24 A It was more like it was happening, and then he

25 started having chest pains, so he just went to the

- 1 hospital. And I think they said that it would've
2 been a heart attack.
- 3 Q Okay. Who took him to the hospital?
- 4 A I think he took himself that time.
- 5 Q So he was in the midst of a heart attack, and he
6 drove himself to the hospital?
- 7 A I think it was before the heart attack, but I don't
8 remember if he took himself or not that time.
- 9 Q Okay. But, I mean, if y'all were alone, then you
10 weren't of age to drive, right?
- 11 A Right.
- 12 Q So he would --
- 13 A So I would have to assume that he took himself.
- 14 Q But y'all didn't call the ambulance?
- 15 A Right. No. We didn't.
- 16 Q Okay. Now, you've also testified that the first
17 time that this happened, you got into bed with your
18 father and your mother; is that right?
- 19 A Yes.
- 20 Q Now, help me understand that. Was that, like, in
21 the middle of the night? Was it the beginning of
22 the night? Was it the -- when y'all were about to
23 wake up?
- 24 A It was in the middle of the night.
- 25 Q Middle of the night, okay. Okay.

1 MR. SHEALY: Bear with me, Your Honor.

2 Q Now, you've testified also that you remember having
3 been interviewed at the Children's Advocacy Center?

4 A Uh-huh. Yes.

5 Q Do you know what day you were interviewed there?

6 A Maybe August 2nd.

7 Q Okay. It actually was exactly August 2nd.

8 A I just -- I watched the video last week, so the
9 time --

10 Q Sure. Sure. So you've watched the video, so you
11 saw what -- what you had said then?

12 A Yes.

13 Q And -- okay. And would it -- and I don't know if
14 you were at your house at this point, but would it
15 surprise you if they served a -- if you found out
16 that they'd served a search warrant on your house
17 August the 10th?

18 A I knew.

19 Q You knew that?

20 A I knew that. Well, not the exact date, but I knew
21 that they searched the house, yes.

22 Q So shortly after --

23 A Uh-huh. Sure.

24 Q -- you had given this Children's Advocacy Center --
25 all right. And do you recall speaking to -- I

1 believe it is, Ms. Flassing? Ms. Heather Flassing,
2 I think was her name. Bear with me.

3 And you discussed this vibrator -- this pink
4 vibrator -- in a little bit more detail. You had
5 told, again, the Children's Advocacy Center
6 forensic interviewer, that Mr. Gilbert had gone
7 with a brother to the mall and purchased it?

8 A I think so.

9 Q Okay.

10 A I can't tell you for a fact, because I wasn't
11 there; but I remember them getting home and talking
12 about it.

13 Q Which brother was this?

14 A Nicholas.

15 Q So he went with Nicholas and purchased a pink
16 vibrator?

17 A I knew that they were at the mall together, and
18 then when he got home -- well, when they both got
19 home, he pulled it out in front of him. And
20 Nicholas said something about it, because he -- he
21 was --

22 Q Uh-huh.

23 A -- thought it was weird.

24 Q Well, sure. I can imagine he would think that,
25 that was weird. And then I believe you had told

1 the forensic interviewer that it was in your
2 room -- that it was placed on a shelf in your room?

3 A Yes.

4 Q And that you also told the forensic interviewer --
5 well, let me back up to make sure I understand the
6 -- the chronology of events.

7 In June, DSS came out because of a dirty house
8 complaint?

9 A Yes.

10 Q Y'all cleaned up, were back in the house in July --

11 A Yes.

12 Q -- when DSS came back. So the house had gone
13 through its major cleanup already.

14 A Uh-huh.

15 Q And then this interview is happening in August.

16 A Yes.

17 Q Do you recall telling the interviewer that, that
18 vibrator was still on the shelf to the left?

19 A Well, I wouldn't have known because I was taken
20 away as of --

21 Q Then why would you --

22 A -- the beginning of July.

23 Q Then why would you say that it happened?

24 A Because to my knowledge, that's where it was.

25 That's the last place I saw it.

1 MR. SHEALY: Your Honor, if you could bear
2 with me. I think I need to introduce that
3 section.

4 Your Honor, may I have use of one of
5 those rooms back there just to make sure I've
6 got it cued up at the appropriate place?

7 THE COURT: Yes, sir.

8 MR. SHEALY: Thank you, Your Honor.

9 THE COURT: And wait a minute, Matt.

10 MR. SHEALY: Yes, ma'am.

11 THE COURT: I mean, Mr. Shealy. If that's
12 going to take you a moment, sir, and you and
13 Ms. Hallford are going to need to confer about
14 it, why don't we go ahead and break for lunch
15 now. It's about a quarter till, okay?

16 (To The Jury) Now, I will ask everyone
17 to be back here at two o'clock, okay? At the
18 courthouse. And you will not discuss the
19 case. Please don't. Please don't discuss
20 anything that has occurred. Don't tell --
21 don't call family members. Don't -- please
22 understand how important all of this is. To
23 get all of the evidence in the case from this
24 courtroom, all right?

25 And I am going to go ahead and instruct

1 Ms. Gilbert. Ma'am, you will also take a
2 lunch break, but because you are still
3 testifying, you won't be allowed to talk to
4 your representatives from the solicitor's
5 office, nor anyone regarding the testimony
6 that you are giving or may give.

7 THE WITNESS: Okay.

8 THE COURT: Do you understand?

9 THE WITNESS: Uh-huh.

10 THE COURT: Okay. Mr. Shealy, are you
11 satisfied with that instruction?

12 MR. SHEALY: I -- I am, Your Honor.

13 Certainly.

14 THE COURT: Okay. Not that she can't talk to
15 her family members, okay, but she can't talk
16 about the testimony. They can talk about
17 where to eat lunch.

18 THE WITNESS: Okay.

19 MR. SHEALY: Yes, ma'am.

20 THE WITNESS: Like I say, I can't drive
21 myself, so that would be awkward.

22 THE COURT: Yes, ma'am. You might have a
23 hungry hour.

24 Okay. So, now, at this time, then, I'm
25 going to instruct our jury to vacate the

1 courtroom. Follow Mr. James.

2 And if everyone would please rise. Two
3 o'clock, okay?

4 THE WITNESS: Thank you.

5 THE COURT: You stay right here. Let them
6 leave.

7 (WHEREUPON, the jury was excused at
8 12:47 p.m.)

9 THE COURT: Okay. Thank you, all. And,
10 ma'am, you may step down.

11 Counsel, do you all need to talk with me
12 before I also break for lunch?

13 MR. SHEALY: I don't think so, Judge.

14 THE COURT: Okay. All right. Thank you, all.
15 We will be in recess until two o'clock. All
16 right. Thank you. And for counsel's
17 information, the courtroom will be locked,
18 okay?

19 (Off the record from 12:48 p.m. to
20 2:11 p.m.)

21 THE COURT: Okay. Counsel, are we ready?

22 MS. HALLFORD: State's ready.

23 MR. SHEALY: Your Honor, Defense is ready. I
24 did want to ask, Judge, as to the objection I
25 did during openings, did you want me to do

1 that on the record again, or did you -- I
2 don't know if that bar -- bench conference was
3 on the record or not.

4 THE COURT: Let me find my notes. We can go
5 ahead and put that on the record right now.

6 As you all understand, it is very unusual
7 for counsel to object during opening and
8 closing statements of opposing counsel.
9 Actually, I think the rule says "shall not
10 interrupt." And so now we need to put the
11 objection on the record.

12 Mr. Shealy objected. According to my
13 notes, we started opening statements by the
14 State at 11:38 a.m. Ms. Hallford started
15 making her opening. There was an objection at
16 11:53 a.m. by Mr. Shealy. His objection was
17 to Ms. Hallford's using the term "expert" to
18 refer to a potential witness.

19 Yes, sir. Mr. Shealy?

20 MR. SHEALY: Thank you, Your Honor. It's my
21 understanding that to preserve these kinds of
22 objections, I'm required to do them
23 contemporaneously. In fact, there was an
24 issue for me with a different case that I
25 tried that I apparently did not object

1 contemporaneously during the closing is my
2 understanding.

3 Judge, I objected to Ms. Hallford's
4 characterization of a witness as an expert in,
5 I believe, it was child sex abuse dynamics.
6 Your Honor, I don't believe that anybody has
7 yet been qualified as such, and because no one
8 has been qualified as such, I believed that
9 that was incorrect, and I believe that it
10 would have been prejudicial to the jury, had I
11 allowed her to continue to refer to that
12 witness as an expert. Particularly given she
13 has not yet been so qualified. Thank you,
14 Your Honor.

15 THE COURT: Okay. And Ms. Hallford?

16 MS. HALLFORD: Your Honor, I -- when I got
17 back in front of the jury, didn't say anything
18 further about it, just referred to there will
19 some additional witnesses, and . . .

20 THE COURT: Yes, ma'am. And I did -- for the
21 record, I did sustain that objection made by
22 Mr. Shealy and asked the State to rephrase.

23 Is that it?

24 MR. SHEALY: Yes, Your Honor.

25 THE COURT: Anything else, Ms. Hallford?

1 MS. HALLFORD: Nothing from the State, Your
2 Honor.
3 THE COURT: The second objection was made by
4 Mr. Shealy at 12:08 as to leading.
5 MR. SHEALY: It was, Your Honor.
6 THE COURT: And I sustained the objection and
7 asked that counsel rephrase, which she did.
8 MR. SHEALY: Yes, ma'am.
9 THE COURT: Thank you. Anything else before
10 we bring in the jury?
11 MS. HALLFORD: Nothing from the State, Your
12 Honor.
13 THE COURT: Okay. And just for everyone's
14 information, after the jury is seated, I will
15 ask Ms. Gilbert to return to the witness
16 stand, and she will still be under oath and
17 will not need to be resworn, okay? I'm
18 waiting on our clerk, I believe.
19 MR. SHEALY: Yes, ma'am. May we approach for
20 just a moment?
21 MS. HALLFORD: Somebody's at the door, I
22 think. Oh, here we go. She's coming.
23 MR. SHEALY: May we approach for a moment?
24 THE COURT: Yes.
25 (WHEREUPON, a bench conference was

1 held.)

2 THE COURT: Ms. Gilbert, ma'am, why don't you
3 come on up. Just take your seat. Make
4 yourself comfortable, ma'am.

5 THE WITNESS: Thank you so much.

6 THE COURT: Ma'am, I --

7 (To Mr. Shealy) Are you ready?

8 MR. SHEALY: I am, Your Honor.

9 THE COURT: Okay. Ma'am, I gave you
10 instructions before we recessed for the lunch
11 hour. Were you able to comply with my
12 instructions?

13 THE WITNESS: Yes.

14 THE COURT: Okay. Thank you.

15 Anything else, Mr. Shealy?

16 MR. SHEALY: No, ma'am.

17 THE COURT: Anything else, Ms. Hallford?

18 MS. HALLFORD: No, ma'am.

19 THE COURT: (To The Bailiff) Okay. We need
20 to have the jury, please.

21 THE BAILIFF: All rise.

22 (WHEREUPON, the jury came into open
23 court at 2:19 p.m.)

24 THE COURT: Be seated.

25 Okay. Mr. Foreman, sir, is everyone back

1 and ready to proceed?

2 JURY FOREMAN: Yes, Your Honor.

3 THE COURT: Okay. Thank you.

4 And then I will remind our witness, Ms.
5 Gilbert, that she is still under oath, ma'am,
6 okay?

7 Mr. Shealy, you may continue with cross-
8 examination.

9 MR. SHEALY: Thank you, Your Honor.

10 CROSS-EXAMINATION CONTINUES

11 BY MR. SHEALY:

12 Q All right, Ms. Gilbert, I know, obviously, we had
13 broken for lunch. But I'm going to backtrack a
14 little bit, just to make sure that y'all remember
15 what was being said.

16 So my understanding is Mr. Gilbert left the
17 house in March; is that correct? Do you --

18 A Yes.

19 Q -- know roughly what day?

20 A I believe it was the 17th.

21 Q Okay. So it was middle of March? Okay.

22 A Yeah.

23 Q And then DSS came out to the house in June; is that
24 correct?

25 A Right.

- 1 Q Okay. And that was because there was a report of a
2 dirty house?
- 3 A Right.
- 4 Q All right. So that was about three months after --
5 or well, a little bit more than that -- after Mr.
6 Gilbert had left the house --
- 7 A Right.
- 8 Q -- is that correct? Okay. And at that point, DSS
9 asked if there was a sexual abuse at -- if there
10 had been any sexual abuse, and you had told them
11 no. Did everyone else in the house, to your
12 knowledge, tell them no?
- 13 A I'm not sure if they asked everyone else.
- 14 Q Okay. But you know that they asked you in
15 particular?
- 16 A Correct.
- 17 Q And then in July -- so about a month -- so you were
18 taken into protective custody at that point?
- 19 A Right.
- 20 Q Okay. And then in July, there was -- you were
21 returned to --
- 22 A Yes.
- 23 Q -- your mother's care? Do you know exactly when
24 you were returned to your mother's care?
- 25 A The beginning of July.

1 Q Okay. Because I think in your CAC interview you
2 said that y'all had celebrated July 4th together --
3 A Yeah. I think so.
4 Q -- that sound right? But then there -- July 10th,
5 there is a -- DSS comes back out --
6 A Right.
7 Q -- and, again, asks if there was a sexual abuse
8 that had occurred?
9 A Right.
10 Q All right. And at that point, you disclosed to a
11 DSS officer, agent, or an officer of the law? Do
12 you remember?
13 A Are you asking which one?
14 Q I am.
15 A I believe it was an officer.
16 Q Okay. So you told an officer?
17 A Correct.
18 Q Okay. And then in -- and you were removed -- you
19 were taken back into protective custody?
20 A Correct.
21 Q Did they arrest your mother right then and there?
22 A I don't think so, but I could be wrong.
23 Q All right. But while you were there, they didn't
24 take her into custody?
25 A No. They took me.

1 Q They took you. Okay. And then August 2nd you
2 testified that you did your CAC interview --
3 A. Right.
4 Q -- right? And then we've talked about August 10th.
5 That's when there was a search warrant done --
6 A Uh-huh.
7 Q -- about the house? Okay. Now, you testified
8 earlier about a big clean-out. Ms. Hallford, I
9 believe, made mention of this a couple of times.
10 And that was between June and July; is that right?
11 A Right.
12 Q Okay. And you were present for that?
13 A I wasn't living there, but, yes, I would come back
14 during the day --
15 Q Right.
16 A -- and help.
17 Q Okay. But your other brother wasn't living there
18 at the time, either?
19 A No. None of us were living there. We were all
20 living with a family friend.
21 Q Okay. Was your mother and Nicholas living there?
22 A My mother may have been, but Nicholas was not.
23 Q Okay. Was he under the age of 18 at that time,
24 or --
25 A No.

- 1 Q But he had just moved out?
- 2 A He was -- he had just turned 18.
- 3 Q Okay. Now, when they come out August 10th, are you
- 4 aware that they condemned the house because it was
- 5 dirty again?
- 6 A Yes.
- 7 Q So y'all cleaned -- y'all had a big clean-out --
- 8 A Right.
- 9 Q -- and then a month -- about a month later, they
- 10 condemned it because it, again, was too dirty to
- 11 live in; is that --
- 12 A I don't know the exact date, but, yes. It was
- 13 condemned at some point.
- 14 Q Okay. Now, you testified -- you've testified
- 15 regarding that Mr. Gilbert had bought a vibrator
- 16 and I believe I was asking you that before we went
- 17 to lunch; so we can -- if we could go back to that.
- 18 So my understanding, from what you've
- 19 testified to is that you had -- or that Mr. Gilbert
- 20 went with -- I think you said Hunter --
- 21 A Nicholas.
- 22 Q -- went with Nicholas -- excuse me -- to the
- 23 mall --
- 24 A As far as I can remember, yes.
- 25 Q -- to the mall and purchased this --

- 1 A It wasn't -- they didn't specifically go to the
2 mall for that, but while they were there, he made
3 that purchase, yes.
- 4 Q And then Mr. Gilbert gave that to you in front of
5 Nicholas?
- 6 A Yes. To my -- me remembering, yes.
- 7 Q And then you placed it on a shelf in your bedroom?
- 8 A I did not. Mark did.
- 9 Q And that was a little shelf when you first walked
10 in?
- 11 A Right.
- 12 Q All right. And when you were asked, is that
13 something that is still there, like, did something
14 happen to it, do you remember your answer being,
15 "No, the door is broken, but it's still there?"
- 16 A Right. Talking about the shelf, yes.
- 17 Q So, at that point, you were speaking about the
18 shelf and not the vibrator?
- 19 A Right because the shelf would have a door, not the
20 vibrator.
- 21 Q So the -- you're there to discuss a sexual abuse
22 accusation, correct?
- 23 A Right.
- 24 Q And you had talked about a sexual abuse accusation
25 for 37 minutes and 36 seconds, correct?

1 A If that's the time, yes.

2 Q And you were discussing a vibrator that Mr. Gilbert

3 allegedly purchased for you --

4 A Right.

5 Q -- with the forensic interviewer?

6 A Right.

7 Q And when asked, "Is that something that is still

8 there?" it's your position that your -- your answer

9 was in regards to a shelf and not the pink vibrator

10 that you had just been talking about?

11 A Right.

12 Q Okay.

13 A Well, I was 14 at the time, so, yeah, I guess I was

14 confused about the exact question. So, yes, that

15 was my answer.

16 Q Okay. Because that's what the forensic interviewer

17 was interested in? You don't know?

18 A I'm not her.

19 Q Okay. Now, you've also testified that -- but you

20 admit to having used those words; is that correct?

21 A Yes. I did.

22 Q You've also testified with respect to the

23 disclosure to Nicholas that it was simply because

24 you believed that you were -- I mean, you were just

25 closer with him than anyone else; is that right?

- 1 A Right.
- 2 Q Now, when interviewed, again, you had told --
- 3 you -- your claim was you told Nicholas because you
- 4 thought they suspected something.
- 5 A Right.
- 6 Q So did they suspect something, or was it just
- 7 because y'all were close?
- 8 A Why I told him?
- 9 Q Right.
- 10 A There was -- I think it was a couple of days, maybe
- 11 earlier, that I had been really upset because of
- 12 the abuse and I was crying. And I want to -- you
- 13 know, I want to be by myself, so I kind of hid in
- 14 the laundry room to be by myself and be upset, and
- 15 Nicholas had saw me crying. So he knew that there
- 16 was something wrong with me, but he didn't know
- 17 what. And I took that opportunity to, you know --
- 18 not that exact opportunity, but I took the
- 19 opportunity to, you know, finally tell him because,
- 20 you know, he knew that I was upset about something,
- 21 and I was ready for it to be over.
- 22 Q So you told him while you were in the lunch room?
- 23 A The laundry room.
- 24 Q Laundry room.
- 25 A And, no. That wasn't where I told him. That was

1 where I was crying, and then I think it might have
2 been a couple of days later, that is when I
3 actually told him. But he had asked me what was
4 wrong, and I didn't tell him then. But after
5 thinking about it, I decided that it was time to
6 tell him.

7 Q Okay. Now, again, obviously, Ms. Hallford has --
8 has asked you some questions, but when being
9 interviewed, there's another time you -- that
10 wasn't mentioned while you were on direct. That at
11 some point Hunter had caught the two of you?

12 A I wouldn't say "caught" because I -- you know, I'm
13 not him, so I couldn't say what he saw, but while
14 he was performing a sexual act on me, while we were
15 in his bedroom, Hunter walked through the door of
16 the bedroom, and Mark kind of moved the cover over
17 us really quickly. So I couldn't tell you if he
18 actually saw it, but that's what happened.

19 Q Okay. So that's what happened with respect to
20 Hunter?

21 A Right.

22 Q All right. Well, can you go into it a little
23 bit -- with a little bit more detail, because my
24 understanding is that y'all woke up -- or he would
25 wake you up really early --

- 1 A. Right.
- 2 Q -- is that what you're testifying to?
- 3 A Yes.
- 4 Q And so Hunter's in the -- the house at this point?
- 5 A Right.
- 6 Q And this is the house with no walls?
- 7 A Right.
- 8 Q And --
- 9 A The bedroom had walls.
- 10 Q The bedroom did have walls?
- 11 A Yes. My bedroom and the living room did not.
- 12 Q Oh, I thought that there was already testimony -- I
- 13 mean, there was earlier testimony that there were
- 14 no walls at all. That it was simply studs. But
- 15 that's no longer true?
- 16 A Well, I didn't say the whole house, so, no.
- 17 Q Okay.
- 18 A Just in my bedroom and the living room, but there
- 19 were walls in my parent's bedroom, and I think
- 20 that's it. Just my parent's bedroom and the
- 21 bathroom --
- 22 Q Okay.
- 23 A -- and the kitchen.
- 24 Q And was there a location for the computer? Was a
- 25 computer set up somewhere?

- 1 A Yes. In the bedroom --
- 2 Q So --
- 3 A -- of my parents.
- 4 Q So in your parent's bedroom there was a computer?
- 5 A Right.
- 6 Q And was that the only computer in the house?
- 7 A Yes.
- 8 Q All right. And your brothers would attempt to wake
- 9 up earlier than the others --
- 10 A. Yes.
- 11 Q -- than the other one?
- 12 A Right.
- 13 Q So they could get on that computer?
- 14 A Right.
- 15 Q And when we're -- now, all of you are school-aged
- 16 children; is that correct?
- 17 A Correct.
- 18 Q So all of you would be, presumably, going to school
- 19 most days?
- 20 A Right. Unless it was summer, yeah.
- 21 Q Okay. And this was a competition between your
- 22 brothers to get up earlier than the other one?
- 23 A Yeah. I guess so.
- 24 Q And they would run downstairs, get into my client's
- 25 bedroom in order to get on the computer first?

- 1 A I don't know if they would run, but, yes. They
2 would go down there and try and, you know, get on
3 before the other one. So they --
- 4 Q They would try -- try to beat the other one?
- 5 A Right.
- 6 Q Okay. And this particular time you're testifying
7 about, he was committing a sex act. Can -- do you
8 remember what that sex act was?
- 9 A No.
- 10 Q And he flung a blanket over the top of you?
- 11 A Right.
- 12 Q In flagrante while y'all were presumably naked or
13 close thereto?
- 14 A Right.
- 15 Q And Hunter then proceeded to get on the computer?
- 16 A We could've had clothes on, but, I mean, he could
17 have had his hands in my pants. But I do know that
18 he was performing a sexual act on me when Hunter
19 came in, and then, you know, threw the blanket on
20 top of us.
- 21 Q Okay. But then Hunter would have gotten -- and
22 then Hunter, presumably, got on the computer at
23 that point --
- 24 A Yes.
- 25 Q -- is that correct? And then he extricated himself

- 1 from you? He got away from you somehow, or you got
2 away from him somehow?
- 3 A No. We were still just laying there in bed
4 watching whatever was on the TV.
- 5 Q Until Hunter finished with the computer?
- 6 A Maybe. I don't remember the exact, you know,
7 times. Like, I don't remember if he was still on
8 the computer when I left the room or anything like
9 that, because it was a really long time ago.
- 10 Q Okay. Now, you've also testified that whenever you
11 would refuse to do things, that he would -- I
12 believe either hit you or make you stay up all
13 night cleaning --
- 14 A Right.
- 15 Q -- is that correct? And when you say "stay up all
16 night cleaning," what were you -- were you cleaning
17 the upstairs? the downstairs?
- 18 A Downstairs.
- 19 Q And did your brothers ever -- and this happened
20 over a very long period of time --
- 21 A Right.
- 22 Q -- a two-year span? Did they ever ask, "Why are
23 you always up all night cleaning?"
- 24 A Well, no. They -- but they knew that he was, you
25 know, abusive and that he would give us, like,

1 over-the-top chores, I guess, or tasks, you know,
2 to do if he got upset at something that we did.
3 But, yeah. Not, obviously, specifically knowing
4 what I did to make that happen.

5 Q Okay. And did DSS come out to your house before?

6 A Before --

7 Q Before June.

8 A -- June? No. Never.

9 Q Had the police come out before June?

10 A No.

11 Q So --

12 A Well, for Hunter, but . . .

13 Q For -- okay. But -- well, yeah. All right.

14 And -- but other than for --

15 A Right.

16 Q -- for your -- for Hunter?

17 A No. They had never come to my house before.

18 Q Okay.

19 THE COURT: One second.

20 THE COURT REPORTER: I'm sorry. Can you guys
21 speak one at a time. It's --

22 MR. SHEALY: I apologize.

23 THE COURT REPORTER: It's getting a little
24 tough.

25 THE COURT: Of course, we are trying to create

1 a record, and I'm not fussing at anyone. I
2 think that it's normal to try to answer
3 sometimes, but because our court reporter is
4 trying to --

5 THE WITNESS: Okay.

6 THE COURT: -- get an accurate record, if --
7 if Mr. Shealy can ask his question, and then
8 the witness can respond, and Mr. Shealy can
9 allow her to respond fully before asking a
10 follow-up or the next question. Thank you.

11 MR. SHEALY: Thank you, Your Honor. I have --
12 I have often had that problem. I apologize.

13 THE COURT: That's okay.

14 Q Okay. So the -- neither the police nor DSS had
15 ever come out, other than for Hunter, which was --

16 A Right.

17 Q -- completely unrelated to this --

18 A Right.

19 Q -- prior to June?

20 A Correct.

21 Q All right. But in any event, so you've testified
22 that he would -- did he also remove privileges, or
23 was that not a thing that he would do?

24 A Yes.

25 Q Okay. And when we saw -- talk about privileges,

- 1 what are we talking about?
- 2 A Like, not being able to go to my friend's house, or
- 3 I went to church on Wednesdays with friends, and he
- 4 wouldn't let me do that. I think that's about it.
- 5 Q Okay. So you were still allowed to go, for
- 6 instance, to band?
- 7 A Yeah.
- 8 Q And band camp?
- 9 A Yeah.
- 10 Q And you've testified that he -- he would stop you
- 11 from having sleepovers. I think earlier you
- 12 testified that at least one of your friends and you
- 13 would sleep on the couch. So that friend was still
- 14 allowed to come over, or --
- 15 A Yes.
- 16 Q All right. Okay. Now, as for whenever he's
- 17 hitting you, what would he hit you with?
- 18 A His hand or a belt.
- 19 Q Okay. And when you say "a belt," did you ever show
- 20 anybody, or did anybody ever see bruises on you?
- 21 A No. Because -- well, I -- if he would hit me with
- 22 the belt, it would usually be on my butt, like a
- 23 normal punishment -- quote, normal. Yeah. Like a
- 24 spanking, I guess. But if he would hit me with his
- 25 hand, he would usually slap me in the face.

1 Q Okay. So he would slap you in the face?

2 A Yeah.

3 Q And did he ever leave any kind of mark?

4 A Yes. There was an incident where I wouldn't --
5 well, I refused -- this certain time, I refused to
6 give him oral sex; and we were in the bathroom and
7 there were other people home. And when I refused
8 to do it, he, you know, told me to clean the
9 bathroom and was standing over me.

10 And, basically, he thought that I wasn't
11 trying hard enough to clean the shelf that was in
12 there, so he slapped me and made me hit my head on
13 the shelf. And there was a mark on my face and I
14 started crying and then I walked out of the
15 bathroom and Nicholas saw me and he started yelling
16 at Mark for hitting me after I told him why he hit
17 me. Well, not -- sorry. Not -- I didn't tell him
18 exactly, you know, that I wouldn't perform oral sex
19 on him, and that's why he hit me. I told him it
20 was because I wasn't trying hard enough to clean.

21 Q So let me understand. It's your contention that
22 y'all are in the house, in the bathroom together --

23 A Yes.

24 Q -- and the door was open or closed?

25 A Closed, because the shelf that I was cleaning was

- 1 behind the door, so you wouldn't have been able to
2 get to it.
- 3 Q Okay. And he insists at that point that you give
4 him oral sex; is that right?
- 5 A Yes.
- 6 Q And you say no, and this is -- who else was at home
7 at this point?
- 8 A I know that Nicholas was there. I'm not sure if
9 anybody else was there or not.
- 10 Q Okay. So Nicholas is there. You refuse to give
11 oral sex.
- 12 A Right.
- 13 Q He -- things ensue. He slaps you hard enough to
14 leave a handprint and part of that -- and Nicholas
15 goes and starts screaming at Mr. Gilbert?
- 16 A Right.
- 17 Q But, at that point, you don't tell him about the
18 oral sex part?
- 19 A No.
- 20 Q Okay. Do you know what Nicholas was doing at home
21 that day?
- 22 A No.
- 23 Q He just -- he was just at home?
- 24 A Yeah. We were both at home. I guess it was -- it
25 -- I think it was in the evening, so it was after

1 school --

2 Q Okay.

3 A -- or during summer.

4 Q Okay. Now, you've also testified that y'all

5 watched -- that Mr. Gilbert forced you to watch

6 porn or pornography on a Firestick?

7 A Yes.

8 Q And you said that -- something about hacking a

9 Firestick or something. Can you explain that a

10 little bit?

11 A Yeah. There are, like -- when you buy a Firestick,

12 there are, like, apps you can download on it; like

13 Netflix or other apps that you can download for --

14 like, to watch movies for free and stuff. So,

15 yeah.

16 Q Okay. And part of the -- one of the apps that you

17 can --

18 A You could, like, go on the Internet.

19 Q -- hack -- right, but you -- one of the apps would

20 allow you to look at pornography?

21 A It was like an Internet app, so you could look at

22 anything --

23 Q Okay.

24 A -- on the Internet.

25 Q Okay. And so they found -- it's my

1 understanding -- three of those Firesticks at your
2 house. So those didn't get part -- those weren't
3 part of the clean-out?

4 A I guess not.

5 Q Okay. Okay. Now, you've also testified with
6 respect to when you reported -- disclosed -- your
7 initial disclosure was to Nicholas sometime around
8 -- in March. How long was it before Mr. Gilbert
9 was removed from the house?

10 A I couldn't give you an exact time, but it was, I
11 think, a couple days; maybe the next day.

12 Q Okay.

13 A But it wasn't long at all.

14 Q All right. The reason I ask is, again, while you
15 were being interviewed, you had told the CAC
16 interviewer that, in fact, this continued even
17 after you had told Nicholas what happened.

18 A Did I say that?

19 Q You did, yes, ma'am.

20 A Okay. Then -- then that's probably true, yeah.

21 MR. SHEALY: Your Honor, if you'll bear with
22 me, please.

23 Q I believe it was 40 minutes in. Well, nearly 40
24 minutes in.

25 A Yeah. It did -- the abuse did happen up until a

1 couple of days before he was gone.

2 Q Now, what also -- I'm a little confused about is,
3 again, whenever you would talk about Mr. Gilbert
4 being removed from the house, you would talk about
5 both brothers. You've only ever talked about
6 disclosing to one brother here. You would say, "my
7 brothers" removed him or kicked him out of the
8 house or confronted him or whatever.

9 A Uh-huh.

10 Q Is -- which -- which is true? Did you disclose to
11 both brothers, or simply one of them?

12 A I told Nicholas what had been happening, and the
13 argument, you know, that, I guess happened
14 afterwards, like, the one that basically led to my
15 mom breaking her finger and them breaking things
16 and everything like that. At that point, I believe
17 Nicholas had -- I guess, to my knowledge, because I
18 wasn't there when they had that conversation. But
19 I only disclosed it to Nicholas, but Hunter --
20 Hunter is the one who found the cameras, so . . .

21 Q Okay. So this -- oh -- excuse me.

22 Now, you testified you're not aware of your
23 mother meeting your father. Were you aware that
24 Hunter had attacked him in Wellford?

25 A Yes. After it happened --

- 1 Q After that?
- 2 A -- he came home and told me what happened.
- 3 Q Okay. But did he -- did he not explain to you that
- 4 he went up there with your mother?
- 5 A Oh, he did. Yeah.
- 6 Q Okay. So you were aware that your mother was
- 7 meeting your father?
- 8 A I don't understand.
- 9 Q Well --
- 10 A He, at that point -- that's the point where I found
- 11 out that she had been meeting him is after they got
- 12 home, because she had been gone for hours; and me
- 13 and my best friend were at home; and we were really
- 14 confused as to where she was going. Like --
- 15 because she told us she would be right back. So
- 16 when they got back, my mom -- they were both
- 17 like -- they both walked through the door. And so
- 18 Hunter then told me what he did and that she met up
- 19 with him and that's the point where I found out.
- 20 Q Oh, okay.
- 21 MR. SHEALY: If you'll bear with me one
- 22 second, Your Honor.
- 23 Q Okay. And you've also testified about getting up
- 24 really early while your mom was gone. She was
- 25 working at Costco, correct?

1 A Uh-huh.

2 Q And when we say, "She was working at Costco," she

3 was working at the actual store --

4 A Yes.

5 Q -- is that right? She wasn't working at some kind

6 of distribution center or anything like that?

7 A No.

8 Q What were her hours?

9 A Her hours have changed now, because she's working a

10 different part; but as far as I can remember, it

11 was, like, nine or ten until, like, five or six,

12 usually.

13 Q Okay. Who usually picked you up from school?

14 A I rode the bus.

15 Q You always rode the bus?

16 A (Nods head up and down.)

17 Q Okay.

18 THE COURT: (To The Witness) I need you to

19 answer out --

20 THE WITNESS: Yes. Sorry.

21 THE COURT: -- out loud. Okay. Thank you.

22 THE WITNESS: Yes. I always rode the bus.

23 THE COURT: Thank you. Continue.

24 Q Now, it's my understanding also that you were in

25 marching band?

- 1 A Yes.
- 2 Q And you've testified that you were -- that your
3 brother was in marching band, as well?
- 4 A Yes.
- 5 Q And that, that was one of the reasons he wasn't
6 always at home?
- 7 A Right.
- 8 Q What were -- when were your practices and things
9 like that?
- 10 A Tuesdays and Thursdays, yeah. And then we have
11 games on Fridays and competitions on Saturdays.
- 12 Q Okay. So Tuesdays -- let me write that down.
13 Tuesdays, Thursdays, game on Friday, and
14 competitions on Saturday, right?
- 15 A Yes. I was not in marching band until the eighth
16 grade, so that was my only year doing it, but
17 Nicholas had been in it for three years prior to
18 that.
- 19 Q Okay. And when you were doing the practices, when
20 would you get done?
- 21 A I think it was 4:00 to 6:30, and then Mark would
22 pick us up or Sara Bell would take us home because
23 she was also there.
- 24 Q She also was in the marching band?
- 25 A Yeah. She -- well, she played the same instrument

1 as me.

2 Q Okay. And then Friday, when did you -- when were

3 you at school Friday with respect to marching band?

4 A It was like from right after school, pretty much.

5 We would either go home right after school and then

6 come back for the game a couple hours later, or we

7 would, you know, go get something to eat with Sara

8 and then go to the football game. And we wouldn't

9 get home until probably like 10:00 or 10:30, maybe.

10 Q Okay. And these competitions on Saturday, is there

11 a competition season, or . . .

12 A. Is there a season?

13 Q Is there a season? I mean, how do you -- how do

14 these competitions work?

15 A The fall.

16 Q And are those an all-day --

17 A Usually not.

18 Q Okay. And who would you -- who would pick you up

19 after your marching band?

20 A Sara or Mark or if my mom was off work, she would.

21 Q Okay. Okay. Now, I want to go back to this

22 timeline. So in June, there was an anonymous tip

23 that there was a problem?

24 A Yes.

25 Q Did -- I know you -- you've speculated as to who

- 1 was the originator of the July tip. Do you have
2 any idea as to who was the originator of the June
3 tip?
- 4 A I don't.
- 5 Q So that just kind of came out of the blue?
- 6 A Yes.
- 7 Q Okay. And then in July, there was another
8 anonymous tip that you believe came from your
9 aunt --
- 10 A Right.
- 11 Q -- because your mother, you think, told her about
12 it?
- 13 A Yes. I think.
- 14 Q Any idea as to when your mother would have told her
15 that?
- 16 A Sometime -- well, she's a -- my aunt's a mandated
17 reporter, so I assumed she would have told
18 immediately; so probably either that same day or
19 right before.
- 20 Q So your aunt's a mandated reporter?
- 21 A Yes.
- 22 Q And your mother knew that, obviously --
- 23 A Right.
- 24 Q -- because you know that.
- 25 A Right. Well, maybe she didn't know until after,

1 but . . .

2 Q Uh-huh. Would it surprise you if that was

3 immediately after my client turned off his VA

4 pension to their joint checking account?

5 A Would it surprise me if --

6 Q Would that surprise you that this -- that this

7 report to DSS came immediately after my client

8 removed his VA pension benefits from their joint

9 bank account?

10 A Well, I didn't know that, so . . .

11 Q You didn't know that?

12 A So, yeah. That would surprise me.

13 Q Okay. And it's your testimony that prior to these

14 allegations, you and Mr. Gilbert got along fine; is

15 that correct?

16 A Prior to the abuse, yes. Not prior to the

17 allegations.

18 Q Okay. Now, that -- that's fair. And that there

19 was no -- well, I mean, was their tension within

20 the house --

21 A Before the abuse?

22 Q -- before the --

23 A Yes. He's always been physically and emotionally

24 abusive before he was sexually abusive.

25 Q But, again, there was never any DSS involvement?

1 A No.

2 Q Or police involvement?

3 A No.

4 Q With respect to any kind of issues with your
5 mother?

6 A Right.

7 Q All right. But there was police involvement with
8 Hunter?

9 A Correct.

10 Q Okay. Now, you've also testified about sex in the
11 shower. Explain -- and is this one of the showers
12 -- is it a shower and bathtub combination, or is it
13 just a --

14 A. Yes.

15 Q So it's a shower that has a bathtub kind of
16 attached to it?

17 A Yes. And at one point, when -- because we were
18 renovating the house, we didn't have the water
19 working in the bathroom, because we only had
20 bathroom that we used downstairs. So while that
21 wasn't working and while we were fixing it, we
22 showered outside with the hose for a while.

23 Q Uh-huh.

24 A Like, maybe a couple of months. And that was also
25 right after he had his surgery, so I guess it was

1 okay -- not okay. But I guess whoever was there at
2 the time and knew that I was showering with him,
3 didn't really think about it, or maybe felt that I
4 had clothes on while I was doing it, but that's not
5 true.

6 Q So people knew that you were taking a -- that you
7 were helping him clean himself with his shower --
8 surgery?

9 A As far as I know, yes.

10 Q Who?

11 A I don't know for sure because we haven't talked
12 about it, but I would have to assume that my mom at
13 least knew and maybe my brothers.

14 Q Did that shower have a shower curtain or was it
15 glassed in?

16 A Inside?

17 Q Inside.

18 A A shower curtain.

19 Q Okay. And how big was this bathroom?

20 A The bathroom? It was pretty small.

21 Q Okay. And how big was this bathtub?

22 A Like the -- it was the length of the bathroom.

23 Q Okay.

24 A So that -- the bathtub was a normal size, and the
25 bathroom could fit, like, you know, a bath and a

1 toilet and a sink, so . . .

2 Q Okay.

3 MR. SHEALY: Judge, if you'll bear with me
4 just one second.

5 Q Now, you testified that Mr. Gilbert would come pick
6 you up. How many cars did y'all have?

7 A Two.

8 Q From -- so you always had two?

9 A No. I can't remember exactly. We had one for a
10 really long time until probably, like, until the
11 end -- until, like, the middle of elementary school
12 for me. And then pretty much from then on, we
13 usually had two.

14 Q So you --

15 A Like, he had one and my mom had one.

16 Q Okay. So you always had two while this abuse was
17 going on --

18 A Yes.

19 Q -- is your contention?

20 A As far as I am concerned, yes.

21 Q Okay.

22 MR. SHEALY: That's all I have for this
23 witness. Thank you.

24 THE COURT: Yes, ma'am. Ms. Hallford, any
25 redirect?

1 MS. HALLFORD: Just very briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. HALLFORD:

4 Q Just making sure that we understand. You were
5 asked about the vibrator and the shower. And when
6 you were asked about that during your interview,
7 you said, "I was talking about the shelf because
8 the shelf had a door"; is that accurate?

9 A Yes.

10 Q Does a vibrator have a door?

11 A No.

12 Q Okay. Now, you were asked about Hunter walking in.
13 When Hunter walked in, were the two of you covered
14 up?

15 A He -- as soon as, like, we knew he was walking in,
16 that's when Mark pulled the cover over. So right
17 before he was in, no, we weren't covered up; but
18 after he was in, yes, we were covered up.

19 Q Do you have any idea what, if anything, Hunter saw?

20 A No.

21 Q Did Hunter ever come to you and say, "Hey, I saw
22 Dad doing something?"

23 A No.

24 Q So you have no idea if he saw something or not?

25 A No. I have no idea.

- 1 Q So the abuse was -- let me make sure I got this
2 right -- from mid-2016, when you were turning 12 --
3 because you turned 12 in January, correct?
- 4 A Yes.
- 5 Q To around March 2018, the time when he got kicked
6 out of the house; is that accurate?
- 7 A Yes.
- 8 Q Okay. You were interviewed in August of 2018 at
9 the Child Advocacy Center; is that correct?
- 10 A Yes.
- 11 Q So that would have been -- I do not math -- like
12 three -- three/four months, correct?
- 13 A Yes.
- 14 Q Okay. So do you know what today's date is? May
15 26th? It's May of 2021?
- 16 A Yeah. Yeah. I don't know the exact day.
- 17 Q Okay. So -- so that's almost -- 2018 to 2019, 2019
18 to 2020, 2020 to 2021. I am not joking when I say
19 I do not do math. That's almost -- that's -- it's
20 been a little over three years --
- 21 A Yes.
- 22 Q -- since he moved out?
- 23 A Yes.
- 24 Q Would you say that your memory would be better
25 closer to when events happened or better today?

- 1 A Better closer to when the events happened.
- 2 Q So when you are testifying today, are you trying to
- 3 be misleading?
- 4 A No.
- 5 Q Are there things about what happened back then that
- 6 you do not remember?
- 7 A Yes.
- 8 Q Is this something that you tried to keep in the
- 9 forefront of your mind?
- 10 A No.
- 11 Q What do you try to do with it?
- 12 A Push it away and not think about it.
- 13 Q Okay. You said that your aunt is a mandated
- 14 reporter. What does that mean to you?
- 15 A It means if she hears of, like, child or -- I guess
- 16 it doesn't have to be child. If someone hears
- 17 about abuse, they have to report it, or they,
- 18 themselves, can get in trouble.
- 19 Q Did the bathroom have walls?
- 20 A Yes.
- 21 Q Did the bathroom have a door?
- 22 A Yes.
- 23 Q You were asked earlier about whether the bedroom --
- 24 his bedroom had walls.
- 25 A Yes.

1 Q Was your testimony on direct that the bedroom had
2 walls?
3 A I don't understand. I'm sorry.
4 Q When I asked you about the bedroom having walls or
5 not, do you remember what you testified to on
6 direct?
7 A Yes.
8 Q What did you say?
9 A The bedroom did have walls.
10 Q Okay.
11 MS. HALLFORD: I have no further questions.
12 THE COURT: Okay. Thank you. Any reason that
13 this witness should not be allowed to step
14 down at this time?
15 MS. HALLFORD: Nothing from the State.
16 THE COURT: Mr. Shealy?
17 MR. SHEALY: No, Your Honor. Nothing from the
18 Defense.
19 THE COURT: All right. Thank you.
20 And so, ma'am, you are allowed to step
21 down and -- and return to the gallery.
22 THE WITNESS: Thank you.
23 THE COURT: Watch your step, okay?
24 THE WITNESS: Okay.
25 THE COURT: Next witness.

1 (WHEREUPON, the witness was excused
2 at 2:59 p.m.)

3 MS. HALLFORD: May we approach?

4 THE COURT: Yes.

5 (WHEREUPON, a bench conference was
6 held.)

7 MS. HALLFORD: I'm going to call Sara Bell.

8 THE COURT: Yes, ma'am. If you'll please come
9 forward. You need to be sworn, okay?

10 WHEREUPON,

11 SARA BELL,

12 After having been duly sworn, testified as follows:

13 THE COURT: Now, make yourself comfortable and
14 adjust that microphone as you need to, okay?

15 Ms. Hallford?

16 MS. HALLFORD: Sara, can you take the mask
17 off, so we don't have trouble -- thank you.

18 DIRECT EXAMINATION

19 BY MS. HALLFORD:

20 Q Sara, did you graduate from high school?

21 A I did.

22 Q Where did you go to school?

23 A Dorman High School.

24 Q What year did you graduate?

25 A 2018.

- 1 Q Who do you live with right now?
- 2 A Right now, I live with my grandmother.
- 3 Q Are you working anywhere?
- 4 A I am.
- 5 Q Where do you work?
- 6 A I work at a family-owned Italian restaurant.
- 7 Q Name of it?
- 8 A Fratello's. Sorry.
- 9 Q How long --
- 10 THE COURT: One -- one second. And just
- 11 for -- for your information, ma'am, if you see
- 12 this lady hold up her hand, it means that
- 13 maybe she's not understanding something.
- 14 THE COURT REPORTER: Can you spell the name of
- 15 that restaurant?
- 16 THE WITNESS: F-r-a-t-e-l-l-o-s.
- 17 Q How long have you been working there?
- 18 A For about three years.
- 19 Q Sara, do you know Child 1 ?
- 20 A I do.
- 21 Q How did you initially meet Child 1?
- 22 A I was friends with her brother first, and then we
- 23 became closer friends through band.
- 24 Q Do you consider Child 1 to be a good friend?
- 25 A I do.

- 1 Q Do you spend a lot of time with her?
- 2 A I do.
- 3 Q On or around your birthday -- well, first of all,
4 when is your birthday?
- 5 A My birthday is March 19th, 2000.
- 6 Q So you might not remember the exact date, but on or
7 around your birthday in 2018, did you and Child 1 have
8 band rehearsal?
- 9 A We did.
- 10 Q And did you see Child 1 when she got dropped off at
11 the rehearsal?
- 12 A I did.
- 13 Q What, if anything, did you notice about how Child 1
14 was acting when you first saw her?
- 15 A She was obviously upset. She looked like something
16 was wrong.
- 17 Q How could you tell that she was upset? What made
18 you think she was?
- 19 A Just the look on her face, and she is usually like
20 outgoing and happy, and she wasn't.
- 21 Q What did you do when you realized that -- that Child 1
22 was upset?
- 23 A I kept asking her about it, but she just didn't
24 want to talk about it.
- 25 Q The evening of that same day, did you and Child 1 go

1 out to eat to celebrate your birthday?

2 A We did.

3 Q And on the car ride to the restaurant, did you

4 continue to ask Child 1 what was wrong with her?

5 A I did.

6 Q Was she -- did she still appear to have something

7 that was bothering her at that point?

8 A Yes.

9 Q At some -- you can't say specifically what she said

10 or who she said did it, because that's hearsay.

11 But at some point, on the way to the restaurant,

12 did she tell you that she had been sexually abused?

13 A She did.

14 Q Did she tell you when it happened?

15 A She said --

16 MR. SHEALY: Objection, Your Honor. That's

17 hearsay.

18 MS. HALLFORD: No, Your Honor, that's --

19 THE COURT: Please.

20 MS. HALLFORD: Oh, I'm sorry.

21 (WHEREUPON, a bench conference was

22 held.)

23 THE COURT: All right. Ladies and gentlemen

24 of the jury, I was trying to push us until

25 3:15, but we have a matter that we need to

1 take up right now outside of your presence.
2 That may happen throughout the trial. Please
3 understand that I certainly don't want to make
4 any errors, okay? This is very important to
5 everyone in this room. I know y'all
6 understand that.

7 And so I will ask you all to follow your
8 foreman and the bailiffs, and we'll go ahead
9 and take a break right now. You all can use
10 the restroom, get something to drink, and
11 stretch a little bit. I'll get you back in as
12 soon as we can.

13 (WHEREUPON, the jury was excused at
14 3:07 p.m.)

15 THE COURT: Okay. Now, Mr. Shealy, sir, you
16 have made a motion. First, you objected
17 and -- as to a statement being hearsay. So
18 let me hear from Ms. Hallford on that, and
19 then there is a motion -- a second motion
20 regarding the testimony of this witness?

21 MR. SHEALY: Yes, ma'am.

22 MS. HALLFORD: Okay. So, Your Honor, under
23 Rule 801, Subsection 1, Subsection D, these
24 are statements which are not hearsay, and that
25 is if it is consistent with declarant's

1 testimony in a criminal sexual conduct case or
2 in an attempted criminal sexual conduct case
3 where the declarant is the alleged victim,
4 which Child 1 is, and the statement is limited to
5 the time and place of the incident.

6 So what I am asking Sara to testify to is
7 what Child 1 the declarant of that statement and
8 also the victim of a criminal sexual conduct
9 incident, told her about where it happened and
10 when it happened.

11 THE COURT: Mr. Shealy?

12 MR. SHEALY: Your Honor, it was unclear to me
13 that that was actually what she was going to
14 testify to. She had, initially, simply said
15 "she said." The emotion with respect to --
16 quite frankly, it appeared to be hearsay.
17 And, again, I understand that there is this
18 specific statement that it is not hearsay, but
19 it is limited, and it's strictly limited to
20 time and place of the incident.

21 And so my request would be -- and I
22 understand if we just don't have time -- would
23 be to proffer this witness to ensure that
24 she's not going to go into things that she's
25 not allowed to go into -- go beyond time and

1 place because, again, it -- it's a very strict
2 limitation as to what she's allowed to go
3 into, and without -- I mean, otherwise, I -- I
4 may be --

5 THE COURT: Okay. And Mr. Shealy, first of
6 all, I am going to overrule your objection
7 with regard to the hearsay, okay, objection.
8 Second, with regard to proffering this
9 witness' testimony. That's -- that -- well,
10 it's unusual unless there is a specific motion
11 being made regarding her testimony or a
12 statement that she has made in the past. I
13 mean, you understand that this is unusual.
14 Let me hear from Ms. Hallford.

15 MS. HALLFORD: Your Honor, that's the reason
16 why when I asked her the question, I said to
17 her, "You can't give any of the details, or
18 say who said it happened" --

19 THE COURT: Right, right. I'm not talking
20 about the hearsay objection.

21 MS. HALLFORD: Oh.

22 THE COURT: I'm talking about him wanting to
23 proffer her testimony.

24 MS. HALLFORD: Oh. It's just two questions.
25 I don't have a problem with it. I think it's

1 unnecessary, but I'm certainly happy to do it.

2 THE COURT: Go ahead. Go ahead.

3 EXAMINATION OF SAGE BELL CONTINUES

4 BY MS. HALLFORD:

5 Q Did she say when it happened?

6 A I'm sorry. Could you repeat it?

7 Q Did -- did ~~Child 1~~ tell you when the sexual assaults
8 would happen?

9 A It would happen when people weren't home from
10 school or work.

11 Q Did she say where it would happen?

12 A It would happen in her parent's bedroom or in the
13 bathroom.

14 MS. HALLFORD: That's it. I mean I -- and
15 then I have a question about how she was
16 acting, but demeanor is -- is --

17 THE COURT: All right. But anything else?

18 MR. SHEALY: So -- so long as that's what it's
19 limited to, Your Honor. I --

20 THE COURT: Well, her testimony doesn't have
21 to be limited to that, but the hearsay portion
22 of her testimony has to be limited to that --

23 MR. SHEALY: Yes, ma'am.

24 THE COURT: -- correct?

25 MR. SHEALY: Yes, ma'am.

1 THE COURT: Okay. Anything else from anyone?

2 MS. HALLFORD: Nothing from the State, Your

3 Honor.

4 THE COURT: Okay. Why don't we go ahead then,

5 and we'll take five minutes. Go ahead and use

6 the restroom if you need to or get a sip of

7 water because -- well, let me ask you

8 something else. After this -- while the jury

9 is still out -- after this witness, is this --

10 we are taking up something else in limine?

11 MS. HALLFORD: Qualifying Lynn McMillan as a

12 blind expert in child abuse dynamics.

13 THE COURT: How long do you all think that

14 will take?

15 MS. HALLFORD: Ordinarily, it doesn't take

16 very long at all. The case law is very

17 settled that it is admissible. So my

18 questions would be quite brief. I don't know

19 what Mr. Shealy plans to do.

20 MR. SHEALY: Well, I mean, Judge, a lot of it

21 depends on what -- whether she covers all the

22 ground, but I do need to ask her some

23 questions. I mean, I don't mean to

24 disagree --

25 THE COURT: Okay. This is what I would be

1 inclined to do: Before I send -- because the
2 jury is -- is really walking across the
3 building --

4 MS. HALLFORD: Right.

5 THE COURT: -- to go to their jury assembly
6 room -- instead of walking two steps into the
7 jury assembly room, they are going to the
8 family court; Judge Moss' courtroom, okay,
9 which is Judge Fraley's old courtroom. And --
10 and so what I would propose is that we go
11 ahead and handle that now if she's here.

12 Is she here?

13 MS. HALLFORD: Yes, ma'am.

14 THE COURT: Let's go ahead and handle that.

15 Any objection, Mr. Shealy, to taking that
16 up out of order?

17 MR. SHEALY: No, Your Honor.

18 THE COURT: Okay. And we're just trying to be
19 as efficient as we can be, all right? Okay.

20 And so I will ask, ma'am -- Ms. -- and
21 that is your full name?

22 THE WITNESS: Yes, ma'am. Uh-huh. Sara Bell.

23 THE COURT: Okay. Ms. Bell?

24 THE WITNESS: (No response.)

25 THE COURT: Okay. Ms. Bell, ma'am, I would

1 ask you -- if you don't mind, I'm going to ask
2 you to exit the courtroom. Do not talk to
3 anyone about your testimony, and we will call
4 you back in as quickly as we can. Thank you
5 for your understanding.

6 Okay. And so this next witness is Dr.
7 McMillan or Dr. Henderson?

8 MS. HALLFORD: Dr. McMillan. And I -- oh,
9 here they are. I couldn't find my questions.
10 (To The Bailiff) She's not here? Okay.
11 So -- that's right.

12 THE CLERK: Will she be coming back, or is she
13 finished?

14 THE COURT: She'll be coming back. She'll be
15 coming back. I'm just going to go ahead and
16 take this up outside the presence of the jury,
17 so that we can be as efficient as possible.

18 After I hear from you all on this issue
19 and from this witness as -- as solely to this
20 issue, we will take about five minutes, okay?

21 MR. SHEALY: Yes, ma'am.

22 THE COURT: And then we will bring the jury
23 back in.

24 MR. SHEALY: Yes, ma'am.

25 THE COURT: The -- the young lady at the back

1 may need -- may need you.

2 MS. HALLFORD: Oh. Your Honor, this is Dr.
3 Lynn McMillan.

4 THE COURT: Dr. McMillan, if you will please
5 come forward. This is the witness stand.
6 Will you -- ma'am, you're going to be placed
7 under oath.

8 WHEREUPON,

9 LYNN MCMILLAN, PhD,

10 After having been duly sworn, testified as follows:

11 THE WITNESS: Do I take this on or off?

12 THE COURT: Ma'am, you can take it off while
13 you are testifying, okay?

14 THE WITNESS: Thank you.

15 THE COURT: Make yourself comfortable, adjust
16 that microphone, and state your full name for
17 the record.

18 THE WITNESS: My name is Lynn, L-y-n-n,
19 McMillan, M-c-M-i-l-l-a-n.

20 VOIR DIRE DIRECT EXAMINATION

21 BY MS. HALLFORD:

22 Q Dr. McMillan, where are you currently employed?

23 A I am currently full-time employed at the University
24 of South Carolina Upstate.

25 Q How long have you been with USC Upstate?

1 A I have been there since 2012, so about nine years
2 or so.

3 Q And, in general, what -- what is your position
4 there, and what do you do?

5 A I started out as an adjunct faculty. I am now
6 full-time faculty, teaching in child advocacy
7 studies, which is housed in the department of
8 psychology. I am also the director of the Center
9 for Child Advocacy Studies, and I'm also the
10 interim executive director of our Child Protection
11 Training Center.

12 Q Can you tell us about your educational background,
13 please?

14 A Yes. I hold three degrees, all in social work. I
15 have a bachelor's -- bachelor's degree in social
16 work from East Carolina University in Greenville,
17 North Carolina. I hold a master's and a doctorate,
18 PhD, from University of South Carolina College of
19 Social Work.

20 Q Beyond that education, do you have any professional
21 licensing or certifications?

22 A Yes. I do. I am a licensed social worker in both
23 South Carolina and North Carolina. In South
24 Carolina it's called "LISW-CP," which is licensed
25 independent social worker for clinical practice.

1 In North Carolina, it's called "LCSW," which is
2 licensed clinical social worker.

3 Q Do you have any additional training in the field of
4 child abuse/sexual assault?

5 A I have -- well, part of my licensure is additional
6 trainings and educational opportunities every two
7 years. We have to have 40 hours of additional
8 education. Some of those are actual trainings, and
9 I have advanced trainings in child forensic
10 interviewing, and I have other trainings, as well.

11 I'm also what's called an "ACE," an A-C-E.
12 That's adverse childhood experiences. I'm an ACE
13 master trainer for South Carolina, and that is
14 through the South Carolina Children's Trust.

15 Q Are you the member of any professional
16 organizations related to child sexual assault/child
17 abuse?

18 A The organization I'm a member of now is the
19 National Association of Social Workers.

20 Q You said you're a professor, so, obviously, you
21 have some teaching experience. Tell us a little
22 bit about that.

23 A Well, I've had some teaching experience over the
24 years. Back in 2001, I did some teaching with
25 Limestone University or Limestone College in their

1 department of social work. I've also taught at
2 College of Social Work at USC in their masters
3 program. And then I teach at USC Upstate in child
4 advocacy studies.

5 Q Do you have any -- have you done any publishing in
6 the field of child sexual abuse/sexual assault?

7 A I have. My name's on a couple of publications,
8 yes. And I'm getting ready to do another current
9 research one with the students. A couple things
10 with students and a couple otherwise.

11 Q Do you take continuing education courses to keep up
12 with the field and the developments in the field?

13 A Yes. I do. Our licenses are renewed -- our
14 professional licenses are renewed every 40 --
15 excuse me. They are renewed every two years, and
16 they're required 40 hours.

17 Q Are the methods you rely upon uniformly accepted
18 and recognized in your field?

19 A That I rely on for . . .

20 Q For -- for -- to be qualified as an expert in child
21 abuse dynamics?

22 A Yes. In -- in child abuse dynamics, but also
23 recognized in our child advocacy studies program,
24 as well.

25 Q And are those methods subject to peer review?

- 1 A Yes. They are.
- 2 Q Can you find these methods and principles in
3 articles, journals, textbooks that are accepted by
4 professionals in your field?
- 5 A Yes. And when we're talking peer review, we're
6 thinking about research articles. And those would
7 be peer-reviewed for the journals, particular
8 journals that they would published in. There's
9 also peer review as far as the practice goes for
10 Children's Advocacy Centers that are -- they have a
11 peer-review standard, as well, through the National
12 Children's Alliance.
- 13 Q Have you previously testified as an expert in the
14 field of child abuse dynamics?
- 15 A Yes. I have.
- 16 Q How -- do you have any idea how many times?
- 17 A Over the years, probably 40 or 50 or so times.
- 18 MS. HALLFORD: Your Honor, that would be our
19 testimony regarding her qualifications as an
20 expert in the field of child abuse dynamics.
- 21 THE COURT: Okay. And just to be clear, this
22 witness has been qualified as an expert in
23 that field 40 or 50 times in the past? That's
24 her testimony?
- 25 THE WITNESS: That is correct.

1 MS. HALLFORD: Yes, ma'am.

2 THE WITNESS: I would -- I would estimate
3 that.

4 THE COURT: Okay.

5 Mr. Shealy?

6 MR. SHEALY: Thank you, Your Honor. Just
7 briefly.

8 VOIR DIRE CROSS-EXAMINATION

9 BY MR. SHEALY:

10 Q Is there -- obviously, what you do is -- is not
11 chemistry or something like that with a -- a
12 number, but is there a recognized error rate for
13 these -- for forensic interviewing, anything like
14 that?

15 A I've never heard or seen anything about an error
16 rate. I'm not sure what you mean by "error rate."

17 Q Okay. Well, they -- in -- well, again, in the
18 sciences, it would be called a "false positive," so
19 where a forensic interviewer, for instance, thinks
20 that a -- a crime occurred, but then it turns out
21 that a crime did not occur. So that would be an --
22 that forensic interviewer made an error. Is there
23 a published or accepted error rate within your --
24 your field of -- of expertise?

25 MS. HALLFORD: Your Honor, may we approach?

1 Or, actually, they're out.

2 She's not qualifying as an --

3 THE COURT: Oh, okay. Are you making an
4 objection?

5 MS. HALLFORD: Yes, ma'am. Objection.

6 THE COURT: What -- to what, please?

7 MS. HALLFORD: Well, relevance. She's not
8 qualifying as a forensic interviewer. That is
9 actually, by case law, not something you can
10 qualify in. She is not going to be addressing
11 the forensic interview. She is here to
12 testify about child's behavior, specifically
13 related to delayed disclosure, piecemeal
14 disclosure, non-offending caregiver reactions,
15 and topics along that line; nothing to do with
16 the forensic interview, at all.

17 That interview's not admissible in this
18 trial, because the victim was over the age of
19 12. So it's going to be confusing to the jury
20 if we get into that, and we can't by case law,
21 so . . .

22 MR. SHEALY: Well, Judge, they're using her
23 forensic interviewer training as an under --
24 as to underpin her -- her standing as an
25 expert. They've repeatedly asked her about

1 the fact that she is a forensic interviewer.
2 It's throughout her CV that she is a forensic
3 interviewer.

4 Now, I can rephrase the question as, "Is
5 there an error rate with respect to childhood
6 dynamics," but -- I'm happy to do that if Your
7 Honor would like me to; but I believe the
8 question is still a valid one given the route
9 that they took.

10 THE COURT: Okay. All right. Ms. Hallford,
11 is this witness' CV going to be made an
12 exhibit in the case?

13 MS. HALLFORD: Actually, yes. And I should
14 have done that in advance. I didn't even
15 think about those when we were talking about
16 exhibits. I've got her most updated one she
17 sent me by email -- yeah, today or yesterday.

18 Can this be made a Court's Exhibit Number
19 1, right?

20 THE COURT: Two.

21 MR. SHEALY: Yeah, it'd be Number 2 --

22 MS. HALLFORD: Two. Sorry.

23 MR. SHEALY: -- as a Court exhibit.

24 THE COURT: I just want to review it.

25 MS. HALLFORD: And I apologize for that, Your

1 Honor.

2 THE COURT: One second. One second. Amber's
3 trying to mark it and . . .

4 (WHEREUPON, Court's Exhibit No. 2 is
5 admitted into evidence.)

6 THE COURT: Okay. Mr. Shealy, go ahead. I --
7 I now am looking at her curriculum vitae.

8 MR. SHEALY: Thank -- thank you, Your Honor.

9 Q There was -- so I had asked about the error rate
10 with respect to forensic interviewing, where,
11 again, a forensic interviewer may think that a
12 crime occurred, but a crime, it turns out, did not,
13 for instance, or I don't know; maybe the client was
14 found not guilty, or some other evidence came to
15 light that it could not have happened for some
16 reason. Is there a published error rate for that?

17 A I do not know of a published error rate, but I also
18 have further comment.

19 Q Okay.

20 A Okay. The -- the forensic interviewer doesn't make
21 a decision about did it happen or did it not
22 happen. The role of the forensic interviewer is to
23 allow that child an opportunity to tell about their
24 experience, so there's not a statement in the
25 report that says that they believe them or don't

1 believe them or that it happened or didn't happen.

2 Q So there --

3 A So I'm not -- I guess I -- I don't see that as far

4 as an error rate of how you would know that.

5 Q Okay. And is there a published error rate with

6 respect to child abuse dynamics? So, again, where

7 you're going to testify as to piecemeal disclosure,

8 for instance, that sometimes things come out at

9 various times --

10 A Uh-huh.

11 Q -- and it turns out that those things were

12 incorrect. Is there any published error rate with

13 respect to that information? That --

14 A. There's published information about the example you

15 gave -- piecemeal disclosure, sometimes called

16 "other types of disclosures." But I don't --

17 again, they're never referred to as "error rate"

18 because you may not be fact-checking that, and that

19 would not be the role of the forensic interviewer

20 to fact-check a particular dynamic.

21 Q So are you going to testify to particular dynamics

22 with respect to --

23 A I'm going to answer the questions that are asked of

24 me.

25 Q Well, I mean, I'm just trying to figure out how

1 your testimony could possibly be relevant if you're
2 not going to testify that this is a thing that
3 people usually do.

4 A I will testify to however I'm asked as far as --
5 and there is research about that. I've never read
6 anything in the literature related to an error rate
7 related to forensic interviewing or family dynamics
8 or child dynamics.

9 MR. SHEALY: (To The Court) If you'll bear
10 with me just one second.

11 Q So to your knowledge, there are no statistical
12 studies been done on -- on any -- the -- this kind
13 of a case -- a criminal sexual conduct case where
14 there are -- there's piecemeal disclosure and a
15 determination as to how many of those resulted in
16 convictions and how many of those resulted -- did
17 not result in convictions?

18 A I am confident there are conviction rates related
19 to disclosures, and I don't know if it's that
20 specific of a piecemeal disclosure. And
21 disclosures usually are considered over time, so I
22 don't know if you're talking about the piecemeal
23 disclosure related specifically to the forensic
24 interview or looking at the disclosure over the
25 course of time. Who the child may have disclosed

1 to prior to being referred for the forensic
2 interview or what the child may further disclose
3 afterwards. So piecemeal disclosure is generally
4 something that's a little more restrictive in the
5 time frame.

6 Q And, again, I'm just using that as an example of --
7 of one of the things you may be requested to
8 testify about.

9 A Okay.

10 Q So if -- so are you aware of any -- so in your
11 field, is it a generally accepted practice to
12 create statistical analyses of various cases?

13 A There is, as far as data from children. There may
14 be research around conviction cases. There may be
15 research of -- well, not maybe -- there is research
16 around conviction rates related to the age of the
17 child, to the nature of the sexual abuse that was
18 alleged, or the conviction was about. There may be
19 research about all kinds of different dynamics.

20 Q Okay. Then have you taken part in any of that kind
21 of research?

22 A I've done my own.

23 Q Okay.

24 MR. SHEALY: And bear with me, Your Honor.

25 Judge, I've got nothing else for this

1 witness.

2 THE COURT: Okay. And, Ms. Hallford,
3 specifically, what area are you seeking to
4 have Dr. McMillan classified as an expert in?

5 MS. HALLFORD: Child abuse dynamics.

6 THE COURT: Okay. All right.

7 Mr. Shealy, anything else from you?

8 MR. SHEALY: No, Your Honor.

9 THE COURT: All right. I am, then, going to
10 qualify her as an expert, okay?

11 MR. SHEALY: Yes, ma'am.

12 THE COURT: Child abuse dynamics, and in -- in
13 the field of child abuse dynamics and will
14 allow her to testify. I will also be giving
15 the jury the normal charge before the expert
16 testifies regarding expert testimony. And I
17 will, again, give them that charge prior to
18 they -- them beginning their deliberations,
19 all right?

20 Anything else of Dr. McMillan at this
21 time?

22 MS. HALLFORD: No, ma'am. Nothing from the
23 State.

24 THE COURT: Okay. And so, Dr. McMillan, we
25 did take you out of order, so we would not

1 have to send this portion of your testimony
2 out of order so that we would not have to
3 recess again in camera. And so, ma'am, if you
4 would be so kind as to exit the courtroom.
5 You will be called back in shortly. Thank
6 you.

7 THE WITNESS: Thank you.

8 THE COURT: Okay. As promised, we'll take
9 five minutes, and then the jury will be coming
10 back in for the testimony of Ms. Bell.

11 (Off the record from 3:31 p.m. to
12 3:39 p.m.)

13 THE COURT: Okay. Are we ready to go?

14 MS. HALLFORD: State's ready.

15 MR. SHEALY: The Defense is ready.

16 THE COURT: Where is Ms. Bell?

17 MS. HALLFORD: Oh, she's out.

18 THE COURT: (To Ms. Bell) Okay. Ma'am, just
19 make yourself comfortable, all right? You're
20 still under oath.

21 (WHEREUPON, the witness, Ms. Bell,
22 re-enters the courtroom.)

23 Bring in the jury.

24 THE BAILIFF: All rise, please.

25 (WHEREUPON, the jury came into open

1 court at 3:42 p.m.)

2 THE BAILIFF: Be seated, please.

3 THE COURT: Okay. We are continuing with the
4 direct testimony of Ms. Bell. She is still
5 under oath.

6 Ms. Hallford?.

7 MS. HALLFORD: Thank you, Your Honor.

8 DIRECT EXAMINATION CONTINUES

9 BY MS. HALLFORD:

10 Q My last question to you was, can't give the
11 specifics or who she said did it, but did she tell
12 you when the sexual assaults would happen?

13 A It would happen when people were at work or school.

14 Q And did she say where it would happen?

15 A It would happen in her parent's bedroom, or in the
16 bathroom.

17 Q So this is a conversation that you had with Child 1
18 that took place about three years -- well, over
19 three years ago -- thank you, COVID. Do you
20 remember every single thing that Child 1 told you that
21 night?

22 A No.

23 Q Do you remember how Child 1 was acting when she was
24 talking to you about this?

25 A She was very upset. Her voice was shaking, and she

1 was crying.

2 MS. HALLFORD: I have no further questions.

3 THE COURT: Cross-examination?

4 MR. SHEALY: Just briefly.

5 CROSS-EXAMINATION

6 BY MR. SHEALY:

7 Q You testified that this was March 18th that this
8 happened?

9 A Around then.

10 Q Around then? Okay. Because March 18th is your
11 birthday?

12 A March 19th is my birthday.

13 Q March 19th is your birthday?

14 A Yes.

15 Q Okay. But y'all went out to celebrate your
16 birthday?

17 A So it was on my birthday.

18 Q So it would have been March 19th, as opposed to the
19 18th?

20 A (No response.)

21 Q Okay.

22 MR. SHEALY: No further questions. Thank you,
23 Your Honor.

24 THE COURT: Any redirect?

25 MS. HALLFORD: Nothing further.

1 THE COURT: Ma'am, you may step down. Thank
2 you.

3 Any reason that I cannot excuse this
4 witness?

5 MS. HALLFORD: Nothing from the State, Your
6 Honor.

7 THE COURT: Ma'am, you may be excused, or you
8 may remain in the courtroom if that is your
9 wish.

10 Ms. Hallford, you don't intend to call
11 her again, do you?

12 MS. HALLFORD: No, ma'am.

13 THE COURT: Okay. Thank you.

14 The next witness, please.

15 MS. HALLFORD: Doctor -- Dr. Lynn McMillan.

16 THE COURT: Yes, ma'am. If you will please
17 come forward. I need to place -- have you
18 placed under oath by our deputy clerk.

19 (WHEREUPON, the witness was sworn.)

20 THE COURT: Thank you, ma'am. Please make
21 yourself comfortable, and if you will, state
22 your full name for the record; and you may
23 remove the mask while testifying. Thank you.

24 THE WITNESS: My name is Lynn McMillan. L-y-
25 n-n M-c-M-i-l-l-a-n.

1 DIRECT EXAMINATION

2 BY MS. HALLFORD:

3 Q Where are you currently employed?

4 A I'm currently employed full-time at the University
5 of South Carolina Upstate, here in Spartanburg.

6 Q How long have you been with USC Upstate?

7 A I started with USC Upstate in 2012 as an adjunct
8 faculty, and I've been there since.9 Q And, basically, what are your duties? What does
10 your position there entail?11 A Okay. Well, I teach in the child advocacy studies
12 program where -- interdisciplinary minor, housed in
13 the psychology department at USC Upstate. I'm also
14 the director for the Center for Child Advocacy
15 Studies at Upstate. And I'm also the interim
16 executive director for our Child Protection
17 Training Center at USC Upstate.18 Q Can you tell the jury your educational background,
19 please?20 A Uh-huh. Yes. I hold three degrees. They're all
21 in social worker -- all in social work. I have an
22 undergraduate degree in social work from East
23 Carolina University in Greenville, North Carolina,
24 and I hold a masters and a doctorate, a PhD, in
25 social work from the University of South Carolina

1 College of Social Work in Columbia.

2 MS. HALLFORD: I'm sorry. Your Honor, may we
3 approach briefly?

4 (WHEREUPON, a bench conference was
5 held.)

6 THE COURT: Okay. Yes, ma'am. Thank you.

7 THE WITNESS: Thank you.

8 MS. HALLFORD: Thank you.

9 Q We just finished your educational background. Can
10 you tell us -- tell the jury if you have any
11 specialized training beyond the degrees that you
12 have already mentioned?

13 A I do have specialized training beyond the degrees.
14 I am an ACE master trainer through the South
15 Carolina Children's Trust. And ACE means -- A-C-E
16 -- adverse childhood experiences, and I do
17 trainings in that. I've also had advanced -- other
18 advanced trainings. And for my licensures, we also
19 have continuing education requirements every two
20 years when our licenses are renewed, and I -- I
21 honor all of that.

22 Q And how many hours is it for your license --
23 licensure renewal -- sorry.

24 A The licensure renewals for both states, South
25 Carolina and North Carolina, are 40 hours every two

1 years.

2 Q Okay. Are you the member of any professional
3 organizations related to child abuse/child sexual
4 assault?

5 A I'm a member of the National Association of Social
6 Workers.

7 Q Do you have -- you're -- you're a professor at USC
8 Upstate. Tell us a little bit about your teaching
9 experience and what you have taught.

10 A Okay. At USC Upstate, I teach various programs --
11 I mean -- excuse me -- various courses in the child
12 advocacy study curriculum. Both at an
13 undergraduate and at graduate level. One of my
14 courses, for the summers perhaps, are System
15 Responses to Child Maltreatment. And I also am
16 teaching this summer, Prevention and Intervention
17 Strategies for Child Maltreatment. Those are some
18 regular courses I've taught repeatedly.

19 I've also taught the Introduction to Child
20 Maltreatment course and similar sounding names at
21 the graduate level. I've also taught for the
22 University of South Carolina College of Social Work
23 in their masters program, and I've taught various
24 courses within that.

25 Q Do you have any publications in the field of child

1 sexual assault/child abuse?

2 A I have a couple of publications. They're not
3 specific to child sexual assault, that main field.

4 Q All right. And are the methods that you rely upon
5 uniformly accepted and recognized in your field?

6 A Yes. Both for teaching and practice.

7 Q And are those methods subject to peer review?

8 A Yes. And peer review -- what peer review means is
9 -- for educational purposes and research
10 purposes -- when somebody does research and they
11 submit an article to a professional journal
12 requesting publication, it's reviewed by their
13 peers, meaning other people who also have some
14 expertise in what that particular area is about
15 their publication.

16 Another way that we use the term "peer review"
17 would be in the work practice. For instance, the
18 Children's Advocacy Centers, where children are
19 interviewed, they have standards. Part of their
20 accreditation and that's also called "peer review,"
21 as well, around the practice work.

22 Q And can you find those methods and principles in
23 articles, journals, and textbooks that are related
24 to your field?

25 A Oh, sure. Yes.

1 Q Have you previously testified as an expert in the
2 area of child abuse dynamics?

3 A Yes. I have.

4 Q And how many times would you estimate that you have
5 testified as an expert in that field?

6 A I would estimate 40 or 50 or so times.

7 MS. HALLFORD: Your Honor, at this time, the
8 State offers Dr. Lynn McMillan as an expert in
9 the field of child abuse dynamics.

10 THE COURT: Thank you.

11 Mr. Shealy, is there any objection?

12 MR. SHEALY: None, Your Honor.

13 THE COURT: All right. Thank you. And so I
14 find that Dr. McMillan is qualified -- Dr.
15 Lynn McMillan is qualified to testify as an
16 expert in the area of child abuse dynamics.

17 Now, before you continue, Ms. Hallford, I
18 do need to give some information to our jury.

19 (To The Jury) Normally, a person cannot
20 give opinion testimony. Normally, when a
21 person testifies, they must testify as to what
22 they either saw themselves, they heard, or
23 sensed by smell or something like that.
24 However, there is an exception when someone is
25 qualified because of education or experience

1 as an expert.

2 They are permitted to give their opinion
3 in certain areas if the court qualifies them
4 that way. I have already stated that Dr. Lynn
5 McMillan will be qualified in the area of
6 child abuse dynamics to give opinion testimony
7 in that area. That does not mean that you
8 must accept the opinion, but it is evidence
9 for you to use in any way that you see fit.

10 You'll hear this again from me in your
11 charge on the law, okay? And so with that, I
12 will now call upon Ms. Hallford to continue
13 with her direct examination of this witness.
14 Thank you.

15 MS. HALLFORD: Thank you, Your Honor.

16 Q Dr. McMillan, do you have any personal involvement
17 with the victim in this case?

18 A No. I do not.

19 Q Do you even know who the victim is?

20 A I do not.

21 Q Have you had any involvement in the investigation
22 of this case?

23 A No. I have not.

24 Q Have you reviewed any of the documentation of the
25 investigation in this case?

- 1 A No. I have not.
- 2 Q Your position as a child abuse dynamics expert,
3 you're sometimes referred to as a "blind expert."
4 Is that because you are supposed to have no
5 knowledge about the particular case when you're
6 called -- when you are called to testify?
- 7 A Yes. That is correct. The blind is -- I'm blind.
8 I know nothing about the case.
- 9 Q What is the term -- what is meant by the term
10 "delayed disclosure?"
- 11 A Okay. Delayed disclosure is a -- a term that we
12 hear in this field. Delayed means simply a child
13 didn't tell right away. Disclosure means to tell
14 about something that may have happened. So a
15 delayed disclosure simply means the child did not
16 tell right away when they experienced something
17 that may have been needed to be reported.
- 18 Q And in your training and experience, when you use
19 the term "delayed," what type of time span could we
20 be talking about?
- 21 A We could be talking about a month or years. And
22 actually, the research shows us that most children,
23 if we're talking specifically to child sexual
24 abuse, never tell as children. So the delay may be
25 they never tell.

1 Q What are some of the reasons why a child might not
2 disclose when they've been sexually abused?

3 A Well, it depends on a particular child. So you
4 never want to just assume a reason that a child may
5 not have disclosed right away, but as part of
6 understanding that child and understanding the
7 family dynamics, as well.

8 Some reasons that a child may not disclose
9 right away is, one, they may care about the person
10 who is actually the person who abused them and not
11 wanting them to get into trouble. They may feel
12 their own shame and guilt about what happened.
13 They may feel that they will be not believed. They
14 may feel that they may harm someone else, or
15 someone else may be getting in trouble, as well, or
16 they may hurt somebody else if they tell about what
17 happened to them.

18 Sometimes, it's more overt, meaning, the
19 person who has abused them has actually threatened
20 them in some manner if they do tell; and there's
21 some threat associated with that.

22 Q When the child does disclose something as egregious
23 as child sexual abuse, does the child's demeanor
24 when talking always match the seriousness of the
25 information that the child is sharing?

1 A No. And I -- I think that that would be common in
2 other situations, as well, that it doesn't
3 necessarily match. I think that we often -- "we"
4 meaning global "we" -- may think that children
5 should be very upset about something that happened
6 to them, and that may not be what comes across when
7 they're telling somebody about it.

8 But it also may be determined on who they're
9 telling about it. They may be telling a friend or
10 a neighbor or a family member about what happened.
11 They may tell a teacher, or they may be actually
12 telling when they're officially interviewed about
13 the situation. So I -- I would have to take into
14 consideration the situation in which the child is
15 being asked about what happened.

16 The other thing I would take into
17 consideration is how long ago it happened. If it
18 was very recent or it had been a long time and what
19 the relationship still was with the person.

20 Q Would you expect someone's memory to be close -- to
21 be better closer to the time of the event or
22 further away from the event.

23 A I think memories are pretty strong. Obviously, if
24 something just happened, I -- we might have a
25 better recall or a more spontaneous recall about

1 what happened. And sometimes if it's been some
2 time since something has happened, the memory is
3 there, and they may just require some cueing to
4 bring up the memory about what had happened.

5 We store the memories in our bodies about what
6 happened to us, and then how do we take that, then,
7 to verbally be able to talk about what happened.

8 Q Explain what is meant by the process of disclosure.

9 A Again, we're talking disclosure, meaning, to tell
10 about something. And that means that it's not
11 necessarily a one-and-done about what happened.
12 That it takes time and safety and -- and sometimes
13 over time to be able to fully tell about what
14 happened. Part of that may be -- maybe not
15 remembering some detail initially, and then
16 something cues them to it later on.

17 So the process means that over time, more and
18 more detail may emerge about whatever the child is
19 talking about that happened with them. And that
20 may come in the form of just personally they may be
21 remembering some things. It may be that if they
22 are involved in therapy, after they've been
23 interviewed or after the investigation, some of the
24 therapeutic process may elicit some memory for
25 them, as well, and they may then begin to tell more

1 about -- about the situation.

2 Q In your experience, is it common or uncommon for a
3 child to be abused by a family member or a person
4 in a position of authority or trust in a child's
5 life?

6 MR. SHEALY: Objection, Your Honor. I
7 don't -- that doesn't sound like it'd be --

8 THE COURT: Don't. Nope. Come up and tell me
9 about it. No speaking.

10 (WHEREUPON, a bench conference was
11 held.)

12 THE COURT: Okay. It's my understanding that
13 the question is being withdrawn by the State,
14 and so no ruling will be needed on that
15 objection. Thank you.

16 Q Dr. McMillan, how may a child's disclosure be
17 affected if the perpetrator is a family member or
18 lives in the home?

19 A The -- well, again, just like I said earlier what
20 might interfere with a child being able to tell
21 about what happened to them. It may be based on
22 the relationship that they had with the person.
23 And so it may not be safe for a child to tell. If
24 the person who they say is abusing them is living
25 in the home or frequents the home or has access to

1 the child in some kind of manner, it may be harder
2 for them to tell about it. And, again, thinking
3 about what the relationship is to that person, not
4 only to the child, what is the relationship of that
5 person to the people who live in the home with the
6 child?

7 Q Children who have been abused, do they all cope
8 with that trauma in the same way?

9 A No. They do not cope the same way.

10 Q Is there a standard behavior pattern for children
11 who have been molested?

12 A I could probably list 20 ways to think about how a
13 child might respond to child sexual abuse, and it
14 really depends on the child, their own
15 personalities, their own histories, their own
16 support system, who's there for them. Again,
17 safety. Are they still having access to this
18 person? Who believes them? Who doesn't believe
19 them? So there are a lot of variables about how a
20 child may cope and -- and were there any other
21 abuse dynamics going on, you know, beyond that, as
22 well.

23 Q What is a non-offending caregiver?

24 A Non-offending caregiver is a term that people use
25 to say it might be the parent or a grandparent.

1 Whoever is charge of that child who is not the
2 person who has allegedly abused the child.

3 Q And what are some reasons why a non-offending
4 caregiver may not support a child in his or her
5 disclosure?

6 A One of the, to me, fairly obvious reasons why
7 someone might not believe -- the non-offending
8 caregiver may not believe initially is because it's
9 just too awful to believe; and they just may not
10 make sense of it when they first hear it. So it
11 just may not be something they can latch onto to
12 believe.

13 The other is that, again, if we're looking at
14 dynamics, we're looking at family dynamics. What
15 is the relationship of that person to the family,
16 you know, that might interfere with that parent --
17 or -- excuse me -- that non-offending caregiver?
18 Whoever that is might not be able to believe
19 because they have their own relationship with the
20 person that the child is saying abused them.

21 Another thing to consider is that, that
22 non-offending caregiver may have their own abuse
23 history as a child, and that may also interview --
24 excuse me -- interfere with their ability to make
25 sense of it, as well.

1 Q Can you tell the jury why a child might become
2 passive or compliant with abuse and just allow it
3 to go on and on?

4 A Some -- yes. We call that a "compliant child" or
5 "compliant victim." Is that -- that means they --
6 they kind of went along with it. They didn't do
7 anything maybe to try and tell anybody about it or
8 do anything to stop it.

9 And another reason is that the children often
10 care about the person, and so that -- again, as I
11 said earlier, they may not want to get that person
12 in trouble or they may be protecting somebody else
13 in the family, like the non-offending caregiver or
14 siblings from abuse.

15 So they may care about that person in lots of
16 other kinds of ways because the abuse may not
17 happen all the time. And there are things about
18 that -- the alleged offender that they may love and
19 like, and so they may go along with it.

20 And, again, if that dynamic is there, as well,
21 where they actually do care about the person, they
22 may not want to get them into trouble, and they may
23 feel like they can handle it by themselves.

24 Q So based on your professional experience and the
25 available literature in the field, is acceptance

1 and kind of going along with it a common reaction
2 in a child who is being sexually abused?

3 A It can be, yes.

4 MS. HALLFORD: I have no further questions.

5 THE COURT: Cross-examination?

6 MR. SHEALY: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. SHEALY:

9 Q Dr. McMillan, you've -- you've testified that
10 children don't always cope the same way; is that
11 correct?

12 A Correct.

13 Q Okay. And today you're testifying as a -- as a
14 child abuse dynamics expert; is that correct?
15 Right?

16 A That's what I've been qualified for, yes, sir.

17 Q Okay. And you've also testified a number of times
18 about the process of disclosure and that disclosure
19 may be affected by relationships and those kinds of
20 things; is that correct?

21 A Correct.

22 Q But you can't give an opinion as to whether a
23 particular behavior is part of that child's coping
24 mechanism with respect to a child sex abuse act or
25 some other issue?

1 A That is correct. A particular -- may I elaborate?

2 Q Yep.

3 A A particular behavior may be suspicious or
4 indicative, but it may not. And so part of the
5 process is understanding what that child is trying
6 to explain to us and then put that together with a
7 fuller picture.

8 Q Okay. All right. You've also testified that --
9 and I think this will be my last question -- or my
10 last set of questions -- that "memories are pretty
11 strong." What do you mean by that?

12 A We hold the memories of what happened to us, even
13 when we cannot articulate it. And -- and
14 there's -- there's literature, and that's part of
15 the adverse childhood experiences is that we hold
16 those experiences in our bodies, meaning stress
17 hormones and things that happen inside our bodies
18 when a child -- say if a child just experienced
19 something of abuse or neglect in childhood, some
20 kind of adversity in childhood, and so they become
21 very hypervigilant and -- and always checking out
22 if they're safe or not safe. That keeps all the
23 hormones going in our body, and that holds that
24 memory in our body.

25 So people may say, you know, a one-year-old or

1 a two-year-old may not remember something -- not
2 specifically abuse, but other things. But on a
3 negative experience like that, it is somewhere held
4 in that's child's body, and they may -- something
5 may cue the memory later on.

6 You talked -- or we talked about disclosure.
7 We sometimes call that "spontaneous disclosure,"
8 where a disclosure may seem to come out of nowhere,
9 but, actually, something did cue that child's
10 memory to come out of them verbally because it's
11 been held in.

12 Q Okay. So, basically -- and I believe to some
13 extent, this was with context of Ms. Hallford's
14 question to you that elicited that answer. It's
15 not necessarily true in this kind of -- in a child
16 -- within the rubric of child sexual abuse dynamics
17 that someone would know or would have a better
18 memory at -- closer to the time than longer from
19 the time?

20 A I think they probably would've, but because it's
21 just recent in your memory, and you're not having
22 to cue it up in the same kind of way as if there's
23 distance in the -- in the beginning.

24 Q Okay. But memories still live on in your body?

25 A They do.

1 MR. SHEALY: Your Honor, that's all I have for
2 this witness.

3 THE COURT: Redirect?

4 MS. HALLFORD: Nothing, Your Honor. May this
5 witness be excused?

6 THE COURT: Any objection?

7 MR. SHEALY: I have no objection, Your Honor.

8 THE COURT: Thank you, ma'am. You may be
9 excused. Watch your step.

10 THE WITNESS: Yes, ma'am.

11 MS. HALLFORD: May we approach?

12 THE COURT: Yes.

13 (WHEREUPON, a bench conference was
14 held.)

15 THE COURT: Next witness, please.

16 MS. HALLFORD: State calls Dr. Nancy
17 Henderson.

18 (To The Court Reporter) While she's
19 coming up, I'll have this marked as Court's
20 Exhibit 3.

21 (WHEREUPON, Court's Exhibit No. 3
22 was admitted into evidence.)

23 WHEREUPON,

24 NANCY HENDERSON, MD,

25 After having been duly sworn, testified as follows:

1 THE COURT: Thank you, ma'am. Please make
2 yourself comfortable and, ma'am, if you are
3 more comfortable taking off the mask while you
4 testify, you may do so.

5 THE WITNESS: Thank you.

6 DIRECT EXAMINATION

7 BY MS. HALLFORD:

8 Q Did you state your name for the record? Okay.

9 Could you state your name for the record?

10 A Dr. Nancy Henderson.

11 Q Dr. Henderson, where are you employed?

12 A Prisma Health Upstate Children's Hospital in
13 Greenville.

14 Q And what is your occupation, ma'am?

15 A I'm a child abuse pediatrician.

16 Q I assume that means you're licensed to practice
17 medicine here in South Carolina.

18 A Yes. I am.

19 Q Where did you get your undergraduate degree?

20 A At Rutgers College of Pharmacy in New Brunswick,
21 New Jersey.

22 Q Where did you go to medical school?

23 A I went to medical school at Bowman Gray School of
24 Medicine, which is a part of Wake Forest University
25 in Winston-Salem, North Carolina.

- 1 Q Do you want to tell us when you graduated?
- 2 A I graduated in 1984.
- 3 Q Where did you do your residency?
- 4 A I did my residency at T.C. Thompson Children's
5 Hospital in Chattanooga, Tennessee.
- 6 Q And can you just explain to the -- to the jury what
7 your residency entailed?
- 8 A Sure. My residency was a general pediatric
9 residency. It's three years, and it really
10 involves going through all areas of pediatrics in
11 the hospital and as an outpatient and also rotating
12 through with subspecialist in the area, taking call
13 at the emergency room for the whole -- sort of all
14 the areas that -- that children may enter and
15 babies may enter into the medical system.
- 16 Q And do you currently specialize in the field of
17 child abuse pediatrics?
- 18 A I do.
- 19 Q Would that cover child sexual abuse and physical
20 abuse, or is it just one or the other?
- 21 A It is both.
- 22 Q Are you board-certified?
- 23 A Yes. I am.
- 24 Q In what field?
- 25 A In -- in pediatrics, as well as child abuse

1 pediatrics.

2 Q Can you tell the jury what particular training you
3 have had in the field of child abuse pediatrics?

4 A So child abuse pediatrics is really a relatively
5 newer area in the Academy of Pediatrics. It just
6 came about in 2009. So you had to -- to be able to
7 sit for the boards. You had to have 50 percent of
8 your practice at that point in time be related to
9 child abuse and neglect, all the areas, and then
10 took a written exam, and then that has to be
11 recertified with not only CMEs but a new
12 examination every ten years.

13 Q You may have already said this, but how many years
14 have you practiced specifically in the area of
15 child abuse pediatrics?

16 A Well, in -- as a board-certified pediatrician in
17 child abuse, it's been since 2009 because that's
18 when the specialty actually existed. But before
19 that and including in the residency, child abuse is
20 a part of what is seen by pediatricians, as well,
21 so training really began during my residency and
22 since then.

23 Q Do you have special training in conducting child
24 sexual assault examinations?

25 A The work that I do is primarily not the assault

1 exams that occur in the emergency room as for the
2 acute forensic collection kits that happen. I work
3 either in the hospital or at -- through the
4 Children's Advocacy Centers in doing what we call
5 more of the chronic evaluation of children that may
6 have been abused for sexual abuse.

7 Q So just explain to the jury a -- the difference
8 between acute and chronic.

9 A Sure. So -- so we -- in the medical field, we have
10 looked at sort of setting up this time frame about
11 when children disclose and then get evaluated. And
12 it has evolved over the year, but it's sometimes
13 within the first three days, sometimes within the
14 first five days for -- for patients, in general, to
15 be evaluated for an acute exam that would go
16 through the emergency room.

17 For children, that is often being condensed to
18 the first 24 hours or first 36 hours, and it's all
19 around sort of the likelihood of finding sort of
20 DNA evidence on exam. And so they're -- for those
21 type of evaluations -- besides the general
22 examination of looking from head to toe and the
23 genital area, it also is about collecting swabs
24 from the particular orifices to look for not just
25 infections, but also DNA.

1 For children, on the other hand, there often
2 is a much longer time period from when the event
3 occurred, from when they are seen by a medical
4 examiner, and so the likelihood of finding actual
5 DNA evidence really drops off pretty dramatically
6 in kids after about the 36 hours because they bathe
7 very frequently; they're changing their clothes.
8 So we don't often find that.

9 So the "chronic exam," as we call it, is the
10 head-to-toe examination, looking at the genital
11 area, collecting evidence, as far as looking for
12 STIs if the situation warrants, but not the -- the
13 DNA collection. And -- and that really is sort of
14 the -- the biggest difference between those two
15 type of exams.

16 Q Why would it be important to have specialized
17 training in the area of conducting chronic
18 examinations?

19 A Well, like any area of medicine, the more you do
20 it, the better expertise you have of knowing what's
21 normal and what's abnormal. And in my field, you
22 know, we are as careful of saying that this is a
23 normal exam or this is an abnormal exam and
24 documenting that. Whether that's child sexual
25 abuse or physical abuse or any area of abuse and

1 neglect, because it -- it carries such a heavy
2 load, good or bad. But, I mean, our -- our job is
3 always to make sure that -- that our patients are
4 safe and -- and that they're healthy or to provide
5 the -- the medical care that they need.

6 So having as much expertise as you possibly
7 can to -- to try to make the best decision is
8 extremely important. And so the more that you are
9 involved in this area, the more that you have that
10 kind of experience, I think, the better you are
11 able to make the best diagnosis.

12 Q How many years' experience do you have conducting
13 specifically the chronic examinations on children?

14 A Well, like I mentioned, I have been doing that, you
15 know, as part of my residency, but came to
16 Greenville, and joined their -- which was then
17 Greenville -- Greenville Medical Center -- and
18 joined that program back in 1992.

19 And so I have been doing those type of exams
20 pretty much since then and held at the Children's
21 Advocacy Center as part of my job at Greenville
22 when it opened in 1994. So I've been involved in
23 that since then.

24 Q Can you even estimate the number of cases where you
25 have conducted a chronic examination?

- 1 A I -- I don't have an exact number, but within our
2 division, we see about four to 500 children a year,
3 and that's just not sexual abuse, although a good
4 percentage of them are. That also includes
5 children coming into the hospital for physical
6 abuse, as well. I think through the Children's
7 Advocacy Center in Spartanburg, we see between 100
8 to 175 children coming through for evaluations.
9 And, again, most of those are related to child
10 sexual abuse.
- 11 Q Dr. Henderson, have you previously testified --
12 excuse me -- as an expert in the area of child
13 abuse pediatrics?
- 14 A Yes. I have.
- 15 Q Do you have an idea of how many times you have
16 qualified as an expert?
- 17 A Well, it's been a long time since I've been in
18 court, secondary to the pandemic, but, usually, I
19 had been going to court about maybe once a month.
20 Some -- some of those times it's related to family
21 court, as well.
- 22 Q Would you say it was in excess of 50 times?
- 23 A Yes.
- 24 Q And so you have qualified as an expert in the area
25 of child abuse pediatrics as least in excess of 50

1 times?

2 A Yeah. It's either child abuse pediatrics or
3 general pediatrics, and sort of that has varied
4 depending on the court.

5 Q Okay. Thank you.

6 MS. HALLFORD: Your Honor, at this time, the
7 State moves to have Dr. Henderson qualified as
8 an expert in child abuse pediatrics.

9 THE COURT: Any objection?

10 MR. SHEALY: No, Your Honor.

11 THE COURT: Okay. All right.

12 (To The Jury) And so as you all have
13 heard previously, normally -- well, first let
14 me say that I will find that Dr. Nancy A.
15 Henderson may testify as an expert in child
16 abuse pediatrics.

17 And now I will explain to the members of
18 our jury panel that a person cannot normally
19 give opinion testimony; however, with -- and,
20 normally, when a person testifies, they
21 testify as to what they either saw, heard, or
22 sensed by smell or something of that nature.
23 However, there is an exception, and that
24 exception is when someone is qualified because
25 of their education or experience as an expert.

1 They are permitted to give their opinion in
2 certain areas if the court qualifies them that
3 way.

4 This witness will be qualified in the
5 area of child abuse pediatrics, and she will
6 be allowed to give opinion testimony in that
7 area. Again, this does not mean that you must
8 accept the opinion, but it is evidence for you
9 to use in any way that you see fit, all right?
10 Thank you.

11 Ms. Hallford?

12 MS. HALLFORD: Thank you, Your Honor.

13 Q Did you examine Child 1 on August 24th of
14 2018?

15 A Yes. I did.

16 Q Can you briefly just explain to the jury the
17 procedure that you follow when a child is brought
18 to you for an examination?

19 A Sure. So she was referred from Department of
20 Social Services and law -- Spartanburg County Law
21 Enforcement for a medical evaluation, because of
22 concerns for possible sexual abuse. And I have
23 a -- I see patients over at a subspecialty clinic
24 over at North Grove, off of Highway 9, is where the
25 children are evaluated by me for that.

1 So, typically, what we do is the child will
2 come with either a legal guardian or someone who is
3 able to transport them to the center. We spend
4 some time. We have a Child Life Specialist who
5 will go over the evaluation with the child and
6 caretaker as needed to just explain to them what's
7 going to happen, show them the equipment, just so
8 that they are better prepared for what's going to
9 happen. It takes about an hour or so for the
10 evaluation.

11 We learn body part names, and then once that
12 happens from Child Life, I often will come into the
13 exam room and just talk to the caretaker and the
14 child together just to get some general health
15 information. And then we have a number of things
16 that happen during that evaluation. We often will
17 talk to the child by themselves. We'll do the
18 physical exam. And depending on what the
19 allegations are and what the disclosures are, we'll
20 decide what testing -- STI testing -- needs to be
21 done.

22 And, typically, for me because I do have
23 information that has come from the advocacy center
24 prior to the medical exam and law enforcement
25 report, I often let the child sort of decide sort

1 of the order of how they would like to do things;
2 what they're most comfortable with. Sometimes they
3 want to get the bloodwork over first. Sometimes
4 they want to do the exam, and then they want to
5 talk. But whatever it is, you know, it just makes
6 it easy, so they have a little bit of control of
7 what's happening during that time and feel most
8 comfortable.

9 Q So before we get into the specifics of Child's exam,
10 can you explain to the jury the vaginal area of a
11 child from a medical perspective?

12 A Sure. So for a child this age or . . .

13 Q Well, she was 14, so --

14 A Right. Okay.

15 Q Right.

16 A So -- so in a child that is 14, she had already
17 gone through puberty, so we definitely look at that
18 as I'm doing the medical exam. Just -- we call it
19 "sexual maturity rating," just to -- to see where
20 they are. There's a lot of questions and -- that
21 we ask ahead of time, trying to understand, you
22 know, if they've had their period or not. Just
23 gives us an idea sort of where they are in that
24 sexual development.

25 And so for -- for most female teenagers at age

1 14 have already gone through menses, we would
2 anticipate to see -- the outer part of the genital
3 area is what we call the "labia." You know, if it
4 has pubic hair on top of that. The labia act as
5 sort of a covering over the vaginal area. On
6 the -- once you sort of separate that area, you
7 really can get a very -- a very good look into the
8 genital area and sort of superia (phonetic.) Once
9 you look inside, you see the urethra, which is
10 where, you know, we pee from, and then you see --
11 inferior to that, you see the vaginal opening,
12 which is often covered by a hymen, a thin piece of
13 tissue that is partially over that area. And then
14 surrounding the urethra and the vaginal area is
15 what's called the "vulvar" area. Sort of just all
16 the skin, tissue, around that. We look at all of
17 that, and then inferior to that is the rectal area,
18 which we look at, as well.

19 Q So when you're saying "inferior," does that mean
20 beneath?

21 A Below.

22 Q Okay. Below.

23 A Beneath, below. And that's -- and that is with the
24 child laying on the back, so -- in -- in that
25 position. That's sort of how those are described.

1 Q So a common perception is that there's a hymen, and
2 that when there is a penetration of the vaginal
3 area, that the hymen is broken, and you can tell
4 it's no longer intact; is that accurate?

5 A That is not accurate.

6 Q Can you explain to the jury how that is not an
7 accurate perception, because a lot of us have that.

8 A Okay. So as I just mentioned, the hymen is just a
9 -- a tissue that partially covers over the vaginal
10 area. There's -- like so many things, there's lots
11 of different varieties of normal, some what you can
12 "annular" which go all the way around. Some are
13 sort of crescent, sort of like a crescent moon, and
14 just go sort of inferiorly. There are -- there are
15 some type of hymens that, you know, almost cover
16 over -- completely over the vaginal area with a
17 small opening.

18 So all of those things can be normal. And
19 when -- one of the first stages that the child --
20 when they start going through puberty is that
21 estrogen that gets secreted; and that estrogen
22 actually causes the hymen to go through a
23 transition from being very sort of thin and sort of
24 translucent, almost like Saran Wrap, to really much
25 thicker, much more flexible, stretchable in the

1 adolescent period.

2 So while it can tear, perhaps in -- with
3 sexual intercourse, more often in childbirth, it
4 can -- it can cause it to tear. It doesn't
5 necessarily have to, so, you know, my experience as
6 a pediatrician, I've seen many teenagers that are
7 sexually active by -- by history and by -- by sort
8 of what they're coming in for, and that estrogen
9 allows for that hymenal tissue to stretch instead
10 of tear when there is penetration. So while it can
11 -- it can have some findings, it is often -- it
12 does not. It just stretches and does not cause any
13 bleeding or trauma or tears when there is a history
14 of penetration.

15 Q So if the -- if a child's vaginal area is
16 penetrated by a finger during a sexual assault,
17 would you necessarily expect to find any physical
18 evidence in the vaginal area?

19 A No. Not necessarily.

20 Q Same -- even if there have been multiple incidents
21 of penetration by a finger?

22 A That's correct.

23 Q Would the same thing apply if the vagina had been
24 penetrated by a penis multiple times?

25 A Right. You may see something, but often in my

1 practice and -- and in the medical literature, you
2 often do not. And -- and then -- the other thing
3 that we didn't talk about is sort of, you know,
4 healing in that --

5 Q That's my next question.

6 A -- in that area. You know, that -- the genital
7 area has an incredibly excellent blood supply, like
8 any sort of skin tissue. So if there had been
9 small tears, which is possible, they can heal very,
10 very quickly, within days, and that we wouldn't see
11 it at a later date on a -- a delayed exam. So
12 outside of that acute exam, you know, we -- we
13 really won't see it, and that's sort of the
14 majority of cases. Somewhere between 93 to 95
15 percent of those chronic exams are normal for some
16 of the reasons we just talked about.

17 Q So do you base your opinion solely on your own
18 experience, or is there medical literature that
19 supports the position that sexual abuse in a child
20 will not necessarily cause physical trauma?

21 A Oh, it is -- it is certainly based on the
22 literature and the science that has happened in
23 this field to become sort of a board specialty in
24 the area of pediatrics. And -- and sort of the
25 classic article actually came out really early in

1 my career in, like, 1994, and the title was "It's
2 Normal To Be Normal." And they looked at, you
3 know, children that -- that had disclosed about
4 penetrating injury and what their exams look like
5 and the likelihood of -- of having findings, which
6 are -- are very uncommon even with those histories
7 of digital or penile penetration.

8 Q When you examined Child 1 what was the
9 result?

10 A Her exam was normal.

11 Q In your medical opinion, and based on the accepted
12 medical literature and studies, can Child 1 normal
13 physical exam still be consistent with her history
14 of sexual assault?

15 A Yes.

16 MS. HALLFORD: No further questions.

17 THE COURT: Cross-examination?

18 MR. SHEALY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. SHEALY:

21 Q Dr. Henderson, you said a couple of times
22 "history." What do you mean by that, a patient's
23 history?

24 A The history is the information that they share.

25 Q So it's the information that's self-reported

1 generally by the -- by the person you are
2 examining?

3 A Correct.

4 Q And if you get -- do you get any other information?
5 Law enforcement report, stuff like that?

6 A I get the incident report, so it's often just the
7 first page of -- of their report, and I get a very
8 -- a summary of the forensic interview.

9 Q Okay. And so, basically, you do the -- this
10 examination happened August 24th; is that correct?

11 A Yes. Of 2018, yes.

12 Q Now, are you aware that the actual report to law
13 enforcement was in July?

14 A I did not look at the law enforcement report prior
15 to coming in, so I don't remember the date of that.

16 Q Okay. Is it a normal -- is it normal for y'all to
17 wait for a -- for it take a month for you to do a
18 chronic exam?

19 A Well, you know, I think in this particular
20 situation, in reviewing my notes, the incidents
21 happened up until March, so whether we saw her in
22 July or in August, you know, at that point, it
23 really didn't make that much of a difference. If
24 we saw her in March, you know, that might have been
25 a -- a different -- a different story.

1 Q Sure. So you expected a normal outcome here or a
2 normal exam?

3 A Yes.

4 Q I mean, ultimately --

5 A Well, I -- you know, you don't know exactly what to
6 expect. So I -- it's not I go in expecting
7 anything, but in that her exam was normal, like I
8 just said, is not unanticipated with these type of
9 evaluations.

10 Q Right. So, ultimately, your job really is just
11 you're either going to confirm that there is a
12 problem in the vagina or you're going to say that
13 it's normal and that neither rules in nor out
14 sexual trauma or sexual battery; is that correct?

15 A Well, the exam, you know, takes in the history, the
16 behavioral, the physical symptoms, the evaluation
17 head to toe and checking for sexually transmitted
18 infections, and then making sure the appropriate
19 referrals are made, and the child understands all
20 of that in context of what had happened.

21 Q But if a -- if a person seeing you or if a child is
22 seeing you, then there's likely been some kind of
23 allegation, so there --

24 A Yes.

25 Q -- so there would some kind of history of alleged

1 child sexual abuse.

2 A There'd be some -- some concern to bring her in,
3 correct.

4 Q And, ultimately, you're never going to say, "Yeah.
5 It didn't happen," because a normal exam -- you're
6 still going to say neither rules it in nor out; is
7 that correct?

8 A If a child has a normal exam, you cannot say just
9 by the exam itself that something did or did not
10 happen --

11 Q Okay.

12 A -- that's correct.

13 Q But you can say if something did happen, or how
14 does that work?

15 A So if a child does have a hymenal transection, you
16 can say that there has been -- there is evidence of
17 -- of trauma penetrating injury of a healed tear.
18 And so that's what that report would look like.

19 Q Okay. So, again, it would be -- well, I'll leave
20 that alone.

21 Just to go over where you are presently
22 working. So you're presently the medical director
23 at The Julie Valentine Center; is that correct?

24 A I'm presently a part of Prisma Health, and as that
25 -- as my employment with -- and tied in with the

1 hospital, we do -- in Greenville, instead of doing
2 it at North Grove, we do our exams at The Julie
3 Valentine Center.

4 Q Okay. And what is The Julie Valentine Center?

5 A It's a children's advocacy center.

6 Q Okay. You're also the medical director at
7 Pendleton Place? What is that?

8 A Pendleton Place is a assessment center for children
9 coming into foster care.

10 Q Okay. And then you're also the medical director at
11 Spartanburg Children's -- Child Advocacy Centers;
12 is that correct?

13 A Right. Correct.

14 Q You are also on the Bradshaw Institute Professional
15 Advisory Board. You support the division on child
16 abuse prevention --

17 A Correct.

18 Q -- is that correct?

19 A Yes, sir.

20 Q Okay.

21 MR. SHEALY: Your Honor, if you'll bear with
22 me just one second. Let me ask my client. I
23 think that's all I have.

24 Q And just to be clear. Your findings were there
25 were no -- there was no physical trauma at this

1 time -- at the time of your examination?

2 A My finding was she had a normal exam, yes, sir.

3 Q Yes.

4 MR. SHEALY: That's all I have for this
5 witness.

6 THE COURT: Any redirect?

7 MS. HALLFORD: Nothing, Your Honor. May this
8 witness be excused?

9 THE COURT: Any objection?

10 MR. SHEALY: I have no objection.

11 THE COURT: Okay. Ma'am, thank you for being
12 here. You may be excused.

13 Can you all approach?

14 MS. HALLFORD: Yes, ma'am.

15 (WHEREUPON, a bench conference was
16 held.)

17 THE COURT: The next witness, please.

18 MS. HALLFORD: Averee Duclos.

19 THE COURT: Ma'am, you need to be sworn.

20 (WHEREUPON, the witness was sworn.)

21 THE COURT: Ma'am, make yourself comfortable.
22 You will state your full name for the record.

23 THE WITNESS: Averee Duclos.

24 THE COURT: And will you spell your last name?

25 THE WITNESS: D-u-c-l-o-s.

1 THE COURT: Okay. Thank you.

2 DIRECT EXAMINATION

3 BY MS. HALLFORD:

4 Q Averee, how old are you?

5 A Seventeen.

6 Q Are you going to school anywhere?

7 A Yes, ma'am. I'm at Dorman High School.

8 Q What, 11th grade?

9 A Yes, ma'am.

10 Q Do you know what you want to do after high school?

11 A Probably something in the medical field.

12 Q Do you know Child 1 ?

13 A Yes, ma'am.

14 Q When did you first meet Child 1

15 A I met her in school through marching band, my
16 freshman year of high school; so around 2018.

17 Q Okay. I was trying to figure that out. Do you
18 remember the circumstances under which you met?

19 A Yes, ma'am. I was close friends with a friend of
20 hers named "Kimoni," and we went out to lunch one
21 day before a football game for marching band.

22 Q Who else was at that lunch besides you and Child 1

23 A Sara and Kimoni.

24 Q While you were at lunch with them, did you have
25 occasion to find out where Child 1 was living at the

1 time?

2 A Yes, ma'am.

3 Q What did you find out?

4 A That she was living in a group home.

5 Q Now, you can't say who she said did it or any of

6 the specifics, but during that conversation, when

7 you were learning about why she was living in a

8 group home, did Child 1 disclose to you that she had

9 been sexually abused?

10 A Yes -- yes, ma'am.

11 Q Did she tell you when the sexual assault happened?

12 A I never got an exact date, but I found out that it

13 was going on over a pretty long duration of time.

14 Q What was her emotional state when she was talking

15 to you about this?

16 A She became suddenly very quiet and upset and her

17 eyes got pretty watery.

18 Q After you met Child 1 that day, what did you end up

19 doing?

20 A I was definitely pretty distraught about it, very

21 upset from what I had heard, and I went home and

22 told my mom and dad about it. And we decided that

23 night that we were going to begin the process to

24 start foster care and see if we could get her into

25 our home.

1 Q And did she, in fact, end up coming to live with
2 you?

3 A Yes, ma'am.

4 Q And, again, you can't get into the specifics, but
5 while Child 1 was living with you and your family, did
6 you learn from her some more information about
7 those sexual assaults?

8 A Yes, ma'am.

9 Q And did she tell you where the sexual assaults
10 would happen?

11 A Yes.

12 Q And where did she say that was?

13 A In her mom and dad's bedroom.

14 Q Are you and Child 1 still friends?

15 A Yes, ma'am.

16 Q Do you get to see each other very often?

17 A Yeah. We get see each other still.

18 Q Okay.

19 MS. HALLFORD: I have no further questions.

20 THE COURT: Cross-examination?

21 MR. SHEALY: Just one, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. SHEALY:

24 Q Did Mr. Gilbert give permission for y'all to foster
25 him -- foster her -- Child 1

1 A I was never really involved in -- it was more my
2 parents that took over who was allowed -- the
3 logistics of it, so . . .

4 Q Okay. So you don't know that --

5 A No, sir. I was not involved in that part of it.

6 MR. SHEALY: That's all I have for this
7 witness.

8 THE COURT: Redirect?

9 MS. HALLFORD: Nothing, Your Honor. May this
10 witness be excused?

11 THE COURT: Yes.

12 Thank you, ma'am. Watch your step.

13 Any objection to this witness staying in
14 the courtroom if she chooses?

15 MS. HALLFORD: Nothing from the State, Your
16 Honor.

17 MR. SHEALY: No, Your Honor.

18 THE COURT: Thank you, ma'am.

19 THE WITNESS: Thank you.

20 MS. HALLFORD: (To The Court) My next -- do
21 you want us to approach?

22 (WHEREUPON, a bench conference was
23 held.)

24 THE COURT: Okay. Madam -- or excuse me --

25 Mr. Foreperson and members of the jury, we've

1 come to a point in the trial, it is 4:43 p.m.,
2 and as I understand it from counsel that the
3 next witness may be lengthy, and we don't know
4 that until the testimony begins. But I don't
5 want to keep you after five, and I promised
6 you that I wouldn't unless it was absolutely
7 necessary.

8 And, of course, in trying to coordinate
9 all of this with testimony and getting folks
10 in and out, it -- it rarely is absolutely
11 perfect that we end it right at five. I'm
12 going to let you all leave in just a minute,
13 okay? And I'm going to ask that you come back
14 in the morning at 9:30. And you will
15 report -- you'll come --

16 (To The Bailiff) They've been coming
17 through the main door at 180 Magnolia Street
18 at the flagpole --

19 THE BAILIFF: Yes, ma'am.

20 THE COURT: -- correct?

21 (To The Jury) You'll do that again, and
22 then you will look for folks wearing the red
23 jackets, and they will instruct you on where
24 you need to be tomorrow. I'm not certain if
25 that family courtroom is going to be used

1 tomorrow. You all may have to set up shop in
2 another office, okay?

3 But I, again -- and -- and it's so very
4 important, and I don't want you to think that
5 in any way I'm fussing at you because I'm not,
6 at all, but I just want to continue to remind
7 you that you cannot, one, discuss this case
8 with -- with anyone, okay? It will be hard
9 for you not to, because this is something you
10 -- for you all, unlike those of us that are in
11 and out of the courtrooms on a daily basis,
12 but you must not talk with anyone regarding
13 the events that you have seen and witnessed
14 today from the courtroom. And to do so would
15 be very unfair to everyone involved, because
16 someone else may give you their insight and
17 opinions about what they think you should do,
18 and that would be improper.

19 Second, you are not to do any independent
20 research about anyone or anything that you
21 have heard discussed today, okay? Whether
22 that is a person or subject matter. You are
23 not to seek information outside of this
24 courtroom to help you make your decision.
25 Everything you will get to make your decision

1 will come from this witness stand or by way of
2 exhibits concerning the facts in this
3 particular case, all right?

4 And so, with that, thank you. Thank you
5 so much for your attention. I have been
6 watching you all and think that you all are
7 paying attention to the events happening in
8 the courtroom, which is also very important.

9 I'll see you at 9:30 in the morning. And
10 I think they want your badges as you leave.

11 (WHEREUPON, the jury were excused at
12 4:46 p.m.)

13 THE COURT: Okay. Thank you. Be at ease.
14 And, Counsel, I do need to speak with both of
15 you. I'm going to be here for a little while.
16 I'm assuming that Mr. Shealy may make -- need
17 to handle some other things before y'all talk
18 to me, okay? All right.

19 THE COURT REPORTER: Are we off the record?

20 THE COURT: We're off the record.

21 (Off the record at 4:47 p.m.)

22 END OF DAY 2

23 DAY 3 OF TRIAL

24 THE COURT: Good morning, everyone. I
25 understand that all of the jurors are here.

1 Counsel, are we ready to proceed?

2 From the State?

3 MS. HALLFORD: State is ready.

4 THE COURT: From the Defense?

5 MR. SHEALY: We're ready, Your Honor.

6 THE COURT: Okay. I just want to make sure,
7 also, that there are no potential witnesses in
8 the courtroom at this time.

9 MS. HALLFORD: Matt, isn't that your --

10 MR. SHEALY: Mr. Angrisanio. Come on out
11 here, please.

12 (To Ms. Hallford) Thank you.

13 (To The Court) I'm sorry, Your Honor.

14 THE COURT: Yes, sir.

15 Okay. Counsel, if we're ready, I'm going
16 to have the jury return.

17 Mr. Shealy, anything that we need to take
18 up before I bring the jury in, sir?

19 MR. SHEALY: No, Your Honor, nothing.

20 MS. HALLFORD: Nothing from the State.

21 THE COURT: Okay. And as I understand it, we
22 will continue with the State's case; is that
23 correct?

24 MS. HALLFORD: Yes, ma'am. I have one more
25 witness.

1 THE COURT: All right. Thank you. Bring the
2 jury in. Be reminded, you will rise when they
3 come in.

4 THE BAILIFF: All rise, please.

5 (WHEREUPON, the jury came into open court
6 at 9:48 a.m.)

7 THE COURT: Okay.

8 THE BAILIFF: Be seated, please.

9 THE COURT: Okay. Good morning to the members
10 of our jury. Mr. Foreperson, sir, are we
11 ready to go?

12 JURY FOREMAN: Yes, Your Honor.

13 THE COURT: Okay. Thank you, all. I am aware
14 that you all were here early or right on time,
15 which I sincerely appreciate. I hope y'all
16 had a nice evening.

17 And so, with that, we will resume the
18 State's case today. The Assistant Solicitor
19 Ms. Hallford will call her next witness.

20 MS. HALLFORD: Thank you, Your Honor. State
21 calls Nicholas Gilbert.

22 THE COURT: Good morning, sir.

23 MR. N. GILBERT: Morning.

24 THE COURT: You need to be sworn in, okay?

25 MR. N. GILBERT: Okay.

1 (WHEREUPON, the witness was sworn.)

2 THE COURT: Sir, have a seat. Make yourself
3 comfortable, and we did just sanitize that
4 area, okay?

5 THE WITNESS: Thank you.

6 THE COURT: All right, Ms. Hallford?

7 MS. HALLFORD: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MS. HALLFORD:

10 Q How old are you, Nicholas?

11 A I'm 20.

12 Q How long have you lived here in the Spartanburg
13 area?

14 A About ten years.

15 Q Do you know where -- do you remember where you
16 lived before? I assume you would.

17 A Myrtle Beach.

18 Q Okay. You graduate from high school?"

19 A Yes.

20 Q Where did you graduate and when?

21 A Dorman, 2018. Sorry.

22 Q Are you going to college anywhere?

23 A Yes. I'm going to Lander University.

24 Q What's your major?

25 A Mass communications and broadcasting.

- 1 Q Do you know when you're going to graduate?
- 2 A About 2024, I believe.
- 3 Q Do you have any brothers and sisters?
- 4 A Yes. I have an older brother, Morgan; a younger
5 brother, Hunter; and a younger sister, Child 1
- 6 Q What's your mom's name?
- 7 A Kelly.
- 8 Q What is your father's name?
- 9 A Mark.
- 10 Q Do -- and you may not know exactly, but how old is
11 Mark Gilbert?
- 12 A Fifty.
- 13 Q Did Mark Gilbert live with you when you were
14 growing up?
- 15 A Yes.
- 16 Q What was the address that you guys lived in here in
17 Spartanburg?
- 18 A Spartanburg SC
- 19 Q Spartanburg County?
- 20 A Yes, ma'am.
- 21 Q Who all lived with you at Spartanburg SC?
- 22 A My mom, my dad, my younger brother Hunter, and my
23 younger sister Child 1
- 24 Q Morgan never lived with you guys there?
- 25 A No, ma'am.

- 1 Q So you cannot get into the specifics, but in March,
2 at some point, in 2018, did Mark Gilbert move out
3 of the house on Spartanburg SC ?
- 4 A Yes, ma'am.
- 5 Q Prior to him leaving, were most of the interior
6 walls in that house removed?
- 7 A Yes, ma'am.
- 8 Q Why was that?
- 9 A Remodeling.
- 10 Q And whose project was that?
- 11 A My father's.
- 12 Q At the time he moved out, what rooms in the house
13 still had walls?
- 14 A Just my parent's master bedroom.
- 15 Q What about the bathroom?
- 16 A The bathroom also had walls.
- 17 Q Okay. Did the bathroom also have a door?
- 18 A Yes.
- 19 Q Where did you and your brother sleep from, like,
20 middle school on?
- 21 A We -- probably the beginning or the end of middle
22 school, in the living room. And at the end of
23 middle school, up in -- upstairs, up until -- I
24 believe.
- 25 Q Up until you moved? I'm sorry. I didn't hear what

1 you said.

2 A Up until we moved. Yes, ma'am.

3 Q Okay. I'm sorry. When you were upstairs sleeping,

4 would you be able to see down into the living room?

5 A No, ma'am.

6 Q At some point, did Mark Gilbert have shoulder

7 surgery?

8 A Yes, ma'am.

9 Q Approximately -- and I know you may not remember

10 for sure, but, approximately, when was that?

11 A I believe it was a year before March 2018.

12 Q Okay.

13 A I think.

14 Q So around 2017 --

15 A I believe so.

16 Q -- time frame? To your knowledge, did Child 1 have to

17 help Mark Gilbert take showers?

18 A Yes, ma'am.

19 Q How do you know about that?

20 A He would ask her in front of me.

21 Q What was his reason for why Child 1 needed him to help

22 him take showers?

23 A He couldn't lift his arm above his head.

24 Q Did he ever ask you to help him?

25 A No, ma'am.

- 1 Q To your knowledge, did you ever hear him ask Hunter
2 to help him?
- 3 A No, ma'am. I don't believe so.
- 4 Q Wouldn't it make more sense to have your son help
5 you take a shower than your daughter help you take
6 a shower?
- 7 A I would say so, ma'am.
- 8 Q Because the two of y'all have the same type of
9 equipment, correct?
- 10 A Right.
- 11 Q Did you ever say anything to Mark Gilbert about him
12 making Child 1 help him shower?
- 13 A Yes. It made me uncomfortable.
- 14 Q Did he have any reaction to that?
- 15 A I don't remember, ma'am.
- 16 Q Normally, where would your mom be when Child 1 was
17 having to help Mark Gilbert in the bathroom?
- 18 A Typically, at work.
- 19 Q So the bathroom had walls, you said?
- 20 A Yes, ma'am.
- 21 Q A door?
- 22 A Yes, ma'am.
- 23 Q Would the door be open or shut when Child 1 would be
24 helping him?
- 25 A Probably shut.

- 1 Q Probably or -- or shut?
- 2 A Shut.
- 3 Q Were you able to see specifically what Child 1 had to
4 do to help Mark Gilbert in the shower?
- 5 A Could you repeat the question, ma'am?
- 6 Q Were you able to see with your eyes exactly what it
7 was she had to do to help him in the shower?
- 8 A No, ma'am.
- 9 Q And, again, not getting into any of the specifics,
10 but at some point, in early 2018, did Child 1 talk to
11 you about something that was happening to her?
- 12 A Yes, ma'am.
- 13 Q Can't say specifically what she said was going on.
14 Can't say who she said was doing it, but did she
15 tell you that she had been sexually -- was being
16 sexually assaulted?
- 17 A Yes, ma'am.
- 18 Q Did she tell you when the abuse would happen?
- 19 A When I was at band; when my mom was at work; when
20 Hunter was in DJJ.
- 21 Q Did she tell you where the abuse happened?
- 22 A At the house. Typically, probably, in the living
23 room.
- 24 Q Do you remember that specifically, or are you
25 guessing here? Because we're only -- what we

- 1 definitely remember.
- 2 A I don't remember. I'm sorry.
- 3 Q Okay. Do you remember what Child1 emotional state
- 4 was when she was talking to you about the sexual
- 5 abuse?
- 6 A She was distressed, crying, not herself.
- 7 Q When she was talking, did it appear, based on your
- 8 knowledge of Child1 that it was something easy for
- 9 her to share?
- 10 A No.
- 11 Q Based on what Child1 shared with you, what did you
- 12 tell her you were going to do?
- 13 A That I would handle it.
- 14 Q So did you have a plan for handling this?
- 15 A No, ma'am.
- 16 Q Then why did you tell her you were going to handle
- 17 it?
- 18 A Something big brothers say, I guess.
- 19 Q Why didn't you just go and confront Mark Gilbert
- 20 immediately after you found out what Child1 told you?
- 21 A Frankly, he terrified me growing up.
- 22 Q Why did he terrify you?
- 23 A He -- very -- he's very manipulative and -- and
- 24 intimidating.
- 25 Q So did you go and tell Kelly Gilbert?

- 1 A No, ma'am.
- 2 Q Why didn't you tell Kelly?
- 3 A Because she was in denial most of our life.
- 4 Q In denial about what?
- 5 A That he wasn't as charming as he seemed.
- 6 Q Did you tell Hunter about what was going on?
- 7 A No.
- 8 Q And why didn't you tell Hunter about what **Child 1** had
9 shared with you?
- 10 A Because I was afraid that he would act
11 irrationally.
- 12 Q Why didn't you call law enforcement?
- 13 A I didn't want to split my family apart.
- 14 Q So at some -- and, again, don't get into the
15 specifics -- at some point, what did you make Mark
16 Gilbert do?
- 17 A Leave the house.
- 18 Q How were you, a teenage boy -- what, you were 17
19 then?
- 20 A Yes, ma'am.
- 21 Q How did you make him leave?
- 22 A I confronted him with what **Child 1** had told me.
- 23 Q What was his reaction to that?
- 24 A He denied it.
- 25 Q How -- when he was talking -- when he was denying

- 1 it to you, how was he behaving?
- 2 A He's not himself, jittery, just generally
- 3 squirrely.
- 4 Q Was the way he was acting when he was telling you
- 5 he didn't do this, a typical way for him to act?
- 6 A Not at all, no.
- 7 Q Did he ever move back into your residence after
- 8 y'all made him move out?
- 9 A No, ma'am.
- 10 Q After you made him leave, did you report it to law
- 11 enforcement?
- 12 A No, ma'am.
- 13 Q Why?
- 14 A I didn't want to split my siblings apart.
- 15 Q To your knowledge, did your mom report it to law
- 16 enforcement?
- 17 A No, ma'am.
- 18 Q So around the middle of June 2018, did someone from
- 19 DSS come to your house about the conditions that
- 20 you guys were living in?
- 21 A Yes, ma'am.
- 22 Q While she was there, did she ask you, personally, a
- 23 series of questions about: Are you going to
- 24 school? Do you have enough food to eat? That kind
- 25 of stuff?

1 A Yes, ma'am.

2 Q Was one of the questions she asked you about
3 whether or not there had been any sexual abuse in
4 your family?

5 A Yes, ma'am.

6 Q What did you tell her?

7 A I said, "No."

8 Q Why did you lie to her?

9 A I didn't want to split my siblings apart again.

10 Q Why was that -- why did you think that would
11 happen?

12 A That's just what I have seen in, you know, TV or
13 even in people that I know in school and things
14 like that. They would all go to a foster family
15 and not really be able to see each other.

16 Q At that point, Mark Gilbert was no longer in the
17 residence; is that right?

18 A Yes, ma'am.

19 Q So he had been gone March, and this is June, so --
20 so roughly, three months. Was he an immediate
21 threat to Child 1 anymore?

22 THE COURT: One moment.

23 THE COURT REPORTER: Can you say yes or no?

24 THE WITNESS: Yes. I'm sorry. (To Ms.
25 Hallford) Well, could you repeat the

- 1 question?
- 2 Q Which one did you not answer?
- 3 THE COURT REPORTER: He said "uh-huh" to the
- 4 last question.
- 5 Q Had he been gone for three months at that point?
- 6 A Yes, ma'am. Sorry.
- 7 Q Was he an immediate threat to **Child 1** anymore?
- 8 A No.
- 9 Q To your personal knowledge, did Kelly continue to
- 10 see Mark for a period of time after he moved out?
- 11 A I'm not sure. Yes. Actually, yes.
- 12 Q Okay. So why -- you said, "Not sure," and now
- 13 you're saying, "Yes." What --
- 14 A I had forgotten that -- that my brother had gone
- 15 into the back of the car and -- and -- when my
- 16 mother was going to visit Mark.
- 17 Q Your brother had gone in the back of the car?
- 18 A The -- the assault on Mark.
- 19 Q Oh, okay. Gotcha. So back of the car, are you
- 20 talking about the trunk?
- 21 A Yes. I guess so.
- 22 Q Okay. So how did you find out about that? Did
- 23 Hunter tell you or --
- 24 A Hunter told me, yes.
- 25 Q -- okay. Nicholas, is this something that you and

1 Child 1 cooked up to get Mark Gilbert out of the
2 house?

3 A No, ma'am.

4 Q Can you tell the jury what effect this has had on
5 Child 1 from what you have seen?

6 A She's just not the same person. Nobody wants to
7 know that what -- what happened, happened to her or
8 to themselves. She just -- she's gotten better
9 over the past couple years, but it was not the same
10 when it originally happened.

11 Q Is your testimony here today truthful?

12 A Yes.

13 Q Did you hate Mark Gilbert enough that you would be
14 involved in -- I mean, because we have to admit,
15 these are terrible accusations.

16 A Yes.

17 Q Would you be involved in something like this if it
18 were not true?

19 A No.

20 Q Thank you.

21 THE COURT: Cross-examination?

22 MR. SHEALY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SHEALY:

25 Q Mr. Gilbert, you testified that you were terrified

- 1 of my client?
- 2 A Yes, sir.
- 3 Q And why is that?
- 4 A Growing up, he just did mean -- mean things to me.
- 5 Q He did mean things to you. Like what?
- 6 A Shot me with a pellet gun. Just, generally,
- 7 intimidating me. He didn't have to beat us. He'd
- 8 just give us a look, because he done it a couple of
- 9 times enough where I just didn't -- I like to think
- 10 of it as bowing down like a dog.
- 11 Q Uh-huh. Okay. So then, because of all of that,
- 12 you were very scared of him?
- 13 A Yes, I was.
- 14 Q All right. When you were -- I guess this all
- 15 happened in March. How old were you March of 2018?
- 16 A Seventeen.
- 17 Q You were 17 years old. Okay. And the -- my
- 18 understanding from Child 1's testimony is that -- I
- 19 guess DJJ had been to the house several times --
- 20 A Yes.
- 21 Q -- to, I guess -- because Hunter --
- 22 A DJ -- well, DJJ wasn't at the house, but he went to
- 23 DJJ several times.
- 24 Q Okay, but -- so the police were actually --
- 25 A Yes.

- 1 Q -- at the house several times?
- 2 A Yes.
- 3 Q Can you ballpark a number for how often they were
4 there for Hunter?
- 5 A Probably three or four.
- 6 Q Okay. And did you ever tell those police officers
7 you're terrified of your dad?
- 8 A No.
- 9 Q Okay. Did you ever have any interviews with DJJ
10 regarding Hunter?
- 11 A I actually don't remember.
- 12 Q You don't remember that? Okay. But there has been
13 a fair bit of involvement with the criminal justice
14 system, and at no time, until March the 17th or so,
15 did you report any kind of issues you had with your
16 father?
- 17 A No, sir.
- 18 Q Okay. Now, I've been provided in discovery a
19 video.
- 20 MR. SHEALY: Judge, may we approach? Just
21 so --
- 22 THE COURT: Yes, sir.
- 23 MR. SHEALY: -- that I can --
- 24 (WHEREUPON, a bench conference was held.)
- 25 THE COURT: We will be at ease for just a

1 moment. It's easier for me to step out with
2 the lawyers than for you all to trek back
3 across the courthouse.

4 Mr. Gilbert, sir, just remain on the
5 stand.

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Don't talk to anyone, okay?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Thank you.

10 (Off the record from 10:04 a.m. to
11 10:10 a.m.)

12 THE BAILIFF: Remain seated and come to order.

13 THE COURT: Okay. We are back on the record
14 with regard to the matter of the State versus
15 Mark Gilbert. It is now 10:10.

16 I had a conference with counsel outside
17 of the courtroom in the small conference room
18 behind this room. And at this time, I will
19 call upon counsel to state the resolution of
20 the issue concerning the video.

21 MR. SHEALY: Your Honor.

22 THE COURT: Assistant Solicitor Hallford?

23 MS. HALLFORD: Well, may we approach?

24 THE COURT: Yes.

25 (WHEREUPON, a bench conference was held.)

1 THE COURT: And I guess maybe what we need to
2 do is have Mr. Shealy put -- announce his
3 intention, and then the State originally
4 objected.

5 MR. SHEALY: Judge, based on our -- our
6 conference, I was going to back up and start
7 asking and maybe lay a better foundation, as
8 well as get into some other things because of
9 the --

10 THE COURT: Yes, sir, but --

11 MR. SHEALY: But my intention is to play a
12 video that was taken. It's undated. It's
13 untimed, as it was provided to me. At some
14 point during my -- my cross-examination, there
15 was an objection, I believe, for hearsay, but
16 I'll leave that up to Ms. Hallford to discuss.

17 THE COURT: Okay. Ms. Hallford, ma'am, was
18 there an initial objection to this evidence?

19 MS. HALLFORD: There was an initial objection,
20 partly because of the foundational issues,
21 partly the hearsay issue, but after having the
22 conversation and for the reasons why he wishes
23 to admit it, the State withdraws their
24 objection.

25 THE COURT: Okay. Thank you.

1 CROSS-EXAMINATION CONTINUES

2 BY MR. SHEALY:

3 Q All right. Mr. Gilbert -- and, again, I'm going to
4 back up. We'll -- we'll kind of put a pin in that
5 for just a second.

6 Now, we've had a lot of testimony. Obviously,
7 you weren't here for -- for that testimony. But
8 there was testimony regarding you going to the mall
9 with Mr. Gilbert and purchasing a pink vibrator.

10 A Yes.

11 Q Do you remember that?

12 A Yes.

13 Q So when did that happen?

14 A Maybe a year or two before he left.

15 Q So a year or two? You're not entirely sure?

16 A No, sir.

17 Q Do you remember what y'all had gone to the mall
18 for?

19 A No, sir.

20 Q And then did you come home with Mr. Gilbert?

21 A Yes, sir.

22 Q And you saw him give that vibrator to your sister?

23 A I believe so, sir. I'm not -- I don't remember
24 exactly, so --

25 Q You don't really remember him giving it --

- 1 A No.
- 2 Q So you don't really remember what happened to that
3 vibrator?
- 4 A Say again.
- 5 Q You don't remember what happened to that vibrator?
- 6 A No, sir.
- 7 Q Okay. There's been other testimony -- now, did he
8 often take you to the mall or other places?
- 9 A No, sir. He took me to some jobs that he would
10 work with his friends doing plumbing, housework,
11 things like that.
- 12 Q Okay. So he was a plumber?
- 13 A Yes, sir. By trade.
- 14 Q By trade. But he also drew a check through the VA?
- 15 A Yes.
- 16 Q All right. Do you have any idea as to how much
17 that check was?
- 18 A No, sir. And he -- and he didn't -- he didn't work
19 as a plumber. He would help out his friends.
- 20 Q Okay. Do you know why he drew that check through
21 the VA?
- 22 A Disability.
- 23 Q Was it -- and it was service-connected disability?
- 24 A I believe so. I don't really know how that works,
25 sir.

- 1 Q Okay. Okay. And -- now, you've testified that you
2 were at band quite a bit.
- 3 A Yes, sir.
- 4 Q Did you play any sports or anything like that, as
5 well, or --
- 6 A No. It was marching band, so it was Tuesdays till
7 six, Thursdays till six, Fridays till midnight,
8 Saturdays till midnight.
- 9 Q Okay. And so that's just -- and is marching band a
10 year -- I don't know. Is that --
- 11 A It's during fall semester, and during spring
12 semester it is not.
- 13 Q So you don't do it on spring semester?
- 14 A No, sir. Spring semester is just regular school.
- 15 Q Did you go through this band camp?
- 16 A Yes, sir.
- 17 Q And tell me about band camp.
- 18 A Two weeks in the summer, right before school
19 starts, it's every day from eight to five, I
20 believe.
- 21 Q Now, there was also testimony about an incident
22 where my client had slapped Child 1 in the bathroom.
23 Do you --
- 24 A Yes.
- 25 Q So you remember that, as well?

1 A Yes, sir.

2 Q So tell us about that.

3 A My father had -- I'm not sure. There's a --
4 there's a part in here that I was at -- not
5 supposed to say in regards to the guns. Could I
6 talk to Ms. Hallford about that?

7 MR. SHEALY: Well, Judge, may we -- I think we
8 got a matter to take up outside the presence
9 of the jury --

10 THE WITNESS: Yes.

11 MR. SHEALY: -- because --

12 THE WITNESS: I was --

13 THE COURT: Okay. Sir -- sir --

14 THE WITNESS: Okay.

15 THE COURT: -- if you'll just hold that
16 thought.

17 THE WITNESS: Okay.

18 THE COURT: Okay? Don't -- don't say anything
19 else yet.

20 (To The Jury) Mr. Foreman and members of
21 the jury, I will ask you all to go back.
22 Follow the bailiffs back into your holding
23 area -- your waiting area, okay?

24 (To All in Courtroom) Please rise.

25 MS. HALLFORD: Oh, I'm sorry.

1 (WHEREUPON, the jury is excused at 10:17
2 a.m.)

3 THE COURT: Okay.

4 MR. SHEALY: Your Honor.

5 THE COURT: Wait -- wait one second. (To The
6 Bailiff) Are we clear?

7 Mr. Shealy?

8 MR. SHEALY: Judge, I think based on --

9 THE COURT: Please be seated.

10 THE WITNESS: Sorry.

11 MR. SHEALY: Neither Ms. Hallford nor I are
12 entirely sure what he means, so we can -- out
13 of an abundance of caution, I would ask that
14 I'd be able to proffer whatever his answer is
15 going to be, make sure it doesn't contravene
16 something that we're not supposed to -- that
17 our motion -- is that --

18 MS. HALLFORD: What he's saying, when he said
19 "I'm not supposed to talk about." I told him
20 that we cannot, through direct testimony,
21 bring out any prior bad acts, any physical
22 abuse, any -- the having the guns. I think I
23 remember him talking to me about having guns.
24 So that's what he's talking about when he's
25 saying, "I'm not supposed to talk about this,"

1 because what I had told him was our case is
2 about the sex abuse. We can't bring in other
3 bad acts, but if the defense attorney opens
4 the door for this stuff, then you can answer
5 it.

6 So that's what he means when he says,
7 "I'm not supposed to talk about this." He's
8 not trying to be deceitful. He's just trying
9 to follow the instructions.

10 THE COURT: All right. Mr. Shealy?

11 MR. SHEALY: So, Judge, would you like me to
12 proffer -- can we proffer the answer, or . . .

13 THE COURT: Yes, sir. And, again, there's no
14 -- the jury is not present. And I will
15 determine whether or not this testimony comes
16 in, all right?

17 (To The Witness) And so, sir, we're
18 going to continue with cross. You may have to
19 do this again in a few minutes --

20 THE WITNESS: Okay.

21 THE COURT: -- you may not, okay? But you're
22 going to listen carefully to my decision after
23 I hear your testimony --

24 THE WITNESS: Yes, ma'am.

25 THE COURT: -- okay?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: All right. Yes, sir?

3 CROSS-EXAMINATION CONTINUES

4 BY MR. SHEALY:

5 Q Okay. So Child¹ has talked about a particular
6 incident with respect to my client leaving a
7 handprint on her face out of the bathroom.

8 A Yes, sir.

9 Q Can you tell us about that particular incident?

10 A Yes, sir. My sister had gone to the bathroom -- or
11 my father had asked her into the bathroom, and I
12 don't know what happened, but he ended up slapping
13 her; and I told him not to do that; and he got --
14 he got in my face, and he went to the couch where
15 he slept.

16 He grabbed the handgun that he had. He put
17 the magazine in the handgun, and then he pointed it
18 at me. And he told me -- well, he didn't tell me
19 anything, but the message was very clear. And so I
20 -- and my mom scooted me out of the house, and I
21 went to my friend's house for that night.

22 THE COURT: Anything else, Mr. Shealy?

23 MR. SHEALY: No, Your Honor. Maybe we can
24 have the jury come back.

25 THE COURT: Ms. Hallford.

1 MS. HALLFORD: So that's not part of the res
2 gestae of this offense, and so I don't think a
3 jury should hear that; and I'm saying that to
4 protect him. Of course, I would love for the
5 jury to hear about this, but I don't want
6 there to be issues on appeal, so . . .

7 THE COURT: So you don't think that Mr. Shealy
8 has opened the door?

9 MS. HALLFORD: I do, but we also have PCRs to
10 think about, so . . .

11 MR. SHEALY: Well, I mean, quite frankly,
12 Judge, that account is vastly different from
13 the account we have already heard with respect
14 to this particular incident.

15 THE COURT: Well, you heard that from the
16 victim. You didn't hear that from this young
17 man, correct?

18 MR. SHEALY: Well --

19 THE COURT: Do you know whether or not the
20 victim observed that?

21 MR. SHEALY: Well, I don't know how she
22 couldn't have observed that. And they may
23 deny that she observed that, but I think that
24 the jury -- I mean, and I don't particularly
25 care for having this -- I mean, obviously, now

1 the witness is hearing all of this, but --

2 THE COURT: Well, yes, sir, because you wanted
3 to proffer this testimony.

4 MR. SHEALY: Well, Judge, she's -- he's
5 hearing this particular argument, but I am --
6 I'm fine having the jury come back and asking
7 about this particular incident.

8 MS. HALLFORD: It's all on the record that he
9 has made a -- a legal decision after weighing
10 his options to have this come out.

11 So this is a legal, tactical decision,
12 correct?

13 MR. SHEALY: Judge, again, I'm fairly
14 comfortable that I can argue that in closing.

15 THE COURT: Argue?

16 MR. SHEALY: Argue this -- the -- I'm fairly
17 certain that -- yes. It is a -- a legal
18 decision on my part. A strategic decision on
19 my part to allow that to -- for him to testify
20 to this.

21 THE COURT: Counsel, step with me into the
22 other room for just a moment.

23 MR. SHEALY: Yes, ma'am.

24 (Off the record from 10:23 a.m. to
25 10:46 a.m.)

1 THE BAILIFF: Remain seated and come to order.

2 THE COURT: Okay. Mr. Shealy, are you ready
3 to proceed, sir?

4 MR. SHEALY: Judge, I -- I do -- Judge, I have
5 to place on the record my understanding as to
6 Mister -- Ms. Gilbert has testified to a
7 particular incident and has testified
8 comprehensively on both cross, as well as
9 redirect. And she, again, testified to that
10 comprehensively. It appears that Mr. Gilbert
11 is going to testify to the same incident
12 completely differently from what Ms. Gilbert
13 testified to.

14 My understanding of reply -- the law
15 regarding reply, would be that they can only
16 call witnesses -- or testimony with respect to
17 reply can only be with respect to new
18 information. I would submit that this is not
19 new information, because she testified
20 comprehensively to that. And that is, again,
21 the reasoning behind my decision to call or to
22 ask Mr. Gilbert this particular question.

23 THE COURT: Let me hear from Ms. Hallford.

24 MS. HALLFORD: I don't know exactly what he's
25 going to testify to, but I think he might be

1 right about the reply issue. I think I can
2 only reply to witnesses he puts up, but I
3 would have to do some research on that, too,
4 because this is a new issue for me.

5 THE COURT: Okay. And so this is what I'm
6 going to rule at this time, all right?

7 Sir, I can't hold the State -- I can't
8 limit the State to the way that they are going
9 to prosecute your case at this juncture. I
10 have no idea what the State is going to
11 request, all right? Sir, you can review this
12 if they decide to recall a witness that
13 contradicts this testimony, okay? Or a
14 witness that you think may contradict the
15 testimony, or you can raise it when the
16 witness is questioned about this incident, if
17 that happens.

18 MR. SHEALY: Yes, ma'am.

19 THE COURT: All right. And I will, again,
20 tell you, Mr. Shealy, that I think that goes
21 to the weight of the evidence and argument
22 later.

23 MR. SHEALY: Thank you, Your Honor.

24 THE COURT: All right. And so if there is
25 nothing else, we would like to have the jury.

1 MR. SHEALY: Yes, ma'am.

2 THE COURT: And, again, everyone needs to
3 speak very loudly, all right?

4 THE BAILIFF: All rise.

5 (WHEREUPON, the jury came into open court
6 at 10:51 a.m.)

7 THE BAILIFF: Be seated.

8 THE COURT: Okay. We are back on the record
9 with regard to the matter of "The State versus
10 Mark Gilbert," and Mr. Nicholas G : is
11 still on the stand.

12 Mr. Foreman, is everyone ready to go?

13 JURY FOREPERSON: Yes, Your Honor.

14 THE COURT: All right, thank you.

15 I will ask Mr. Shealy to proceed with
16 cross-examination. Thank you.

17 MR. SHEALY: Thank you, Your Honor.

18 CROSS-EXAMINATION CONTINUES

19 BY MR. SHEALY:

20 Q All right, Mr. Gilbert, before the jury left, I
21 guess I had asked you about a previous incident
22 where he had slapped her or allegedly left a
23 handprint on her face. Why don't you tell us about
24 that incident?

25 A Okay. Child 1 went to the bathroom, or he asked her

1 to the bathroom, one or -- one or the other, and an
2 argument broke out. He slapped her in the face. I
3 -- I believe that he asked her to do something, and
4 she didn't want to do it. And then I asked him --
5 I told him not to do that. It was one of the few
6 times where I did that. And he said, "hold on
7 right there," because he was still going to the
8 bathroom. And he went to his bed -- which was the
9 couch at the time, because he had shoulder surgery
10 -- and he grabbed his gun and he put the magazine
11 in it, a pistol, and he pointed it at me, and the
12 message was clear. My mom scooted me out of the
13 house, and I went to go spend the night at my
14 friend's.

15 Q So you were in that room when she was asked to go
16 into the bathroom?

17 A I honestly don't remember, sir.

18 Q Okay. Well, you just testified that --

19 A I said --

20 Q -- she was asked to go in the bathroom.

21 A -- she was either in the bathroom or -- she either
22 went in the bathroom or he -- she was asked because
23 it wouldn't have been the first time that she was
24 asked, sir.

25 Q All right. And so there was a handgun in the

1 house?

2 A Yes, sir.

3 Q Any other guns in the house?

4 A I believe a shotgun.

5 Q A shotgun. Okay. Would it surprise you that --
6 well, let me ask -- my understanding is --

7 THE COURT: Mr. Shealy, I'm sorry, sir.

8 Apparently, as I explained to you all on
9 the break, there -- there -- the audio in the
10 room is not really great when, I guess, the
11 air is running. If you can face towards the
12 front of the courtroom or towards the jury
13 when you're speaking and -- that would apply
14 to everyone, all right? Thank you.

15 MR. SHEALY: I apologize, Your Honor. I -- I
16 tend to have --

17 THE COURT: Just take your time.

18 MR. SHEALY: I have a problem doing that from
19 time to time -- not facing where I was
20 supposed to face.

21 Q You were present -- what -- you lived at this house
22 in -- in March of 2018; is that correct?

23 A Yes, sir.

24 Q And then did you live in this house in, I guess,
25 June is when DSS came out?

1 A Yes, sir.

2 Q Okay.

3 A It -- when DSS came out, yes, sir, I lived in it;
4 and then we went to go live with my mom's friend,
5 Miss Judy.

6 Q Okay. And then in July, did you -- were you --
7 when did -- did you move back into the house?

8 A I believe that I moved in for a couple days, but
9 then I went to go live with my -- my best friend.

10 Q Okay. And that was in July, or was that before
11 July?

12 A I'm not exactly sure, sir.

13 Q Okay. And then in August, you were present when
14 the sheriff's department served a search warrant at
15 that house?

16 A Yes, sir.

17 Q Okay. And they found a number of -- or they took a
18 number of things into evidence; is that correct?

19 A Yes, sir.

20 Q And then they also condemned the house?

21 A Yes, sir. They also arrested my mother.

22 Q And arrested your mother. Yeah.

23 To your knowledge, did they find a handgun in
24 that house?

25 A No, sir.

- 1 Q Did they find a shotgun in that house?
- 2 A No, sir.
- 3 Q Okay. My understanding of the confrontation that
- 4 you had with Mr. Gilbert, is that y'all confronted
- 5 him, I think, around March 17th.
- 6 A Yes.
- 7 Q Does that sound right?
- 8 A Yes, sir. That's the date.
- 9 Q March 17th, and there was a lot of stuff going on,
- 10 a lot of stuff getting smashed, I guess, was the
- 11 testimony; and then your mother broke her finger --
- 12 A Yes, sir.
- 13 Q -- or her pinky, I guess it was.
- 14 A Yes, sir.
- 15 Q And then Mr. Gilbert took her to the hospital?
- 16 A Yes, sir.
- 17 Q He came back. You had a conversation with him, and
- 18 then he never came back to the house --
- 19 A Yes, sir.
- 20 Q -- is that right?
- 21 A I believe so, sir.
- 22 Q Okay. And you had that conversation with him by
- 23 yourself --
- 24 A Yes, sir.
- 25 Q -- is that right? Okay.

1 Now, do you recall a big clean-out in the
2 middle of June or, well, I guess it would have been
3 after June?

4 A After they condemned the house?

5 Q Well, not after they condemned the house because
6 they did that in August, but the first time DSS
7 came out.

8 A Okay. Before they -- okay. Yes. There wasn't
9 really -- there was nothing really clean. That's
10 why they condemned the house completely.

11 Q Okay. So y'all didn't do a whole lot of cleaning?

12 A No.

13 Q All right. So -- all right. And then you've
14 testified that in July, they came back out; is that
15 right?

16 A I believe so, sir.

17 Q And did they ask you if there would have been any
18 sexual abuse that you knew of?

19 A Is that with -- when Sonya Heath came?

20 Q Right. When -- when DSS came the second time.

21 A I believe so. I -- I honestly don't remember, sir.

22 Q Okay. So you don't know if you told them that
23 there had been sexual abuse allegations or not?

24 A I don't remember if -- I don't remember when it was
25 -- it came out that there was sexual abuse

1 allegations. I don't remember which visit or which
2 time --

3 Q Okay.

4 A -- it is.

5 Q Okay. When did the walls get removed in this
6 house?

7 A It depends -- it depended, really. Maybe once a
8 year, there was a new room that didn't have walls
9 in it, and it stayed that way until we left the
10 house. Probably starting when I was in middle of
11 middle school.

12 Q Uh-huh. And did you have friends over to your
13 house?

14 A Never.

15 Q Why?

16 A In the last two years before he moved out, I had
17 two friends come over to the house. Their names
18 are -- well, yeah, three: Sara Bell, C.J. Ogele,
19 and Julianne Montagna. Before that --

20 THE COURT: One second. One second, sir.
21 Can you repeat those names?

22 THE COURT REPORTER: Can you slow down,
23 please?

24 THE WITNESS: Yes. I'm sorry.

25 THE COURT REPORTER: Say those names again,

1 please.

2 THE WITNESS: C.J. Ogele.

3 THE COURT REPORTER: Can you spell that?

4 THE WITNESS: O-g-e-l-e. Julianne Montagna or
5 Julianne Montagna. M-o-n-t-a-g-n-a. And then
6 Sara Bell, S-a-r-a B-e-l-l.

7 Q Okay. And why did you not have very many friends
8 come over?

9 A One, I was embarrassed. Two, I didn't want them
10 meeting my father. Mostly just embarrassed and
11 didn't want them meeting my father. I guess, I
12 just didn't like my house. It had no walls, and it
13 was messy. It was like a hoarder's house.

14 Q Right. It wasn't a nice place to live?

15 A No. It was not.

16 Q And we've talked about your mother. She worked at
17 Costco. Can you tell me what kind of -- what her
18 hours are?

19 A Probably nine to five. Two days off a week.
20 Regular work hours for -- she wasn't a cashier, but
21 she was a photo lab person, supervisor. So regular
22 grocery store hours, I guess.

23 Q Okay. And I guess you've testified that Mark
24 generally didn't work, he -- but he did do, I
25 guess, maybe odd jobs; is that what you mean --

- 1 A No. He just --
- 2 Q -- for his friends?
- 3 A He just worked with his friends -- for his friends.
- 4 Usually, not for money. Just for hanging out with
- 5 them.
- 6 Q Okay.
- 7 A He only had one job the whole time we were living
- 8 in Spartanburg, and it was working at Converse
- 9 College as a security officer for about two months,
- 10 I believe.
- 11 Q So how many cars did y'all have?
- 12 A We had one up until the point I was in middle
- 13 school, I believe. Then we had -- we had -- we had
- 14 a few, but at one time. Is that what you're asking
- 15 me? At one time?
- 16 Q Yeah. At any given time.
- 17 A Two.
- 18 Q You generally had two cars?
- 19 A At any given -- one or two at any given time.
- 20 Working cars, I should say.
- 21 Q Okay. And when you say "one or two," -- so let's
- 22 try to -- and I don't know if you'll remember this
- 23 or not.
- 24 A Okay.
- 25 Q But -- so in 2016, do you think you had one car or

1 two cars or . . .

2 A I honestly don't remember --

3 Q You don't?

4 A -- sir. I'm sorry.

5 Q Okay. In 2017, same?

6 A Two. I know for -- two.

7 Q Two in 2000 -- okay. And then in 2018?

8 A Two, I believe. Yes, sir.

9 Q Okay.

10 A A Jeep and the minivan.

11 Q Okay. Now, y'all had done -- y'all had obviously,

12 I suppose, ejected Mr. Gilbert from his house or

13 from y'all's house in (as spoken) March 17th. Did

14 DJJ come back out for Hunter? Was Hunter still in

15 trouble?

16 A I don't believe so, sir. I don't -- I don't

17 remember exactly, but I don't believe so.

18 Q You don't think so?

19 A The only times he went to foster care, and he came

20 back is he ran away --

21 Q Okay.

22 A -- is the only trouble that I believe he got in.

23 Q Okay. And then, again, in June, obviously, DSS

24 shows up because they have a report. Do you have

25 any idea as to where that report came from?

1 A I don't believe so, sir, no.

2 Q Okay.

3 A I don't -- I don't have any idea. I don't

4 remember.

5 Q All right. How did the house get so dirty?

6 A How?

7 Q Yeah.

8 A Nobody picked up. Nobody picked up. Just years of

9 it, and then you just get used to it, like a

10 hoarder's house. You ever -- like *Hoarders* on TV,

11 basically.

12 Q Well, that's fair, but the police had come out

13 several times before and never taken y'all into --

14 or never taken anybody into protective custody.

15 A They never came inside the house.

16 Q They never came inside the house?

17 A Never. Not once.

18 Q So they didn't look inside -- when they --

19 A I don't -- I don't believe -- I don't remember

20 exactly, but I'm not 100 percent -- I'm 90 percent

21 sure that they never came in the house.

22 Q Then how would they arrest Hunter?

23 A He would be outside, or he would be running away

24 because he was running away from the cops; and they

25 would chase him throughout the neighborhood.

1 Q Okay. Now, as --

2 A Or we --

3 Q Oh.

4 A Or we would be chasing him. (To The Court
5 Reporter) Am I talking too fast?

6 THE COURT REPORTER: No. It's just y'all are
7 talking over each other. If y'all can talk
8 one at a time, please.

9 THE COURT: Okay. Again --

10 THE WITNESS: Sorry.

11 THE COURT: -- and I'm trying not to
12 interrupt, but Mr. Shealy will ask the
13 questions, sir, and you will answer. And I
14 know it's a slower pace than normal
15 conversation, but Ms. Payne is -- is trying --

16 THE WITNESS: I'm sorry.

17 THE COURT: -- her best to make a record for
18 us, okay?

19 THE WITNESS: Okay.

20 THE COURT: Thank you.

21 Q Now, there's also been testimony about a computer.

22 A Yes, sir.

23 Q Where was the computer in the house?

24 A In my parent's bedroom.

25 Q And there was only the one?

- 1 A Yes, sir.
- 2 Q Okay. And I guess it's been described as kind of a
3 competition as to who could get to the computer
4 first, you or your brother.
- 5 A To play, like, video games on it?
- 6 Q Uh-huh.
- 7 A Yes, sir.
- 8 Q Yeah. And so it's basically whoever got there
9 first, got to play the video games?
- 10 A Sure. If my father wasn't on it, yes.
- 11 Q Okay. And that was a fairly common occurrence?
- 12 A Yes, sir.
- 13 MR. SHEALY: If you'll bear with me, Judge,
14 one second.
- 15 Q Now, I know you've testified that he would go and
16 fix his friend's various things or work jobs for
17 his friends. Isn't it true he also fixed Sara
18 Bell's car?
- 19 A Yes, sir. He and I did.
- 20 Q Okay. And he helped out with her bathroom. I
21 guess her grandmother's bathroom?
- 22 A Yes, sir. He and I did.
- 23 Q Okay. And he's also fixed Kimoni's bathroom?
- 24 A Yes, sir. He and I did.
- 25 Q Okay. And Kimoni was over there quite a bit; is

1 that true?

2 A Yes, sir.

3 Q Okay. And other people, other friends --

4 A Oh. Yes, sir.

5 Q -- were there from time to time?

6 A From the house?

7 THE COURT: Okay. Again, just let -- let

8 him --

9 THE WITNESS: Sorry.

10 THE COURT: -- let him finish the question.

11 MR. SHEALY: We're in --

12 THE COURT: Because I'm not sure they're

13 questions right now, okay?

14 If you will state a question, sir, and

15 then let him respond. And the court reporter

16 had her hand up. You just couldn't see it.

17 Thank you.

18 MR. SHEALY: Yes, ma'am. Yes, ma'am.

19 THE COURT: Go ahead.

20 Q And there -- other people were in that house from

21 time to time; is that correct?

22 A In my house?

23 Q Yeah.

24 A I believe just Kimoni, I guess.

25 Q Just Kimoni?

- 1 A That -- and the times, like I said, C.J. Ogele,
2 Julianne Montagna, but Mark wasn't there for that,
3 and Sara Bell.
- 4 Q Okay. And Hunter never had any friends over?
- 5 A Hunter didn't have -- I don't believe so.
- 6 Q Okay.
- 7 A Hunter didn't have many -- very many friends.
- 8 Q Okay. Now, when -- again, y'all ejected Mr.
9 Gilbert in March. DSS came out in June. Y'all
10 testified that you never told them about their --
11 these allegations, but you did tell them about the
12 -- the allegations in July; is that right?
- 13 A Could you repeat the question for me?
- 14 Q Excuse me. You didn't tell -- or you told no one
15 or nobody told anyone in March of 2018, right?
- 16 A Yes, sir.
- 17 Q Despite apparently several other people hearing
18 about it, no police report was ever made; is
19 that --
- 20 A Yes, sir.
- 21 Q -- correct? In --
- 22 A Yes, sir.
- 23 Q In March of 2018?
- 24 A Yes, sir.
- 25 Q Hunter attacked Mr. Gilbert -- Mark -- at some

1 point in March of 2018; is that right?

2 A I believe so, sir.

3 Q Okay. And in the -- whatever investigation
4 involved there, there was never any report; is that
5 correct?

6 A I don't believe so, sir.

7 Q No sexual abuse allegation was reported then?

8 A I don't believe so, sir. Like -- like I've stated
9 before, it was so that my family didn't get split
10 apart.

11 Q Sure. And then we get to June. DSS comes out for
12 a dirty house. There's still no --

13 A No, sir.

14 Q -- allegation? No. And then in June, my client
15 cuts off his benefits. And then in July, y'all
16 report that this happened; isn't that true?

17 A No. I did not report, and I don't believe that any
18 of my immediate family members reported it.

19 Q Well, my understanding from earlier testimony is
20 that the belief is your aunt, who's a mandated
21 reporter, was told by your mother.

22 A My immediate mother -- or my immediate family, I
23 don't believe reported it. My aunt just lives in
24 New York, and she has no -- she hasn't been in my
25 life -- very little at all. She lives in Albany,

1 New York.

2 Q But she's required to report any allegation of
3 sexual abuse; is that correct?

4 A Yes, sir. I believe so.

5 Q And it's --

6 A She's a doctor.

7 THE COURT: All right. Again, I'm -- I can
8 see the court reporter more clearly than y'all
9 can, all right? If you'll just let him ask,
10 and you respond, okay?

11 THE WITNESS: I'm sorry.

12 Q And so your mother, who knew that, told your aunt?

13 A I believe it --

14 Q That's your understanding?

15 A I guess so. Yes, sir.

16 Q Okay.

17 MR. SHEALY: Your Honor, if I may have just
18 one minute.

19 Q Did you live with your grandparents at some point
20 during this?

21 A Yes, sir.

22 Q When was that?

23 A Afterwards. After I lived with my best friend, I
24 went up there to move up there for school -- to New
25 York -- so I could get in-state tuition after

1 living there for a year; but I moved back down
2 after my mother figured through things out (as
3 spoken) and had a house that I could live in.

4 Q Okay. So they didn't ask you to leave? They
5 didn't ask you to leave?

6 A My grandparents?

7 Q Right.

8 A No. They did not ask me to leave.

9 MR. SHEALY: That's all I have for this
10 witness, Your Honor.

11 THE COURT: Any redirect?

12 MS. HALLFORD: Just -- just briefly, Your
13 Honor.

14 REDIRECT EXAMINATION

15 BY MS. HALLFORD:

16 Q So before we had the break and the jury went out,
17 you said "There are things I can't talk about."

18 A Yes.

19 Q Were you told before testifying that the State
20 cannot bring up certain other bad acts that your
21 father has done?

22 A Yes, ma'am.

23 Q Were you trying to deceive the jury by not talking
24 about those things?

25 A No, ma'am.

- 1 Q Why didn't you talk about those when I was
2 questioning you?
- 3 A Because you didn't open up the question, I guess.
- 4 Q And it -- to your knowledge, is the State allowed
5 to bring up other bad things he has done in a sex
6 abuse case?
- 7 A Not to my knowledge, no.
- 8 Q So were you trying to be deceptive?
- 9 A No, ma'am.
- 10 Q Are -- is your testimony truthful today?
- 11 A Yes, ma'am.
- 12 Q Are you trying to put before the jury, to the best
13 of your recollection, everything that you remember?
- 14 A Yes, ma'am.
- 15 Q Do you know if Child 1 was still in the bathroom when
16 you and Mark had your confrontation?
- 17 A I do not remember, sir. I do not remember, ma'am.
- 18 Q Was that confrontation with Mark three years ago?
- 19 A Yes. I had to do the math in my head.
- 20 Q Little -- little over three?
- 21 A Well, no.
- 22 Q Eighteen to '19?
- 23 A It was in -- it was in 2017, I believe, in -- in --
24 it was cold --
- 25 Q Oh.

1 A -- out when I was outside.

2 Q Okay. I'm sorry. So four -- four years ago?

3 A Yes.

4 Q Okay. I don't do math either. I also don't read
5 my handwriting.

6 MS. HALLFORD: Okay. That's all. Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: Any objection to this witness
9 being excused?

10 MS. HALLFORD: Nothing from the State.

11 MR. SHEALY: No objection, Your Honor.

12 THE COURT: All right. Thank you, sir. You
13 may stand down.

14 THE WITNESS: Thank you.

15 THE COURT: Be careful. Watch your step. You
16 can remain in or you may leave.

17 THE WITNESS: Thank you.

18 (WHEREUPON, the witness was excused.)

19 THE COURT: All right, Ms. Hallford?

20 MS. HALLFORD: The State rests.

21 MR. SHEALY: Your Honor, we have some -- some
22 things to bring up outside the presence --

23 THE COURT: Okay.

24 MR. SHEALY: -- of the jury.

25 THE COURT: All right. And so, Mr. Foreman

1 and members of the jury, if you will now
2 follow the bailiff. There are some matters
3 that I need to take up -- matters of law.

4 THE BAILIFF: All rise.

5 (WHEREUPON, the jury exits at 11:13 a.m.)

6 THE COURT: Thank you. Be seated.

7 Okay. The State has rested. Motions
8 from the Defense?

9 MR. SHEALY: Thank you, Your Honor. Judge, I
10 think I am required to renew my motions to
11 quash with respect to these indictments.

12 THE COURT: Mister -- and I really need for
13 you to keep your voice up for me, okay?

14 MR. SHEALY: I'm sorry. Maybe if I step up a
15 little bit. Judge, I -- I would renew my
16 motions to quash based on them being
17 multiplicitous indictments. Based on our
18 arguments previously yesterday morning, we
19 would also make a motion for a direct verdict.
20 I think they fixed it, but they very nearly
21 missed, I think, venue; but I think they fixed
22 that with Nicholas.

23 But -- so our -- our motion would be the
24 generic motion. The State has failed to
25 produce sufficient evidence as to each kind of

1 sexual battery that they have charged my
2 client with, with respect to each of those to
3 wit portions. The -- that there was actual
4 penetration with respect to a dildo. I don't
5 know that there was any actual testimony that
6 there was penetration, as well as insertion
7 with respect to digital penetration. I don't
8 know that the State has deduced sufficient
9 evidence from which a reasonable jury could
10 find my client guilty of any of those
11 particular crimes. Thank you.

12 THE COURT: Okay. And so, first, let me --
13 let me hear Ms. Hallford with regard to the
14 motion to quash. It's my understanding -- or,
15 I guess, it's motions to quash because there
16 are four indictments. And I believe that Mr.
17 Shealy is, first, renewing the motions that he
18 made on Monday afternoon, prior to selecting
19 the jury, that then we more fully put on the
20 record yesterday morning. I don't believe
21 there's a written motion. It was an oral
22 motion. I'm happy to hear from you again
23 regarding his motions to quash.

24 MS. HALLFORD: Your Honor, the State's
25 position would be the same. Each different

1 type of sexual battery is a sexual -- is a
2 separate crime, and he has been charged for
3 separate crimes. So we believe that the
4 indictments are correct and -- and certainly
5 permissible to charge that way.

6 THE COURT: Okay. Anything else, Mr. Shealy,
7 with regard to the motions to quash?

8 MR. SHEALY: No, Your Honor.

9 THE COURT: Okay. My ruling would remain
10 as -- as it was on yesterday, based upon the
11 case law, "State v. Gentry," "State v.
12 Tumbleston," "State v. Wade," and then I
13 believe Mr. Shealy raised "U.S.B. Zalapa," and
14 "State v. Adams." All of them, I think, are
15 still consistent with my ruling, even though
16 Mr. Shealy did a wonderful job of trying to
17 argue against that.

18 All right. As to the motion for directed
19 verdict. Any other argument from Mr. Shealy
20 before I hear from the State?

21 MR. SHEALY: No, Your Honor.

22 THE COURT: Thank you.

23 Ms. Hallford?

24 MS. HALLFORD: Your Honor, in a directed
25 verdict motion, the light is to be viewed in

1 the most favorable to the State. We have
2 presented evidence of penetration. He
3 specifically said he didn't think that we had
4 presented that evidence related to the dildos
5 and the digital penetration. She did say in
6 both instances that they -- that he put them
7 inside of her. She also established
8 jurisdiction, and Nicholas established
9 jurisdiction, but there is certainly enough
10 evidence to put this before a jury.

11 THE COURT: Anything else, sir?

12 MR. SHEALY: No, Your Honor.

13 THE COURT: Okay. All right. Under South
14 Carolina Rule of Criminal Procedure 19, I am
15 to consider only the existence or non-
16 existence of evidence and not its weight.
17 Also, based upon "State v. Hepburn," a South
18 Carolina Supreme Court case of 2013, I -- I do
19 believe that the State has met its burden,
20 and, sir, you can, of course, renew your
21 motion if you feel that is necessary later on,
22 okay?

23 MR. SHEALY: Yes, ma'am.

24 THE COURT: All right. Anything else before
25 we have the jury?

1 MS. HALLFORD: Nothing from the State, Your
2 Honor.

3 MR. SHEALY: Judge, I'd ask for just a few
4 minutes to make sure that all my -- that my
5 witness is here and all of that.

6 THE COURT: Yes, sir. And can y'all come up
7 for just a moment? And this is solely for
8 planning purposes as to lunch and . . .

9 (WHEREUPON, a bench conference was held.)

10 THE COURT: Okay. And so just -- and just to
11 be clear, I am respectfully denying the
12 defendant's motions at this time. And unless
13 there's anything else, we will have the jury
14 come back around.

15 MS. HALLFORD: Nothing from the State.

16 MR. SHEALY: Nothing else for the Defense,
17 Your Honor.

18 THE COURT: Okay. Thank you. And so, Mr.
19 Shealy, you need to look out the backdoor of
20 the courtroom while I'm bringing the jury
21 around.

22 MR. SHEALY: Yes, ma'am.

23 THE COURT: Thank you.

24 MR. SHEALY: Thank you.

25 THE BAILIFF: All rise.

1 (WHEREUPON, the jury come into open court
2 at 11:26 a.m.)

3 THE BAILIFF: Be seated.

4 THE COURT: Mr. Foreman, is everyone ready to
5 proceed?

6 JURY FOREPERSON: Yes, Your Honor.

7 THE COURT: Thank you.

8 All right, Mr. Shealy?

9 MR. SHEALY: Thank you, Your Honor. The
10 Defense would call Robert Angrisanio. If I
11 may go grab him?

12 THE COURT: Yes, sir.

13 (To Mr. Angrisanio) Good morning, sir.
14 Take your time. You'll need to be sworn,
15 okay?

16 MR. ANGRISANIO: Yes, ma'am.

17 (WHEREUPON, the witness was sworn.)

18 THE COURT: Sir, there is water right here if
19 you need it, okay?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: And I'm sure this isn't the first
22 time that you've been asked. If you would
23 please spell your name for the record, all
24 right?

25 THE WITNESS: Okay. A-n-g-r-i-s-a-n-i-o.

1 THE COURT: Thank you, sir.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Direct examination.

4 MR. SHEALY: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. SHEALY:

7 Q Mr. Angrisanio, how old are you?

8 A Forty-nine.

9 Q Okay. Do you know Mark Gilbert?

10 A Yes. I do.

11 Q Okay. What do you do for a living?

12 A I'm a disabled veteran.

13 Q Okay. So you -- and is that disability related to
14 your leg?

15 A Yes.

16 Q Okay. And was that service-connected?

17 A Yes. It was.

18 Q Okay. And where was that service done?

19 A In Somalia.

20 Q In Somalia?

21 A Yes.

22 Q Do you know Mark Gilbert?

23 A Yes, sir. I do.

24 Q How do you know Mark?

25 A He's a friend of mine.

- 1 Q Okay. Do you -- how did y'all meet?
- 2 A We met him through a mutual acquaintance of ours.
- 3 Q Okay. And then y'all just hit it off?
- 4 A Yes, sir.
- 5 Q And why is that?
- 6 A Just same type of personality. We were both
- 7 military, both veterans, both combat vets, so we
- 8 had a lot in common, a lot to talk about.
- 9 Q Okay. And how long have you known Mark?
- 10 A Probably six -- five or six years.
- 11 Q Okay. So going back to 2015/2016?
- 12 A Yes, sir.
- 13 Q Sometime around when he had his first heart attack?
- 14 A Yeah. Yes, sir.
- 15 Q Okay. Are you aware of his physical infirmities?
- 16 A Yeah. Yeah. We -- we talk about some of that
- 17 stuff.
- 18 Q Uh-huh. So what kind of things are going on with
- 19 him?
- 20 A Right. Well, the erectile dysfunction is one thing
- 21 that we've spoke of --
- 22 Q Uh-huh.
- 23 A -- you know. And, of course, he's got the heart
- 24 problems and diabetes and --
- 25 Q Uh-huh.

- 1 A -- so, yeah. We -- we speak on that.
- 2 Q Y'all have talked about that?
- 3 A Yes, sir.
- 4 Q Okay. Now, did you ever have cause to go to his
5 house?
- 6 A Yes, sir. I've been to his house several
7 occasions.
- 8 Q So a number of times?
- 9 A Yes, sir.
- 10 Q All right. And tell me about when you went. Were
11 people there or --
- 12 A Yes, sir. Usually, Mark -- well, Mark was there.
13 Usually, his kids were there.
- 14 Q Okay. And so you had plenty of opportunity to
15 observe the dynamics of the household?
- 16 A Yes, sir.
- 17 Q And can you tell me a little bit about that? How'd
18 they get along?
- 19 A Everybody seemed to get along all right. The kids,
20 like I said before, they -- disrespectful. No --
21 don't -- not real -- yeah. They don't listen very
22 well. Not to their father, at least.
- 23 Q And were you ever there when the mother was there?
- 24 A On occasion.
- 25 Q Uh-huh.

- 1 A Not often, but sometimes.
- 2 Q And did they provide a united front with the kids,
3 or . . .
- 4 A No. They didn't. It was --
- 5 Q What do you --
- 6 A Seemed like they pitted each other against -- they
7 pitted each other against each other.
- 8 Q So the kids pitted the parents against --
- 9 A Yes, sir.
- 10 Q -- each other? And, specifically, was the mother
11 undermining --
- 12 A Yes. She was.
- 13 Q So was undermining Mr. Gilbert --
- 14 A Uh-huh. Right.
- 15 Q -- a good bit?
- 16 A Yes, sir.
- 17 Q Did you ever see any -- any threatening behavior by
18 Mr. Gilbert?
- 19 A No. I did not.
- 20 Q Okay. Did you ever -- who was the discipline in
21 that house to your knowledge?
- 22 A Seemed like the mother was.
- 23 Q The mother was -- was disciplining them?
- 24 A Yes, sir.
- 25 Q So they would listen to the mother?

- 1 A Right.
- 2 Q But they wouldn't listen to Mr. Gilbert?
- 3 A Correct.
- 4 Q Okay. And, again, you observed this over a -- a
5 good period of time?
- 6 A Yes, sir. Over a course of a couple of years.
- 7 Q Okay. And when you say "they were disrespectful,"
8 what do you mean by that?
- 9 A That they just backtalked. They wouldn't do what
10 they were told.
- 11 Q So they -- they -- and when you say "they wouldn't
12 do what they were told," what kind of things were
13 they being told to do?
- 14 A Like take out the trash, clean the kitchen, you
15 know, stuff around the house.
- 16 Q So they weren't doing their chores?
- 17 A Right.
- 18 Q And he would get angry about that?
- 19 A I wouldn't say angry, but he would admonish them
20 for it.
- 21 Q Uh-huh. And would their mother tell them, "Listen
22 to your father?"
- 23 A No. Not that I'd ever heard.
- 24 Q Okay.
- 25 MR. SHEALY: All right. That's all I have for

1 this witness.

2 THE COURT: Cross-examination?

3 MS. HALLFORD: Yes.

4 CROSS-EXAMINATION

5 BY MS. HALLFORD:

6 Q You testified on direct that you were there, quote,
7 a couple of times. So three?

8 A A couple of -- been where? To their house?

9 Q At their house. You said that you were at their
10 house, quote, a couple of times. That's what I
11 wrote down.

12 A Well, it wasn't --

13 Q Is that what you said?

14 A Not that I recall. No. I've been over to their
15 house quite a few times.

16 Q Quite a few times? Okay. And I could be wrong.
17 So did you spend the night there?

18 A No.

19 Q What kind of stuff would y'all do when you were
20 there?

21 A Hang out and talk, mainly.

22 Q Did you hang out and talk to the kids or hang out
23 and talk to Mark?

24 A Hang out and talk with Mark.

25 Q Okay. So were the kids right there the whole time?

- 1 A Usually, yes.
- 2 Q Okay. What room would you guys be in?
- 3 A The living room.
- 4 Q Okay. So if you were there on a particular day,
5 how many hours would you say you stayed?
- 6 A It just -- it just varies. You know, maybe an
7 hour, maybe three hours, maybe five hours. It just
8 depended on what I had going on that day.
- 9 Q Okay. Would this be in the summer when the kids
10 were out of school?
- 11 A Summer, winter. It was both.
- 12 Q Okay. You would not be okay with some -- with a
13 man having sex with his daughter, right?
- 14 MR. SHEALY: Objection, Your Honor. I don't
15 see how that's relevant.
- 16 THE COURT: All right.
- 17 MS. HALLFORD: It is --
- 18 THE COURT: Come up.
- 19 (WHEREUPON, a bench conference was held.)
- 20 Q You would not be okay with a man having sex with
21 his daughter, would you?
- 22 A No.
- 23 Q You have never said anything in your life that
24 would lead someone to believe that you would be
25 okay with a man having sex with his daughter, have

1 you?

2 A No, ma'am.

3 Q You have never done anything that would lead

4 someone else to believe that you, personally, would

5 be okay with a man having sex with his daughter --

6 A No.

7 Q -- have you?

8 A No.

9 Q Would you, in fact, find that reprehensible?

10 A Yes.

11 MR. SHEALY: Judge --

12 THE COURT REPORTER: Was -- was that an

13 objection?

14 MR. SHEALY: It is an objection.

15 (WHEREUPON, a bench conference was held.)

16 THE COURT: Ms. Hallford, please continue.

17 MS. HALLFORD: I kind of forgot what my last

18 question was, but . . .

19 Q You have never -- you've never done anything that

20 would allow someone to believe that you'd be okay

21 with this?

22 A No.

23 Q Okay. Thank you.

24 THE COURT: Redirect?

25 MR. SHEALY: Just very briefly.

REDIRECT EXAMINATION

2 BY MR. SHEALY:

3 Q You've testified you were in the living room?

4 A Yes.

5 Q There have been a number of witnesses already who
6 have testified that there weren't a whole lot of --
7 of walls in this house?

8 A Yes, sir.

9 Q So pretty much the entire house was the living
10 room?

11 A Correct.

12 Q Okay.

13 MR. SHEALY: That's all I have for this
14 witness.

15 THE COURT: Okay. Any objection to this
16 witness being released?

17 MS. HALLFORD: Nothing from the State.

18 MR. SHEALY: No, Your Honor.

19 THE COURT: Okay. Thank you, sir.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Watch your step, okay?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Please be careful. You are
24 excused.

25 THE WITNESS: All right. Thank you.

1 (WHEREUPON, the witness was excused.)

2 THE COURT: Mr. Shealy?

3 MR. SHEALY: Your Honor, at this time, I
4 suppose -- I suppose we need to approach
5 because --

6 THE COURT: All right.

7 MR. SHEALY: -- that's --

8 THE COURT: Okay.

9 (To The Jury) Mr. Foreman and members of
10 the jury, there is a matter that I do need to
11 take up outside of your presence. I will try
12 to handle this as quickly as possible. If you
13 all will follow the bailiffs back to your jury
14 room. Thank you.

15 All rise. All rise.

16 (WHEREUPON, the jury is excused at 11:38
17 a.m.)

18 THE BAILIFF: Be seated.

19 THE COURT: Okay. Thank you. Now, yes, sir,
20 Mr. Shealy?

21 MR. SHEALY: Judge, I believe at this time,
22 we're going to need to talk with -- that Mr.
23 Gilbert and I are going to need to discuss as
24 to whether he would be testifying or not.
25 We'd ask for some time to do that, and --

1 THE COURT: Okay. And so there is a certain
2 procedure that I need to follow concerning
3 whether or not Mr. Gilbert will testify.

4 Mr. Gilbert, sir, if you'll please stand
5 and raise your right hand.

6 (WHEREUPON, the Defendant is sworn.)

7 THE COURT: Sir, do you understand that you
8 have the right to testify or not to testify in
9 this case? You can put your hand down.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: If you decide to testify, you may
12 be asked about any convictions, which involve
13 dishonesty or false statements, or any
14 convictions that carry a sentence of
15 imprisonment for more than one year. These
16 convictions may be used to attack your
17 credibility.

18 Sir, if you testify, you will be subject
19 to cross-examination by the State. And if you
20 decide not to testify, I will instruct the
21 jury that they cannot hold the fact that you
22 do not testify against you.

23 Now, I understand that this is a very
24 important decision for you, sir. And I need
25 for you -- before you answer my question about

1 whether or not you wish to testify, I want you
2 to confer with your lawyer and anyone else
3 that you feel that you need to talk with.

4 That may be a family member, a friend.

5 Sir, I'm going to give you an opportunity
6 right now to talk with anyone that you want to
7 before making this decision. Do you
8 understand what I'm asking?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. And so I'm not going
11 to ask for your answer yet.

12 Why don't we take ten minutes, Mr.
13 Shealy.

14 MR. SHEALY: Yes, ma'am.

15 THE COURT: And if you need more time after
16 that, you let me know. We will be at ease,
17 all right?

18 MR. SHEALY: Yes, ma'am. Yes, ma'am.

19 (Off the record from 11:40 a.m. to
20 12:08 p.m.)

21 THE BAILIFF: All rise. Come to order. Be
22 seated.

23 THE COURT: Okay. We are back on the record
24 with regard to the matter of "The State versus
25 Mark Gilbert." We took a recess at 11:40 to

1 determine if --

2 MR. SHEALY: I'm sorry, Your Honor.

3 THE COURT: Take your time.

4 -- to -- to determine if the defendant
5 wished to testify, and he was given an
6 opportunity to speak with his counsel and
7 anyone else that he wished to speak with
8 concerning that decision.

9 Mr. Shealy, has your client made a
10 decision?

11 MR. SHEALY: I believe he has, Your Honor.
12 I'd ask Your Honor to inquire into that.

13 THE COURT: Okay, sir, you're still under
14 oath. If you would please rise. Sir, have
15 you made a decision about whether or not
16 you're going to testify?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And what is that decision?

19 THE DEFENDANT: I will testify.

20 THE COURT: Okay, thank you.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And so please be seated.

23 All right. Then I will call the jury
24 back in after which Mr. Gilbert will take the
25 stand. He will be resworn at that time, all

1 right?

2 Okay. Thank you.

3 (To The Bailiff) Bring in the jury,
4 please.

5 And, Counsel, for your benefit, we can
6 break for lunch for the jury after this
7 testimony, okay?

8 MR. SHEALY: Yes, ma'am.

9 THE COURT: Or we'll see how it goes. How
10 about that, all right?

11 MR. SHEALY: Yes, ma'am.

12 THE COURT: And so I don't have to ask y'all
13 again in front of the jury, everybody remember
14 to really speak loudly, all right?

15 THE BAILIFF: All rise.

16 (WHEREUPON, the jury came into open court
17 at 12:12 p.m.)

18 THE BAILIFF: Be seated.

19 THE COURT: Okay. Mr. Foreman and members of
20 the jury, are y'all ready to go?

21 JURY FOREPERSON: Yes, Your Honor.

22 THE COURT: Okay. Thank you very much. And
23 for planning purposes, it is my desire that we
24 break for lunch around one o'clock, and we'll
25 see how things are going, all right? I'm not

1 going to put that in cement, but -- but that's
2 the plan right now, all right?

3 And so, with that, Mr. Shealy?

4 MR. SHEALY: Thank you, Your Honor. The
5 Defense will call Mark Gilbert.

6 THE COURT: Mr. Gilbert, sir, please come
7 around. You'll be sworn. And the witness
8 stand has been sanitized.

9 (WHEREUPON, the witness was sworn.)

10 THE COURT: Sir, please make yourself
11 comfortable. There's a bottle of water right
12 back here if you need it, okay?

13 THE WITNESS: Yes, ma'am.

14 THE COURT: Adjust that mic if you need to,
15 and if you would state your full name for the
16 record.

17 THE WITNESS: Mark Anthony Gilbert.

18 MR. SHEALY: All right. Thank you, Your
19 Honor.

20 DIRECT EXAMINATION

21 BY MR. SHEALY:

22 Q Mr. Gilbert, will you -- or how old are you?

23 A Fifty.

24 Q Okay. And how old were you in 2018?

25 A Forty-seven/forty-eight.

- 1 Q Somewhere in there? Okay. And in 2016 -- so you
2 would have been around 45; is that right?
- 3 A Yeah.
- 4 Q Something like that?
- 5 A Yes, sir.
- 6 Q Okay. Tell me about, I suppose, your life before
7 you had met Kelly? Were you in the military?
- 8 A I was.
- 9 Q Okay. Can you -- what branch and for how long?
- 10 A Marine Corp. About two and a half/three years.
- 11 Q Okay. And what did you do in the Marine Corp?
- 12 A I was a machine gunner for 3rd Light Armor Recon.
- 13 Q And did you deploy anywhere?
- 14 A I did.
- 15 Q Where is that?
- 16 A Kuwait --
- 17 Q All right.
- 18 A -- Saudi Arabia, Desert Storm, Germany, Spain.
- 19 Q Okay. And then when you left the military, did you
20 -- were you -- did you have a service-connected
21 disability?
- 22 A I did at that point, but I had not sought help for
23 it.
- 24 Q Okay. And what's the nature of that disability?
- 25 A PTSD.

- 1 Q Okay. So -- is it because you saw combat in Desert
2 Storm?
- 3 A I did see combat, yes.
- 4 Q Okay. So as a machine gunner in Desert Storm?
- 5 A Yes, sir.
- 6 Q All right. And do you have a disability rating?
- 7 A I do. Seventy percent.
- 8 Q All right. And because of that, you draw a
9 disability check, essentially, from the VA?
- 10 A Yes, sir.
- 11 Q All right. And when you left the marines, were you
12 -- you moved to New York; is that right?
- 13 A Yes, sir.
- 14 Q Okay. Did you get any training in New York?
- 15 A I did. I was -- well, I had went to New York when
16 I got out of the Marine Corp and, basically, was a
17 little bit of a free spirit. I thought I'd join
18 the carnival and just kind of have fun for a
19 summer. And then while I worked at that carnival,
20 I met my wife and settled down. I went to the
21 Plumbers' Union. They were doing open calls for
22 apprentices. I'd actually first went to
23 Steelworkers, and they were quite backed up, so I
24 went to the Plumbers' Union instead.
- 25 Q And they trained you to be a plumber?

- 1 A Yes, sir.
- 2 Q Okay. Did you get any certifications as a plumber?
- 3 A I did not.
- 4 Q Okay.
- 5 A I moved out of New York. We moved to Myrtle Beach.
- 6 Q And why'd you move to Myrtle Beach?
- 7 A Financially, I was a maintenance manager at a Best
8 Western, and I was salary, so -- but the hours were
9 getting piled on and -- and I really wasn't making
10 any money, so I called down to Myrtle Beach, and I
11 knew it was wintertime. Thanksgiving Day, we came
12 down, and the job started Thanksgiving Day, and I
13 worked down there. And hotels are really cheap
14 during the winter. It was off-season, so I could
15 get a hotel for us with our kids for \$400, and it
16 includes everything; and I was working right across
17 the street. So while I did that during the winter,
18 we saved money and rented an apartment out in town
19 and saved -- kept saving money, and just kind of
20 taking steps for a better life to buy a house,
21 which we eventually did.
- 22 Q Okay. And did your wife get a job in Myrtle Beach?
- 23 A She did -- Costco.
- 24 Q Okay. And what'd she do in Costco?
- 25 A She was a photo lab tech.

- 1 Q All right. And then -- and how many children did
2 you have at that point?
- 3 A Two. We had **Child 1** in Myrtle Beach, I don't quite
4 remember, but . . .
- 5 Q Okay. And your -- Nicholas has testified to
6 Morgan, Nicholas, Hunter --
- 7 A Morgan, I -- I -- Morgan's mother, I met before I
8 met my wife.
- 9 Q Okay.
- 10 A So . . .
- 11 Q So that's a half-brother?
- 12 A Yes, sir.
- 13 Q And he didn't live with y'all --
- 14 A No, sir.
- 15 Q -- at the time? Okay. All right.
- 16 So then you got -- how did you end up in
17 Spartanburg?
- 18 A My wife, like I said, was working part-time at
19 Costco. A position opened up when Costco, here in
20 Spartanburg, opened for a photo lab manager, and
21 she was qualified and got the job.
- 22 Q Okay. And so, at that point, you left your job in
23 Myrtle Beach to come up here for her job at Costco?
- 24 A Yes, sir.
- 25 Q All right. And do you remember what her hours at

1 Costco were?

2 A Nine to five, pretty -- or eight to four. You

3 know, something like that. It was just normal

4 hours.

5 Q Okay. And did she meet with customers or . . .

6 A Yes, sir. Customers would come up to the counter

7 and they'd have film that needed to be developed

8 or, you know, want pictures or photos. They had

9 certain things they could order.

10 Q Okay. So then when you came to Spartanburg, you'd

11 said that you were saving up money down in Myrtle

12 Beach. Were you able -- you bought a house in

13 Spartanburg or . . .

14 A Yes.

15 Q All right. And that was the -- Jackson?

16 A Yes, sir.

17 Q And that's here in Spartanburg County?

18 A Yes, sir.

19 Q What -- what municipality is that in or what city

20 is that in?

21 A It's right outside -- so it's -- the neighborhood

22 behind California Ave. and Asheville Highway, where

23 they --

24 Q Uh-huh.

25 A -- cross. It's called "Hilltop." That's the area.

- 1 Q Okay. So you lived in Hilltop?
- 2 A Yes, sir.
- 3 Q All right. And when did you move into that house?
- 4 A Two-thousand -- that's when my daughter was four or
5 five. I don't remember.
- 6 Q Okay. Just ballpark? Was it --
- 7 A Two --
- 8 Q -- 2013, 2014, or was it before that?
- 9 A Maybe before that.
- 10 Q Okay.
- 11 A I'm not -- I don't quite remember.
- 12 Q All right. So you've lived in that house a -- a
13 fair while before 2017?
- 14 A Yes, sir.
- 15 Q Okay. When was your first heart attack?
- 16 A Maybe '15. So 2015/'16.
- 17 Q Okay. And then have you had any other heart
18 attacks?
- 19 A Yes.
- 20 Q Okay. And when were those?
- 21 A After my first heart attack, about a year later, I
22 had another heart attack. And this last October --
23 September/October, I had a heart attack. And then
24 January, I had another heart attack.
- 25 Q Okay. Now, I believe your daughter's (as spoken)

1 testified as to stents being placed in your heart.
2 Did you -- how many stents have you had --
3 A Five.
4 Q -- placed? Okay. And how many of those were prior
5 to 2018?
6 A Three.
7 Q Okay. And so after your first heart attack, you
8 had two put in?
9 A My first heart attack, I had two put in. A year
10 later, those failed, and they put another stent
11 inside those two stents.
12 Q Okay. And then you've also -- or there's also been
13 a lot of testimony about a shoulder surgery. When
14 did that happen?
15 A 2017/'18, I think.
16 Q And which shoulder was that?
17 A My right shoulder.
18 Q And are you right-handed or left-handed?
19 A I'm right-handed.
20 Q You're right-handed. Okay.
21 A It was a complete rotator cuff tear and bicep tear.
22 It was bad.
23 Q Okay. How did that happen?
24 A I don't know, actually. Personally, I'm not a
25 doctor, but it -- it was pretty bad, and I got a

1 PRP shot. My doctor at the time gave me a PRP
2 shot. And what that is, is they draw your blood,
3 spin out the white blood cells, and they put it
4 back in. It's kind of like maple syrup. And I
5 think when that was done, I think it blew it out
6 even worse.

7 Q Okay. Have you had -- did you have any other
8 surgeries?

9 A Yes. I had hernia surgery and a foot surgery.
10 Plates and pins in my foot and mesh in my stomach.

11 Q They put mesh in your stomach? When did that
12 happen?

13 A 2015. 2017. Somewhere in there.

14 Q Okay. Do you take medication for any other issues?

15 A Yes. Heart disease, stent, and beta blockers. I
16 take insulin four times a day -- shots and pills
17 for Type 2 diabetes, as well as insulin.

18 Q Okay. So you've got pretty serious Type 2 diabetes
19 if you're taking --

20 A Very.

21 Q -- taking both pills and insulin?

22 A Yes.

23 Q All right. And how long has that been going on?

24 A Six/seven years.

25 Q All right. So throughout the term of the alleged

1 conduct -- this indictment --

2 A Yes, sir.

3 Q -- is that correct? Okay.

4 Now, there's been some testimony about the
5 house. Tell me about your home life. Did you --
6 how did you get along with your -- your kids?

7 A When they were younger, great. As they started
8 getting older, if I asked to bring the garbage out,
9 it wouldn't happen, or any chore was kind of
10 disregarded, like, "Whatever." And, eventually,
11 you know -- at what point -- I just said, "Look.
12 There's five people in this house. Nobody's going
13 to clean. What am I supposed to do?"

14 Q Uh-huh.

15 A And I can't physically -- at one point, you know, I
16 -- I couldn't physically pick up after everyone.
17 If you can't bring the garbage out, you know,
18 and -- and it would get into a confrontation every
19 time. So, you know, that stress is every day. You
20 know, it's not the best. And it wasn't just that,
21 you know. It was going to school or whatever.

22 Q What do you mean "going to school?"

23 A Well, if you don't, you know -- perfect example,
24 "If -- if you miss the bus that comes right outside
25 our door, I kind of think you're old enough to get

- 1 yourself up and not, you know, have it be a
2 confrontation every time, and, you know, that's
3 your responsibility. You're old enough." And
4 that's what I tried to teach. And if I bring you
5 to school when we're two minutes away and you say
6 you forgot to put your shoes on, you know, I'll get
7 flak from a child and my wife, because I'm not
8 driving all the way back home. I went to the
9 dollar store and got a pair of dollar flip-flops
10 and -- I mean, it's your responsibility.
- 11 Q Uh-huh. So the house was generally unclean?
- 12 A Yes.
- 13 Q I mean, in --
- 14 A Very. And -- yes.
- 15 Q And you -- did you try to keep it as clean as you
16 could?
- 17 A I tried.
- 18 Q Okay. But you only had one arm for some period of
19 time?
- 20 A Yes.
- 21 Q As well as -- tell me about the hernia surgery.
22 When did that happen?
- 23 A Sixteen/Seventeen. I think somewhere in there.
- 24 Q And so your body at that -- and so all of this
25 happened within about a three-year span? You had a

- 1 -- it started off with a heart attack, had another
2 heart attack, hernia surgery, foot surgery, and
3 shoulder surgery all in -- from about 2016 or so --
4 A If I remember correctly, yes, sir.
5 Q -- to 2018.
6 A It was all pretty close.
7 THE COURT: One -- one moment.
8 THE WITNESS: I'm sorry.
9 THE COURT: The court reporter held up her
10 hand.
11 THE COURT REPORTER: Can you guys speak one at
12 a time, please?
13 THE WITNESS: Yes. I'm sorry.
14 Q So -- and that happened -- and so that was from
15 2016 or so to 2018?
16 A Yes, sir. If -- if I remember correctly. I could
17 be a little off, but it was all generally pretty
18 close in time.
19 Q Okay. Now, obviously, you've heard a lot of
20 testimony about sexual misconduct with your
21 daughter.
22 A Yes, sir.
23 Q Did you ever commit any kind of sexual misconduct
24 with your daughter?
25 A No, sir.

- 1 Q Did you ever place your penis in her vagina?
- 2 A No, sir.
- 3 Q Did you ever place your fingers in her vagina?
- 4 A No, sir.
- 5 Q Did you ever use any kind of appliance, any dildos
- 6 or vibrators --
- 7 A No, sir.
- 8 Q -- on your daughter? Do you recall going to the
- 9 mall and purchasing a pink vibrator?
- 10 A No, sir.
- 11 Q Did you ever go to the mall with Nicholas?
- 12 A I'm sure we did on occasion. I mean --
- 13 Q Uh-huh.
- 14 A -- he would need reeds for his instrument or
- 15 clothes. I mean, yeah, we've -- we've gone to the
- 16 mall.
- 17 Q But never purchased a vibrator?
- 18 A No, sir.
- 19 Q That's not a thing you would do with your son?
- 20 A No. I don't -- do they have vibrator stores at the
- 21 mall? I - I wouldn't know.
- 22 Q Okay. You've also heard testimony about an
- 23 attempted -- I guess there was an attempt to put
- 24 your penis in her anus. Did that ever happen?
- 25 A No, sir.

1 Q Okay. And I understand that you can't give --
2 well, can you give an alibi for each and every one
3 of these days as to what you were doing?

4 A No. But there were always people in that house,
5 and -- always friends of theirs, and for most of
6 this alleged time period, I was on the couch where
7 they would be -- their friends -- because they
8 really didn't go into the rest of the house.
9 There's upstairs, but there was a living room, and
10 there were couches and a TV and everybody was there
11 all night, everyday. And if they weren't there,
12 they were at school or band practice, together.

13 Q Okay. And were you always at the house?

14 A Not always. I would visit my friend, Bobby, or I
15 would go -- some of their friends had car issues.
16 I would either have them bring their car to my
17 house, and I would repair their car, or I'd go to
18 their house and, usually, just the -- the people,
19 you know, that we knew that were close. Their
20 friends, you know, their parents or family would
21 have an issue with their bathroom, and I'd go fix
22 it for free.

23 Q Okay.

24 A You know, because a lot of people, you know,
25 financially, weren't able to pay prices plumbers

- 1 charge, I mean, so . . .
- 2 Q Okay. Now, there's also been a lot of testimony
3 about the wall situation at the house -- in the
4 house. Why did you keep on pulling down these
5 walls?
- 6 A Well, the electrical was old, and the walls were
7 plaster and lathe. I don't know if you're familiar
8 with that, but it cracks and there's just generally
9 holes that -- and, you know, so I figured, "Well,
10 if I'm going to fix the walls, I might as well take
11 them down and rewire while I'm at it -- rewire the
12 house" --
- 13 Q Uh-huh.
- 14 A -- "and replumb the house."
- 15 Q And so that was your plan?
- 16 A Yes, sir.
- 17 Q And why didn't that get done in a -- in a quick
18 fashion?
- 19 A Well, aside from financially, you know, injuries
20 cost a lot, and it's a family of five. I had heart
21 attacks and shoulder surgery and foot surgery and
22 hernia surgery.
- 23 Q So you just physically weren't able to rewire the
24 house?
- 25 A For the most part, yes, sir.

1 Q Okay. Now, we've heard from Mr. Angrisano about
2 some problems -- some erectile dysfunction
3 problems. So why don't you tell me about that?
4 And I understand that, that's embarrassing, but
5 tell me when did that begin and -- well, just tell
6 me when that began.

7 A Probably around my first heart attack or a little
8 beforehand. And -- yeah.

9 Q So you just -- it just stopped working?

10 A It was gradual, but it was -- by my first heart
11 attack, it was pretty much not working.

12 Q All right. And then, obviously, you've been seeing
13 a lot of doctors, right?

14 A Yes, sir.

15 Q Did you ever talk to a doctor about it?

16 A I didn't really talk to anyone at the VA. I had a
17 doctor who was also my friend, but, you know, at
18 the time, it was new to me, and it was kind of
19 embarrassing, especially with your friend. You're
20 a man. I mean, it's not something you really want
21 to talk about. I mean, we didn't -- I didn't even
22 let him give me a prostate exam, ever, because we
23 were friends outside of his practice. So it was
24 embarrassing. I -- I mentioned it kind of -- I'd
25 beat around the bush a little bit a couple of

- 1 times, but it wasn't really --
- 2 Q But -- so why didn't -- but, I mean, obviously,
- 3 you're married --
- 4 A Yes, sir.
- 5 Q -- at this time?
- 6 A Yes, sir.
- 7 Q I mean, I too am married. I would have expected --
- 8 for a marriage to work, for instance, generally,
- 9 there's some kind of sexual activity. Why didn't
- 10 you go get some help based on trying to keep this
- 11 marriage going?
- 12 A I didn't have the desire, really.
- 13 Q So you just didn't have desire? I mean, I think --
- 14 again, explain that to us because men generally are
- 15 expected to at least want to have sex, if only for
- 16 -- with their wives. I mean, so if you -- was it
- 17 your body that's a problem? What -- what was
- 18 the --
- 19 A Well, partially that, but there were hygiene issues
- 20 with my wife.
- 21 Q Okay. And were those hygiene issues similar to the
- 22 housework issues?
- 23 A Yes, sir.
- 24 Q So there's just a general problem with cleanliness
- 25 in this house?

- 1 A Yes, sir.
- 2 Q And -- okay. If -- if that's the case, why didn't
- 3 you go -- and I'm not suggesting this would have
- 4 been a right thing to do, but why didn't you go
- 5 outside of the house and try to get help there?
- 6 A For?
- 7 Q Well, you just weren't interested in sex?
- 8 A No, no. I was interested in sex, and I did try and
- 9 -- and get help. I -- can I be specific, or . . .
- 10 Q Well, just -- but you never got help, I guess is my
- 11 question.
- 12 A For me? No. You know, I thought maybe it -- I
- 13 would get over it. I didn't really understand it.
- 14 I thought, you know, taking meds, having a better
- 15 diet, you know, would -- would help on its own,
- 16 initially, until, you know, I learned more about
- 17 it.
- 18 Q Did it?
- 19 A No.
- 20 Q Okay. Well, you've had a lady in the courtroom
- 21 this whole time.
- 22 A Yes, sir.
- 23 Q I assume -- who is she to you?
- 24 A That's my girlfriend.
- 25 Q Well -- so have you fixed this problem now?

1 A No. I actually got pills, and pills don't work.
2 Q The pills don't work at all?
3 A No.
4 Q Okay. And this is just because -- or -- well, you
5 don't know why it is, because -- have you -- well,
6 have you talked to the VA about it?
7 A Well, they consider -- I can't remember the term.
8 "You deserve some sort of pleasure in your life."
9 That's kind of where they go with that, so they
10 don't do a whole lot. They just kind of, you know,
11 "Here, try this for, you know, a while," and they
12 give you a couple of pills over a certain amount of
13 time, because it's not -- like a -- you've lost a
14 leg or an arm, so they will give you whatever you
15 need for that. For -- for this, they just kind of
16 say, "We'll give you a little bit because you
17 deserve to have some happiness in your life."
18 A Uh-huh.
19 Q But it's not really extensive what they do. And,
20 financially, to go to someone to try and figure
21 that out, you know, financially, I can't really
22 afford it, so . . .
23 Q Okay. So let's get to the actual facts here.
24 Well, obviously, you've denied each and every one
25 of the allegations --

1 A Yes, sir.

2 Q -- that have been made? That you had sexual
3 intercourse with your daughter? That you -- that
4 you inserted your fingers in your daughter's
5 vagina; is that correct?

6 A I did not.

7 Q And you've denied the -- the use of any kind of
8 appliances on your daughter; is that correct?

9 A Yes, sir. I've denied it.

10 Q And so just all of those things, you've already
11 denied?

12 A Yes, sir.

13 Q Tell me about March 17th when they have testified
14 they kicked you out just by being terrified of you.

15 A I came home. I don't remember if I had brought my
16 wife to the hospital or -- Kimoni, my daughter's
17 friend, was there. I can't remember at this time.
18 She had been mouthing off to me, and I said,
19 "Listen, I'll just bring you home." She always
20 stayed at the house, lived at the house,
21 practically. I don't remember if it was that or my
22 wife had hurt her finger. She tripped over the
23 garbage and broke her finger. But when I came
24 home, my son came out. My daughter was standing on
25 the porch, and --

1 Q Now, don't testify to what people have told you or
2 what people told you, just what you did as a result
3 of the conversation.

4 A So it was insinuated that I touched my daughter,
5 and the only thing I knew to do was -- I'm not
6 going to put myself in that situation. I'm not
7 going to go back into that situation that -- where
8 I'm being accused of something like that. That
9 would be dumb, so I left at that moment.

10 Q Okay. Where'd you go?

11 A I went to my friend, Bobby's, house.

12 Q Okay. And did you have any contact with your wife?

13 A I did.

14 Q Okay. And what was the -- the nature of that
15 contact?

16 A Either by phone or maybe once a week, we'd get
17 together for a few minutes, and we'd discuss what
18 was said and how to deal with it -- how to handle
19 it.

20 Q Okay. And that went on for how long?

21 A A month or two.

22 Q Okay. So that would -- went on through, say, April
23 or May?

24 A That went on through the -- until my son assaulted
25 me.

1 Q Okay. Do you have any idea as to when that was?
2 A I think that was in June.
3 Q Okay. Now, did you have -- did you ever go back to
4 the house --
5 A I did not.
6 Q -- between May and --
7 A Never.
8 Q So you've not --
9 A To this day.
10 Q -- you've not been back to Spartanburg SC ; --
11 A No, sir.
12 Q -- since March?
13 MR. SHEALY: Sorry.
14 THE COURT REPORTER: Can y'all talk one at a
15 time, please?
16 THE WITNESS: I'm sorry.
17 THE COURT: Again, gentlemen, thank you. I
18 know it's hard. Just slow down a little bit.
19 Yes, sir.
20 All right, Matt, if you'll ask that
21 question -- Mr. Shealy, sir. Sorry.
22 MR. SHEALY: Yes, ma'am.
23 THE COURT: If you'll ask that question again.
24 MR. SHEALY: Yes, ma'am.
25 Q So you've not been back to that house since March

- 1 17th?
- 2 A No, sir.
- 3 Q Okay. And what were you and your wife talking
4 about?
- 5 A Initially, I said, you know, we need to sit down
6 with the kids and discuss this accusation and go to
7 the sheriff's department if we need to. That was
8 my suggestion.
- 9 Q Okay. And did she agree to do that, or . . .
- 10 A No. She said, "I don't believe it and we won't."
- 11 Q Okay. And then in June, you've testified that your
12 -- that's the last time you saw your wife?
- 13 A Yes.
- 14 Q Okay.
- 15 A If -- if I remember correctly. Yeah. That was
16 when I was assaulted.
- 17 Q Okay. So tell me about the assault.
- 18 A I had asked my wife to get together with me to
19 discuss -- so we had a joint bank account, and my
20 disability was going into that joint bank account,
21 and -- which means she can withdraw money from it
22 whenever she wanted. And, at that point, I said,
23 "Look, if -- if we cannot come to how we're going
24 to work this out, if we're not going to go to the
25 sheriff's department, you know, if we're not going

1 to resolve this, then I need a separate account
2 that that money goes into, so I can survive, but
3 I'll give you whatever you need. You know, but I
4 need to survive, you know, pay bills out here if
5 you're not going to resolve it."

6 Q So for several months you've been, essentially,
7 living on Bobby's couch?

8 A Yes, sir.

9 Q On -- kind of at his -- bumming money off of him?

10 A No.

11 Q Okay. So how was that working?

12 A I paid him money every month. Not a lot, but, I
13 mean, he was doing me a favor. But still, he had a
14 family, and bills have to be paid, and I didn't
15 expect that this would turn into what it did.

16 Q Okay. And so you met her at a -- where did you
17 meet her?

18 A I met her in Wellford, there's a big tire --

19 Q Uh-huh.

20 A -- in Wellford -- a big feed store, the big tire.
21 Right next to there is a little mall with a Chinese
22 restaurant.

23 Q Okay. And did y'all meet in the restaurant? Did
24 you meet out at her car? Where did you --

25 A No. We met inside the restaurant, had something to

- 1 eat.
- 2 Q Okay. And then what happened?
- 3 A And I came out, and she said, "Hunter's here," and
- 4 he threw something at me and hit me in the head,
- 5 split my head open; and then we rolled around on
- 6 the ground for a little while; and they -- he got
- 7 up and they left and then the police came. Someone
- 8 had called the police, obviously. People are
- 9 fighting in the parking lot, and --
- 10 Q And did the police ask you what was going on?
- 11 A Yes. I -- I said -- I told them exactly what was
- 12 going on. I said that my daughter had accused me
- 13 of molesting her, and I had nothing to hide. And
- 14 at that point, I was just done. Which is -- you
- 15 know, I -- this can't go on. I mean, at what point
- 16 -- I had nothing to hide. I told the police
- 17 exactly what I was accused of. I told the
- 18 policemen exactly, you know, what had just
- 19 happened, so . . .
- 20 Q And that's the point at which you cut off your
- 21 disability going into your joint bank account?
- 22 A Yes.
- 23 Q Okay. And you let your wife know about that?
- 24 A Yes.
- 25 Q And to your knowledge, did she tell the kids that?

1 A I do not know.

2 Q You don't? Okay. All right. And then,
3 ultimately, there's an investigation, I suppose,
4 and this is where it has ended up; is that
5 accurate?

6 A Well, I -- I had went to Florida.

7 Q Okay. Tell me about -- why did you go to Florida?

8 A That's where my family is. My sister, my dad, and,
9 you know, I just needed family at that time. So I
10 -- I went down there and they had called me -- DSS.
11 They had called me on the phone, and they sent the
12 police out there. The VA sent the police out to do
13 a wellness check while I was down there.

14 Q Okay. And they had a warrant. They arrested you?

15 A No, no. This is before that, and they just did a
16 wellness check, you know, the police did. And I
17 said, "I'm fine." I told them exactly what I was
18 being accused of. And then, at some point,
19 Spartanburg put a warrant out for my arrest; and
20 they arrested me there and shipped me --

21 Q Okay.

22 A -- up here.

23 Q All right. And then -- so at no point have you
24 tried to hide with any dealings that you've had
25 with respect to law enforcement --

- 1 A No.
- 2 Q -- or anybody what you are accused of?
- 3 A No.
- 4 Q And it's always been your contention that this did
5 not happen?
- 6 A Yes.
- 7 Q And -- now, there's been a lot of talk about Hunter
8 having had problems with the law previously. Did
9 the police ever come inside the house, or do you
10 know?
- 11 A They came to the doorway. Do I -- can I mention
12 circumstances or -- I don't . . .
- 13 Q Well, no. I -- I'm not asking you why they were
14 looking for Hunter. I'm just asking if they came
15 into the house or not.
- 16 A No. Just to the doorway. His probation officer
17 came to the doorway.
- 18 Q So DJJ never did a home visit, home study, any of
19 that stuff?
- 20 A Not that I'm aware of. But like I said, his -- his
21 probation officer came to the house. Police came
22 at various times to the house. SWAT came to the
23 house.
- 24 Q Okay. Well -- so now, the other question that I
25 had for you is -- so when -- obviously, there were

1 allegations that arose in July. Who, ultimately,
2 fostered your daughter?

3 A So I was being held here, and Ms. Duclos works at,
4 really, Spartanburg County; and she came to me; and
5 I guess DSS was supposed to have brought me
6 paperwork to sign so that she could foster my
7 daughter. They had not, and, you know, until that
8 happened, my daughter was sitting in a group home,
9 and Ms. Duclos wanted her to be in a home, which I
10 understand. So Ms. Duclos came to me directly
11 in -- in the jail and asked if it was okay with me
12 versus waiting for paperwork to come through, and I
13 said, "I don't have any problem with that. None.
14 You've been background checked. You work here.
15 Sure."

16 Q Okay. So you allowed somebody from the jail --

17 A Yes, sir.

18 Q -- to be the foster parent to the person who was
19 accusing you of these things --

20 A Yes, sir.

21 Q -- despite any kind of risk of disclosure, things
22 like that?

23 A I -- I have nothing to be afraid of. I didn't do
24 anything, so she can foster.

25 Q Okay. So do you have anything else you think that

1 the jury needs to hear about?

2 A No, sir.

3 Q No? All right. Thank you.

4 MR. SHEALY: If you'll answer any questions
5 that Ms. Hallford has for you.

6 THE COURT: Ms. Hallford, cross-examination.

7 MS. HALLFORD: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. HALLFORD:

10 Q So, Mr. Gilbert, I'm super confused now. I hope
11 that you can help me out.

12 THE COURT: Ms. Hallford, ma'am, can you keep
13 your voice up for me?

14 MS. HALLFORD: I -- I'm so sorry.

15 THE COURT: Yes, ma'am.

16 MS. HALLFORD: Will that help any?

17 Q So I'm hoping you can help me out here. You would
18 agree that Child 1 is a lovely young lady, wouldn't
19 you?

20 A Yes, she is.

21 Q She is bright? Yeah, yeah?

22 A Yes, ma'am.

23 Q Intelligent?

24 A Yes, ma'am.

25 Q Clearly, very articulate. You heard her testify?

- 1 A To some degree, yes, ma'am.
- 2 Q You only think she's somewhat articulate?
- 3 A She's articulate with what she's been . . .
- 4 Q What? What she's been what?
- 5 A Told to say, in my opinion.
- 6 Q Okay. "Told to say." She is polite?
- 7 A Very.
- 8 Q Exceedingly?
- 9 A Yes, ma'am.
- 10 Q She would be a delight for anyone to have as a
- 11 child, wouldn't she?
- 12 A Yes, ma'am.
- 13 Q She's in high school?
- 14 A Yes, ma'am.
- 15 Q You know much about teenage girls in high school?
- 16 A I have no idea.
- 17 Q You don't know -- you've never seen *Gossip Girls* or
- 18 any of the shows about how catty teenage girls in
- 19 high school can be?
- 20 A No.
- 21 Q No?
- 22 A No, ma'am. That doesn't interest me.
- 23 Q Okay. It doesn't interest me either, but . . .
- 24 Can you think of anything that would be more
- 25 embarrassing for a teenage girl than to have other

1 teenage girls know that their dad had sex with
2 them? Can you think of anything more embarrassing?

3 A I can't say I would know how that feels at all.

4 Q But can you think of another scenario that would be
5 more embarrassing for a teenage girl than to have
6 people know that their dad was having sex with
7 them?

8 A No.

9 Q There's not anything more embarrassing, is there?

10 A No, ma'am. Not that I can think of.

11 Q So why do you think that ~~Child 1~~ is making up these
12 terrible lies about you?

13 MR. SHEALY: Objection.

14 THE COURT: Counsel.

15 (WHEREUPON, a bench conference was held.)

16 Q What motive would Child 1 possibly have to expose
17 herself to that kind of ridicule by falsely
18 accusing you of having sex with her?

19 A I couldn't answer that question.

20 Q Because she doesn't have a motive to do that, does
21 she?

22 A I wouldn't know.

23 Q There is no reason for her to go full nuclear with
24 this kind of humiliating information if she's
25 making it up, is there?

- 1 A I wouldn't know.
- 2 Q If she wanted you out of the house, she could have
3 accused you of beating her, couldn't she?
- 4 A I wouldn't know.
- 5 Q If she wanted you out of the house, she could have
6 said, "My dad deals marijuana," and gotten someone
7 to plant some in your car, couldn't she?
- 8 A I wouldn't know.
- 9 Q If she wanted you out of the house, there are a
10 multiplicity of things she could have accused you
11 of, but you want this jury to believe that she
12 decided to accuse you of the thing that would be
13 the most humiliating for her to have to live with
14 for the rest of her life. Is that what you want
15 this jury to believe?
- 16 A Yes, ma'am.
- 17 Q It is not true, is it? She accused you of this
18 because you did it, didn't you?
- 19 A No, ma'am. I did not.
- 20 Q You put your penis inside her, didn't you?
- 21 A No, ma'am. I did not.
- 22 Q You put a vibrator inside her, didn't you?
- 23 A No, ma'am. I did not.
- 24 Q You forced her to put her mouth on your penis and
25 suck it, didn't you?

- 1 A That's disgusting, and, no.
- 2 Q It is disgusting.
- 3 A I did not.
- 4 Q Yes. It is. I agree with you. We can agree on
- 5 this. It is disgusting, and she would have no
- 6 motive to put herself through the knowledge that
- 7 people are going to know about this for the rest of
- 8 her life. You sit there, emotionless, because you
- 9 don't care. You did it? You --
- 10 MR. SHEALY: Objection.
- 11 Q -- did it, didn't you?
- 12 MR. SHEALY: Objection.
- 13 THE COURT: Come forward. Come forward.
- 14 (WHEREUPON, a bench conference was held.)
- 15 Q When did you say you started having erectile
- 16 dysfunction problems?
- 17 A Right around my first heart attack.
- 18 Q And I don't remember when you said your first heart
- 19 attack was. 2017?
- 20 A I -- I'd have to look. Sixteen/Seventeen.
- 21 Q You literally testified to it a few minutes ago.
- 22 You said when your first heart attack was.
- 23 A That's right. I think I said '16 --
- 24 Q You can't remember what you said now?
- 25 MS. HALLFORD: Oh, sorry.

1 THE COURT REPORTER: One at a time, please.

2 MS. HALLFORD: Yes, ma'am.

3 THE COURT REPORTER: Thank you.

4 A I think I said 2016/2017, if I remember correctly.
5 Somewhere near '15. I don't know.

6 Q So when that problem -- let me back up.

7 So you've got a friend who is a medical
8 doctor?

9 A I do. I had one.

10 Q You had a friend who was -- what happened to him?

11 A These accusations come out, and people assume from
12 the start that they're true, otherwise, why would
13 you be accused.

14 Q Okay. So before the accusations came out, which
15 was in 2018, you had the erectile dysfunction
16 problems, correct?

17 A Yes, ma'am.

18 Q And you have a friend who's a doctor --

19 A I do.

20 Q -- right? But you didn't talk to him about the
21 erectile dysfunction problems?

22 A That's right. Like I stated earlier, he's my very
23 good friend. It was embarrassing.

24 Q It was embarrassing to talk to a doctor about
25 erectile dysfunction problems?

- 1 A He was my friend, as well.
- 2 Q Correct. Who's also a doctor?
- 3 A Yes, ma'am.
- 4 Q Okay. But you had no problem talking about your
5 erectile dysfunction problems to your friend who
6 was not a doctor?
- 7 A We didn't discuss that until after.
- 8 Q Until you needed a jury to believe that you
9 couldn't get your penis up; isn't that right?
- 10 A No.
- 11 Q Will we hear from any doctors today about your
12 problem?
- 13 MR. SHEALY: Objection.
- 14 THE COURT: Counsel.
- 15 (WHEREUPON, a bench conference was held.)
- 16 Q So, basically, it was too embarrassing for you to
17 talk to a doctor, right?
- 18 A Generally, yes. I'd beat around the bush and
19 dropped the -- the hints to it a few times before
20 this. Before any of these accusations, I did kind
21 of speak with him about it. But, like I said, I
22 wouldn't even let me give -- let him give me a
23 prostate exam, so . . .
- 24 Q But not too embarrassing to talk to a random man
25 who could not possibly help you with your problem?

1 A He wasn't a random man. He was my very, very good
2 friend.
3 Q As was the doctor --
4 A Yeah.
5 Q -- who could have helped you with the problem?
6 A Maybe, but, at the time, like I said -- also
7 stated, there was really no interest in sex with my
8 wife because of other issues.
9 Q That's because you didn't need your wife, isn't it?
10 A I'm sorry?
11 Q That's because you didn't need your wife for sex,
12 isn't it? You had someone else in your house for
13 sex, didn't you?
14 A That's disgusting. No.
15 Q So you said that between January of 2016 and --
16 well, you said there was always someone in your
17 house. Always?
18 A Pretty much, yes, ma'am.
19 Q So is it your testimony to this jury that you were
20 never alone with Child1 between January of 2016 and
21 March of 2018?
22 A There may have been moments, but not many.
23 Q Literally, for over two years, you're saying there
24 were only "moments" when you were alone with your
25 daughter?

- 1 A Maybe in a car, driving, but she was in band with
2 her brother. Hunter was in and out. Kelly -- I
3 mean, if they were all at school -- if school was
4 open, they were all at school together. I mean,
5 not together in the same class, but they were all
6 at school, or they were at band together because
7 they were both in band and they were all in school,
8 except Hunter.
- 9 Q Except Nicholas is older than her, so he goes to a
10 different school, right?
- 11 A No. He went to Dorman. She goes to Dorman. I
12 mean --
- 13 Q No. There were times when she was in middle
14 school.
- 15 A Yes.
- 16 Q He -- he was in high school, so they had different
17 schedules, correct?
- 18 A Yes, ma'am.
- 19 Q So she would come home on the bus and be there
20 alone without her brothers there, because they were
21 in high school --
- 22 A Or --
- 23 Q -- isn't that right?
- 24 A No, ma'am. Actually --
- 25 Q No?

1 A -- sometimes, but she also had soccer and her mom
2 would pick her up, as her mom usually picked up the
3 kids from Dorman or Fairforest.

4 Q Okay. So let's back up. Sometimes she was at home
5 with you when the brothers were at school. You
6 just admitted that.

7 A Yes.

8 Q So there were times when you were at home alone
9 with Child 1?

10 A Not very many. Like I said, her mom would pick her
11 up from soccer.

12 Q My question wasn't how many. My question was --

13 MS. HALLFORD: I'm sorry.

14 THE COURT REPORTER: Keep going.

15 Q My question was there were sometimes when you were
16 home alone with Child 1 yes or no?

17 A Yes, ma'am.

18 Q Okay. So your testimony to this jury, then, is
19 that you're completely innocent of all of this; is
20 that right?

21 A Yes. Yes, ma'am.

22 Q And your daughter, who you agree is articulate and
23 smart --

24 MR. SHEALY: Judge, I think I'm going to
25 object.

1 THE COURT: Counsel.

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: Please continue.

4 MS. HALLFORD: I have no further questions.

5 THE COURT: Anything on redirect, Mr. Shealy?

6 MR. SHEALY: Yes, ma'am. Yes, ma'am. Just a
7 few things.

8 REDIRECT EXAMINATION

9 Q Were you arrested March 17th?

10 A I was not.

11 Q Were your kids taken into protective custody March
12 17th?

13 A No, sir.

14 Q Was there an allegation, March 17th, made to any
15 official law enforcement organ?

16 A No, sir.

17 Q Was there an accusation made April 17th that you
18 know of?

19 A No, sir.

20 Q Was there one made May 17th that you know of?

21 A No, sir.

22 Q Was there made -- was there one made in June that
23 you know of?

24 A No, sir.

25 Q It wasn't until July that there was an accusation;

- 1 is that correct?
- 2 A Yes, sir.
- 3 Q To an official organ of the state?
- 4 A Yes, sir.
- 5 Q Okay. So you were -- there's a lot made about this
- 6 most embarrassing thing that could happen.
- 7 A Yes, sir.
- 8 Q That didn't happen until July; is that correct?
- 9 A Yes, sir.
- 10 Q So if things had continued -- the status quo had
- 11 continued that resulted in May 17th, you had stayed
- 12 away and you had kept giving them money, this would
- 13 have never -- you wouldn't be here --
- 14 A I --
- 15 Q -- is that correct?
- 16 A -- probably, yes, sir.
- 17 Q So nobody in high school would have known about it;
- 18 is that correct?
- 19 A Yes, sir.
- 20 Q Nobody would have been catty about it; is that
- 21 correct?
- 22 A Yes, sir.
- 23 Q Okay.
- 24 MR. SHEALY: All right. That's all I have for
- 25 this witness. Thank you, Judge.

1 THE COURT: Ms. Hallford?

2 RECROSS-EXAMINATION

3 BY MS. HALLFORD:

4 Q So that's the answer to the question, then?

5 A I'm sorry?

6 Q So then that's the answer to my original question?

7 A I --

8 Q Child 1 --

9 A You're --

10 Q -- so Child 1 made all of this up, because you cut off
11 some VA benefits to her mother?

12 A I can't tell you that answer. I don't know.

13 MR. SHEALY: Objection. That's
14 mischaracterizing -- oh, well -- yeah.

15 THE COURT: Come up. Come up. Come up.

16 THE COURT REPORTER: Can you repeat that? You
17 said "objection." I didn't hear the end of
18 it.

19 THE COURT: Just one second.

20 THE COURT REPORTER: Okay.

21 (WHEREUPON, a bench conference was held.)

22 THE COURT: All right. Thank you.

23 (To Ms. Hallford) Yes, ma'am. Right
24 now, is there anything else?

25 MS. HALLFORD: No.

1 THE COURT: Okay. Mr. Shealy?

2 MR. SHEALY: I don't have anything else for
3 this witness. I'm done.

4 THE COURT: Okay. All right. Mr. Gilbert,
5 sir, you may return to sit next to your
6 attorney. Thank you.

7 THE WITNESS: Can I take this with me?

8 THE COURT: Yes, sir. You can have it.

9 (WHEREUPON, the witness was excused.)

10 (To The Jury) All right. At this time,
11 Mr. Foreman and members of the jury, we're
12 going to take a break for lunch. Now, that
13 doesn't necessarily mean that the lawyers get
14 to go to lunch. They're going to have to talk
15 to me for a little bit about some other
16 matters that we've got to take up this
17 afternoon. But, again, we're trying to be
18 most efficient with your time.

19 I would like for you all -- and I'm
20 looking at counsel just to make sure -- 2:15?

21 MS. HALLFORD: Yes, ma'am.

22 MR. SHEALY: Yes, ma'am.

23 THE COURT: Mr. Shealy, Ms. Hallford, come up
24 one more time. I'm thinking this through.

25 (WHEREUPON, a bench conference was held.)

1 THE COURT: Okay. After -- after conferring
2 with counsel, let me ask. Mr. Shealy, sir, do
3 you have other witnesses?

4 MR. SHEALY: I do not, Your Honor. The
5 Defense will rest at this point.

6 THE COURT: Defense rests.

7 (To The Jury) Okay. All right. Now,
8 Mr. Foreman and members of the jury. I am
9 going to let you all go to lunch right now. I
10 would ask that you be back here at 2:15.
11 Thank you. Again, don't discuss the case with
12 anyone, not even among yourselves. You still
13 don't have all of the evidence, and I have not
14 told you to start deliberations yet. All
15 right?

16 JURY FOREPERSON: Yes, Your Honor.

17 THE COURT: Thank you. Have a nice lunch. If
18 everyone will please rise.

19 (WHEREUPON, the jury was excused at 1:05
20 p.m.)

21 THE BAILIFF: Be seated.

22 THE COURT: Okay. And so I have some matters
23 I need to take up with the lawyers and
24 everyone else can be at ease and go enjoy
25 lunch. I will see you all in just a few

1 minutes.

2 Mr. Shealy, Ms. Hallford, Ms. Clark, if
3 you all want to take a couple of minutes.
4 Hopefully, we can do what we need to do first,
5 and then y'all can get something to eat, okay?

6 All right. Thank you.

7 (Off the record from 1:06 p.m. to
8 2:30 p.m.)

9 AFTERNOON SESSION

10 THE COURT: All right. Please be seated.
11 Okay. And I believe the bailiffs want to let
12 folks in right now. Not the jury, of course,
13 but the folks that were in earlier, and I
14 don't see any reason why not to do that now.
15 Okay.

16 THE BAILIFF: Yes, Your Honor.

17 THE COURT: Come on in. They can come on in.

18 Okay. And so now, with regard to our
19 motions. I think there are some motions from
20 the State, and there are some things we need
21 to put on the record regarding objections that
22 have been made prior to -- well, in the
23 morning, prior to the lunch break. Okay.

24 Why don't we start with the objections.

25 MR. SHEALY: Yes, ma'am.

1 THE COURT: If y'all can bear with me just one
2 moment. Okay.

3 I believe that there was an objection at
4 12:48. Was that the first one, Counsel, with
5 the cross-examination of the State?

6 MR. SHEALY: Excuse me. I believe so, Your
7 Honor. Mr. Angrisanio? I had a relevance
8 objection with respect to the line of
9 questioning regarding whether or not Mr.
10 Angrisanio found it reprehensible for a man to
11 have sex with his daughter. There were
12 several other questions. I objected again,
13 and I believe the -- the -- that Your Honor
14 asked Ms. Hallford to move on at that point.
15 But I -- I had a relevance objection as to
16 whether -- as to how that could possibly be
17 relevant.

18 THE COURT: Okay. And let me just find his
19 testimony. I'm sorry.

20 Okay. At 11:33, there was an objection
21 during the defendant's first witness'
22 testimony on cross-examination. It was -- the
23 objection was as to relevance. I overruled
24 that objection at that time.

25 Then there was another objection at 11:35

1 and I -- I -- and the word was
2 "reprehensible," and I sustained the
3 objection, because I thought that that
4 question had already been asked and answered
5 several times, okay?

6 And so next we get to the defendant's
7 testimony.

8 MR. SHEALY: Yes, ma'am. Your Honor, I
9 believe there was an objection with respect to
10 a question, "Why would Child 1 -- and I'm
11 paraphrasing -- "Why would Child 1 do this or
12 make this up?" I objected to that as
13 speculation. Because, obviously, it was --
14 she's asking that he speculate as to her
15 motive. There was a request for her to
16 rephrase that. I believe that my objection
17 carried over because the rephrase was, "What
18 could be her motive?" And so that -- that was
19 my objection with respect to those two
20 questions. That motive that --

21 THE COURT: One second.

22 And Ms. Hallford, I believe that you
23 stated you would rephrase the question; is
24 that correct?

25 MS. HALLFORD: Yes, ma'am. And I did.

1 THE COURT: Okay. And so -- so that objection
2 would have been sustained, all right?

3 MR. SHEALY: Your Honor, and I believe that my
4 objection would have continued to the way that
5 she rephrased that question, because, again,
6 it was the motive, or at least that was my
7 intention.

8 THE COURT: And I believe that I sustained
9 that, and said that had been asked and
10 answered, okay? Next?

11 MR. SHEALY: Your Honor, I'm not sure that I
12 had any other objections. I don't believe
13 that I had any other objections.

14 THE COURT: There was, I believe, an objection
15 regarding burden-shifting --

16 MR. SHEALY: Okay.

17 THE COURT: -- and then witness pitting.

18 MS. HALLFORD: Oh, that was --

19 MR. SHEALY: There -- there --

20 MS. HALLFORD: -- the doctor question.

21 MR. SHEALY: -- there was, Your Honor. Our
22 argument with respect to -- Ms. Hallford had
23 asked my client regarding where's the doctor,
24 essentially. It would be our position that,
25 that shifts the burden as required for that,

1 is the comment on our decision not to call
2 particular witnesses. It's intended to force
3 us to prove particular elements for particular
4 things, and I don't believe they're allowed to
5 do that.

6 THE COURT: Okay. And I believe that I
7 sustained that objection. And then the last
8 one was as to pitting witnesses, and I
9 sustained that objection, as well.

10 MR. SHEALY: And I think we both agree that
11 there was going to be a pitting --

12 MS. HALLFORD: Yes.

13 MR. SHEALY: -- so she -- she rephrased that
14 question.

15 MS. HALLFORD: I pulled it --

16 MR. SHEALY: Okay.

17 MS. HALLFORD: -- all together, though.

18 THE COURT: Okay. All right. Okay. And so
19 does that handle all of the objections that we
20 -- we -- when you all approached?

21 MR. SHEALY: Yes, ma'am. I believe so.

22 THE COURT: Okay. Thank you. And so let me
23 now hear regarding any motions from the
24 Defense, and then after that, I know Ms.
25 Hallford also wants to bring up another

1 matter, okay?

2 MR. SHEALY: Your Honor, the Defense would
3 renew all their prior objections, as well as
4 their prior motions. In this case, motions to
5 quash. We also have the motions for direct
6 verdict. We would ask that Your Honor
7 reconsider those and grant them at this time.
8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 Ms. Hallford?

11 MS. HALLFORD: The State has the same response
12 as previously.

13 THE COURT: Okay. And, Mr. Shealy, those
14 motions are respectfully denied, sir, for the
15 same reasons. Thank you.

16 MR. SHEALY: Thank you, Your Honor.

17 THE COURT: Duly noted that -- that they have
18 been made.

19 Okay. Ms. Hallford.

20 MS. HALLFORD: Yes, Your Honor. The State
21 informed the Defense and Your Honor earlier
22 that it's the State's intention to, in closing
23 argument, address the fact that a doctor has
24 not come in to confirm that Mr. Gilbert has
25 erectile dysfunction. Under the State --

1 under the case of "Douglas v. State," and that
2 is 504 S.E.2d 307. The Court says, "Where the
3 defendant presents evidence at trial and there
4 are witnesses seemingly accessible to the
5 accused or under his control who are or should
6 be cognizant of material and relevant facts
7 and competent to testify thereto and whose
8 testimony would presumably aid him or
9 substantiate his story if it were true, it is
10 not improper for the prosecuting attorney to
11 comment upon the defendant's failure to
12 produce them."

13 So his testimony was that he had erectile
14 dysfunction, that it started somewhere back in
15 2016, I think he said, and that this has been
16 an ongoing issue. So it's the State's
17 position that -- and he did testify that he
18 sought the advice of a doctor and got some
19 pills. It's the State's position that this
20 has been an on -- allegedly, an ongoing
21 problem with him, that it is appropriate for
22 the State to comment about the fact that he
23 has not brought a doctor in here to say that
24 he does have erectile dysfunction.

25 He also said that he kind of skirted the

1 issue with his friend, the doctor, at -- back
2 -- back in the day when he was talking to his
3 other friend. So the State believes it -- it
4 is proper, and the case law supports us being
5 able to comment on that.

6 THE COURT: Mr. Shealy?

7 MR. SHEALY: Thank you, Your Honor. I -- I
8 believe Ms. Hallford's putting an awful lot of
9 weight on "Douglas v. State." In "Douglas v.
10 State," the "complained-of" statement was one
11 thing they short me on is I didn't put these
12 officers up. Well, I tell you one thing.
13 They can call witnesses, just like I can, and
14 he did call witnesses. And we will admit that
15 we did, in fact, call witnesses, and we called
16 my client.

17 My client specifically testified that, in
18 a doctor setting, he never discussed erectile
19 dysfunction, so that would have been found in
20 no -- in no medical records. It would have
21 been -- well, it would have been in no --
22 there would have been no doctor who could
23 testify to it at the time -- the relevant time
24 period here. No doctor can diagnose my client
25 with chronic E.D. that goes back to 2016.

1 They can say you have E.D. today. They can --
2 they may be able to testify that at some point
3 he told them that it was an ongoing thing, but
4 it is not -- that would not have been a
5 medical opinion that he was suffering from
6 E.D. during the relevant time period.

7 And because it would have been, frankly,
8 a -- a doctor who had diagnosed him recently
9 and given him some pills, that would have been
10 a collateral issue. That is not an issue.
11 That -- that's just a collateral issue,
12 because it's not relevant to -- in other
13 words, does not make a particular fact at
14 issue in this trial more or less likely.
15 Because if -- assume he had been diagnosed in
16 2020, that doesn't mean that in 2019 he had
17 erectile dysfunction, just as -- and it would
18 not be relevant to this case. It wouldn't --
19 he's not allowed to testify to that.

20 So, Judge, it would be our position that
21 we have specifically explained that there is
22 no doctor who could have testified to this
23 particular information in any event. And
24 that --

25 THE COURT: Okay. But more specifically,

1 right now, it's whether or not the State can
2 use that in their closing to say that certain
3 witnesses were not called by the defendant.
4 And I'm going back to the burden-shifting, and
5 I think that's very, very close.

6 Ms. Hallford, I'm not going to allow you
7 to say that, that way. I think there is
8 another way to get your point across without
9 saying that he failed to call witnesses, okay?
10 That would be my ruling, and I appreciate the
11 effort and the research.

12 Anything else?

13 MS. HALLFORD: Nothing from the State. Sorry.

14 MR. SHEALY: Nothing from the Defense, Your
15 Honor.

16 THE COURT: Okay. Oh, there is one more
17 thing. Okay.

18 Counsel has reviewed my charge on the
19 law, and I will ask again after I make the
20 charge on the law to the jury if the -- if the
21 lawyers have any objections or any amendments
22 to that or additions to it. But,
23 specifically, as to the reasonable doubt, I am
24 going to add the word "reasonable" -- I'm --
25 into this paragraph or this sentence. What

1 that means is simply this: If any of you had
2 a reasonable doubt about anything during the
3 trial, you would be required to resolve that
4 doubt in favor of the defendant, okay?

5 And I thought that -- and throughout the
6 rest of that charge, if the term is reasonable
7 doubt, reasonable doubt, reasonable doubt,
8 reasonable doubt, reasonable doubt, and then
9 it says "doubt;" and so I'm adding
10 "reasonable" ahead of that word, all right?

11 MR. SHEALY: Yes, ma'am. And I think it's
12 incumbent upon me. I think I have to object
13 to that, but I don't have a case that says
14 that, that's what the charge is supposed to
15 say. I'll just say that that is what the
16 charge says. Thank you, Your Honor.

17 THE COURT: Thank you.

18 Anything else, Ms. Hallford?

19 MS. HALLFORD: No, ma'am.

20 THE COURT: Okay. And so then we are going to
21 -- and, Ms. Hallford, again, I just wanted to
22 make sure -- and I know that it is implicitly
23 understood already, but the State is not
24 intending to call any -- anyone on reply?

25 MS. HALLFORD: No, ma'am.

1 THE COURT: Okay. And so, at this time, then,
2 we will have the jury come back in. We are
3 going to have closing arguments, and then I
4 will charge them on the law, right? And you
5 all do have a copy of the verdict form?

6 MR. SHEALY: Yes, ma'am.

7 THE COURT: And it has --

8 MS. HALLFORD: Yes, ma'am.

9 THE COURT: And it has not yet been -- it has
10 not been revised in any manner since we all
11 reviewed it, okay?

12 MS. HALLFORD: Yes, ma'am.

13 THE COURT: Okay. All right. Thank you.

14 MR. SHEALY: Ma'am, while they go get them,
15 can we approach just on scheduling?

16 THE COURT: Yes.

17 (WHEREUPON, a bench conference was held.)

18 THE BAILIFF: All rise.

19 (WHEREUPON, the jury came into open court
20 at 2:47 p.m.)

21 THE BAILIFF: Be seated.

22 THE COURT: Counsel, can you all approach for
23 just a moment?

24 (WHEREUPON, a bench conference was held.)

25 THE COURT: Okay. Mr. Foreman and members of

1 the jury, are you all ready?

2 JURY FOREPERSON: Yes, Your Honor.

3 THE COURT: I hope that you all had a nice
4 lunch. Thank you for being prompt. We worked
5 through lunch, and it seems like every time I
6 say I'm going to be healthy, that I end up
7 eating snacks, you know. So it's been that
8 kind of day and week. Not only for me, but
9 for these lawyers, as well. Thank you all for
10 your patience. We did have a lot of things
11 that we needed to cover.

12 We are, I think, ready to go now. And so
13 I will inquire of the State.

14 Ms. Hallford, Ms. Clark, are y'all ready?

15 MS. HALLFORD: The State's ready.

16 THE COURT: Mr. Shealy, the Defense?

17 MR. SHEALY: We're ready, Your Honor.

18 THE COURT: Okay. And so we will now have the
19 closing arguments of counsel.

20 PLAINTIFF CLOSING ARGUMENT

21 MS. HALLFORD: Child 1 is either a
22 brilliant actress who needs to move to
23 Hollywood, or she is a young lady who has
24 suffered horrific abuse at the hands of her
25 father. And, ultimately, that is the question

1 that you have to decide. Is Child 1
2 telling the truth, or is Mark Gilbert telling
3 the truth?

4 He has been charged with criminal sexual
5 conduct with a minor in the second degree.
6 There are four counts. Criminal sexual
7 conduct with a minor in the second degree
8 requires that an actor, the defendant, engage
9 in a sexual battery with the victim. The
10 victim has to be between the age of 11 and 14.
11 Well, the statute specifically says "is at
12 least 14 years of age or less, but is older
13 than 11." So 11 to 14.

14 Sexual battery is defined by statute as
15 sexual intercourse; cunnilingus, which is oral
16 sex performed on the female; fellatio, oral
17 sex performed on the man; anal intercourse; or
18 any intrusion, however slight, of any part of
19 the person's body or of any object into the
20 genital or anal openings of another person's
21 body unless you're doing that for medical
22 purposes.

23 So, in this case, we have sexual
24 intercourse; we have fellatio; we have
25 penetration by fingers, so the penetration,

1 however slight; and we have penetration by the
2 dildos and the vibrators. So that is -- those
3 are the elements that the State has to prove.
4 We have to prove those beyond a reasonable
5 doubt.

6 If any of y'all watch television and you
7 like the procedural shows: *Law and Order* --
8 well, I guess that's old, but I know there's
9 new stuff. But, anyway, you know you -- you
10 hear reasonable doubt thrown around all the
11 time. So what is reasonable doubt?

12 The judge is going to charge you on that,
13 and if anything I say contradicts what she
14 says, what she says rules. But, essentially,
15 she's going to tell you that reasonable doubt
16 is the kind of doubt that would cause a
17 reasonable person to hesitate to act. She
18 will also tell you that it is evidence that
19 leaves you firmly convinced of a defendant's
20 guilt, then the State has met their burden.

21 So in his opening statement, the defense
22 attorney got up and gave you an illustration
23 about going to check out meat at the grocery
24 store. He said, "You smell it. You look at
25 it. You touch it, and then you decide not to

1 buy it. You've hesitated. That's reasonable
2 doubt." That's a mischaracterization of what
3 reasonable doubt is.

4 We want you to hesitate. That's why we
5 call it "deliberation -- jury deliberation."
6 You deliberate. You hesitate. You look at
7 the evidence. You discuss the -- the
8 testimony that you have heard, and then you
9 make your decision. If, after you have
10 deliberated, you still are hesitant, if you
11 are not firmly convinced, then the State has
12 not met its burden. But to say if you walk
13 back there and y'all take a vote and y'all are
14 hesitant to act at that point, then my client
15 has to be found not guilty; that is not right.
16 You do deliberate. You do discuss amongst
17 yourself. That's what we have you here for.

18 We have you here, because you are people
19 who have life experiences, and you have common
20 sense; and you will apply that to the facts
21 you have heard. And you will decide who do I
22 believe? Is he guilty or is he not? So
23 that's reasonable doubt.

24 The judge will tell you that you are the
25 judges -- you are the sole determiners of the

1 credibility of the witnesses. And in a case
2 like this, that's your most important job.

3 The Defense talked to you about how
4 there's not any DNA. There's not any physical
5 evidence. Well, that's how it is almost all
6 the time in cases where kids are the victims
7 because they don't tell. So you don't get the
8 chance to collect DNA. And because, as in
9 this case, months elapsed between the time she
10 -- they kicked him out and the time a search
11 warrant was executed, they didn't find the
12 dildos. They didn't find the vibrators. They
13 didn't find a gun.

14 I have no idea what happened to that
15 stuff, but what I do know is that there were
16 two clean-outs mandated by DSS, and the place
17 was a hot mess. So I don't know where that
18 stuff went.

19 So, no. I don't have that to present to
20 you. I wish I did, because I hate that child
21 victims are put in the position of going
22 "Help. Somebody believe me." And they live
23 with this abuse for so long, and they're
24 afraid to disclose. And then by the time they
25 do, the things that could have helped their