

VOLUME I of III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO KERSHAW COUNTY

Court of Common Pleas

The Honorable Grace Gilchrist Knie, Circuit Court Judge

Case No. 2019-CP-28-00236

James Wayne Miller, #367454,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

Appellate Case No.: 2022-000753

APPENDIX

ASHLEY A. MCMAHAN
McMahan Law, LLC
PO Box 50536
Columbia, SC 29205
(803) 219-1110

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

WILLIAM W. BLITCH, JR.
Sr. Asst. Dep. Attorney General
PO Box 11549
Columbia, S.C. 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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1 State of South Carolina)
2 County of Kershaw) Indictment No.: 2012-GS-28-1381
3) 2012-GS-28-1382
4 State of South Carolina,)
5 Plaintiff,)
6 vs.) Transcript of Record
7 James Wayne Miller,)
8 Defendant.)
9

10 March 14 through 18, 2016
11 Camden, South Carolina

12 BEFORE:
13 The Honorable Tanya Gee, Judge; and a Jury.

14
15 APPEARANCES:
16 Kathryn Cavanaugh, Assistant State Solicitor
17 Karlen Senn, Assistant State Solicitor
18 Attorneys for the State
19 Anna Good, Esquire
20 Attorney for the Defendant
21
22
23
24
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CERTIFICATE OF REPORTER

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 March 14, 2016

2 BAILIFF: All rise.

3 THE COURT: Thank you. Please be seated. I
4 understand the defendant has some back issues. When I
5 walk in and out of the courtroom, there's no need for you
6 to stand up if you're not able to stand up. That's not
7 a sign of disrespect. I understand what you are going
8 through, sir. All right. I understand we have some
9 pretrial matters in the case of the State versus James
10 Wayne Miller. I will hear from the defense attorney on
11 the motion for continuance first.

12 MS. GOOD: Thank you, Your Honor. As we previously
13 mentioned in chambers, Mr. Miller has had chronic back
14 problem for quite a while, however, in the past week and
15 a half or so it has escalated to the point that he needs
16 surgery. He went to the doctor, Dr. Julie Taylor on
17 March 3rd of 2016, Your Honor, regarding some of his
18 pain. At that time she medicated him with hydrocodone,
19 Your Honor, and ordered an MRI. His MRI was conducted
20 last Wednesday which was March 8th of 2016 and I would
21 like to make this a court exhibit. It indicates that he
22 has five different things wrong with his back and lumbar
23 spine. I'll hand it up to Your Honor.

24 THE COURT: All right. If we can give this to the
25 court reporter so he can make it a court exhibit, please.

1 (Whereupon, Court's Exhibit #1 marked for
2 identification.)

3 THE COURT: Go ahead, Ms. Good.

4 MS. GOOD: Thank you, Your Honor. After that he
5 went back to his doctor for a follow up where he was
6 prescribed on March 9th, oxycontin, Your Honor. In
7 addition, on March 11th from his doctor, Dr. Julie
8 Taylor, he was given another steroid as well as Lortab.
9 He's struggling here just to sit, Your Honor. He's been
10 laying down ever since March 8th when the pain became
11 significant and according to the MRI is pressing on one
12 of his nerve roots. It's my indication from him as well
13 as his aunt and girlfriend that he has been out in the
14 car blacking out. It's my concern at this time, Your
15 Honor, that he deserves a fair defense and if he cannot
16 help me and aide in his defense based on the combination
17 of medications that they have him on and based on the
18 fact that he does need surgery to fix this as well as if
19 he's blacking out, Your Honor, he cannot aide me in any
20 way and help in cross examining or questions I may need
21 to ask because he would know this case better than I
22 would when it comes to some of the questions as to the
23 victim or the family members who may be testifying
24 against him.

25 In addition, Your Honor, I just don't think he has

1 the capability at this point to help in his defense based
2 on the medication and the fact that he can't even sit
3 here without - I mean, we had to wheel him in here in a
4 wheelchair, Your Honor. He can't walk. He can't stand
5 up, and it hurts him just to sit. It's my concern that
6 he wouldn't be able to help. This has been pending for
7 three and a half years, Your Honor. He's been on bond.
8 He's obviously here today. This is the first time we
9 have actually been in a courtroom for a trial. It's been
10 scheduled previously before and the State had one more of
11 the date certain to be able to get some witnesses here.
12 We, of course, had no problem with that. Then it got
13 transferred from one Solicitor to another Solicitor and
14 they had to do some additional work which didn't even
15 happen until this past November after it had been pending
16 for three years, Your Honor, so at this time we would ask
17 for a continuance based on all those factors, the fact
18 that we have not asked for a continuance before. We have
19 been very patient with the Solicitor's Office when it
20 comes to getting their witnesses here as well as any
21 additional evidence they needed processed or anything
22 which was done as late as November.

23 THE COURT: All right. Ms. Cavanaugh.

24 MS. CAVANAUGH: Thank you, Your Honor. As Ms. Good
25 stated, this case has been pending since August of 2012.

1 This was assigned to another Solicitor in our office who
2 left to go to the Greenville office. I received the case
3 in November of 2015. The case, I know nothing about what
4 was previously discussed regarding dockets before
5 December of 2015, however, when I received the case, I
6 was made aware that it was on the trial docket for
7 December 14th. I wanted to make sure that everything was
8 - that we were going to be able to call it in December.
9 I did realize at that time that there were some swabs
10 that were not tested at SLED. I wanted those tested
11 before we proceeded to trial so I called Ms. Good in
12 November and I told her we were not going to be able to
13 go forward because I wanted to get those tested. We
14 mutually agreed on a date in early January that it would
15 be called on March 14th. I sent a trial notice to
16 Ms. Good and Mr. Miller on January 6th, notifying them
17 that this would be the trial date.

18 We have flown three witnesses in, one the victim and
19 her sister and her mother. The sister lives in
20 California. We have flown [minor] in from California. We
21 have flown [minor] in from Virginia and Ms. Miller, Tammy
22 Miller from Florida. So we are prepared to go to trial
23 on this. I did not learn of anything related to Mr. --
24 It's my understanding that Mr. Miller does not have any
25 previous history of any sort of back pain. I could be

1 mistaken about that but I have never been made aware of
2 that. Ms. Good did come to me on Friday morning to tell
3 me that there was something major going on with his back
4 but that she did not have concrete information from a
5 doctor as far as the severity of that issue or that any
6 sort of emergency surgery was needed.

7 Today when we met back in chambers with Your Honor,
8 she did provide us with the little bit of documentation
9 that her client was able to provide to her regarding what
10 his current issue is and medications that he's currently
11 on. I do, while not to minimize his pain, I do think
12 that the timing is extremely inconvenient for this trial.
13 It happened -- I don't even know exactly what caused the
14 severe back pain, but all of it started occurring last
15 week, the week before trial. So we think that the
16 continuance, because there is nothing from a doctor that
17 states that he needs emergency back surgery, that he
18 cannot stand trial this week.

19 In addition to the case law, while there is nothing
20 specific that we can find on point related to pain
21 medication, *McLaughlin v. State of South Carolina* which
22 was a 2002 Supreme Court case did hold that antiseizure
23 medication did not render the defendant incompetent to
24 stand trial. Also, I think the standard under *State v.*
25 *Welk* which is a 2002 South Carolina Supreme Court case

1 outlines the standard of whether the defendant has the
2 present ability. Just as long as he has the present
3 ability to consult with his lawyer with a reasonable
4 degree of rational understanding and whether he has a
5 rational understanding of the proceedings against him
6 which he has had for the past three and a half years,
7 that he is able to stand trial and that the defendant
8 bears the burden of proving his lack of competence by the
9 preponderance of the evidence.

10 THE COURT: All right.

11 MS. CAVANAUGH: So I just think that the timing is
12 extremely inconvenient for this issue to surface.

13 THE COURT: All right. Ms. Good, other than this
14 court's exhibit that appears to be an e-mail from Scott
15 Kerns to Julie Taylor, I, of course, have no idea who
16 Scott Kerns is. I assume Julie Taylor, it says on the
17 very top, and I don't know who - there is no foundation.
18 Ms. Taylor, I assume isn't here. That's his doctor?

19 MS. GOOD: Correct, Your Honor. She was the doctor
20 he went to see. He subsequently has been to Palmetto
21 where he had an appointment that was set up for tomorrow
22 at Carolina Neurosurgery which is in Charlotte, I
23 believe. I have spoken to his aunt. She may be able to
24 give a little bit more.

25 THE COURT: Do you have any affidavits from a

1 doctor?

2 MS. GOOD: No, I don't. No, I don't, Your Honor.

3 THE COURT: Okay. All right. Anything other than
4 this exhibit which, I mean, again it's an e-mail that has
5 handwritten on it James Miller and it has a numerical
6 list up to five that states things like this is an
7 inflammatory response and can cause pain, facets, DJD,
8 can cause pain. There is compression on a nerve root
9 that's described as right-sided radiculopathy. Other
10 than these five findings, is there anything that you have
11 about his medical health that would prevent him from
12 having a trial today?

13 MS. GOOD: No, ma'am, Your Honor. Just the fact
14 that he's on these two medications and he's set to go see
15 a neurosurgeon.

16 THE COURT: Okay. All right. The motion for
17 continuance is denied. This case has been pending since
18 2012. I understand that the defendant is in pain and we
19 will take breaks as necessary during the trial. I myself
20 recently had surgery. We'll need to take breaks and so
21 we will do our best to accommodate Mr. Miller with regard
22 to his back pain, but that's no reason to continue this
23 trial. I'll hear the next pretrial motion.

24 MS. GOOD: Do you want to do the defense or the
25 State first?

1 THE COURT: I'll hear from Ms. Cavanaugh. Why don't
2 we go ahead and do the Jackson v. Denno.

3 MS. CAVANAUGH: Yes, Your Honor.

4 THE COURT: Do we have witnesses for that hearing?

5 MS. CAVANAUGH: Yes, we have three witnesses that we
6 need for that hearing. I also just for logistic purposes
7 whether Mr. Hutchinson would be kind enough to stay in
8 here to help with the projector. Kershaw County
9 Sheriff's Department does record audio and visual
10 interviews with the defendant so we have, there are two
11 interviews that occurred on the same afternoon. We have
12 both of those interviews. I didn't know -- Obviously
13 we'll put our witnesses up first before we try to
14 introduce the videos. One is about 15 minutes. One is
15 approximately 30 so I didn't know if you wanted to play
16 those during this hearing or actually review those during
17 the lunch break.

18 THE COURT: Okay. My preference would be to review
19 those in chambers if no one has an objection to me doing
20 it that way.

21 MS. GOOD: No objection.

22 MS. CAVANAUGH: Thank you.

23 THE COURT: Thank you.

24 MS. CAVANAUGH: The State calls Corporal Brooks
25 Houser.

CORPORAL BROOKS HOUSER - DIRECT BY MS. CAVANAUGH

17

1 Thereupon,

2 CORPORAL BROOKS HOUSER

3 after having been first duly sworn, testified as follows,

4 THE CLERK: Please have a seat. After you're
5 seated, please state your full name for the record.

6 THE WITNESS: Full name is Lonnie Brooks Houser,
7 H-o-u-s-e-r.

8 DIRECT EXAMINATION

9 BY MS. CAVANAUGH:

10 Q. Is it corporal?

11 A. It's actually patrolman at the moment. Back then,
12 yes, it was corporal. Officer is sufficient as well.

13 Q. Thank you. Officer Houser, where are you currently
14 employed?

15 A. At the Elgin police department, Elgin, South
16 Carolina.

17 Q. When did you begin at the Elgin police department?

18 A. Approximately one month ago.

19 Q. Previous to being employed with the Elgin police
20 department, where were you employed?

21 A. At the Kershaw County Sheriff's Department.

22 Q. How long were you employed at the Kershaw County
23 Sheriff's Department?

24 A. Almost 11 years.

25 Q. And I'm going to take your attention to August 11th

1 of 2012. Did you receive a call from dispatch that
2 afternoon?

3 A. Yes.

4 Q. And what was the nature of that call?

5 A. The nature of the call?

6 Q. How did that call come in to you?

7 A. If I recall exactly, it came in as the mother, the
8 complainant, I believe Ms. Tammy Miller, stated that she had
9 found out - or that she had found out that her husband had
10 forced her daughter to have sexual relations with him.

11 Q. Okay. So did you respond to that particular call?

12 A. Yes.

13 Q. Where was that? Where did you go?

14 A. That was [REDACTED] Camden, Kershaw
15 County.

16 Q. It's your understanding that was the residence of
17 the family?

18 A. Yes.

19 Q. And who did you first see upon arriving at the
20 house?

21 A. The complainant Ms. Miller.

22 Q. Tammy Miller?

23 A. Yes, Tammy Miller.

24 Q. Who else -- Did any other officers respond
25 with you?

1 A. Yes.

2 Q. Who were they?

3 A. Deputy Cody Wilson and Deputy Justin Scott at that
4 time.

5 Q. What did you all do first upon arriving at the
6 house?

7 A. At first like I stated I meet Ms. Tammy Miller. She
8 was very upset and crying, almost hysterically. Uhm, like I
9 said, she stated that Mr. James Miller, she had found out that
10 he had forced her daughter to have sexual relationships with
11 him several times over the past year. At that time I observed
12 Mr. Miller --

13 Q. Well, before we get there, where were you speaking
14 with Ms. Tammy Miller?

15 A. On the left side of the house near the driveway
16 right as you drive up.

17 Q. Did you see when you were speaking with Tammy where
18 was **minor one**

19 A. She was on the dock like that extends out into the
20 lake.

21 Q. Is **minor** the victim in this case?

22 A. Yes.

23 Q. Okay. So did you see. As you were speaking with
24 Tammy could you see **minor one**

25 A. Yes.

1 Q. And when you were speaking with Tammy, when was the
2 first time you actually ever saw the defendant James Miller?

3 A. He appeared moments later. I don't know if he was
4 in the house or if he was just in the backyard but he appeared
5 from the right and then he walked out onto the dock.

6 Q. So when was the first time that you actually
7 observed him?

8 A. Probably within just a few moments after speaking
9 with his - the mother Ms. Miller, Tammy.

10 Q. But at that point you understood that James was the
11 suspect in this case?

12 A. Yes.

13 Q. Okay. And, uhm, you saw him at the dock with his
14 daughter?

15 A. He was walking towards her, yes, then walked to
16 her.

17 Q. Okay. So once you saw him walking towards her, what
18 did you do?

19 A. At that time, uhm, we approached, myself, Deputy
20 Scott and Deputy Wilson approached to at first try to separate
21 him from the daughter, the alleged victim basically for
22 investigative purposes and to just in general just to try to
23 keep the peace while we investigate exactly what's going on.

24 Q. What was he doing? What did you observe him doing
25 down at the dock?

1 A. When Mr. Miller, he was talking with his daughter
2 and it appeared that way. When he saw us approach, he began
3 walking towards us. He then began to unhook his belt, empty
4 out his pockets and turned around and placed his hands behind
5 his back or actually behind his head without any verbal
6 command or anything at that point.

7 Q. So you hadn't told him what you were there for
8 yet?

9 A. No.

10 Q. Had any of the other deputies had a chance to do
11 that yet?

12 A. No.

13 Q. Did you even tell him that he was under arrest?

14 A. No.

15 Q. Did you call -- At what point did you call
16 Investigator Dill during this?

17 A. I called Investigator Dill after I placed him in the
18 back of my patrol car. I believe he was the on-call
19 investigator at that time.

20 Q. Okay. What did you do after you got off the phone
21 with Investigator Dill?

22 A. At that point I read Mr. Miller his Miranda Rights.
23 The two other deputies were present as well and I went over
24 the Miranda Rights very carefully and made sure that he
25 understood his rights and he stated that he did.

1 Q. And while you're -- He indicated that he understood
2 them?

3 A. Yes.

4 Q. How did he indicate that to you?

5 A. He made a statement that -- I mean, he basically
6 repeated that whatever she indicating the victim **minor one**
7 whatever she says happened, that's what happened. If she said
8 it, it's not a lie.

9 Q. Okay. After - before we get to that, after you read
10 him his Miranda Rights, you said that he indicated that he
11 understood?

12 A. Yes.

13 Q. By nodding his head or saying yes?

14 A. Yes.

15 Q. Okay. Was anything asked of him after he was read
16 his Miranda Warnings?

17 A. Anything asked of him?

18 Q. I mean, did you or any of the other officers while
19 you were there ask him a question?

20 A. The only thing that I can recall exactly was we gave
21 him an opportunity to make a statement as to what his side of
22 the story was, but we still never indicated, you know, really
23 the nature or I guess any accusations.

24 Q. Okay. So you just asked do you have something to
25 say?

1 A. Tell us, you know. Yeah. Exactly.

2 Q. Okay. And at that point you said that he said
3 what?

4 A. Uhm, he stated that whatever she, meaning **minor one**
5 whatever she says, that's what happened and if she says it,
6 it's not a lie.

7 Q. Now, once he says that, he's in the back of the
8 patrol vehicle, is that the extent of your involvement with
9 him on the scene?

10 A. Basically, yeah. I didn't really have any other
11 interaction with him. At that point I went on to complete the
12 initial investigation and statement and all.

13 Q. Did you go speak to the victim and her mom
14 further?

15 A. Yes.

16 Q. Okay. Who actually transported Mr. Miller to the
17 Sheriff's Department?

18 A. Deputy Tom Hathaway.

19 Q. So he was removed from whatever car he was in
20 initially to Deputy Hathaway's car?

21 A. Yes, he was.

22 Q. Okay. Did you have any further conversations with
23 him about why y'all were there?

24 A. No.

25 MS. CAVANAUGH: Nothing further from this witness.

1 THE COURT: All right. Ms. Good.

2 MS. GOOD: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MS. GOOD:

5 Q. Good morning, Officer Houser.

6 A. Good morning.

7 Q. You stated this was August 11th, 2012, correct?

8 A. Correct.

9 Q. And you first saw Tammy Miller when you showed up.
10 Was she with her daughter?

11 A. She was not with her daughter?

12 Q. Was she by herself or was anybody else around?

13 A. She was by herself.

14 Q. And at that time you didn't see Mr. Miller or minor
15 correct?

16 A. Not initially but I saw minor on the dock.

17 Q. Okay. And you said there were three officers, you,
18 Officer Wilson and Officer Scott?

19 A. At that point, yes.

20 Q. And how were you dressed at that time? Were you in
21 full uniform?

22 A. Yes.

23 Q. You had a gun on you?

24 A. Yes.

25 Q. Taser?

1 A. I believe.

2 Q. And were Officer Wilson and Officer Scott dressed
3 the same or were they in plain clothes?

4 A. They were in uniform.

5 Q. You had your patrol car, correct?

6 A. Yes.

7 Q. When you met with Ms. Miller, about how long did you
8 speak with her in the driveway before you saw minor on the
9 dock?

10 A. It was just a few minutes maybe at the most.

11 Q. And when you said you saw Mr. Miller walk down onto
12 the dock, you said we approached. All three of you, you,
13 Officer Wilson and Officer Scott, correct?

14 A. Yes.

15 Q. How quickly were y'all walking down there?

16 A. We weren't running, but I mean, we were just walking
17 at a normal pace.

18 Q. So you weren't concerned to get down there quickly
19 concerning the alleged suspect was speaking with the alleged
20 victim?

21 A. Well, at the moment we were still just trying to
22 ascertain exactly what was going on. There wasn't any exigent
23 physical, anything going on at the time. Nothing exigent so
24 no.

25 Q. Okay. And when you were walking down there, did you

1 have your hands on your gun or your guns pulled out in any
2 way?

3 A. No.

4 Q. Were you in the front, middle or back, do you
5 remember?

6 A. I can't recall.

7 Q. Was Mr. Miller free to leave at that time?

8 A. Before we detained him?

9 Q. As you were walking down there, was he free to leave
10 or were you going to detain him as you walked down there?

11 A. Well, I was going to detain him, yes.

12 Q. Once you got him in your custody, you said you put
13 him in your car, correct?

14 A. Correct.

15 Q. Was your car running at that time?

16 A. Yes.

17 Q. Does it have video in it?

18 A. I can't recall if it did or not. It may have.

19 Q. And when you arrived at the scene, were the blue
20 lights flashing? Was your video on?

21 A. I don't believe so. I don't - I don't recall.

22 Q. When you put Mr. Miller in the car, did you turn
23 your video on?

24 A. I can't remember. I don't think it's documented on
25 the CAD.

1 Q. When you put him in the car, were the windows up or
2 down?

3 A. They may have been cracked, but I can't recall
4 specifically.

5 Q. Do you remember if the heat was on or if the air was
6 on?

7 A. I'm pretty sure the air conditioner was running.

8 Q. How long was he sitting in that car before anyone
9 came over to him to read him his rights?

10 A. Before he was read his rights? Maybe a few minutes.
11 It wasn't very long at all.

12 Q. You said once -- I want to get the timeline on this
13 because earlier you stated he made a statement and then you
14 read him his rights. When did he give the statement about
15 whatever she says happened? Was it before or after you asked
16 him if he wanted to give a statement?

17 A. That was after his Miranda Rights were given.

18 Q. So you gave him his rights and then asked if he
19 would like to speak?

20 A. Yes.

21 Q. Did he indicate that he wanted to waive his
22 rights?

23 A. No. To waive his rights?

24 Q. Yes.

25 A. He didn't -- He said he understood his rights and

1 when he was asked to, if he wanted to, you know, make a
2 statement, that's when he commenced to saying what he said.

3 Q. And he never used the name [minor] or Tammy or
4 anything? He just said whatever she says, correct?

5 A. Correct.

6 Q. So you don't know who she was? You're just
7 speculating that you believe it was [minor one]

8 A. I -- That's the way -- I don't want to speculate,
9 but at the same rate that's the way it was inferred.

10 Q. That's just the way you took it to mean, correct?
11 He never actually said her name?

12 A. I can't recall if he said her name.

13 Q. After you spoke with him in the car and read him his
14 rights, you said you continued on the scene finishing up the
15 investigation. About how long was that before Hathaway got
~~16 there to take him to the jail?~~

17 A. I don't have the timeline on that. I don't know.
18 But if, I mean, if - maybe half an hour. I don't know.

19 Q. And you never spoke with him again after this
20 statement about whatever she says, correct?

21 A. No.

22 MS. GOOD: No further questions, Your Honor.

23 THE COURT: All right. Any redirect?

24 REDIRECT EXAMINATION

25 BY MS. CAVANAUGH:

1 Q. When you saw James at the dock with **minor one** you knew
2 enough to know that you needed to go separate the two?

3 A. Yes.

4 Q. So while it wasn't necessarily an exigent situation,
5 you weren't aware of any threats specifically, how was Ms.
6 Miller when she was telling you this information?

7 A. Uhm, extremely upset.

8 Q. And you knew that James was the suspect?

9 A. Yes.

10 Q. And he was down there with the victim?

11 A. Yes.

12 Q. And so why did you head down to the dock
13 at that point?

14 A. At that point to detain him.

15 Q. And as soon as you saw him down there, what did you
16 do?

17 A. We went to detain him.

18 MS. CAVANAUGH: Nothing further.

19 THE COURT: All right. You may step down. Ms.

20 Cavanaugh, call your next witness.

21 MS. CAVANAUGH: The State calls Deputy Tom Hathaway.

22 Thereupon,

23 DEPUTY THOMAS HATHAWAY

24 after having been first duly sworn, testified as follows,

25 THE CLERK: Please have a seat. After you're

1 seated, please state your full name for the record.

2 THE WITNESS: Thomas Sherwood Hathaway.

3 DIRECT EXAMINATION

4 BY MS. CAVANAUGH:

5 Q. Is it deputy?

6 A. At that time it was.

7 Q. What is it now?

8 A. Sergeant.

9 Q. Sergeant Hathaway, where are you employed?

10 A. Kershaw County Sheriff's Office.

11 Q. How long have you been employed with the Sheriff's
12 Office?

13 A. Approximately five years.

14 Q. And were you employed with the Sheriff's Office in
15 August of 2012?

16 A. That's correct.

17 Q. Were you asked to respond to [REDACTED]
18 on August 11th, 2012?

19 A. That's correct.

20 Q. What time did you get notification that you needed
21 to go to that location?

22 A. I received notification at approximately 2:22.

23 Q. What time did you arrive at the house?

24 A. I arrived at the house at 3:03.

25 Q. Okay. Once you arrived, what do you remember

1 happening at that location?

2 A. When I arrived, the defendant was in the back seat
3 of Deputy Brooks', Corporal Brooks' vehicle. When I arrived,
4 my purpose was to transport back to a specific location which
5 happened to be the Sheriff's Office.

6 Q. Okay. Do you remember whether -- I mean, it was
7 August of 2012. Do you remember the conditions of the car?
8 Was it running? Was the air conditioning on?

9 A. The vehicle was running the defendant was in. I
10 believe the windows were either up or cracked but normally the
11 air conditioning would be running. I believe it was.

12 Q. Okay. When you made contact with James Miller, did
13 he appear in any sort of discomfort or distress or anything
14 like that?

15 A. No, ma'am.

16 Q. Did you actually say anything to him or have any
17 conversations with him?

18 A. I did not have any conversations with him, but I did
19 observe him making a comment, whatever she says. That pretty
20 much was repeated several times.

21 Q. So he was just -- Was anybody talking to him when he
22 was saying that?

23 A. No, ma'am.

24 Q. So he was saying again what?

25 A. Whatever she says.

1 Q. Okay. Did you have any idea what he was talking
2 about?

3 A. No, ma'am.

4 Q. Okay. What was your role once you arrived at the
5 scene? What were you doing?

6 A. My role was simply to transport him back to a
7 specific location which happened to be the Sheriff's Office.

8 Q. Okay. And what time did you begin to take him back
9 to the Sheriff's Office?

10 A. I left the scene with the defendant at 3:14 en route
11 back to the Sheriff's Office.

12 Q. So you were on the scene about ten minutes?

13 A. That's correct.

14 Q. And what time did you arrive at the Sheriff's
15 Department or the Sheriff's Office?

16 A. I arrived at the Sheriff's Office at 3:35.

17 Q. And what did you do when you arrived at the
18 Sheriff's Office?

19 A. When I arrived at the Sheriff's Office, the
20 defendant was turned over to Investigator Dill at that
21 point.

22 Q. And was he the investigator on-call at that point?

23 A. That is correct.

24 Q. Again, while you all are in your patrol vehicle, did
25 you say anything to him about the nature of the case, any sort

1 of comments about the investigation?

2 A. No, ma'am.

3 Q. Okay. Once Investigator Dill took over at the
4 Sheriff's Office, what did you do after that?

5 A. I remained at the Sheriff's Office for a short
6 period of time and then after that I was asked to transport
7 the defendant at approximately 4:02 back to or to the
8 detention center.

9 Q. Okay. How far away is the Sheriff's Office to the
10 detention center? About how long does that typically take?

11 A. Might take five, ten minutes. Approximately ten
12 minutes.

13 Q. Once you arrived at the detention center, did he say
14 anything to you?

15 A. Once I arrived at the detention center, he stated
16 that he would like to speak to the investigator again.

17 Q. Again?

18 A. Again.

19 Q. Okay. When he spoke with the investigator the first
20 time, were you present during that interview?

21 A. No, ma'am.

22 Q. But it's your understanding that he had spoken to
23 him at the Sheriff's Office?

24 A. Yes, ma'am.

25 Q. And you took him back to the jail or took him to

1 jail and then he said that to you?

2 A. That's correct.

3 Q. What did you do? Was that in response to any of
4 your questions or anything you would have said?

5 A. No, ma'am.

6 Q. What did you do once he said that?

7 A. Once he informed me that he wanted to talk to the
8 investigator again, I contacted Investigator Dill and let him
9 know what was said.

10 Q. And what was your understanding at that point as far
11 as were you going to take him back to the Sheriff's office?

12 A. No. It was my understanding at that point that
13 Investigator Dill would come to the detention center and
14 transport him back to the Sheriff's Office.

15 Q. Okay. So outside of those two statements that you
16 just related to the court regarding whatever she says,
17 whatever she says, am I quoting that correctly?

18 A. That's the only thing that I heard when I arrived.
19 He was kind of mumbling that, if you will.

20 Q. Okay. And then what he said to you at the jail that
21 he wanted to speak to the investigator again?

22 A. That's correct.

23 Q. Those are really the only things, those two
24 statements are really the only things he said to you?

25 A. That is correct.

DEPUTY THOMAS HATHAWAY - CROSS BY MS. GOOD

35

1 Q. And again not in response to any of your questions
2 or comments?

3 A. No, ma'am.

4 MS. CAVANAUGH: Thank you. Answer any questions
5 from Ms. Good.

6 CROSS EXAMINATION

7 BY MS. GOOD:

8 Q. Sergeant Hathaway, when you were notified at 2:22,
9 what was your understanding of what you were being notified to
10 do?

11 A. I was contacted to go to the location and transport
12 back to a specific location, to go and assist and my
13 understanding was to transport.

14 Q. So at that point it was your understanding he was
15 already detained and you were going to transport him to the
16 jail?

17 A. I did not know that he was detained until I arrived
18 on scene.

19 Q. You arrived on scene approximately 40 minutes
20 later?

21 A. That's correct. I believe it was 3:03.

22 Q. When you arrived, you said he was sitting in the
23 back of the vehicle, correct?

24 A. That's correct.

25 Q. Do you recall, you said you assumed the air was on.

1 Do you recall if it was the air or is there was something else
2 on or --

3 A. I recall that my AC would have been on in my car so
4 I believe it would have been on in that car as well.

5 Q. You weren't there when he was given Miranda Rights,
6 correct?

7 A. No, ma'am.

8 Q. So you never heard if he got them or how they were
9 given or anything, correct?

10 A. No, ma'am.

11 Q. You said you observed him making the comment,
12 whatever she says. Did he ever say a name?

13 A. No, ma'am.

14 Q. So you don't know who she is; is that correct?

15 A. That's correct.

16 Q. And then you left the scene approximately 11 minutes
17 later. What occurred in those 11 minutes between 3:03 when
18 you arrived at 3:14 when you left?

19 A. Just normal stuff. I was there in my patrol car. I
20 know they were, the other deputies were doing various things.
21 I believe they were getting interviews and so forth.

22 Q. Now, you turned him over to Investigator Dill and
23 you remained at Kershaw County and then transported him to the
24 jail; is that correct?

25 A. That is correct.

JUSTIN DILL - DIRECT BY MS. CAVANAUGH

37

1 Q. You weren't involved in the investigation at all
2 after that?

3 A. No, ma'am.

4 Q. And all he said to you was he would like to speak to
5 the investigator again, correct?

6 A. I would like to speak to the investigator again.

7 Q. He didn't say anything about the case or anything?

8 A. No, ma'am.

9 MS. GOOD: Okay. No further questions, Your
10 Honor.

11 MS. CAVANAUGH: No further questions.

12 THE COURT: All right. Please step down. Thank you
13 so much.

14 MS. CAVANAUGH: The State calls Justin Dill.
15 Thereupon,

16 JUSTIN DILL
17 after having been first duly sworn, testified as follows,

18 THE CLERK: Please have a seat. After you're
19 seated, please state your full name for the record.

20 THE WITNESS: Justin Lee Dill.

21 DIRECT EXAMINATION

22 BY MS. CAVANAUGH:

23 Q. Justin, how long were you employed at the Kershaw
24 County Sheriff's Department?

25 A. Ten and a half years.

1 Q. Did you recently resign from the Sheriff's
2 Department?

3 A. I did.

4 Q. When was that?

5 A. January 29th, I believe.

6 Q. Were you -- You said you had been there ten and a
7 half years?

8 A. Yes, ma'am.

9 Q. On August 11, 2012, were you employed with the
10 Kershaw County Sheriff's Office?

11 A. Yes, ma'am, I was.

12 Q. What was your position with the Sheriff's Office at
13 that time?

14 A. I worked in criminal investigations.

15 Q. Okay. And on August 11th, 2012, did you become
16 involved in the investigation against James Miller?

17 A. I did. I was the on-call investigator at the
18 time.

19 Q. When did you first become aware of the
20 investigation?

21 A. I received a call from Corporal Houser who advised
22 me of the situation. We discussed the allegations and what
23 had been said, some of the facts and he told me that he would
24 transport him to the Sheriff's Office where I would meet him
25 and talk to him.

1 Q. And was it your understanding that at the scene he
2 had been advised of his rights verbally?

3 A. Yes, ma'am.

4 Q. And he was transported back to the Sheriff's
5 Office?

6 A. Yes, ma'am.

7 Q. Did you go to the scene that afternoon?

8 A. No, ma'am.

9 Q. What time did he arrive at the Sheriff's
10 Department?

11 A. Appears that he arrived at the Sheriff's Office at
12 3:35 p.m.

13 Q. That was Deputy Hathaway that brought him?

14 A. Yes, ma'am.

15 Q. Once he arrived, once James arrived at the Sheriff's
16 Office, what happened? What occurred?

17 A. I went into the interview room with him where it's
18 audio and video recorded. I went over his Miranda Rights with
19 him before I tried to talk to him about what was going on.

20 Q. Okay.

21 (Whereupon, State's Exhibit #1 and #2 marked for
22 Identification.)

23 BY MS. CAVANAUGH:

24 Q. You mentioned the interview room at the Sheriff's
25 Office?

1 A. Yes.

2 Q. And how is the camera operated? How is it turned
3 on?

4 A. When you walk in the room.

5 Q. So as soon as you walk in the room the video and
6 audio recordings comes on?

7 A. Actually it's always on and always recording. It
8 records when the lights are off. You see the lights come on,
9 it's already recording when you walk in.

10 Q. You said he arrived around 3:35?

11 A. Yes, ma'am.

12 Q. And he was taken into the interview room?

13 A. Yes, ma'am.

14 Q. How did you begin? Before you started talking to
15 him, what's the first thing you did?

16 A. I sit down and I actually get his name, date of

17 birth, address, phone number, general information. I
18 generally write my name because I'm conducting the interview.
19 On the form, we have a standard Miranda form and usually the
20 time and the date at the top before I begin advising them that
21 I'm going to read them their rights.

22 Q. Okay. I'll show you what's marked as State's
23 exhibit number 1. Do you recognize that document?

24 A. Yes, ma'am, I do.

25 Q. What is that?

1 A. It's our standard form or Miranda Rights that are
2 read to all defendants before questioning.

3 Q. And you signed -- Do you go through -- Is this the
4 one you used that afternoon?

5 A. Yes, ma'am.

6 Q. How do you know that?

7 A. It has my name and my signature on it.

8 Q. And is it dated?

9 A. It is. August 11th, 2012.

10 Q. Is there also a time on there?

11 A. 3:47 p.m.

12 Q. When you go over his Miranda Rights, how do you read
13 those to him?

14 A. I read each question. I ask if you understand. I
15 put a check beside them as I go down.

16 Q. And if they don't, if they indicate they don't
17 understand a word, what do you do then?

18 A. Give an explanation. Before I begin just to give
19 them Miranda Rights, I tell them if there is anything you
20 don't understand, stop me and ask me and I'll explain.

21 Q. Did you have to explain anything about his rights to
22 him?

23 A. On the first time I don't recall. Generally people
24 have a problem with the word coercion but I don't recall
25 whether I went over coercion with him or not, but not that I'm

1 aware of, no, ma'am.

2 Q. The video would indicate whether you explained the
3 word coercion to him?

4 A. Yes, ma'am.

5 Q. Did he indicate to you that he understood the rights
6 and that he wanted to speak to you?

7 A. Yes, ma'am. He signed at the bottom.

8 Q. And at that point did you begin to ask him questions
9 related to this case?

10 A. Yes, ma'am.

11 Q. And did you have any statements from the victim or
12 from the complainant at that time?

13 A. No, ma'am, I didn't.

14 Q. At that point did he speak to you?

15 A. Just very briefly. Not really about anything. Not
16 the first time.

17 Q. Okay. About how long did that first interview
18 last?

19 A. Probably 15 minutes.

20 Q. Did he indicate to you in any way that he was
21 having, that he was a little bit overwhelmed? I don't want to
22 misinterpret or misdescribe how he seemed. Uhm, can you just
23 in general describe his demeanor throughout this 10 to 15
24 minute interview?

25 A. Uhm, through my experience for someone who's been

1 told what those types of allegations are, there wasn't any
2 emotion. There wasn't any excitement. He just seemed like he
3 had a lot that he was processing in his mind at the time.

4 Q. At some point did he say I'm going to need some help
5 with this?

6 A. Yes, ma'am.

7 Q. How did he -- Investigator Dill, do you have that
8 portion of the interview?

9 A. Yes, ma'am, I do.

10 Q. Okay. So I'll direct your attention to around right
11 about the 11 minute mark. What does he say to you?

12 A. The defendant says I'm going to have to wait and get
13 some help.

14 MS. CAVANAUGH: Okay. And, Your Honor, would you
15 like to see a copy of this?

16 THE COURT: Yes, please.

17 MS. CAVANAUGH: (Proffering.)

18 BY MS. CAVANAUGH:

19 Q. So around the 11 minute mark he says I'm going to
20 have to wait and get some help. And then what does he follow
21 up with at that point?

22 A. He says I guess maybe a counselor or an appointed
23 attorney or something and I need to know what they're
24 saying.

25 Q. Did you at that point when he said -- Again leading

1 up to this, what types of things was he saying, if anything?

2 A. Uhm, basically the whole conversation is he's
3 wanting to know what the others are saying. He's wanting to
4 know what the other people's story are and I'm trying to find
5 out what his story is regardless of what they were saying.

6 Q. Okay. So pointing, more specifically pointing
7 earlier into the interview at the bottom of the first page
8 around the 9 minute mark, what does he say to you at that
9 point?

10 A. I can't admit to nothing right now because I don't
11 know. I don't know where I'm at.

12 Q. So you clarify by asking him?

13 A. I ask him, you don't know where you are? And he
14 said yeah, mentally I don't, so I'm gonna have to have some
15 help.

16 Q. So he had mentioned his mental state. At that point
17 he didn't know where he was at mentally?

18 A. Yes. Not like he had a mental illness, but he was
19 saying I have a lot going on through my mind is how it
20 appeared.

21 Q. So later on about a minute and a half later when he
22 said I'm gonna have to wait and get some help and then follow
23 up with a counselor, an appointed attorney, when he said
24 counselor, what did you think he meant by counselor?

25 A. I guess like a guidance counselor or just someone to

1 talk to. He was listing all the different people to talk
2 to.

3 Q. Okay. So you tried to clarify that by saying who?

4 A. Yes, ma'am.

5 Q. And what did he respond with after that? How did he
6 respond after that?

7 A. He said my daughter and my wife and family. I need
8 to, I want to know where they want me. I asked him where they
9 want you as a question. He said yes. Before I say something,
10 I don't want my story to differ from hers. I asked him, well,
11 I mean, this is the thing though, Mr. Miller. Nobody's gonna
12 tell you what they're saying. I said, they're not gonna do it
13 and you need to take this opportunity to tell what really
14 happened.

15 Q. Okay. So then what does he say?

16 A. An attorney will, I guess. I will have to know her
17 side of the story. I asked him, okay. Do you have an
18 attorney? He said no. I said, have you ever had to have an
19 attorney before? He said no. I said okay. All right. So
20 that's what you want is an attorney to clarify? He says, I'm
21 going to have to have some help with this one, yes, sir. And
22 then I ceased the interview.

23 Q. Okay. So as soon as he made that clarification that
24 he wanted a lawyer --

25 A. I stopped.

1 Q. -- you clarified that and stopped any questions?

2 A. Correct.

3 Q. So when he first said or first hinted that he wanted
4 a counselor or an appointed lawyer and he says I guess maybe a
5 counselor or an appointed lawyer, did you see that as a
6 indication at that point?

7 A. No. He didn't ask for a lawyer. He just was naming
8 off people that he could talk to.

9 Q. And you said -- So you clarified that by saying
10 who?

11 A. Yes.

12 Q. He immediately followed that with what?

13 A. My daughter and my wife and my family, I need to, I
14 want to know where they want me. I intentionally asked who
15 because any time the word attorney or lawyer comes into a
16 sentence, you want to clarify so you can stop talking to
17 him.

18 Q. So he didn't follow up. With your follow up
19 question as to who, he didn't say I want a lawyer now. He
20 continued along other lines?

21 A. Yes, ma'am. He didn't ask for an attorney.

22 Q. But the second that he was a little bit clearer
23 about it, you --

24 A. I ceased the interview.

25 Q. -- ceased the interview?

JUSTIN DILL - DIRECT BY MS. CAVANAUGH

47

1 A. Yes, ma'am.

2 Q. Okay. What did you do after you left the room?

3 A. I had him transported back to the detention center
4 because he invoked his right to an attorney.

5 Q. And were you -- So you were the on-call
6 investigator. At this point while he was being transported to
7 the detention center, do you recall what you were doing?

8 A. I don't recall. Usually I go ahead and make a copy
9 of or a disk of whatever interview I just conducted. It saves
10 it for 30 days so I may have concluded what I was doing and
11 gone on back home. I don't recall.

12 Q. So at some point did you receive a call from Deputy
13 Hathaway?

14 A. I did.

15 Q. When was that?

16 A. Shortly after he would have been taken back to the
17 detention center.

18 Q. Okay. Do you have the dispatch record in front of
19 you?

20 A. Yes, ma'am.

21 Q. First can you tell from this dispatch record what
22 time he was transported back to the jail? Not back to but to
23 the jail?

24 A. Looks like he was en route to the jail with the
25 prisoner at 4:02.

1 Q. Okay. And what time does it appear that you became
2 involved? What would you have done once you received word
3 from Deputy Hathaway that he wanted to talk to you?

4 A. Gone down to the jail and asked him if that is what
5 he requested.

6 Q. What time did that occur?

7 A. Looks like I got to the jail at 4:51.

8 Q. What did you do when you got to the jail?

9 A. I asked him if he had asked another deputy if he
10 wanted to talk to me. Obviously he said yes so I transported
11 him back to the Sheriff's Office at 4:57.

12 Q. Okay. What did you do when you arrived back at the
13 Sheriff's Office?

14 A. Just drove to the Sheriff's Office.

15 Q. Did you have any conversation with him about the
16 case in the car?

17 A. Uhm, as a recall he started making some comments,
18 but I told him I can't speak to you until I read you your
19 Miranda again and we'll talk about that back at the office.

20 Q. Okay. So what time - so what did you do when you
21 got to the Sheriff's Department? Did you both go back into
22 the interview room?

23 A. Yes, ma'am.

24 Q. What was the first thing you did once you got back
25 in the interview room and sat him down?

1 A. I went back over Miranda again, separate Miranda
2 form.

3 Q. I'll show you what's marked as State's exhibit
4 number 2. Do you recognize that?

5 A. Yes, ma'am.

6 Q. And what is this?

7 A. It's a standard Miranda form for the Kershaw County
8 Sheriff's Office signed and dated by myself and signed and
9 waived by Mr. Miller.

10 Q. And what is the date and time at the bottom?

11 A. It's August 11th, 2012 at 5:15 p.m.

12 Q. So about an hour and 30 minutes after the first
13 Miranda Warnings, right?

14 A. Yes, ma'am.

15 Q. Did you go through those Miranda Rights individually
16 again?

17 A. Yes, ma'am. I believe I even told him I know we've
18 already been over this one time but I have to go over it again
19 before I speak to you again.

20 Q. Okay. And did he indicate and memorialize that he
21 wanted to speak to you again?

22 A. Yes, he did.

23 Q. By signing that page, the waiver?

24 A. Yes, I believe, and I always tell them this is no
25 admission of any guilt. This is just saying that you wish to

1 talk to me today.

2 Q. Okay. And did you continue to ask him questions
3 related to this case at that point?

4 A. Yes, ma'am.

5 Q. Okay. At that point did you have any additional
6 information to aid you?

7 A. I believe I had read briefly over the statements
8 that were taken from the witnesses or the victim and the
9 mother and I also talked to the deputies about what they had
10 seen or heard at the incident location on [REDACTED]

11 Q. Okay. And again this interview is recorded video
12 and audio?

13 A. Yes, ma'am.

14 Q. I won't get too much into that actual interview but
15 I do want to ask you a couple things about what he said. Did
16 he tell you anything about his, what he said on the scene?

17 A. I remember confronting him but without watching the
18 video I don't recall. I remember asking him why he said
19 whatever she says is the truth. It's not a lie. I remember
20 in the video that I did ask him that. I do not remember what
21 his response was.

22 Q. Okay. But all of that would be captured in the
23 interview?

24 A. Yes, ma'am.

25 Q. Did he actually admit to you that he had had sexual

1 intercourse with his daughter at that time?

2 A. Uhm, not at that time.

3 Q. Or ever?

4 A. No, ma'am, he didn't.

5 Q. Did he say anything specifically about any touching
6 that might have occurred?

7 A. He discussed one time when apparently he allegedly
8 woke up and had his hand on the inside of, I believe, **minor one**
9 leg and said that that scared both of them and he was upset
10 about it.

11 Q. Did he tell you anything about the sleeping
12 arrangements or where he would sleep in the home?

13 A. I don't recall as far as every night sleeping
14 arrangements, but we did discuss the fact that he laid in bed,
15 he frequently laid in bed with his 17 year old daughter
16 because I told him that I thought that was unusual.

17 Q. But again every statement that he made this entire
18 interview would be captured on video?

19 A. The entire interview.

20 Q. About how long did this one last?

21 A. Probably 30 minutes.

22 Q. Did he appear to understand the questions you were
23 asking him? Did he appear coherent throughout that
24 interview?

25 A. Absolutely.

1 MS. CAVANAUGH: No further questions. Thank you.

2 CROSS EXAMINATION

3 BY MS. GOOD:

4 Q. During the first interview, you stated it lasted
5 about 15 minutes, correct?

6 A. Yes, ma'am.

7 Q. And you have a summary of what was said during that
8 interview?

9 A. Yes, ma'am, I do.

10 Q. On page 2 of that summary right before the 9.30 mark
11 is the first time he mentioned to you so I'm gonna have to
12 have some help, correct?

13 A. Correct.

14 Q. And when he said that, did that indicate anything to
15 you that he might want to have an attorney at that point?

16 A. No, ma'am.

17 Q. So you just kept asking questions not no clarify if
18 that meant an attorney when he said I need some help?

19 A. When he said I need some help, I said okay. He had
20 his opportunity to tell me what kind of help he wanted, but he
21 just started talking about something different.

22 Q. But you started asking him questions about having to
23 air everything out at that point, correct?

24 A. Yes.

25 Q. Then again later he said, I guess maybe a counselor

1 or an appointed attorney or something, and at that point you
2 continued to ask a question after that, correct?

3 A. Yes, ma'am.

4 Q. And when he said an appointed attorney, at that
5 point you had an indication that he could potentially want an
6 attorney, correct?

7 A. Correct.

8 Q. And then finally at the end he said again a third
9 time he wanted an attorney and have some help, correct?

10 A. Yes, ma'am.

11 Q. And that's when you ended that?

12 A. When he clarified that that's what he wanted, I
13 stopped the interview.

14 Q. How come previously when he said so I'm gonna have
15 to have some help you didn't try to clarify at that point what
16 help meant?

17 A. Which time?

18 Q. The first time.

19 A. When he says, yeah, I mean, I don't so I'm gonna
20 have to have some help when I asked him you don't know where
21 you are, I tell him okay. Like a okay question, you know, in
22 my face. I gave him an opportunity to tell me what he was
23 talking about.

24 Q. But you never said what do you mean by help? You
25 never tried to clarify if help meant an attorney?

1 A. No.

2 Q. And you took notes during that interview, correct?

3 A. I don't recall.

4 Q. Do you not have a copy of your notes or anything?

5 A. Not with me, no, ma'am.

6 Q. Did you do an investigative report?

7 A. I don't know, ma'am. I feel like I have seen a
8 piece of paper with my handwriting on it so I probably have
9 notes.

10 Q. I'll hand up to you to refresh your memory
11 (proffering.) Are those your notes from the interview with
12 Mr. Miller?

13 A. That's my handwriting, yes.

14 Q. And there's two separate notes, correct, one from
15 one interview and one from the second?

16 A. This one says second interview so we can only assume
17 this is from the first.

18 Q. And the first interview was fairly short, 15 minutes
19 and you recorded everything that was said in that interview,
20 correct?

21 A. Yes, ma'am.

22 Q. And the second interview when you got back from the
23 jail, on the ride from the jail to the Sheriff's Office, what
24 vehicle were you in?

25 A. I had an Explorer at that time, I believe. I may

1 have had a Charger. I don't recall. It was unmarked.

2 Q. Do either one of those have video in that car?

3 A. No, ma'am.

4 Q. You stated you didn't talk to him again about the
5 case until you got back to the Sheriff's Department at the
6 5:15 interview, correct?

7 A. Correct.

8 Q. At that point you kind of knew what was going on?

9 A. Yes, ma'am. I was more informed.

10 Q. And that was a 30 minute interview. What's your
11 normal course of action when you do an interview with
12 somebody? Do you take notes?

13 A. It differs from time to time. It depends on how
14 they're responding. Sometimes I'll start taking notes and
15 stop because I know it's recorded. Sometimes I write every
16 single thing down. It different from time to time.

17 Q. Do you ultimately go back and do an investigative
18 report on that sort of thing?

19 A. Just depends on what it is. No, ma'am, not all the
20 time.

21 Q. If you are the lead investigator on the case, how do
22 you follow up with what actions you have taken on the case?

23 A. Go through, sometimes I go through. It just depends
24 on if it's all solely my case, I go back and put all my case
25 notes into the case management system. I keep a folder that's

1 my copy of everything that's involved in the case.

2 Q. In this particular case you were the investigator
3 on-call. Were you the lead investigator throughout?

4 A. No, ma'am.

5 Q. Who was that?

6 A. Steve Knafelc.

7 MS. GOOD: No further questions, Your Honor.

8 THE COURT: Any redirect?

9 MS. CAVANAUGH: No, Your Honor.

10 THE COURT: Thank you. Step down. Any additional
11 witnesses from the State?

12 MS. CAVANAUGH: No, Your Honor, not for this
13 portion.

14 THE COURT: All right.

15 MS. GOOD: Beg the Court's indulgence. No
16 witnesses, Your Honor.

17 THE COURT: All right. I know I have the actual
18 DVD's to watch, but do you all want to go ahead and do
19 any summation and then I'll take it under advisement over
20 the lunch hour?

21 MS. CAVANAUGH: Well, Your Honor, we think that
22 under the, first of all, the standard is met under
23 totality of circumstances, that all of the statements
24 that he gave law enforcement were made freely and
25 voluntarily. He made some statements on the scene.

1 Whether they were in response to questions or not he was
2 advised of his Miranda Warnings verbally at the scene and
3 made certain statements about whatever she said is true
4 and then he was transported within the hour to the
5 Sheriff's Office. Investigator Dill read him his rights
6 in a written format and checked as he went over each
7 right which included the fact that he had the right to
8 remain silent and that he had the right to talk to a
9 lawyer and have him present while he's being questioned.
10 And he indicated that he wished to speak.

11 He then ended the interview. Well, first it's the
12 State's position that that first mention of a lawyer is
13 ambiguous because it's in the context of, well, maybe I
14 need a counselor or an appointed lawyer and when Justin
15 Dill, investigator at the time, Investigator Dill tries
16 to clarify who, he then follows up with statements
17 completely unrelated to his original consideration of a
18 lawyer. The second is that he clearly says an attorney
19 will tell me what's going on. That's when Investigator
20 Dill clarifies that, yes, he wants to quit speaking at
21 that point because he wants a lawyer so there are no
22 further questions asked. We believe that portion after
23 he ambiguously states that he might want a lawyer, the
24 portion about him getting his story straight based on
25 what the family is saying is admissible as well and I do

1 have case law to support that.

2 THE COURT: I think it's Davis versus United States.
3 It's exactly that same factual scenario where a suspect
4 said maybe I need to speak to an attorney. Here it's a
5 little different because it was maybe I need to speak to
6 an attorney or a counselor. But in Davis it was maybe I
7 should speak to an attorney, the investigator still
8 questions, the United States Supreme Court found that
9 that was an ambiguous request.

10 MS. CAVANAUGH: Yes. And that is one of the cases
11 that we have to support our position regarding that
12 issue. Also, a Deputy Hathaway testified to, without any
13 questioning or commenting on the case itself, Deputy
14 Hathaway's entire role was just to transport him from the
15 Sheriff's Office to the jail. At that point he said
16 I want to speak to the investigator again. In the video
17 as soon as Mr. Miller walked into that interview room the
18 first question that Investigator Dill asked him is Deputy
19 Hathaway indicated to me that you want to speak to me
20 again; is that correct? And he says. And then they go
21 over his Miranda Warnings once again in writing and he
22 indicates that he wants to talk to him.

23 So we believe that all - there's essentially three
24 sets of statements from Mr. Miller. We believe that all
25 those are admissible under Jackson v. Denno. They were

1 freely and voluntarily given. However, we do recognize
2 that in the first interview when he, even if it is
3 ambiguous, the fact that he mentions that he might want
4 to speak to a lawyer, that could be potentially
5 prejudicial so we have a version of that interview that
6 has that portion redacted so that the jury doesn't hear
7 that he might want to talk to a lawyer. Then, of course,
8 once he indicates clearly that he does want a lawyer, we
9 have redacted all of that from the video.

10 In addition, in the second video when Investigator
11 Dill says it's my understanding you want to speak to me
12 again without a lawyer present, we have that without a
13 lawyer present redacted as well just so it doesn't appear
14 prejudicial to Mr. Miller. So we have the original
15 copies for you to review as well as redacted versions
16 available based on what we anticipated Ms. Good
17 requesting to be redacted.

18 THE COURT: Ms. Good, I'll hear from you.

19 MS. GOOD: Thank you, Your Honor. Just to start off
20 with based on the testimony and conversations with my
21 client, we have no problem with the first statement to
22 Corporal Houser as well as the second statement to
23 Investigator Dill.

24 Your Honor, our issue is with that first interview.
25 You will get to see the interviews. While it may be so

1 unambiguous he asked for help essentially three times,
2 Your Honor. The first time he says I'm gonna have to ask
3 for some help and Investigator Dill says okay and then
4 they just keep talking. Then secondly he says I guess
5 like a counselor or an appointed attorney. At that point
6 he continues to question him despite the fact that he
7 says I need some help from an appointed attorney.

8 THE COURT: But doesn't he use the word "maybe"?

9 MS. GOOD: He says I guess maybe a counselor or an
10 appointed attorney or something. But I would indicate
11 that that's not ambiguous. The fact that he's bringing
12 up an actual appointed attorney, this is the second time
13 he's mentioned having help and Investigator Dill
14 continues to question --

15 THE COURT: But didn't the United States Supreme
16 Court disagree with that argument? Haven't lawyers
17 argued that for a long time?

18 MS. GOOD: They have, Your Honor. I think it comes
19 into context when you actually view the video. That's
20 the second time he asks for help. And then ultimately at
21 the end he does clarify with him about an attorney. Uhm,
22 if you are going to allow it, Your Honor, we would ask
23 that it be redacted as to the point that he's asking for
24 an attorney or maybe an attorney as he does have the
25 right to remain silent, and I believe that is prejudicial

MOTIONS

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1 to the jury and they should not see that he has asked for
2 an attorney.

3 THE COURT: Have you reviewed the redacted version?

4 MS. GOOD: I have not. This is the first I have
5 heard of a redacted version.

6 THE COURT: Based on what Ms. Cavanaugh said about
7 the redaction, and again I'm not going to make a ruling
8 until I actually watch the video which I'll do over the
9 lunch hour, but based on what she said the redaction was,
10 is that what you would be asking for at any point where
11 he asked for an attorney to be redacted?

12 MS. GOOD: Well, my actual argument is that anything
13 after the first I'm gonna have to have some help should
14 be excluded and suppressed. But if you allow --

15 THE COURT: Assuming that I rule against you on
16 that.

17 MS. GOOD: Correct. Any time he asked for an
18 attorney I would ask that it be redacted.

19 THE COURT: Ms. Cavanaugh, you do have a redacted
20 version?

21 MS. CAVANAUGH: Yes, Your Honor, I do.

22 THE COURT: Okay.

23 MS. CAVANAUGH: And I have copies that she can
24 review over lunch hour as well.

25 THE COURT: Right. All right. Well, I will take it

1 under advisement so I have an opportunity to actually
2 listen to the statement myself. The only statement at
3 issue is that 15 minute statement it seems like, correct?

4 MS. GOOD: Correct.

5 THE COURT: Okay. And otherwise the defendant
6 concedes that the other two statements are admissible.
7 So I will make a ruling on that 15 minute statement after
8 the lunch break. The jury is coming in at 1:00 in this
9 courtroom. Do they have to come up right in here?

10 THE CLERK: Yes, ma'am.

11 THE COURT: There's not like a separate area. So we
12 probably need to do the remaining pretrial motions after
13 jury selection is how we'll handle those. None of them
14 seem to involve -- There's a defense motion with regard
15 to the statute, the corroboration statute, defense motion
16 with regard to the State's expert witness. State's

17 motion also dealing with the expert witness and then you
18 both filed motions renewing your Rule 5's and I
19 understand that you both have given each other everything
20 with regard to the Rule 5. There are no other motions or
21 am I missing one?

22 MS. GOOD: We have a couple motion in limine, Your
23 Honor, as to some of the testimony that we anticipate to
24 be given by the victim and her family.

25 THE COURT: Are you wishing to do that before we

1 start the trial?

2 MS. GOOD: Yes, because I think it would potentially
3 -- I mean, I don't know what their opening arguments are,
4 but I would like to have everything settled before
5 opening argument as to what they can or can't go into.

6 THE COURT: Okay. Give me an estimate so I can
7 gauge for the jury how long the remaining motions will
8 take.

9 MS. CAVANAUGH: From our end ten minutes.

10 MS. GOOD: 15 to 20.

11 THE COURT: Okay. Great. We'll do all that before
12 opening argument. Hopefully we can do opening today and
13 may break for the day depending on what time it is.
14 We'll just have to kind of gauge it and it may be if jury
15 selection takes a while, I'll just let the jury go home
16 after jury selection so we can look at these motions. I
17 keep looking at this clock which is still an hour behind.
18 We are getting real close to when the jury is coming in
19 so let's go ahead and break now. We can all eat lunch.
20 What time do you need us back for the jury?

21 THE CLERK: It will take a good 30 minutes or more
22 to scan everybody in and then I talk to them for about 15
23 minutes just to give the instructions. And do you want
24 to be in here when we call the role?

25 THE COURT: I usually -- Sometimes I do, sometimes I

1 don't, but I'll go ahead and be here for the roll call.

2 THE CLERK: It would be between probably a quarter
3 to two to 2:00. That will give you enough time to have
4 lunch.

5 THE COURT: Let's go ahead and give us to 2:00,
6 okay, to grab a bite to eat. We'll gauge it and
7 depending on how long jury selection takes, I may just
8 let the jury go home early and we'll start with the
9 pretrial matters and just start tomorrow early and if
10 y'all have a preference on that, you let me know, but we
11 can go ahead and be off the record.

12 MS. GOOD: Roll call is at 2:00?

13 MS. CAVANAUGH: Yeah. I think our preference would
14 be just to get all the pretrial stuff out of the way this
15 afternoon and start with opening in the morning.

16 THE COURT: That sounds good to me as well. We'll
17 start fresh. We'll get a jury selected and then we can
18 send them home and bring them back tomorrow morning.
19 Great.

20 (Luncheon recess.)

21 * * * * *

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LER

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

JURY QUALIFICATION

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* * * * *

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(Jury venire present.)

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BAILIFF: All rise.

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MR. MILLER: (Defendant complies.) Am I suppose to say anything?

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THE COURT: No. That's all right. You do not have to look to see if you know anybody. They are looking to see if they are related to you by blood or marriage.

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MR. MILLER: I don't see anybody off the top of my head.

(No response.)

THE COURT: Has anyone ever had a close personal or social relationship with James Wayne Miller?

(No response.)

THE COURT: Ladies and gentlemen, I have a list of prospective witnesses here and if any of the witnesses are present, I would ask you to stand up as I read your

1 name. There may be some witnesses on my list who are not
2 in the courtroom today. All right. The first witness is
3 Captain Steve Knafelc. I'm going to list all the
4 witnesses and then I'll ask you a question after I list
5 all the witnesses. Officer Brooks Houser from the Elgin
6 Police Department. Deputy Justin Scott of the Kershaw
7 County Sheriff's Office. Deputy Cody Wilson of the
8 Kershaw County Sheriff's Office. Deputy Tom Hathaway of
9 the Kershaw County Sheriff's Office. Justin Dill. Agent
10 Melissa Skipper Wallace from SLED. Courtney Thompson
11 from SLED. Sally Williamson from The CARE House. Dr.
12 Susan Luberoff from ARC. Dr. Allison Foster from ARC.
13 [minor one] [minor one] Ms. [minor one] is standing. Tammy
14 Lynn Miller. Ms. Miller is standing in the back. [minor
15 Miller Keeter. Ms. Keeter. Martha Penrod. I don't
16 think Ms. Penrod is here.

17 If any member of the jury panel has ever been
18 related by blood or marriage to any of the people I have
19 just listed or has ever had a close personal or social
20 relationship with any of these people, please stand.

21 All right. Ma'am, in the front row please.

22 NANCY REED: Justin Dill.

23 THE COURT: I'm sorry. Can you first say your name
24 and your juror number.

25 NANCY REED: Nancy Reed, 141. We grew up together

JURY QUALIFICATION

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1 and he's my third cousin, I think.

2 THE COURT: Who is that.

3 NANCY REED: Justin Dill.

4 THE COURT: You grew up with each other and he's
5 related distantly, a third cousin. Would that affect
6 your ability to be a fair and impartial juror in this
7 case?

8 NANCY REED: I don't think so.

9 THE COURT: Thank you, ma'am. Yes, ma'am.

10 AIMEE HINSON: Aimee Hinson, juror 65. Officer
11 Brooks Houser. I go to church with him.

12 THE COURT: Would the fact that you go to church
13 with Officer Houser affect your ability to be fair and
14 impartial in this case?

15 AIMEE HINSON: No, ma'am.

16 THE COURT: Thank you very much. The attorneys in
17 this case are Kathryn Cavanaugh and Karlen Senn who are
18 with the Fifth Circuit Solicitor's Office, and Anna Raul
19 Good who is a sole practitioner. Has any member of the
20 jury panel ever been represented by any of the attorneys
21 involved in this case?

22 (No response.)

23 THE COURT: Okay. Has anyone ever been related by
24 blood or marriage to or have you ever had a close
25 personal or social relationship with any of the attorneys

1 involved in this case or anyone in their law firm or in
2 the Fifth Circuit Solicitor's Office?

3 (No response.)

4 THE COURT: This case involves allegations of
5 criminal sexual conduct, however, these are only
6 allegations and the defendant has pled not guilty to
7 these allegations and wears the cloak of innocence until
8 the State proves his guilt beyond a reasonable doubt. My
9 question to you is has anybody heard anything about the
10 case? Has anybody discussed it with you? Has anybody
11 formed an opinion, expressed an opinion or knows anything
12 at all about the case, if so, please stand.

13 (No response.)

14 THE COURT: Is any member of the jury panel aware of
15 any bias or prejudice toward either the State or the
16 defendant in this case? If so, please stand.

17 (No response.)

18 THE COURT: Is there any member of the jury panel
19 who is a member of or contributor to any group which has
20 its primary concern the promotion of law enforcement or
21 victim rights? These groups would include but certainly
22 not be limited to Mothers Against Drunk Driving, Students
23 Against Drunk Driving, battered women shelters or rape
24 crisis centers or similar organizations. If so, please
25 stand.

JURY QUALIFICATION

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1 (No response.)

2 THE COURT: Have you or any close family member or
3 close friend ever been the victim of a crime, convicted
4 of a crime, served time for a crime or have pending
5 criminal charges? If so, please come forward and we can
6 discuss it privately.

7 (No response.)

8 THE COURT: Do you or a close family member or close
9 friend work in law enforcement either as a member of a
10 law enforcement agency or a prosecuting agency such as
11 the Attorney General's Office, Solicitor's Office or any
12 other civilian or law enforcement agency? If so, please
13 stand. Yes, sir. Can you state your name and your juror
14 number please.

15 DARRYL RABON: Darryl Rabon, 138.

16 THE COURT: Tell me why you stood for this
17 question.

18 DARRYL RABON: I work for the Richland County
19 Sheriff's Department.

20 THE COURT: In what capacity?

21 DARRYL RABON: Sheriff's assistant.

22 THE COURT: Would the fact that you work for the
23 Richland County Sheriff's Department affect your ability
24 to be fair and impartial in this case?

25 DARRYL RABON: No.

1 THE COURT: All right. Thank you, sir. Yes, ma'am.

2 CLAIRE WIGGINS: 193, Claire Wiggins. My nephew is
3 a police officer with the Forest Acres Police
4 Department.

5 THE COURT: Would the fact that your nephew is an
6 officer with the Forest Acres Police Department affect
7 your ability to be fair and impartial in this
8 particular case?

9 CLAIRE WIGGINS: No, ma'am.

10 THE COURT: Thank you very much. Ladies and
11 gentlemen, as I said to you, the defendant is presumed to
12 be not guilty of the crimes charged. The State has the
13 burden of proof in the case and the State must present
14 evidence which convinces each and every juror of guilt
15 beyond a reasonable doubt, otherwise you must under your
16 oath find the defendant not guilty. If any juror cannot
17 follow that instruction of law, please stand.

18 (No response.)

19 THE COURT: Does the State have any additional
20 questions it would like to have asked?

21 MS. CAVANAUGH: Your Honor, may we approach?

22 THE COURT: You may.

23 (Side bar off the record.)

24 THE COURT: Has any member of the jury panel or any
25 member of their family ever been accused of, charged,

JURY QUALIFICATION

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1 arrested or convicted of a crime of sexual assault
2 regardless of whether it was reported to law enforcement
3 or has any member of the jury panel or member of their
4 family been a victim of a sexual assault whether or not
5 it was reported to law enforcement? If so, whether it
6 was you or a family member has either been a victim or
7 accused of a sexual assault, please come forward and we
8 can discuss that privately.

9 BAILIFF: 154.

10 KIMBERLY RUSSELL: My sister-in-law's brother was
11 convicted of child molestation.

12 THE COURT: That's your sister-in-law's brother?

13 KIMBERLY RUSSELL: Yes.

14 THE COURT: Would that affect your ability to be
15 fair and impartial in this particular case?

16 KIMBERLY RUSSELL: No.

17 THE COURT: Okay.

18 BAILIFF: 196.

19 THE COURT: Come forward.

20 VIRGINIA WILLIAMS: Virginia Williams. I had a
21 brother that was accused of being a sex offender.

22 THE COURT: Was the fact that he was accused of
23 being a sex offender -- He was just accused? Never went
24 to court?

25 VIRGINIA WILLIAMS: He went to court.

1 THE COURT: Would that affect your ability to be
2 fair and impartial in this particular case?

3 VIRGINIA WILLIAMS: No.

4 THE COURT: Okay. Thank you.

5 BAILIFF: 58.

6 SARAH GRUBBS: When I was a teenager, I was sexually
7 assaulted by a co-worker and I do feel like I'm a little
8 bit impartial in that situation.

9 THE COURT: Impartial or partial?

10 SARAH GRUBBS: Yes. Somewhat bias. Correct.

11 THE COURT: You're the only person that knows that
12 in your heart. I can understand that, how you feel about
13 that. Do you want her to stick around? I'm going to
14 strike her for cause. You're free to go.

15 SARAH GRUBBS: Do I need to stay?

16 THE CLERK: No.

17 BAILIFF: 59.

18 BARBARA HAMMONDS: Barbara Hammonds. My son was in
19 the military. He was accused of a sexual sodomy. He was
20 in Washington. He never served time but he was accused
21 of it.

22 THE COURT: Would that affect your ability to be
23 fair and impartial in this particular case?

24 BARBARA HAMMONDS: It could.

25 THE COURT: You can be fair and impartial?

JURY SELECTION

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1 BARBARA HAMMONDS: Yes.

2 THE COURT: Thank you very much.

3 BAILIFF: 193.

4 CLAIRE WIGGINS: My son sexually abused my
5 daughter.

6 THE COURT: Would that affect your ability to be
7 fair and impartial in this particular case?

8 CLAIRE WIGGINS: I don't think so.

9 THE COURT: Thank you very much. All right. My
10 final question is if you have any reason whatsoever why
11 you cannot be fair and impartial or why you should not be
12 selected to be on this case, please stand now and come
13 forward to speak to me.

14 (No response.)

15 THE COURT: All right. We are now ready to select
16 the jury for this case. If your name is called, please
17 come forward.

18 THE CLERK: Please follow the instructions I gave
19 you previously. Thank you. Number 125, Yolanda Y. Pate.

20 (Whereupon, Yolanda Y. Pate, a black female, was
21 called forward.)

22 THE CLERK: What say the State?

23 MS. CAVANAUGH: Please present this juror, Your
24 Honor.

25 THE CLERK: What say the defense?

1 MS. GOOD: Please seat this juror.

2 THE CLERK: Thank you. Number 2, Karen J. Arbuckle.

3 (Whereupon, Karen J. Arbuckle, a white female, was
4 called forward.)

5 THE CLERK: What say the State?

6 MS. CAVANAUGH: Please present this juror.

7 THE CLERK: What says the defense?

8 MS. GOOD: Please excuse this juror.

9 THE CLERK: Thank you. Number 119, Walter C. Odom,
10 Junior.

11 (Whereupon, Walter C. Odom, Junior, a white male,
12 was called forward.)

13 THE CLERK: What say the State?

14 MS. CAVANAUGH: Please excuse this juror.

15 THE CLERK: Thank you. Number 148, Michael A.
16 Roberts.

17 (Whereupon, Michael A. Roberts, a white male, was
18 called forward.)

19 THE CLERK: What say the State?

20 MS. CAVANAUGH: Please excuse this juror.

21 THE CLERK: Number 20. Michael Brown.

22 (Whereupon, Michael Brown, a white male, was called
23 forward.)

24 THE CLERK: What say the State?

25 MS. CAVANAUGH: Please present this juror.

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1 THE CLERK: What say the defense?

2 MS. GOOD: Please seat this juror.

3 THE CLERK: Thank you. Number 29, Danita
4 Chestnut-Blackwell.

5 (Whereupon, Danita Chestnut-Blackwell, a black
6 female, was called forward.)

7 THE CLERK: What say the State?

8 MS. CAVANAUGH: Please present this juror.

9 THE CLERK: What say the defense?

10 MS. GOOD: Please seat this juror.

11 THE CLERK: Thank you. Number 105, Simone S.
12 Middleton.

13 (Whereupon, Simone S. Middleton, a black female, was
14 called forward.)

15 THE CLERK: What say the State?

16 MS. CAVANAUGH: Please present this juror.

17 THE CLERK: What say the defense?

18 MS. GOOD: Please seat this juror.

19 THE CLERK: Thank you. Number 54, David C.
20 Gardener.

21 (Whereupon, David C. Gardner, a white male, was
22 called forward.)

23 THE CLERK: What say the State?

24 MS. CAVANAUGH: Please present this juror.

25 THE CLERK: What say the defense.

1 MS. GOOD: Please seat this juror.

2 THE CLERK: Thank you. Number 193, Claire G.
3 Wiggins.

4 (Whereupon, Claire G. Wiggins, a white female, was
5 called forward.)

6 THE CLERK: What say the State?

7 MS. CAVANAUGH: Please present this juror.

8 THE CLERK: What say the defense?

9 MS. GOOD: Please excuse this juror.

10 THE CLERK: Thank you. Number 76, Felisha N.
11 Oliver.

12 (Whereupon, Felisha N. Oliver, a black female, was
13 called forward.)

14 THE CLERK: What says the State?

15 MS. CAVANAUGH: Please present this juror.

16 THE CLERK: What say the defense?

17 MS. GOOD: Please excuse this juror.

18 THE CLERK: Thank you. Number 42, James E.
19 Davidson.

20 (Whereupon, James E. Davidson, a white male, was
21 called forward.)

22 THE CLERK: What say the State?

23 MS. CAVANAUGH: Please excuse this juror.

24 THE CLERK: Thank you. Number 163, Marvin J. Simon.

25 (Whereupon, Marvin J. Simon, a black male, was

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1 called forward.)

2 THE CLERK: What say the State?

3 MS. CAVANAUGH: Please present this juror.

4 THE CLERK: What say the defense?

5 MS. GOOD: Please seat this juror.

6 THE CLERK: Thank you. Number 194, Crystal B.

7 Williams.

8 (Whereupon, Crystal B. Williams, a white female, was

9 called forward.)

10 THE CLERK: What say the State?

11 MS. CAVANAUGH: Please present this juror.

12 THE CLERK: What say the defense?

13 MS. GOOD: Please seat the juror.

14 THE CLERK: Thank you. Number 146, Matthew W.

15 Roach.

16 (Whereupon, Matthew W. Roach, a white male, was

17 called forward.)

18 THE CLERK: What say the State?

19 MS. CAVANAUGH: Please present this juror.

20 THE CLERK: What say is the defense?

21 MS. GOOD: Please seat this juror.

22 THE CLERK: Thank you. Number 189, Reginald J.

23 Weston.

24 (Whereupon, Reginald J. Weston, a black male, was

25 called forward.)

1 THE CLERK: What say the State?

2 MS. CAVANAUGH: Please present this juror.

3 THE CLERK: What say the defense?

4 MS. GOOD: Please seat this juror.

5 THE CLERK: Thank you. Number 24, Stephanie A.

6 Bush.

7 (Whereupon, Stephanie A. Bush, a black female, was

8 called forward.)

9 THE CLERK: What say the defense?

10 MS. CAVANAUGH: Please present this juror.

11 THE CLERK: What say the defense?

12 MS. GOOD: Please excuse this juror.

13 THE CLERK: Thank you. Number 171, Nellie M.

14 Stover.

15 (Whereupon, Nellie M. Stover, a black female, was

16 called forward.)

17 THE CLERK: What say the State?

18 MS. CAVANAUGH: Please present this juror.

19 THE CLERK: What say the defense?

20 MS. GOOD: Please excuse this juror.

21 THE CLERK: Thank you. Number 90, Crystal M.

22 Loynes.

23 (Whereupon, Crystal M. Loynes, a black female, was

24 called forward.)

25 THE CLERK: What say the State?

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1 MS. CAVANAUGH: Please present this juror.

2 THE CLERK: What say the defense?

3 MS. GOD: Please excuse this juror.

4 THE CLERK: Thank you. Number 84, S. Douglas
5 Kirkland.

6 (Whereupon, S. Douglas Kirkland, a white male, was
7 called forward.)

8 THE CLERK: What say the State?

9 MS. CAVANAUGH: Please present this juror.

10 THE CLERK: What say the defense?

11 MS. GOOD: Please seat this juror.

12 MS. CAVANAUGH: Thank you. Number 98, Elizabeth V.
13 Mcclester.

14 (Whereupon, Elizabeth V. Mcclester, a black female,
15 was called forward.)

16 THE CLERK: What say the State?

17 MS. CAVANAUGH: Please present this juror.

18 THE CLERK: What say the defense?

19 MS. GOOD: Please excuse this juror.

20 THE CLERK: Number 141, Nancy L. Reed.

21 (Whereupon, Nancy L. Reed, a white female, was
22 called forward.)

23 THE CLERK: Read what say the State?

24 MS. CAVANAUGH: Please present this juror.

25 THE CLERK: What say the defense?

1 MS. GOOD: Please excuse this juror.

2 THE CLERK: Thank you. Number 196, Virginia H.
3 Williams.

4 (Whereupon, Virginia H. Williams, a black female,
5 was called forward.)

6 THE CLERK: What say the State?

7 MS. CAVANAUGH: Please excuse this juror.

8 THE CLERK: Thank you. Counsel, the State has four
9 strikes and the defense has eight. Number 177, Mary A.
10 Trapp.

11 (Whereupon, Mary A. Trapp, a white female, was
12 called forward.)

13 THE CLERK: What say the State?

14 MS. CAVANAUGH: Please present this juror.

15 THE CLERK: What say the defense?

16 MS. GOOD: Please excuse this juror.

17 THE CLERK: Number 15, Donald E. Branham, Junior.

18 (Whereupon, Donald E. Branham, a white male, was
19 called forward.)

20 THE CLERK: What say the State?

21 MS. CAVANAUGH: Please present this juror.

22 THE CLERK: What say the defense?

23 MS. GOOD: Please seat this juror.

24 THE CLERK: Thank you. Number 170, Johnnie E.
25 Stover.

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1 (Whereupon, Johnnie E. Stover, a black male, was
2 called forward.)

3 THE CLERK: What say the State?

4 MS. CAVANAUGH: Please present this juror.

5 THE CLERK: What say the defense?

6 MS. GOOD: Please seat this juror.

7 THE CLERK: Thank you. For our alternate number 67,
8 Charles W. Holley the Fourth.

9 (Whereupon, Charles W. Holley, IV, a white male, was
10 called forward.)

11 THE CLERK: What say the State?

12 MS. CAVANAUGH: Please present this juror.

13 THE CLERK: What say the defense?

14 MS. GOOD: Please seat this juror.

15 THE CLERK: Thank you. Number 165, Cynthia J.
16 Smith.

17 (Whereupon, Cynthia J. Smith, a black female, was
18 called forward.)

19 THE CLERK: What say the State?

20 MS. CAVANAUGH: Please excuse this juror.

21 THE CLERK: Thank you. Number 123, Patricia T.
22 Parker.

23 (Whereupon, Patricia T. Parker, a white female, was
24 called forward.)

25 THE CLERK: What say the State? Does the State

1 challenge this juror?

2 MS. CAVANAUGH: No, ma'am.

3 THE CLERK: What say the defense?

4 MS. GOOD: Please seat this juror.

5 THE CLERK: Thank you.

6 THE COURT: Are there any matters of law regarding
7 jury selection?

8 MS. CAVANAUGH: None from the State, Your Honor.

9 MS. GOOD: None from the defense.

10 THE COURT: All right. Ladies and gentlemen, you
11 have been selected as the jury for the trial of this
12 case. There are two alternates. As the alternates you
13 will step in in the event one of the other jurors is
14 unable to continue to serve so you will be in the
15 courtroom acting as a juror and listening to everything
16 just as all the other jurors listen to and at the end of
17 the trial if you are not needed, you will be excused at
18 that time, but you will sit through the entire trial in
19 the event one of the seated jurors is unable to complete
20 their service.

21 As to those of you who are not selected for this
22 jury, your jury service ends. There are no other trials
23 this week. This is the only trial that we have here in
24 Kershaw County for the week. If anybody needs an excuse
25 for your job, you can go to the Clerk's Office to get

1 that excuse, otherwise, you are free to go and you are
2 free for the week.

3 (Whereupon, the remaining jury venire was released
4 from further jury duty.)

5 THE COURT: All right. Those of you who have been
6 selected, we still have pretrial matters that we need to
7 take care of in the case so I am going to also let you go
8 for the day and we will come back tomorrow to begin our
9 opening statements and you will hear the case tomorrow.
10 We are going to start the trial at 9:30 in the morning
11 tomorrow so I would like you to be here ready to go at
12 9:15. I'll bring you a little bit of breakfast. That
13 will give you an opportunity to have something to eat so
14 you're nice and comfortable for the day of listening to
15 the testimony that you're going to have tomorrow. I'm
16 going to try to make this as comfortable as possible for
17 everyone. Those of us that are in the courtroom a lot
18 are used to sitting all day long. I know that jurors are
19 not so used to that so I will attempt to take breaks
20 regularly so that you can get up and use the restroom.

21 If at any point you need to have a break, we have
22 bailiffs that you can either try to get my attention or
23 otherwise. There are always bailiffs around and you can
24 get their attention and let me know that a juror needs a
25 break and I'll be happy to accommodate you. The jurors

1 are the VIP's of the courtroom. I'm here. I'm like the
2 cruise director trying to make sure you're comfortable.
3 It's your job to ascertain the truth in this case. In
4 order to do that you need to be paying attention and I
5 want to make that as easy as possible for you. So today
6 your job is done for the day.

7 You haven't heard any testimony, but I'm going to
8 throughout the trial tell you that you cannot talk about
9 this case to anyone. That includes your fellow jurors.
10 It includes your family members, your friends. You're
11 here right now to listen and you are not to talk about
12 the case until you have heard the entire case and you are
13 to hear the case in this courtroom. You are not to do
14 any independent research on this case. You are not to do
15 any Google searches about the people involved in this
16 case. Everything you hear has to come from this
17 courtroom, from sworn testimony by witnesses who sit in
18 that witness stand and by any exhibits that come into
19 evidence during the trial. So I'm going to remind you
20 throughout the trial whenever you take breaks, you go
21 back in the jury room, you are not to talk to your fellow
22 jurors about not even what that witness was wearing or
23 nothing about what happens in the courtroom. You guys
24 can talk about how the Gamecocks should have been in the
25 tournament and they didn't get in the tournament and that

1 was ridiculous. You can talk about all sorts of things.
2 You can talk about TV. You can get to know each other.
3 You will not have your electronic devices and so that
4 kind of brings you back in time where you actually get to
5 know your neighbor and I hope you actually enjoy that.
6 You will have a lot of time to just talk to each other
7 and get to know each other and then at the very end
8 after I instruct you on the law and you have heard all
9 the testimony, you will be able to talk about the case
10 with your fellow jurors and make a decision in this case.

11 But until then, what time did I ask you to be here
12 tomorrow morning?

13 (The jury replies in unison, "9:15.")

14 THE COURT: 9:15. I'll see you tomorrow morning and
15 we'll get started at 9:30. Thank you very much. We'll
16 see you at 9:15.

17 (Whereupon, the jury was released for the evening at
18 2:55.)

19 THE COURT: All right. Apparently my microphone was
20 switched to mute so I don't know if people were having
21 trouble hearing in the audience. I apologize. But it is
22 now switched back on. If anybody can't hear me, get my
23 attention and I'll make sure that I keep my microphone
24 on. I'm not sure how that happened.

25 We have the Jackson v. Denno ruling that is still

1 pending. Prior to jury selection, prior to lunch, I
2 heard testimony from the State on the Jackson v. Denno on
3 the statements made by the defendant and the Court's
4 responsibility is to act as a gatekeeper to determine
5 whether or not the jury can hear the statements that the
6 defendant gave.

7 There are three different statements, two of which
8 the defense conceded would be allowed to be heard by the
9 jury and the only one left was the 15 minute statement
10 that the defendant gave in between the other two
11 statements. I have listened to the audio tape of the
12 statement. I don't know if that was supposed to be a
13 DVD. I could only hear it. I could not see it. I feel
14 like I can make a determinations without having seen a
15 video, but what I had was a CD. I find based on the
16 testimony and having listened to the statements that the
17 statements were voluntary. After considering the
18 totality of the circumstances the threshold for me is
19 just a preponderance of the evidence standard and I find
20 that the State has met that standard.

21 There was a point where the defendant mentioned an
22 attorney, but the law is that it has to be an unambiguous
23 request to speak to an attorney or the interrogation to
24 cease and here the defendant said that maybe he needed to
25 speak to an attorney or a counselor. That was ambiguous

1 and it was appropriate for the investigator to continue
2 on with the interrogation so I will allow that statement
3 in.

4 However, I agree with Ms. Good's argument that it
5 needs to be redacted for the jury with regard to the
6 defendant's request for an attorney or mention of an
7 attorney so that he's not prejudiced by asking for an
8 attorney. I understand that the State has already made
9 that redaction. Ms. Good, have you had a chance to
10 review that?

11 MS. GOOD: I have not but she has given it to me,
12 Your Honor.

13 THE COURT: There will be time. If there is an
14 issue with it, please make sure we know of that as soon
15 as possible. All right. And we have additional pretrial
16 motions. We'll go with the State since we are kind of
17 checking through the list that the State has. You had a
18 motion regarding the expert?

19 MS. CAVANAUGH: Yes, Your Honor. We anticipated
20 that she would file the motion to exclude any expert
21 testimony related to this case in the field of child
22 abuse assessment and Dr. Allison Foster is going to be
23 our expert in this case and she is a completely blind
24 witness. She's never met **minor one** the victim, in this
25 case. She has never reviewed any of The CARE House

1 interviews or even seen those recordings so she has had
2 no direct interaction with this case. We believe that
3 the case law is in support of still being able to use an
4 expert in child abuse assessment as long as they are, in
5 fact, separated from the case and a blind expert and
6 certainly not a forensic interviewer.

7 State v. Weaverling is the first case that we
8 believe that is the sentinel case on the matter which
9 allows expert testimony in the field of sexual abuse,
10 Your Honor, and just the different range of responses and
11 the factors that play into victims of sexual abuse.
12 Since Kromah and the other cases that have come down
13 since Kromah, State v. Berry and State v. Brown are both
14 Courts of Appeal cases and they have also reiterated and
15 cited Weaverling and have both holdings related to expert
16 testimony being allowed in these types of cases are

17 admissible as long as they are not the individuals who
18 are the forensic interviewers or have been qualified in
19 the field of forensic interviewer. We would only be
20 asking to qualify her as an expert in child abuse
21 assessment, certainly not in forensic interviewing. And
22 we believe the cases State v. Brown and State v. Berry
23 which have been decided after State v. Kromah still allow
24 for this type of testimony in these cases.

25 THE COURT: All right. Ms. Good.

MOTIONS

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1 MS. GOOD: Thank you, Your Honor. While under State
2 v. Brown and State v. Berry, I think this case is a
3 little bit different in that in the State's motion they
4 have under number 5 Dr. Foster is going to be testifying
5 based upon familiarity with the concepts and
6 characteristics including one, CSC, two, helplessness,
7 three entrapment and accommodation, four, dialyzed
8 disclosure. This is essential, Your Honor, testifying as
9 to child sexual abuse accommodation syndrome which has
10 five factors. The first four are the four that I just
11 mentioned. It's my argument, Your Honor, that this is
12 different from State v. Berry. That in State v. Berry
13 they were testifying as it related to posttraumatic
14 stress disorder which is a recognized disorder that's
15 tested clinically and is in the medical book.

16 In this case she is essentially without using the
17 words child sexual abuse accommodation syndrome is
18 testifying to that and in that case, Your Honor; I don't
19 believe that syndrome qualifies under Daubert as to what
20 she can testify to as it's not peer reviewed, it's not
21 done in a clinical setting to determine how these
22 different things affect children and I would ask that
23 there be some type of proffered testimony or something
24 before this be determined whether she can testify to it
25 as to whether that's what she's testifying to, how it's

1 determined and that sort of thing.

2 THE COURT: Okay. Well, in the way that I have seen
3 this issue maybe we need to compartmentalize it. At this
4 point the question is whether Dr. Foster can testify
5 about, be qualified as an expert in child sexual abuse
6 and the State is making me aware that she was not the
7 forensic interviewer and I understand why the State
8 brought this motion. I think State versus Anderson, I
9 think, is that new case from the Supreme Court where the
10 Supreme Court acknowledged that there is such a thing as
11 a child abuse expert but warned that the practice be used
12 in Circuit Court for the expert to be someone who has not
13 interviewed the child. That that needs to be separated.
14 I think the State is letting the Court know that that's
15 what's going on in this case.

16 So I think it's a little premature for me to make a
17 ruling with regard to whether or not I'm going to qualify
18 Ms. Foster as an expert and whether or not whatever
19 syndrome she may testify about, I don't know whether she
20 is or isn't going to testify about a syndrome, whether
21 it's reliable and whether her qualifications are
22 sufficient. So I think we still have to go through the
23 regular qualifying an expert. We're going to have to
24 have proffered testimony for that. So at this point I
25 think it's good that we had this discussion so that we

1 all know what cases apply. I don't think anybody is
2 blind to this area of the law. It's been a hot topic
3 with the Supreme Court and we will be very careful not to
4 overstep the bounds. It sounds to me like the State is
5 following the directions of the Supreme Court and I can't
6 make any ruling specifically until I hear specifically
7 what Dr. Foster intends to testify about so we will
8 proffer her testimony before we let the jury hear it and
9 I'll make a ruling at that point.

10 MS. GOOD: And I would just ask Your Honor if that's
11 the case that they not be allowed to describe or to
12 mention her in opening statement. In case your ruling
13 were to be in favor of the defense I wouldn't want
14 something, while it's not testimony or evidence, I just
15 wouldn't want that. I believe it's prejudicial if they
16 hear it and it's ultimately not allowed.

17 THE COURT: Okay. What say you, Ms. Cavanaugh? Do
18 you plan to mention Dr. Foster in your opening statement?

19 MS. CAVANAUGH: No, Your Honor, we don't.

20 THE COURT: Okay. Then it's not a problem. Great.
21 Any other matters to be taken up now?

22 MS. CAVANAUGH: Your Honor, that's it other than to
23 renew our reciprocal Rule 5 which we served on the
24 defense earlier this year and then also to sequester any
25 potential -- It's my understanding she might not have any

1 witnesses but to sequester any potential defense
2 witnesses.

3 MS. GOOD: Your Honor, regarding reciprocal Rule 5,
4 we have turned over everything we intend to use in our
5 case in chief. As to sequestering witnesses, at this
6 time I don't have any witnesses to sequester at least
7 from the defense.

8 THE COURT: All right. So we'll move onto defense's
9 pretrial motions.

10 MS. GOOD: Thank you, Your Honor. As we stated in
11 chambers I do need to renew our Brady and Rule 5 material
12 motions. I did meet with Ms. Cavanaugh and Ms. Senn on
13 Friday morning and we went through both of our notebooks
14 to make sure that I had everything that they have and at
15 this point I do believe that they have turned everything
16 over but in case that something else would come up.

17 THE COURT: You're protected for the record.

18 MS. GOOD: Right. We also moved to sequester
19 witnesses, Your Honor. We ask that only witness that
20 remain in the courtroom would be the alleged victim
21 **minor one** or **minor one** I believe is her last name now
22 as well as the lead investigator on the case. We do
23 believe that everybody else should be sequestered at this
24 point. She is of age, Your Honor. I believe she is 19
25 or 20 at this point so I don't believe the family members

1 need to be with her. We would ask to sequester all the
2 witnesses.

3 THE COURT: All right. Ms. Cavanaugh?

4 MS. CAVANAUGH: Yes, Your Honor, as long as our lead
5 investigator and, of course, the victim can stay in. We
6 have the victim advocate that can remain present with her
7 during her testimony. We don't mind sequestering the
8 mother and the sister until they testify.

9 THE COURT: All right. The motion for sequestration
10 is granted. That is typical in a criminal case. We
11 sequester witnesses other than the lead investigator and
12 the victim. We will allow the victim's advocate to be
13 with the victim. And is there any, if anything after
14 occurs, but after the witness testifies, is there going
15 to be any objection to that witness then remaining in the
16 courtroom?

17 MS. GOOD: No, ma'am.

18 THE COURT: Great. All right.

19 MS. GOOD: Next I have a motion in limine in order
20 to prevent the State to referring to South Carolina code
21 section 17-23-175 which essentially is that a victim in a
22 criminal sexual conduct case need not be corroborated.
23 We believe that this case is basically a he said/she said
24 case, Your Honor. We believe by being allowed to mention
25 that statute while it is a statute and it's law, it

1 brings extra attention to her testimony in saying that
2 they do not - basically it's an inference that they don't
3 have to prove her case other than them. We would ask
4 that they not be allowed to go into this, Your Honor, and
5 that the jury not be instructed. It is in the discretion
6 of the judge.

7 THE COURT: Ms. Cavanaugh.

8 MS. CAVANAUGH: Yes, Your Honor. I believe the no
9 corroboration statute is actually 63-66-57, but what we
10 are going to ask is that that be charged to the jury.
11 There are four cases at least that have addressed the
12 issue and have left it to the court's discretion. State
13 v. Schumpert, State v. Rafield, State v. Orozco and State
14 v. Hill. All of those cases have held that as long as
15 that charge is read in conjunction with other the
16 standard charges such as the State has the burden of
17 proof and we have to prove our case beyond reasonable
18 doubt, that the credibility of the witnesses are in,
19 that's in the jury's discretion. All of those cases that
20 I have cited have held that it is certainly the law that
21 applies to these cases and that the charge, that it is in
22 the trial judge's discretion as to whether to charge that
23 and it is certainly not reversible error if the trial
24 judge chooses to charge that.

25 So we would ask that that be not only charged at the

1 end of this trial but also since it is the law on the
2 case as long as we couch it in terms of the other, in
3 terms of what you have to charge in addition to 16-36-57
4 that we at least be allowed to address it in opening and
5 closing as long as undue emphasis is not placed on that
6 particular statute given that it is the law on the case.

7 THE COURT: All right. On this my feeling as a
8 trial judge, and again this is a discretionary call,
9 certainly wouldn't be reversible error if I were to
10 charge this and not emphasize it, but my practice has
11 been not to charge that statute. I think it gives the
12 impression that -- I think it's hard not to emphasize it
13 when reading a charge and I have trouble crafting a
14 charge that I feel does not emphasize or insinuate that
15 the victim has more credibility than anyone else on the
16 witness stand and no witness' testimony has to be
17 corroborated for a jury to believe that witness.

18 So as a judge I will not instruct the jury on that
19 statute. However, I will not prevent the State from
20 arguing what is the law of our state and that is that a
21 victim's testimony does not have to be corroborated. I
22 just believe it's difficult to charge that without making
23 it seem as if the burden of proof has shifted, and as the
24 judge I would want to be very careful to keep the burden
25 of proof on the State. But I, of course, will allow the

1 State to argue what is the statute passed by our
2 legislature in the state.

3 MS. CAVANAUGH: Thank you, Your Honor.

4 MS. GOOD: Thank you, Your Honor. Next I have a
5 motion in limine to prevent any state's expert witness to
6 give an opinion on the truthfulness of the victim.
7 Basically the only two that we'll with is Dr. Foster
8 later when we deal with her proffer. The only one I
9 would be concerned with otherwise would be Sally
10 Williamson from The CARE House, Your Honor. I believe
11 she was the forensic interviewer. I believe it's my
12 understanding that they understand that they can't
13 testify as to compelling that sort of thing, but also
14 I want to get into the issue, I don't believe that they
15 would be allowed to testify that based on their interview
16 with the child this is what their recommendations were,

17 that they believe the child, if the child needs
18 counseling, that sort of thing. I believe that is
19 actually addressed in the new case law that has come
20 about. So that would be my argument on that, Your Honor.

21 THE COURT: Ms. Cavanaugh.

22 MS. CAVANAUGH: And we certainly agree. We will not
23 seek to get the opinion of either Ms. Williamson or Dr.
24 Foster as to the truth of the matter asserted and we
25 certainly won't ask her whether she found -- We agree

1 with everything she asked. We don't intend on doing that
2 including not asking for what the referrals were in this
3 case.

4 THE COURT: All right.

5 MS. GOOD: Thank you, Your Honor. Next we have a
6 motion in limine, Your Honor, to prevent the State from
7 mentioning any references of potential miscarriages of
8 the victim. It's mentioned several times through
9 statements as well when she went to the hospital at one
10 point. She believes she might have had a miscarriage as
11 well as I believe in her physical with Dr. Luberoff at
12 The ARC. We don't believe there is any basis any of
13 this. She never went to the doctor. There's never been
14 any miscarriages confirmed. I believe it would be very
15 prejudicial for the jurors to believe she was pregnant at
16 some point and had miscarriages if there is nothing to
17 show that this actually occurred.

18 MS. CAVANAUGH: Your Honor, and I did -- Oh.

19 THE COURT: Go ahead.

20 MS. CAVANAUGH: I did address that with the victim
21 and she did indicate to me that she's never been seen by
22 a doctor that has officially told her that she's had a
23 miscarriage. She has made those -- She just had very
24 irregular periods a couple times and they were late and
25 there were things that she read about miscarriages that

1 she was nervous that it happened to her. So she has not
2 been -- She's never had a doctor say that, yes, you had a
3 miscarriage, but she was very concerned over the course
4 of that year during the sexual abuse that something was
5 very off with a couple of her periods. So that was just
6 her belief about what could have happened to her.

7 THE COURT: All right. Well, I'm going to allow the
8 victim to testify about the sexual abuse. With regard to
9 whether or not she had a miscarriage because she herself
10 was just speculating about whether or not it happened or
11 not and there is a danger of undo prejudice doesn't seem
12 probative as to the issue, that's not - she's not -
13 that's not a factor in this case and I'm going to exclude
14 that testimony about any sort of miscarriage.

15 MS. CAVANAUGH: Your Honor, just a little bit
16 further down that line, there was one specific time where
17 she told the defendant that she had a, that her period
18 was late. She didn't say anything about a miscarriage,
19 but she did say, dad, my period is late. And his
20 response to her was, well -- And I'll just disclose this
21 to Ms. Good -- if it continues to be late, let me know
22 and we're gonna go take care of that. So that is
23 related.

24 THE COURT: That makes it more probative when she
25 talks about speaking to her father about missing a period

1 and the undo prejudice is lessened because there is not
2 this emotional factor of a fetus dying. And what say you
3 to that, Ms. Good?

4 MS. GOOD: I would say obviously as to that, I mean,
5 if that's a conversation, I mean, of course, we would say
6 the conversation never happened. But assuming she
7 testified to that, I don't see the problem with her
8 testifying that that is a conversation that they had, but
9 not go into the fact that she believes she actually had a
10 miscarriage and lost the baby, that sort of thing.

11 THE COURT: I agree. Ms. Cavanaugh, just so it's
12 clear, she can testify as to any conversations she had
13 with the defendant regarding miscarriage or that she
14 might be pregnant but not speak about any sort of loss of
15 a child when there is nothing other than speculation of
16 that happening.

17 MS. CAVANAUGH: Yes, Your Honor, I understand.

18 MS. GOOD: Finally, Your Honor, I have a motion in
19 limine to prevent the State witnesses mentioning the
20 defendant's alleged drug abuse. Ms. Cavanaugh has given
21 me several statements during investigation speaking with
22 the victim and the victim's mother and other family
23 members that basically their intention is that Mr. Miller
24 was consistently partying and on tons of drugs, doing all
25 these sort of things and I believe that's very

1 prejudicial to the jury as there is nothing to show that
2 he was actually on drugs. That those are outside
3 collateral issues that are prejudicial to him as well as
4 not relevant to this case at all and that it's going to
5 be used to basically make the jury emotional and not like
6 him regarding these prior bad acts that can't even be
7 proved. So we would ask that they not be able to go into
8 extensive history of drug history for Mr. Miller and that
9 he was basically high on cocaine or whatever that they
10 are saying he's on all the time.

11 THE COURT: Okay. Ms. Cavanaugh.

12 MS. CAVANAUGH: Yes, Your Honor. We have discussed
13 this thoroughly. We do agree that there is really no
14 legal argument that we can make that basically correlates
15 the drugs. We concede that we will not bring up the drug
16 use during our direct examination of our witnesses.

17 Depending on what comes out in cross, you know, we
18 reserve.

19 THE COURT: The defense could open the door to
20 that.

21 MS. CAVANAUGH: Right. But we have discussed that
22 looking at the case law. Really the drug abuse over that
23 period or over his life we agree that that really is not
24 probative of sexual abuse. However, there is one memory
25 from the victim that relates to his admission that he

1 used a pill the first time that he actually sexually
2 assaulted her. He said, I'm so sorry. I wouldn't have
3 done this. I was drinking and I combined it with a pill
4 that made me do this to you. So we believe that that is
5 relevant and probative because it relates to a specific
6 memory that she has of the first time that he ever
7 sexually assaulted her. So that statement we believe is
8 admissible regarding that one time that he took a pill
9 when he said that to her.

10 THE COURT: And based on her memory it was the
11 combination of drinking and taking that pill that caused
12 him to --

13 MS. CAVANAUGH: That's the reason he gave her as to
14 why he did that to her.

15 THE COURT: Okay.

16 MS. CAVANAUGH: And then we also have a neighbor of
17 the Millers. Martha Penrod is going to testify. She --
18 Basically the relevance of her testimony is that she
19 observed several occasions of Mr. Miler and **minor one** their
20 interactions with each other just really bothered her.
21 Some of her observations she just did not think that it
22 was appropriate for father/daughter touching and so she
23 has several memories of that. She also says that there
24 were two times where she actually made comments to him
25 related to what she had seen as far as the touching goes.

1 And that was only after, he was drinking both of those
2 occasions. It was at night. They had been - they were
3 arguing over something, property dispute related and it
4 escalated to the point where she said something about,
5 well, at least I'm not sleeping with my daughter. And so
6 the context of those two conversations were that he had
7 been drinking that evening and they had been in an
8 argument and so it escalated up to that point. So I
9 think that that is different from what Ms. Good is trying
10 to prohibit because it just relates - it goes towards -
11 it's probative of her observations of what she observed
12 of the interactions of the defendant and his daughter.
13 It also just gives a context of how their argument
14 escalated to the point of her saying that to him.

15 THE COURT: All right. The drinking isn't a prior
16 bad act.

17 MS. CAVANAUGH: No. No. I just wanted to make --
18 She mentioned partying in part of her motion in limine so
19 I just wanted to give specific examples and we do think
20 that's admissible.

21 THE COURT: Okay. Well, I agree that any mention of
22 any addiction to drugs or drug abuse by the defendant
23 would be excluded unless there is some more probative
24 value than I've heard. It sounds to me like the State is
25 conceding that this would not a prior bad act that's

1 allowed. And I will, however, because there is specific
2 memory from the victim that the defendant essentially
3 admitted that he had sexually assaulted her and gave the
4 reason for it being a mixture of alcohol and a pill, I
5 will allow her to testify as to that specific memory.
6 Anything else?

7 MS. GOOD: That's it for the defense, Your Honor.

8 THE COURT: All right. Well, as you heard me tell
9 the jury I would like to start this case promptly
10 tomorrow morning at 9:30. I will be here probably around
11 8:45 or so in the morning. I think I have got a matter
12 to deal with at 9:00. If I'm needed for anything
13 tomorrow morning, I will be available to y'all.
14 Otherwise, y'all have a good night and we will see you
15 tomorrow for trial.

16 MS, CAVANAUGH: Thank you, Your Honor.

17 MS. GOOD: Thank you, Your Honor.

18 (Whereupon, trial was adjourned for the evening at
19 3:30 p.m.)

1 March 15th, 2016

2 THE COURT: All right. Anything from the State or
3 defense before we bring in the jury this morning?

4 MS. GOOD: At this time, Your Honor, I would like to
5 renew my motion for a continuance. Mr. Miller has been
6 in the emergency room all night in Columbia. He still
7 has not been seen. He got there at 9:00 last night and
8 he indicated to me this morning he was still there, had
9 not been seen. I said that he needed to come or else
10 there would be a bench warrant or we would start the
11 trial without him. You know, at this point I'm
12 concerned, one, the medication he's on again as well as
13 the fact he's had zero sleep because he's been in the ER
14 all night so I would request a continuance.

15 THE COURT: All right. And do you have any
16 affidavit from a doctor?

17 MS. GOOD: I do not, Your Honor. I have his name
18 where he was in the ER, but I don't have anything. And
19 his aunt had indicated to me, too, that they would not
20 give him verification until he had seen a doctor. Since
21 he had still not been seen by that time he had to leave
22 and came back here. I don't have anything from the
23 doctor.

24 THE COURT: All right. Your motion for continuance
25 is denied. Anything from the State?

1 MS. CAVANAUGH: No, Your Honor.

2 THE COURT: All right. Let's bring in the jury.

3 (Whereupon, the jury returned to the courtroom at
4 9:35 a.m.)

5 MS. GOOD: May we approach, Your Honor?

6 THE COURT: Yes.

7 (Side bar off the record.)

8 THE COURT: All right. Sir, in the gray khakis,
9 can you tell me your name? At the end.

10 JOHNNIE STOVER: My name is Johnnie Stover.

11 THE COURT: Okay. Mr. Stover, I'm going to ask you
12 to be the foreperson for this jury. You happen to be
13 sitting in that seat and that's where I like my
14 foreperson to sit so you either drew the small straw or
15 the good straw. I'm not sure how you feel about it.
16 Everybody on the jury will have an equal vote. It just
17 helps to have someone who can sort of start the
18 discussion. Also you will be responsible for signing the
19 ultimate verdict. I'll give you more instructions at the
20 end of the trial.

21 Good morning, ladies and gentlemen. I hope you
22 enjoyed your breakfast this morning. I appreciate you
23 all coming on time. You did a great job. It's just a
24 few minutes after 9:30 and we are getting started. If we
25 keep this up, we're gonna be right on track for this case

1 to run along very smoothly so I really appreciate that.

2 Madam Clerk, please swear in the jury.

3 (Whereupon, the jury was sworn by the Clerk of Court
4 at 9:40 a.m.)

5 THE COURT: The case that we are about to try is the
6 case of the State versus James Wayne Miller. Before we
7 begin this trial, I want to tell you that this trial will
8 probably be different from what you might expect. Many
9 people do not have the chance to attend actual court
10 sessions as you are doing now and may think from watching
11 television or movies or reading books that trials are .

12 always full of high drama and intense action and
13 that may be true in this case, but this trial is not for
14 entertainment. It's a fundamental part of our democracy,
15 a search for the truth in an effort to make sure that
16 justice is done between the parties before this court.

17 Searching for the truth and making sure that justice
18 is done is often slow, deliberate and repetitive. The
19 opposite of what you may have seen on TV or read in
20 books. This courtroom is a place of honor dedicated to
21 the protection and preservation of citizens' rights
22 through what many have called the greatest justice system
23 in the world. The attorneys appearing before you are
24 advocates for the parties, but first and foremost they
25 are officers of this court sworn to uphold the integrity

1 and fairness of our judicial system and to help you in
2 the search for the truth. You should expect them to be
3 professional, competent and ethical in the representation
4 of their clients' interests. You are also expected to be
5 professional, reasonable and ethical. Thank you for
6 accepting this important responsibility of jury service
7 and for your contribution to our judicial system today.

8 What I will now say is intended to serve as an
9 introduction to the trial of this case. These remarks
10 are not a charge on the law in this case. I will
11 instruct you on the law at the end of trial before you
12 retire to consider the verdict. This is merely an
13 explanation of the procedure that we will follow in the
14 trial of this case so that you may better understand what
15 may be happening.

16 The defendant is charged by way of indictments filed
17 in this court with the crime of criminal sexual conduct
18 in the second degree and incest, the elements of which
19 will be explained to you later. The indictment is simply
20 the charge by which the case is brought into court and it
21 is not in any sense evidence of any of the allegations it
22 contains. The defendant has pled not guilty to these
23 indictments. The State, therefore, has the burden of
24 proving the elements in the indictment beyond a
25 reasonable doubt and it will be your duty, ladies and

1 gentlemen, to decide whether the State has met that
2 burden.

3 Your purpose as jurors is to find and determine the
4 facts. You are the sole judge of the facts. If at any
5 time I make a comment regarding the facts, you must
6 disregard it. You are to determine the facts from the
7 testimony you hear and the other evidence introduced in
8 court. It is up to you to determine the inferences
9 which you feel may be properly drawn from the evidence.

10 On the other hand with equal emphasis the same law
11 that makes you the judges of the facts makes me the judge
12 of the law. The law as given by the Court is the only
13 law you may consider. You must accept and follow it even
14 though you may disagree with it. I cannot tell you what
15 the facts are and you cannot disagree with me about what
16 the law is or should be. Your job is to take the law as

17 I give it to you and apply it to the facts as you find
18 them from the testimony of the witnesses and any other
19 evidence that's introduced. After doing that, you will
20 render your verdict, a verdict under the solemn oath that
21 you just took as jurors.

22 Until I tell you that you may begin to deliberate,
23 you must not discuss this case with anyone including your
24 fellow jurors, friends, family members and anyone
25 involved in the case. You must decide this case based

1 solely on the evidence presented here in this courtroom.
2 This means that during the trial you must not conduct any
3 independent research about the case. Please do not try
4 to find out information from any source outside this
5 courtroom. You may not use computers, cell phones or
6 other tools of technology with communication capabilities
7 at any time while you are in the courtroom or during your
8 deliberations. During your breaks for meals or
9 overnight, if necessary, you may use these devices.
10 However, you must not use them to communicate with anyone
11 about the case until the case is over.

12 During the trial do not read, listen to or watch any
13 news reports about this case. You must not consider
14 anything you may have read or heard about the case
15 outside the courtroom whether before or during the trial.
16 Information on television, radio or the Internet or from
17 other sources might be wrong or incomplete. In our
18 judicial system it is important that you are not
19 influenced by anything or anyone outside of this
20 courtroom. If you become aware of another juror's
21 violation of these instructions, please inform me
22 immediately. It is important that you keep an open mind
23 and not decide any issue in the case until all of the
24 evidence has been presented, the parties have made
25 closing arguments and I have instructed you on the law in

1 the case.

2 In just a moment the Solicitor will make what is
3 called an opening statement in which the Solicitor will
4 explain to you the issues in this case or at least what
5 she thinks the issues are. The attorney for the
6 defendant may also make an opening statement, although
7 she is not required to do so. What the attorneys tell
8 you during their opening statements is not evidence in
9 this case. It is only their contention as to what the
10 issues are. From time to time during the trial you may
11 hear one of the lawyers say something like, "Your Honor,
12 I believe we have a question of law or a matter of law to
13 discuss with you." Or they may ask to approach the
14 bench. Or sometimes I myself might find it necessary to
15 excuse you from the courtroom for a short while so the
16 attorneys and I can discuss a matter of law. The reason
17 for this is because you are the judges of the facts in
18 this case and sometimes when I'm discussing a matter of
19 law, it may be necessary for me to make some comment as
20 to the facts in connection with the ruling whether or not
21 a particular law applies. I'm not supposed to tell you
22 what I think the facts are in this case so I will excuse
23 you from the courtroom while these discussions take place
24 so that in no way will you be influenced by anything that
25 I may say or do in connection with the facts.

1 In determining what the true facts are in this case
2 you must decide whether or not the testimony of the
3 witnesses is believable. It will be my responsibility to
4 rule as a matter of law as to whether certain testimony
5 is admissible at all or not, but once that testimony is
6 admitted whether or not you believe it is completely up
7 to you. You have a right to consider anything that is in
8 the record that will help you evaluate the testimony of
9 the witnesses. That means it's your duty to pay close
10 attention to these witnesses, to observe the witnesses,
11 to listen to the witnesses and to pay close attention to
12 the attorneys and to the Court.

13 It's your added duty, Mr. Foreperson, to preside in
14 the jury room and be the jury's spokesperson here in
15 court. It will also be your duty to write the verdict,
16 but I'll give you further instructions at the conclusion
17 of the case.

18 In order to preserve everyone's rights, I'll give
19 the parties an opportunity to object to anything I said.
20 Madam Solicitor?

21 MS. CAVANAUGH: No objections from the State.

22 THE COURT: Ms. Good?

23 MS. GOOD: No objections.

24 THE COURT: All right. We will now begin the trial.
25 Madam Solicitor.

1 MS. SENN: Ladies and gentlemen, this case is
2 about a man who sexually abused his teenage daughter for
3 more than a year. In the summer of 2011 [minor one]
4 who just turned 16 years old, she was with her father
5 James, her mother Tammy, her twin sister [minor] and three
6 younger siblings. She was bright, very intelligent. She
7 was a little bit of a tomboy. She liked to be outside.
8 She was very responsible. So responsible that she went
9 to work with her father James almost every day to help
10 support her family. James was the bread winner who was
11 very unstable. He was emotionally volatile, moody, high
12 highs and low lows. Couldn't hold down a job. He moved
13 his family 20 times often abruptly and in the middle of
14 the night and in the summer of 2011 while the Millers
15 were on vacation in Camden, James convinced Tammy to move
16 to Camden because he needed a fresh start.

17 It was agreed that [minor] would stay behind with
18 James in a camper and fix up the house that they had
19 rented on the lake.

20 THE COURT: Ms. Senn, could you please speak up a
21 little bit. I think some of the jurors are having a hard
22 time hearing you.

23 MS. SENN: Yes. Thank you, Your Honor. I
24 apologize.

25 It was agreed that [minor] and James would stay

1 behind in Camden in the camper on a friend's property
2 while they fixed up the house that they had rented.
3 Tammy took the rest of the children back to Summerville
4 to pack up their things. In the middle of the night
5 while [minor one] 16 year old [minor one] was
6 staying in this camper with her dad in a rural area with
7 no one else around she woke up to her father performing
8 oral sex on her. Frightened and disgusted, she ran to
9 the bathroom. Later that night James came back to finish
10 what he started. He pinned [minor] down and forced her to
11 have sexual intercourse with him. Her father, the man
12 she had grown up with, who she trusted, who she hoped
13 would one day walk her down the aisle, forced her to have
14 sex with him over and over again over the next 13 months.
15 If I can't have you, no one will. That's what James
16 would say to [minor] after he was finished raping her
17 while he had a gun holstered to his belt.

18 When the family was living in Camden, they noticed
19 that she was different. She was quiet, reclusive. She
20 was angry. They couldn't figure out what was going on.
21 She was scared to tell them. At 16 years old she felt
22 responsible for the existence of her family. After 13
23 months of her father forcing her to have sex with him and
24 threatening her, after 13 months of living with the
25 secrecy, the shame and the fear [minor] finally told her

1 mother Tammy that James had been touching her.

2 When deputies arrived at the scene at the Miller
3 house, James didn't know what they were there for.
4 Without anyone telling him that they were there for, when
5 he saw the deputies, he began to empty his pockets, take
6 off his belt, remove his holster and put his hands behind
7 his head and walk towards the deputies. The deputies
8 would later hear him say, whatever she said happened,
9 happened. James later went and gave an interview where
10 he made a statement. That interview is on video. I
11 believe that video will speak for itself.

12 The defense is going to stand up and say that the
13 State's case is weak because James' semen was not found
14 in items tested. But, ladies and gentlemen, just because
15 it wasn't found, doesn't mean it never existed there.

16 I, Karlen Senn, along with my co-counsel Kathryn
17 Cavanaugh represent the State of South Carolina. You're
18 here because James has been charged with incest and
19 criminal sexual conduct second degree. The judge is
20 going to tell you the law and it's the State's
21 responsibility to prove that James Miller is guilty
22 beyond a reasonable doubt. But listen carefully. Beyond
23 a reasonable doubt does not mean that the State must
24 prove he's guilty beyond all doubt.

25 Incest is a crime against kinship. It is illegal in

1 South Carolina for a man to have sex with his daughter.
2 That's fairly easy to understand. Criminal sexual
3 conduct in the second degree is bit more complicated. It
4 is illegal for an actor to use aggravated coercion to
5 accomplish sexual battery. Aggravated coercion is
6 defined as, it means that the actor threatens to use
7 force or violence of a high and aggravated nature to
8 overcome the victim or another person if the victim
9 reasonably believes that the actor has the present
10 ability to carry out the threat or threaten to retaliate
11 in the future by the infliction of physical harm,
12 kidnapping or extortion under circumstances of
13 aggravation against the victim or any other person.

14 Sexual battery means intercourse, cunnilingus,
15 fellatio, anal intercourse or any intrusion however
16 slight of any person's body or any object into the
17 genital or anal openings of another person's body except
18 if such intrusion is accomplished for medically or
19 recognized treatment or diagnostic purposes.

20 I apologize in advance that these subjects are
21 difficult to listen to, uncomfortable to talk about, but
22 your job here is extremely important. You have all been
23 found to be qualified. You have been selected and you
24 have just taken an oath and all that we ask that you do
25 is that you listen carefully and that you consider all

1 the evidence and once the judge tells you to deliberate,
2 we ask that you find James Miller guilty of incest and
3 criminal sexual conduct in the second degree.

4 THE COURT: Ms. Good.

5 MS. GOOD: Good morning. Ms. Senn just got up here
6 and told you about a whole bunch of awful subjects and
7 I'm not going to stand here and say that they aren't
8 awful subjects and that you don't have an easy job on
9 your hands because you don't. However, those awful
10 subjects is what she wants you to focus on. Never judge
11 a book by its cover. As you start getting into this case
12 and hearing testimony from this stand and seeing the
13 evidence that the State has, you're going to see that
14 they don't have the evidence to prove Mr. Miller did any
15 of this.

16 What we say to you today, ladies and gentlemen, is
17 that none of this happened. You're going to hear from
18 witnesses who have reason to lie, have motives to want to
19 get away from Mr. Miller that have nothing to do with
20 criminal sexual conduct or incest in any way. You're
21 going to hear about Tammy Miller who is his wife who
22 wanted out. You're going to hear about how she
23 interjects herself into this investigation. She is the
24 one who called law enforcement a week and a half, almost
25 two weeks later and says, hey, I think I found some DNA.

1 Why don't you come check on it. You're going to see how
2 she has tried to line everything up along with her
3 daughter so that they could get away and do what they
4 wanted to do and move on with their life in the way that
5 they wanted to move on with their life. Not live by his
6 rules and under his control.

7 Ladies and gentlemen, the State has the burden to
8 prove to you beyond a reasonable doubt, and that means a
9 reasonable person hesitates to act when finding somebody
10 guilty. You're going to see all they have are these
11 witnesses who have reason and motive. You're not going
12 to see any DNA evidence. And while Ms. Senn says just
13 because it's not there, doesn't mean it never was there,
14 in a home where Mr. Miller lived and supposedly raped
15 minor one over and over again as well as having
16 sexual intercourse with his wife it's nowhere whatsoever,
17 in spite of the fact that she says, hey, come here. I
18 think I got some DNA right here for you.

19 You will see a medical exam for minor one that
20 doesn't show anything. You will see an investigation
21 with the defendant's statements that they are saying he
22 claims he could have potentially done this. I want you
23 to watch those statements, ladies and gentlemen. Nowhere
24 does he ever say that he did this. He denies it from day
25 one. I want you to hear how everything happens from the

1 time it transpired and minor one conduct over the
2 course of that year and after she discloses this.

3 I'm not going to sit up here and talk to you forever
4 because I want you to hear from these witnesses. I want
5 you to determine their credibility because that is your
6 job.

7 My name is Anna Good. It's a privilege for me to
8 represent my client James Miller. At the end, after you
9 have heard all the evidence, both the defense and the
10 State, we're gonna come back and ask you to find him not
11 guilty. Thank you.

12 THE COURT: All right. The State can call their
13 first witness.

14 MS. CAVANAUGH: May it please the Court. The State
15 calls Corporal Brooks Houser.

16 Thereupon,

17 CORPORAL BROOKS HOUSER
18 after having been first duly sworn, testified as follows,

19 THE CLERK: Please have a seat. After you're
20 seated, please state your full name for the record.

21 THE WITNESS: Lonnie Brooks Houser.

22 DIRECT EXAMINATION

23 BY MS. CAVANAUGH:

24 Q. Good morning, Corporal Houser.

25 A. Good morning.

1 Q. Where are you employed?

2 A. I'm employed at the Elgin police department.

3 Q. How long have you been with the Elgin police
4 department?

5 A. One month.

6 Q. Where were you employed previous to the Elgin police
7 department?

8 A. Kershaw County Sheriff's Department.

9 Q. How long were you with the Kershaw County Sheriff's
10 Department?

11 A. Almost 11 years.

12 Q. And what positions did you hold with the Kershaw
13 County Sheriff's Department?

14 A. Of course, initially I was a patrol deputy, was
15 promoted in 2011 to corporal supervisor, then promoted further
16 in 2013 to investigator. I have also been a school resource
17 officer as well.

18 Q. You say you were promoted to corporal in 2011?

19 A. Yes.

20 Q. And in August what were some of your duties as a
21 corporal?

22 A. Well, basically as a corporal I still had basic
23 duties as a patrol deputy, but I was first line supervisor in
24 the chain of command. I still responded to calls just like a
25 regular road deputy at the time.

1 Q. Okay. And on August 11 of 2012 were you still a
2 corporal at that point?

3 A. Yes.

4 Q. Did you respond to a call that afternoon around
5 1:20?

6 A. Yes.

7 Q. What was the nature of that call?

8 A. It came out to responding units as a disturbance.

9 Q. Okay.

10 A. It was a disturbance, but CAD had it as a
11 disturbance, but it came out as a mother had found out
12 recently that her husband had forced their daughter to have
13 sexual intercourse with him.

14 Q. Okay. And what location did you respond to in
15 relation to this call?

16 A. We responded to [REDACTED] Road in Camden,
17 Kershaw County, South Carolina.

18 Q. And once you arrived at the location, what time did
19 you actual arrive that afternoon?

20 A. At 1:41 p.m.

21 Q. And what was that location? Was it -- What was your
22 understanding of that home?

23 A. I'm sorry.

24 Q. Is that where the Millers lived?

25 A. Yes.

1 Q. Okay. Were you the only officer that responded that
2 afternoon?

3 A. No.

4 Q. Who else responded?

5 A. Deputy Justin Scott and Deputy Cody Wilson.

6 Q. Upon arrival what did you first observe? Who did
7 you first come in contact with?

8 A. Ms. Tammy Miller, the complainant which is the
9 victim's mother.

10 Q. Where was she when you first spoke to her?

11 A. In the driveway on the left side of the house.

12 Q. How did she appear to you at that time?

13 A. She was highly upset, hysterical, crying.

14 Q. Was anybody around Tammy when you first saw her?

15 A. No.

16 Q. At that point what did she relay to you?

17 MS. GOOD: Objection, Your Honor. Hearsay.

18 THE COURT: All right. Ms. Cavanaugh.

19 MS. CAVANAUGH: Your Honor, we're not asking this
20 for the truth of the matter. It's just to explain the
21 course of his investigation.

22 THE COURT: Any response?

23 MS. GOOD: Your Honor, I mean, I'm not sure what his
24 answer is going to be, but I'm sure it's going to be what
25 the daughter related to her which would be double hearsay

1 which would go to the truth of the matter asserted, what
2 the daughter said.

3 THE COURT: Repeat your question to him so I can
4 understand what your question was.

5 MS. CAVANAUGH: Upon arrival, what did Tammy the
6 complainant relay to him.

7 THE COURT: Okay. And you are arguing the purpose
8 for which you are seeking that information is not for the
9 truth of the matter. What would the purpose be?

10 MS. CAVANAUGH: Yes, Your Honor. To allow him to
11 discuss the course of his investigation. I believe State
12 v. Rice allows this type of testimony from the responding
13 officer.

14 THE COURT: Objection is overruled. You may answer
15 that question.

16 BY THE WITNESS:

17 A. Again, when Ms. Miller approached me in the
18 driveway, she was upset, hysterical. She stated to me that
19 her daughter **minor one** told her that her father Mr. James
20 Miller had forced her to have sexual intercourse with him
21 several times over the past year.

22 BY MS. CAVANAUGH:

23 Q. Okay. And you said she said it was her daughter?

24 A. Yes.

25 Q. And what was her daughter's name?

1 A. [REDACTED] minor one

2 Q. And where was [REDACTED] minor when you were talking to Tammy.
3 Did you see where [REDACTED] minor was?

4 A. She was on the dock that extended out into the
5 lake.

6 Q. Did you notice anybody else outside of the home like
7 other children or anybody else at that point?

8 A. No.

9 Q. Was James outside when you first began speaking with
10 Tammy?

11 A. Not at first.

12 Q. Did you eventually see James?

13 A. Yes.

14 Q. When was the first time that you saw James?

15 A. Moments after speaking with Tammy I noticed James
16 walk onto the dock and start talking to [REDACTED] minor his daughter.

17 Q. As soon as you saw that occurring, you had basic
18 information about what the complaint was at that time,
19 correct?

20 A. Yes.

21 Q. What did you do once you saw James down by the
22 dock?

23 A. Myself along with other units that were on scene
24 Deputy Scott and Deputy Wilson, we approached Mr. Miller and
25 our effort was at that time to separate him from his daughter

1 and to detain him.

2 Q. Okay. And what did you observe James doing at the
3 point that you all were walking down towards the dock?

4 A. Well, when he saw us approach, he began to walk
5 towards us and then he began to unhook his belt and take
6 everything out of his pockets and he turned around and placed
7 his hands behind his head. And also, I mean, we never even
8 said a word to him prior to him doing this. This was without
9 any commands of any type.

10 Q. So what you're saying is he had no idea why y'all
11 were there?

12 A. Correct.

13 Q. And you said he took off his belt, he emptied his
14 pockets and he held out his wrists?

15 A. Yes.

16 Q. Upon him doing that, what was your next step?

17 A. At that point we escorted him to my patrol car and
18 placed him in the back seat and he was detained. He was not
19 free to leave. At that point I called for the on-call
20 investigator which was Investigator Justin Dill to see about
21 further investigation, whether or not Investigator Dill needed
22 to speak with him or any type of interviews needed to take
23 place. Investigator Dill told me --

24 MS. GOOD: Objection, Your Honor. Hearsay.

25 MS. CAVANAUGH: I'll rephrase my question.

1 BY MS. CAVANAUGH:

2 Q. You said you spoke to Investigator Dill?

3 A. Yes.

4 Q. He was the on-call investigator at that point?

5 A. Yes.

6 Q. What did you do with James at that point after he
7 spoke to Investigator Dill?

8 A. I advised him of his Miranda Rights and asked him if
9 he wanted to make any statements or wanted to tell his side of
10 the story.

11 Q. At this point again had you explained to him or any
12 other responding officers, explained to him why you were
13 there?

14 A. No.

15 Q. So after you advised him of his Miranda Rights, what
16 did he say to you?

17 A. At that point again after he understood his Miranda
18 Rights, he stated, whatever she says, that's what happened.
19 If she said it, it's not a lie.

20 Q. Now, as a responding officer is it your - is it one
21 of your duties to get every single detail from James at that
22 point?

23 A. Well, at that point, uhm, you know, we don't - we
24 try to get, you know, the initial information. Uhm, further
25 investigation is usually left up to the on-call or another

1 officer.

2 Q. Was he, in fact, transported to the Sheriff's
3 Office?

4 A. He was.

5 Q. Okay. To speak with Investigator Dill?

6 A. Yes.

7 Q. Now, before he was taken to the Sheriff's Office,
8 you said you separated him from everybody at the house,
9 correct?

10 A. Correct.

11 Q. Where was he, uhm, placed while you all were still
12 speaking with the victim and her mother?

13 A. He remained in the back seat of the patrol car. He
14 was supervised by another officer and the vehicle was running
15 as well as the air conditioning.

16 Q. Because it was in August?

17 A. Absolutely.

18 Q. And did you speak to **minor** and her mother?

19 A. I did.

20 Q. Where did you speak to them?

21 A. Inside the house, the living room.

22 Q. So separated from where James was?

23 A. Yes. Sight and sound separated.

24 Q. Okay. And, uhm, you said you arrived around 1:40
25 that afternoon?

1 A. Yes.

2 Q. What time was James actually transported to the
3 Sheriff's Office?

4 A. Pardon me just a second.

5 Q. And just so the jury is aware, what are you
6 referring to?

7 A. The dispatch CAD report.

8 Q. These are just notes taken from that day by the
9 officers?

10 A. Yes, and by the dispatchers who logged the
11 information in from time of arrival and certain things.

12 Q. And part of your duties in this case is also to make
13 an incident report?

14 A. Yes.

15 Q. Did you also write the statement?

16 A. I did.

17 Q. Okay.

18 A. It appears that Mr. Miller was transported to the
19 Sheriff's Department at 2:22. Or am I reading that right?

20 Q. Was it about 3:00?

21 A. Yeah. Okay. 3:00.

22 Q. Okay. Did you take him to the Sheriff's Office or
23 was that someone else?

24 A. It was another officer.

25 Q. Now, I'm going to take you back to the actual, when

1 you said you first saw Tammy.

2 A. Okay.

3 (Whereupon, State's Exhibits #3 through #5 marked
4 for identification.)

5 BY MS. CAVANAUGH:

6 Q. I'll show you these photographs, State's 3, 4, and 5
7 and ask you if you recognize these?

8 A. Yes, I do.

9 Q. Okay. And what do those photographs actually
10 depict?

11 A. That's the location where we responded that day.

12 Q. So [REDACTED] Road?

13 A. Yes.

14 MS. CAVANAUGH: Your Honor, at this time I would ask
15 that State's Exhibit 3, 4, and 5 be admitted into
16 evidence.

17 THE COURT: Any objection?

18 MS. GOOD: No objection.

19 THE COURT: They're so admitted.

20 BY MS. CAVANAUGH:

21 Q. Corporal Houser, do you remember anything about the
22 driveway of the home?

23 A. Yes.

24 Q. Was it a long driveway?

25 A. It wasn't too particularly long, no, but it does

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1 extend a little further than what the photograph shows, a
2 little bit more out this way.

3 Q. So where did you park your vehicle?

4 A. I believe I was up on the upper part on the shoulder
5 of the road, the gravel road upper part around this area here
6 (indicating.)

7 MS. CAVANAUGH: Okay. And I'm going to ask, may the
8 witness step closer to the jury, Your Honor?

9 THE COURT: Yes.

10 BY MS. CAVANAUGH:

11 Q. So show the jury again where you parked your
12 vehicle.

13 A. I was parked more around this area here. May not be
14 shown in the photo but right around this area (indicating.)

15 Q. And where did you first see Tammy Miller that
16 afternoon?

17 A. It was in the driveway around where we parked at in
18 the driveway, this part.

19 Q. And do you see the dock in that picture?

20 A. Yes.

21 Q. Is it further down from where you first met Tammy?

22 A. Yes.

23 Q. Okay.

24 THE COURT: Just for the record, what photo are you
25 referring to?

1 MS. CAVANAUGH: State's Exhibit 4.

2 THE COURT: Thank you.

3 BY MS. CAVANAUGH:

4 Q. And then in State's Exhibit 5, is this the actual
5 dock that you mentioned previously?

6 A. Yes.

7 Q. Is that where **minor** was?

8 A. Yes.

9 Q. So going back to State's Exhibit 5 again, where was
10 the first time that you saw James?

11 A. By that time we saw him walking to the dock. At
12 first though he was - we seen him come almost out of - I don't
13 know exactly where he was coming from, but through the
14 backyard and onto the dock.

15 Q. Okay. You can have a seat. Thank you, Corporal

16 Houser.

17 A. (Witness complies.)

18 Q. Now, you spoke about how Tammy appeared and seemed
19 that day. And can you say that again?

20 A. She was very upset and crying and hysterical.

21 Q. Okay. And you had an opportunity to speak to
22 **minor one**

23 A. I did.

24 Q. And how did she -- What was her demeanor?

25 A. Uhm, not as, I guess, quite verbally upset but very

1 much distressed.

2 Q. Okay. And did you ask [minor] to give you a
3 statement, a written statement?

4 A. Yes.

5 Q. And how did you - what did you ask her? Was it a
6 question and answer statement?

7 A. It wasn't. Generally my, you know, when I ask for a
8 written voluntary statement, I tell whoever is giving the
9 statement to write in good detail their side of what happened
10 and to make sure that whatever they say is truthful.

11 Q. And did you -- But it wasn't like this question and
12 answer, a long drawn out statement?

13 A. No. It wasn't.

14 Q. And this case was going to be turned over to an
15 investigator, right?

16 A. Yes.

17 Q. And did you do - did you ask Tammy to do the same
18 thing?

19 A. Yes.

20 Q. Okay. Did she, did [minor] indicate to you when the
21 sexual assaults began?

22 A. She did.

23 Q. When was that?

24 A. Uhm, [minor] stated that the incidents began around
25 mid July of last year. By last year, since this was 2012,

1 last year would have been 2011.

2 Q. Did she indicate to you where the sexual assaults
3 occurred?

4 A. Yes. She stated that the sexual assault occurred
5 while they were staying in the camper.

6 Q. And any other locations after the camper?

7 A. Uhm, also again another incident she had described
8 that occurred when they moved into the new house.

9 Q. What time did you actually leave the home that
10 afternoon?

11 A. I believe its logged at 4:25 p.m.

12 Q. Where did you go after you left the Miller home?

13 A. I don't recall exactly where I went right after
14 that, but I know that it was within about an hour and a half
15 until our end of shift and with the report with this magnitude
16 I definitely was going to be working on it that evening.

17 Q. Okay. So did you go back to the Sheriff's Office?

18 A. Yes.

19 Q. And was the case handed over to Investigator Dill?

20 A. Yes.

21 Q. And Corporal Houser, the person who you took to
22 detain that afternoon, what was the name of that person?

23 A. James Miller.

24 Q. And is he in this courtroom?

25 A. He is.

CORPORAL BROOKS HOUSER - CROSS BY MS. GOOD

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1 Q. Can you point him out for the jury?

2 A. The gentleman in the dark blue hooded sweatshirt.

3 MS. CAVANAUGH: Your Honor, let the record reflect
4 that he's identified James Miller.

5 THE COURT: So reflected.

6 BY MS. CAVANAUGH:

7 Q. And again, what did he state to you that
8 afternoon?

9 A. Uhm, he stated, uhm, whatever she says, that's what
10 happened. If she says it, it's not a lie.

11 Q. And you mentioned that he walked towards y'all. Was
12 he in a wheelchair at that point?

13 A. No.

14 Q. After you went back to the Sheriff's Office, was
15 that the extent of your involvement in this case?

16 A. Yes. After I finished the report and turned all of
17 my report and my statements over to the investigator, that was
18 all of my involvement.

19 MS. CAVANAUGH: Thank you, Corporal Houser. Please
20 answer any questions from the defense.

21 CROSS EXAMINATION

22 BY MS. GOOD:

23 Q. Corporal Houser, you had no idea who she is when he
24 says whatever she says, do you?

25 A. I can't - I can't actually state for certain. No, I

1 cannot.

2 Q. So he could have been talking about [minor one] He
3 could have been talking about Tammy? He could have been
4 talking about any person that was there; is that correct?

5 A. That's possible.

6 Q. You said that you arrived on scene about 1:41 p.m.
7 and you met with Tammy Miller first, correct?

8 A. Yes.

9 Q. Where was [minor] at that time?

10 A. I don't -- [minor one] I'm sorry. She was on the
11 dock.

12 Q. So Tammy was not with [minor] when you showed up?

13 A. No.

14 Q. Okay. So [minor] was by herself?

15 A. At that point, yes.

16 Q. Where was Tammy when you showed up? Was she in the
17 house? Was she outside? Where was she?

18 A. She was outside in the driveway.

19 Q. Okay. So she was there waiting for you?

20 A. Yes.

21 Q. When you got the CAD call, did it indicate where the
22 defendant was, where Mr. Miller was? Whether he was at home?
23 Whether he was away or anything?

24 A. No.

25 Q. Okay. You stated -- Do you have the pictures?

1 I want to show you State's Exhibit 3. Tammy you said was
2 right about here when you met with her and [REDACTED] was down
3 here on the dock?

4 A. Yes.

5 Q. Where did you first see Mr. Miller?

6 A. Coming through the backyard.

7 Q. So right here?

8 A. No. Not there. Probably more towards around the
9 back of the house.

10 Q. Can you point to it kind of?

11 A. The best I can. He's probably more around like on
12 the other side of the house but I don't know if he was in the
13 house or if he was in the woods.

14 Q. At that point you were aware that he was the
15 potential suspect?

16 A. Correct.

17 Q. About how far from where he was to the end of the
18 dock?

19 A. Maybe 50 yards.

20 Q. Okay. As soon as you saw him, what did you do?

21 A. Oh, at that time myself and the other deputies, we
22 went to go separate him from [REDACTED] and detain him.

23 Q. Did you call out to him in any way while he was
24 walking down to the dock?

25 A. We did not.

1 Q. So you allowed him to walk all the way down to the
2 dock to the end to where Minor was?

3 A. At that point, you know, we're still talking with
4 Tammy and he comes out of nowhere so we responded
5 accordingly.

6 Q. How long did it take you to get from where you were
7 in the driveway with Tammy down to the dock?

8 A. Less than a minute.

9 Q. Okay. Were you in full uniform?

10 A. I was.

11 Q. Was Officer Scott and Officer Wilson also in
12 uniform?

13 A. Yes.

14 Q. Did you have guns on you?

15 A. Yes.

16 Q. Tasers?

17 A. Yes.

18 Q. You all three were going down at the same time?

19 A. Yes.

20 Q. All right. You stated that you then detained him
21 and you have no idea what he thought about why you were there,
22 do you?

23 A. I'm sorry.

24 Q. You have no idea what Mr. Miller was thinking about
25 why you were there, do you?

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1 A. No.

2 Q. So you don't know why he took his belt off or
3 anything?

4 A. I can't testify to that. No.

5 Q. You stated you then put him in your patrol car.
6 Your patrol car has a video, correct?

7 A. I'm - I can't remember if it did or not honestly.

8 Q. If it had a video, would you have been running your
9 video --

10 A. Yes.

11 Q. -- to show any statements that would have been made
12 while Mr. Miller was in that vehicle?

13 A. Yes.

14 Q. But you don't remember if you had one or not,
15 correct?

16 A. I can't remember.

17 Q. When you gave him his rights, how did you give him
18 his rights?

19 A. Verbally.

20 Q. How do you determine what those rights are when you
21 give them to him?

22 A. How do I determine what they are?

23 Q. Do you read them from something or do you just do
24 them off the top of your head?

25 A. No. I have them, you know, standard Miranda

1 Rights.

2 Q. And at that point that's when he says whoever she
3 is, and you don't know who she is, correct?

4 A. I can't be certain.

5 Q. How long was he in the car approximately?

6 A. Maybe 45 minutes. 30, 45 minutes.

7 Q. You stated earlier here in your testimony that the
8 air conditioning was on, correct?

9 A. Yes.

10 Q. In fact, yesterday didn't you testify that you
11 weren't sure if it was on? You assume it was?

12 A. Of it being in August I would assume yes.

13 Q. But your testimony is different today than it was
14 yesterday, correct?

15 A. Apparently.

16 Q. Okay. And he was transferred. You talked to **minor**
17 before or after he left the scene?

18 A. He was still on scene, I believe, but he was
19 separated.

20 Q. Where did you speak with her?

21 A. Inside the house.

22 Q. So she came up from the dock?

23 A. Yes.

24 Q. You said she was not as verbally upset as the mother
25 was?

CORPORAL BROOKS HOUSER - REDIRECT BY MS. CAVANAUGH

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1 A. No.

2 Q. You said you got a written statement from her and
3 you tell people when they do a written statement to be as
4 detailed as possible, correct?

5 A. Yes.

6 Q. What you just testified she only told you about two
7 times that he allegedly assaulted her?

8 A. The two different locations.

9 Q. Okay. And that's what she told you that day?

10 A. Yes.

11 Q. And she wrote that on scene about only a page and a
12 half, correct?

13 A. Correct.

14 Q. Those are the only two times she told you about that
15 day?

16 A. Pardon me a minute.

17 Q. Check your notes.

18 A. There's more incidents described but only two
19 different locations.

20 MS. GOOD: No further questions.

21 REDIRECT EXAMINATION

22 BY MS. CAVANAUGH:

23 Q. Corporal Houser, Ms. Good just asked you, she said
24 it only happened twice. I would like to point you to the
25 bottom of the first page of her statement.

1 A. Right.

2 Q. Can you read that one sentence?

3 A. From starting at "the next"?

4 Q. "When."

5 A. "When we moved into our new house to finish working
6 on it, he had sex with me constantly."

7 Q. Okay. That's fine. Thank you. So it was more than
8 just twice, correct?

9 A. Correct.

10 Q. And again when you went towards the dock, were your
11 guns drawn?

12 A. No.

13 Q. Were your Tasers out?

14 A. No.

15 Q. What was his response as soon as he started walking
16 towards y'all?

17 A. He started unhooking his belt and taking everything
18 out of his pockets and then placed his hands behind his
19 head.

20 Q. And in any way did you indicate to him that you were
21 there specifically for him --

22 A. No.

23 Q. -- to arrest him?

24 A. No.

25 Q. And that was his response when he saw you?

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1 A. Yes.

2 Q. And it's after that what did he say to you?

3 A. He said that whatever she says, that's what
4 happened. If she said it, it's not a lie.

5 MS. CAVANAUGH: Thank you. No further questions.

6 THE COURT: Corporal, you may step down. Thank you
7 very much.

8 MS. SENN: The State calls Justin Scott.

9 Thereupon,

10 DEPUTY JUSTIN SCOTT

11 after having been first duly sworn, testified as follows,

12 THE CLERK: Please have a seat. After you're
13 seated, please state your full name for the record.

14 THE WITNESS: Charles Justin Scott.

15 DIRECT EXAMINATION

16 BY MS. SENN:

17 Q. Good morning, Deputy Scott. How are you?

18 A. Good.

19 Q. What do you do?

20 A. I work for the Kershaw County Sheriff's Department.
21 Been there for about six years.

22 Q. Do you have any other law enforcement experience?

23 A. Just with, all with Kershaw County Sheriff's
24 Department. That's all I have ever done.

25 Q. Were you working in your present capacity in August

1 of 2012?

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

3 Q. Okay. Did you have an occasion to become involved
4 in this case?

5 A. Yes, ma'am, I did.

6 Q. What did dispatch tell you before you arrived on
7 scene?

8 MS. GOOD: Objection, Your Honor. Hearsay.

9 MS. SENN: Your Honor, again --

10 THE COURT: Not offered for the truth of the matter
11 asserted?

12 MS. SENN: Yes, Your Honor.

13 THE COURT: Overruled. Go ahead and answer that
14 question.

15 BY THE WITNESS:

16 A. Say that again please.

17 BY MS. SENN:

18 Q. Yes. What did dispatch tell you before you arrived
19 on scene?

20 A. It was a possible incest complaint.

21 Q. And so were you the first to arrive on the scene?

22 A. No, ma'am, I wasn't.

23 Q. What was your role? When you arrived, what was your
24 role?

25 A. Uhm, Deputy Houser had arrived first. He was the

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1 contact officer. I was there just basically there for his
2 back up and to assist him in his investigation.

3 Q. When you arrived on the scene, what did you see?

4 A. Well, I didn't see Deputy Houser when I first
5 arrived because he was actually around the back, but when I
6 got around there, he was talking with the victim's mother. I
7 believe it was Tammy.

8 Q. Did you see **minor one**

9 A. Yes, ma'am. She was, uhm, down at a dock. It's a
10 pretty long dock. She was sitting at the end of it.

11 Q. Once you approached Tammy and Deputy Houser, what
12 did Tammy tell you?

13 MS. GOOD: Objection, Your Honor. Hearsay.

14 THE COURT: Ms. Senn.

15 MS. SENN: Again, it's not for the truth of the
16 matter asserted but to explain his investigation.

17 THE COURT: Overruled. You may answer the question.

18 And, Ms. Senn, if you will repeat the question for him.

19 BY MS. SENN:

20 Q. When you approached Deputy Houser and Tammy Miller,
21 what did you hear Tammy tell Deputy Houser?

22 A. Uhm, that James and his daughter **minor one** James had
23 been having basically a sexual relationship with his daughter,
24 uhm, but I guess they had already talked a few minutes because
25 I didn't arrive there for a few minutes after so I kind of got

1 the last part of the story but I knew, you know, some of the
2 things that she had said that happened so I kind of had a
3 general idea of kind of what was going on.

4 Q. What time did you arrive on the scene?

5 A. I may not have the same one. It's not showing up on
6 here.

7 MS. SENN: Your Honor, may I approach the witness?

8 THE COURT: You may.

9 BY MS. SENN:

10 Q. So you're saying that you arrived within a few
11 minutes of Deputy Houser?

12 A. Yes, ma'am.

13 Q. Okay. So when did you first see James Miller?

14 A. Uhm, I didn't see him until after I arrived and I
15 went around back, located Deputy Houser, uhm, and I was only
~~16 there for a few minutes and then, uhm, I saw James. He come~~
17 from the side that we actually parked our cars at but I didn't
18 see where he come from other than I know he come from the left
19 side of the house.

20 Q. So where was he when you first saw him?

21 A. Uhm, he was walking from the left side of the house
22 down towards the victim **minor one**

23 Q. Explain the layout of that dock. Do you just walk
24 out of the house and go straight down? Are there steps?

25 A. No. It's a real steep hill going onto the dock and

1 then the dock, of course, is straight out but the backyard is
2 real steep.

3 Q. Okay. So did you see James speak to **minor** on the
4 dock?

5 A. Uhm, he had approached her but before he approached
6 her, I didn't see him until he was actually, you know, close
7 to the dock already and knowing what I knew or knowing what
8 the victim's mother Tammy had already told us, I didn't want
9 the victim and the possible suspect to interact, you know, for
10 her safety, the case that was going on so that's when I went
11 down there.

12 Q. So you walked down there by yourself or with other
13 deputies?

14 A. No. Deputy Wilson went down there with me.

15 Q. Okay. Were your guns drawn?

16 A. No, ma'am.

17 Q. Explain again what your intention was in going down
18 to the dock?

19 A. I just - I didn't - knowing what I knew, what the
20 victim's mother Tammy had told me, I didn't want the suspect
21 to approach the victim. I didn't know what would happen when
22 he did so for the safety of the victim and to keep the suspect
23 from, you know, getting close to or start talking to the
24 victim, I wanted to separate him from her.

25 Q. Okay. So what happened next once you started

1 walking down to the end of the dock?

2 A. By the time that, like I said, by the time I
3 realized that he was actually going down there, he already
4 made it close to the dock, uhm, so I went down there. Just
5 walked down there. As I was walking down there to get him to
6 bring him back up there he, uhm, he had already made contact
7 with her and was pretty close to her already, beside her.
8 Uhm, he turns around and takes his belt off and takes things
9 out of his pockets and puts his hands behind his head and I
10 just walked up to him and he turned around and puts his hands
11 behind his back.

12 Q. Okay. About how many seconds were James and minor
13 on the dock alone?

14 A. It wasn't long because by the time I realized, like
15 I said, by the time I realized that he was going to her, I
16 started making my way that way also.

17 Q. Did you ever speak to James before you got to the
18 end of the dock?

19 A. No. I just walked down there and just basically
20 just to get him away from her.

21 Q. Did you ever tell him to empty his pockets and put
22 his hands behind his head?

23 A. I never said nothing to him. He done that from a
24 distance away as I was walking up to him.

25 Q. Okay. So then what happened next after he was

1 detained on the dock?

2 A. Uhm, he was detained. We walked him back up to the
3 one of the patrol cars. I can't remember whose patrol car he
4 was actually put in. At that point in time based on what we
5 had been told and, you know, everything that was going on, the
6 totality of everything that was going on we go ahead and read
7 him his Miranda Rights in the back seat of the car.

8 Q. Did you read him his rights?

9 A. No, ma'am.

10 Q. Okay. But you were present for them?

11 A. I was right beside the officers that were, the
12 officer that read him his rights.

13 Q. Did James seem to understand his rights?

14 A. Yes, ma'am.

15 Q. Did he say anything at that point?

16 A. Uhm, after, uhm, his Miranda Rights were read to
17 him, I asked him, uhm, was there any, you know, try to get his
18 side of the story and I asked him, you know, if there was
19 anything he would like to say and he basically said, whatever
20 she said is what happened. Whatever she said is not a lie.

21 Q. At that point had you told James what he was being
22 accused of?

23 A. No, ma'am.

24 Q. Had anyone told James what he was being accused
25 of?

1 A. No, ma'am.

2 MS. SENN: Please answer any questions that the
3 defense has.

4 CROSS EXAMINATION

5 BY MS. GOOD:

6 Q. Good morning, officer?

7 A. Good morning.

8 Q. You stated that when you got there, Deputy Houser or
9 Corporal Houser was already there, correct?

10 A. I believe it was Corporal Houser, yes, ma'am.

11 Q. He was speaking with Tammy?

12 A. Yes, ma'am.

13 Q. Did you see minor anywhere at that point?

14 A. She was down there at the dock.

15 Q. So she wasn't with Tammy?

16 A. No, ma'am.

17 Q. And you stated when you saw James going down towards
18 the dock, you started going down there, correct?

19 A. Yes, ma'am.

20 Q. Were you in front, middle, back? Who all went
21 with you?

22 A. It was just me and Deputy Wilson that I can recall
23 that went with me.

24 Q. So you don't remember Corporal Houser being
25 with you; is that correct?

DEPUTY JUSTIN SCOTT - CROSS BY MS. GOOD

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1 A. You talking about being on the scene?

2 Q. No. Going down to the dock?

3 A. No. I don't remember him going down there.

4 Q. Okay. So it was you and Deputy Wilson. How fast
5 were you going down to the dock?

6 A. Not fast.

7 Q. Were you moving quickly?

8 A. No. That is a steep hill. I wasn't trying to run
9 down there.

10 Q. So you weren't that concerned about Mr. Miller
11 getting to **minor** then?

12 A. I was concerned but I didn't feel like I needed to
13 sprint down there.

14 Q. When you went down there, did you call for him in
15 any way? Say, hey, Mr. Miller, come up here?

16 A. No, ma'am.

17 Q. When you walked down there, were you in full
18 uniform?

19 A. Yes, ma'am.

20 Q. You had a gun?

21 A. Yes, ma'am.

22 Q. Was your hand on your gun just in case he tried to
23 do something?

24 A. No.

25 Q. Okay. I'm going to show you what's marked as

1 State's Exhibit 4. Do you recognize this?

2 A. You're talking about this area right here?

3 Q. Yes.

4 A. This is close to where we parked at.

5 Q. Where was Mr. Miller when you first saw him?

6 A. When I first saw him, he was making his way down
7 here close to the dock down here. I wasn't actually paying
8 attention, you know, to back this way. I just happened to
9 look down at the victim and he was already near the dock.

10 Q. Did she see him coming? Do you know if she turned
11 around and saw him?

12 A. I don't recall if she saw him coming.

13 Q. What was her demeanor at the time?

14 A. I was not close to the victim.

15 Q. When you got down there, you were close to her,

~~16 correct, to the dock?~~

17 A. He walked back toward me.

18 Q. Okay. So he walked back from the dock towards
19 you?

20 A. Mm-hmm.

21 Q. All right. And you stated that after you detained
22 him, you put him in the car, correct?

23 A. Yes, ma'am.

24 Q. And you were there when his rights were read and he
25 made a statement regarding "she"?

DEPUTY JUSTIN SCOTT - CROSS BY MS. GOOD

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1 A. Yes, ma'am.

2 Q. You don't know who "she" is, do you?

3 A. No, ma'am.

4 Q. And isn't -- You have been doing this for six years,
5 correct?

6 A. Yes, ma'am.

7 Q. And after you come upon an incident, are you always
8 asked to write a statement of some sort as to what your
9 involvement was, like an incident report or just a statement
10 in general so that anybody can remember?

11 A. I just - any time we go on a call and there's a
12 crime that's happened, we do incident reports but we don't
13 always write statements. The deputy doesn't always write a
14 statement.

15 Q. In this case you wrote a statement; is that
16 correct?

17 A. Yes, ma'am.

18 Q. When you go through training, isn't your training to
19 make sure you're very specific about everything because as
20 with this case we're here three and a half years later and
21 you want to make sure you remember everything?

22 A. Yes, ma'am.

23 Q. And, in fact, in your statement that you wrote that
24 night you wrote down nothing about Mr. Miller making any
25 statements, did you?

1 A. Give me one second please.

2 Q. Sure.

3 No, ma'am, I didn't write that in my statement.

4 MS. GOOD: No further questions, Your Honor.

5 THE COURT: All right. Any redirect.

6 REDIRECT EXAMINATION

7 BY MS. SENN:

8 Q. Deputy Scott, when did you write your statement?

9 A. It would have been that same day. The time was at
10 3:35.

11 Q. What day did you say you wrote your statement?

12 A. It would have been the same day of the incident
13 which was August 11th, 2012.

14 Q. Okay. What date does your statement have on it at
15 the top?

16 A. ~~August the 12th, 2012.~~

17 Q. So you wrote the statement the day after the arrest
18 was made?

19 A. Yes, ma'am.

20 Q. Okay. When you were writing your statement, when
21 you write a statement, how specific are you usually?

22 A. Usually I'm pretty specific but I do recall about
23 this statement right here. Uhm --

24 Q. So sorry to cut you off but because something is not
25 in your statement, does that mean it didn't happen?

DEPUTY CODY WILSON - DIRECT BY MS. SENN

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1 A. No, ma'am, it don't.

2 Q. So do you remember Mr. Miller --

3 A. I do remember. Everything I testified to is what I
4 remember.

5 Q. So you remember him saying whatever she said
6 happened happened?

7 A. Yes, ma'am, I do.

8 MS. SENN: Okay. Thank you. No further
9 questions.

10 THE COURT: All right. You may step down. Thank
11 you, sir.

12 MS. SENN: The State calls Deputy Cody Wilson.
13 Thereupon,

14 DEPUTY CODY WILSON
15 after having been first duly sworn, testified as follows,

16 THE CLERK: Please have a seat. After you're
17 seated, please state your full name for the record.

18 MS. GOOD: Your Honor, may we approach?

19 THE COURT: Yes.

20 (Side bar off the record.)

21 THE COURT: Go ahead.

22 DIRECT EXAMINATION

23 BY MS. SENN:

24 Q. Thank you. Deputy Wilson, it's pretty self
25 explanatory. What do you do?

1 A. I'm a patrol deputy with the Kershaw County
2 Sheriff's Department, answer routine calls, work simple
3 investigations. That kind of thing.

4 Q. How long have you been with the Sheriff's
5 Department?

6 A. Not quite five years.

7 Q. Were you employed in your present capacity in August
8 of 2013?

9 A. Yes, ma'am, I was.

10 Q. Okay. How did you become involved in this case?

11 A. I was dispatched to the call with the other three or
12 four units that responded out there.

13 Q. When you arrived on scene, what did you observe?

14 A. When I arrived on scene, I observed the complainant.
15 I believe she met us somewhere around the side of the

16 residence.

17 Q. Who was the complainant?

18 A. The complainant was **minor one** mother. I'm not sure
19 of her first name.

20 Q. So you made contact with the victim's mother and
21 then what happened?

22 A. Uhm, at that time, uhm, I observed, uhm, the
23 defendant, uhm, along with his daughter **minor one** uhm, were on
24 the dock. She was sitting on the corner of the dock. He was
25 probably less than five feet away from her, uhm, talking with

1 her at that time.

2 Q. What did you do at that point?

3 A. Uhm, at that time, uhm, we started to, uhm, myself
4 along with the other deputies, uhm, moved down the hill. Uhm,
5 it's a pretty steep incline going down there. Uhm, we
6 approached them.

7 Q. What did you observe James do when you were
8 approaching him?

9 A. Uhm, when we approached him, uhm, observed him, uhm,
10 first take off his belt, start to remove everything from his
11 pockets, uhm, and he also placed his hands above his head,
12 uhm, and actually both hands on the back of his head.

13 Q. Did you or the other deputies tell James to empty
14 his pockets and put his hands behind his head?

15 A. Uhm, no, ma'am.

16 Q. Did you tell him what he was being accused of?

17 A. Uhm, no, ma'am.

18 Q. After James was detained, what happened next?

19 A. Uhm, I believe we, the subjects were separated, uhm,
20 actually, uhm, the defendant, uhm, he was, uhm, he was never
21 advised that he was under arrest of any kind. Uhm, just kind
22 of wanted to separate them. Uhm, he was taken to a patrol car
23 so we could kind of figure out what was going on, what the
24 situation was.

25 Q. Was James Miller read his Miranda Rights?

1 A. Uhm, yes, ma'am, I believe he was.

2 Q. Did you read those rights?

3 A. No, ma'am.

4 Q. But you heard them read?

5 A. Yes, ma'am.

6 Q. Did he act as though he understood his rights?

7 A. Yes, ma'am.

8 Q. Did you hear James say anything while you were
9 putting him in the patrol car?

10 A. Yes, ma'am. Actually while he was walking to the
11 patrol car, uhm, he uttered out, uhm, to his wife, uhm, it's
12 not how it was and for her to understand.

13 Q. Okay. What did you do from that point until you
14 left the scene?

15 A. Uhm, from that point, uhm, I assisted inside, uhm,
16 with the victim and along with the complainant, uhm, and as
17 far as the defendant I didn't really assist in any other way
18 after that.

19 Q. Okay. Did he make a statement in this case?

20 A. Yes, ma'am.

21 Q. What day did you complete that statement?

22 A. It was the same day.

23 MS. SENN: Thank you. Please answer any questions
24 that the defense has.

25 CROSS EXAMINATION

DEPUTY CODY WILSON - CROSS BY MS. GOOD

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1 BY MS. GOOD:

2 Q. Good morning.

3 A. Good morning.

4 Q. When you arrived, who was already on scene?

5 A. Uhm, I believe, uhm, Corporal Houser at that time,
6 uhm, I believe was the initial responding officer and, uhm, I
7 believe, uhm, Deputy Scott as well.

8 Q. Were you standing with all of them when you first
9 saw James?

10 A. Uhm, yes, ma'am.

11 Q. Who called your attention to James? Did you see him
12 first?

13 A. Uhm, I'm not exactly sure who seen him first. I
14 think it might have been at the same time. We all just kind
15 of seen him down there.

16 Q. But when you saw him, you said he was pretty much
17 next to **minor** on the dock, correct?

18 A. Right.

19 Q. And he was speaking with her?

20 A. Yes.

21 Q. What was her demeanor? What was she doing?

22 A. Uhm, she seemed to have her face down and like I
23 said, she was looking what appeared to be towards the water --

24 Q. So she just sat there?

25 A. -- at the edge of the dock. Yes, as far as I could

1 tell.

2 Q. Where was Tammy this whole time?

3 A. I'm, uhm, not exactly sure where she was. At this
4 time I was kind of focusing my attention down towards the
5 dock.

6 Q. But when you got there, Tammy was up there and not
7 with **minor one** is that correct?

8 A. Right. She was up at the house.

9 Q. You stated all three of you went down there to the
10 dock?

11 A. Uhm, yes, ma'am.

12 Q. When you were bringing him back, you stated he was
13 not under arrest but was he in handcuffs?

14 A. Uhm, I don't recall whether he was in handcuffs or
15 not.

16 Q. When he made the statement, you have to understand,
17 it wasn't like that, you have no idea what he was talking
18 about, do you?

19 A. Uhm, at that time, no, ma'am. Not really. He just
20 uttered out statements.

21 Q. Okay. And after he was in the car, you stated you
22 went in the house and was dealing with the alleged victim and
23 the complainant, the mother?

24 A. Yes, ma'am.

25 Q. What was your involvement there?

DEPUTY CODY SCOTT - REDIRECT BY MS. SENN

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1 A. Uhm, just as far as just assisting in anything I
2 could assist with. Uhm, just kind of standing by inside the
3 house, uhm, in case Corporal Houser or Deputy Scott needed my
4 assistance for anything.

5 Q. Did you talk to anybody?

6 A. Uhm, no, ma'am. I don't really recall talking to
7 anybody. Nothing of any substance.

8 Q. And did you see the victim and Tammy Miller gave
9 statement?

10 A. Uhm, yes, ma'am.

11 Q. Were they next to each other when they were doing
12 that?

13 A. Uhm, I don't recall if they were or not.

14 Q. So you don't remember if they were in separate rooms
15 or if they were together?

16 A. Uhm, no, ma'am.

17 MS. GOOD: No further questions, Your Honor.

18 THE COURT: Any redirect?

19 MS. SENN: Yes.

20 REDIRECT EXAMINATION

21 BY MS. SENN:

22 Q. Deputy Scott, when you approached the defendant on
23 the dock, you didn't tell him that he was under arrest?

24 A. No, ma'am.

25 Q. And when you were putting him in the patrol car, you

1 knew the allegations of what he was being accused of?

2 A. Yes, ma'am.

3 Q. But did he?

4 A. Uhm, I'm assuming he did, yes, ma'am.

5 Q. Did you ever tell him what he was being accused
6 of?

7 A. No, ma'am.

8 Q. Did Officer or Corporal Houser or Deputy Scott tell
9 him what he was accused of?

10 A. Uhm, no, ma'am, not that I'm aware of.

11 MS. SENN: Okay. Thank you. No further
12 questions.

13 THE COURT: All right. Thank you. You may step
14 down. Thank you very much. All right. It's almost
15 11:00. Let's take a quick ten minute break. It's about
16 10:50 now so let's be back in the courtroom at 11:00,
17 take a comfort break and we'll resume the trial at that
18 point. Again please do not discuss this case until I
19 instruct you that you can start deliberating. You can
20 talk to each other about anything but this case. Thank
21 you.

22 (Whereupon, the jury entered the jury room.)

23 (Short recess.)

24 (Whereupon, State's Exhibits #6 through #25 marked
25 for identification.)

DEPUTY THOMAS HATHAWAY - DIRECT BY MS. CAVANAUGH

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1 (Whereupon, the jury returned to the courtroom at
2 11:10 a.m.)

3 THE COURT: All right. Welcome back, ladies and
4 gentlemen. Madam Solicitor, you may call your next
5 witness.

6 MS. CAVANAUGH: The State calls Deputy Tom Hathaway.
7 Thereupon,

8 DEPUTY THOMAS SHERWOOD HATHAWAY
9 after having been first duly sworn, testified as follows,

10 THE CLERK: Please have a seat. After you're
11 seated, please state your full name for the record.

12 THE WITNESS: Thomas Sherwood Hathaway.

13 DIRECT EXAMINATION

14 BY MS. CAVANAUGH:

15 Q. Is it sergeant now?

16 A. Yes, ma'am.

17 Q. Sergeant Hathaway, where are you employed?

18 A. Kershaw County Sheriff's Office.

19 Q. How long have you been employed with the Sheriff's
20 Office?

21 A. Approximately five years.

22 Q. Your position now is sergeant?

23 A. That's correct.

24 Q. And what are some of your duties and
25 responsibilities in your role at the Sheriff's Department?

1 A. Right now I work with our DUI task force that also
2 does interdiction and drug enforcement.

3 Q. Back in August of 2012 were you with the Sheriff's
4 Department?

5 A. Yes, ma'am.

6 Q. What was your role specifically on August 11, 2012
7 with the Sheriff's Department?

8 A. My role at that point I was a road deputy. I was
9 dispatched to the scene to transport a defendant back to the
10 Sheriff's Office.

11 Q. Okay. Just to back up a little bit, when you say
12 you were dispatched to the scene, what scene was that?

13 A. The scene was up on, I believe it was **minor five** yes,
14 Road.

15 Q. You said, you indicated what your role was. What
16 was your role at that point?

17 A. My role was to assist and also to transport.

18 Q. Okay. What time did you actually arrive at
19

20 A. I arrived just a little after 3:00. 3:03 to be
21 exact.

22 Q. Were other deputies already on scene at that
23 point?

24 A. That's correct.

25 Q. What did you do upon arrival?

DEPUTY THOMAS HATHAWAY - DIRECT BY MS. CAVANAUGH

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1 A. When I arrived on scene, I got out with the other
2 deputies. We talked for a few moments. At that point the
3 defendant was in the back of Corporal -- I'm trying to think
4 of his name -- Brooks' car. At that time I did get out of my
5 car. I talked with them. He was in the back of the car. And
6 then shortly thereafter he was placed in the back of my car
7 and transported back to the Sheriff's Office.

8 Q. Okay. Did you take -- When you say the suspect, is
9 he in the courtroom today?

10 A. Yes, ma'am.

11 Q. Can you point him out for the jury?

12 A. Right over here.

13 Q. What's he wearing?

14 A. He's wearing a pull over with a blue "H" on the
15 front of it.

16 Q. And, uhm, when you first approached him in Corporal
17 Houser's car, do you remember whether the air conditioner was
18 on in that car?

19 A. I don't remember if the air conditioner was on in
20 that car. I know it was warm out there. The air conditioner
21 was on in my car. The defendant didn't appear to be
22 uncomfortable in any way so I would have to say it most likely
23 was.

24 Q. About how long were you on the scene before you took
25 him to the Sheriff's Office?

1 A. Approximately ten minutes.

2 Q. When you were at [REDACTED] Lane, did you hear him,
3 him being James, the defendant, did you hear him say
4 anything?

5 A. I overheard him say several times whatever she said.
6 Whatever she said.

7 Q. When you took him to the Sheriff's Office, what time
8 did you say that was?

9 A. I departed the scene at 3:14.

10 Q. Did you have any conversations with Mr. Miller about
11 the case in that transport?

12 A. No, ma'am.

13 Q. Did you ask him anything about the case
14 whatsoever?

15 A. No, ma'am.

16 Q. What time did you arrive at the Sheriff's Office?

17 A. Arrived at the Sheriff's Office at 3:35.

18 Q. Who did you meet at the Sheriff's Office at that
19 time?

20 A. That was Investigator Dill.

21 Q. Who is Investigator Dill?

22 A. He was the on-call investigator.

23 Q. Okay. Was Mr. Miller -- Did Investigator Dill take
24 over with Mr. Miller at that point?

25 A. He took over at that point, yes, ma'am.

DEPUTY THOMAS HATHAWAY - DIRECT BY MS. CAVANAUGH

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1 Q. What did you do once Investigator Dill took over?

2 A. I was there at the Sheriff's Office. I had some
3 other duties that I needed to take care of at that point.

4 Q. Okay. What did you do -- Did you have any further
5 interaction with James?

6 A. Not while he was being interviewed, no, ma'am.

7 Q. Okay. Did you at some point take him to the
8 detention center?

9 A. Yes, ma'am. I was instructed at that time, it was
10 approximately 4:02, to take the defendant to the detention
11 center.

12 Q. That was a little under 30 minutes later?

13 A. That's correct.

14 Q. When you arrived at the detention center, did he
15 indicate to you at that point that he wanted to speak to
16 Investigator Dill?

17 A. That is correct.

18 Q. From your transport from the Sheriff's Office to the
19 jail, did you have any discussions with him about the case?

20 A. No, ma'am.

21 Q. Did you ask him anything at all related to the
22 allegations?

23 A. No, ma'am.

24 Q. Did you notify Investigator Dill that he wanted to
25 speak to him?

1 A. I did.

2 Q. What time was that?

3 A. That was shortly after I arrived at the distribution
4 center which was 4:10.

5 Q. The distribution center?

6 A. I'm sorry. At the detention center.

7 Q. Okay. So 4:10 you notified Investigator Dill that
8 he wanted to speak to him?

9 A. Approximately, yes, ma'am.

10 Q. Did you take him back to the Sheriff's Office?

11 A. No, ma'am.

12 Q. Did Investigator Dill come pick him up?

13 A. That's my understanding, yes, ma'am.

14 Q. And again, the person that you heard at [REDACTED]
15 Lane saying whatever she says is true, whatever she says is
16 true, can you point him out in the courtroom?

17 A. (Indicating.)

18 MS. CAVANAUGH: Your Honor, let the record reflect
19 that he has identified Mr. Miller.

20 THE COURT: So reflected.

21 MS. CAVANAUGH: Thank you, Sergeant Hathaway.

22 CROSS EXAMINATION

23 BY MS. GOOD:

24 Q. Just a couple questions. You stated when you heard
25 him say whatever she said, was he in your vehicle at that

DEPUTY THOMAS HATHAWAY - REDIRECT BY MS. CAVANAUGH

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1 point or at the scene?

2 A. No, ma'am. It was at the scene.

3 Q. Okay. So he never --

4 A. He was not in my vehicle.

5 Q. So he never said that in your vehicle?

6 A. No, ma'am.

7 Q. And you have no idea who she is, do you?

8 A. No, ma'am.

9 Q. And you said you don't remember if the air was on in
10 Corporal Houser's car?

11 A. No, ma'am. I did not get into his car so I wouldn't
12 know that.

13 MS. GOOD: No further questions, Your Honor.

14 THE COURT: All right.

15 MS. CAVANAUGH: One quick question.

16 REDIRECT EXAMINATION

17 BY MS. CAVANAUGH:

18 Q. Sergeant Hathaway, did he appear uncomfortable to
19 you at that time?

20 A. Yes, ma'am.

21 Q. I'm sorry?

22 A. Yes, he did appear comfortable.

23 Q. Comfortable?

24 A. Yes, ma'am.

25 Q. Not uncomfortable?

1 A. No. Comfortable.

2 MS. CAVANAUGH: Thank you.

3 THE COURT: Thank you. You may step down. You may
4 call your next witness.

5 MS. CAVANAUGH: The State calls [REDACTED] minor one

6 Thereupon,

7 Minor

8 after having been first duly sworn, testified as follows,

9 THE CLERK: Please have a seat. After you're
10 seated, please state your full name for the record.

11 THE WITNESS: [REDACTED] minor Ashley [REDACTED] minor one

12 DIRECT EXAMINATION

13 BY MS. CAVANAUGH:

14 Q. [REDACTED] minor one how old are you?

15 A. 20.

16 Q. Where do you live right now?

17 A. Virginia.

18 Q. Who do you live with in Virginia?

19 A. My husband.

20 Q. What is your husband's name?

21 A. Tyler.

22 Q. What's his last name?

23 A. [REDACTED] minor one

24 Q. How long have y'all been married?

25 A. Almost a year.

Minor

- DIRECT BY MS. CAVANAUGH

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- 1 Q. What do you do?
- 2 A. I go to school and work part-time.
- 3 Q. What are you studying right now?
- 4 A. Personal training.
- 5 Q. What does Tyler do?
- 6 A. He is active duty military.
- 7 Q. What branch?
- 8 A. Marine Corps.
- 9 Q. How long have you lived in Virginia?
- 10 A. Five or six months.
- 11 Q. I'm gonna ask you to scoot a little closer to the
- 12 microphone and speak up, okay, **minor one**
- 13 A. Five or six months.
- 14 Q. Where did you -- So you didn't grow up in
- 15 Virginia?
- 16 A. No.
- 17 Q. Where did you grow up?
- 18 A. A few different towns around South Carolina.
- 19 Q. What are those towns?
- 20 A. Charleston, Summerville and Camden.
- 21 Q. Do you have any brothers and sisters?
- 22 A. Yes.
- 23 Q. Who are they?
- 24 A. I have a twin sister **minor** and three younger
- 25 siblings.

- 1 Q. You said three younger siblings?
- 2 A. Yes.
- 3 Q. And what are their names?
- 4 A. [minor four] [minor] and [minor]
- 5 Q. How old are they?
- 6 A. Nine, 12 and 14.
- 7 Q. So who is the youngest?
- 8 A. [minor four]
- 9 Q. How old is [minor]
- 10 A. 12.
- 11 Q. So [minor] is the oldest?
- 12 A. Yes, ma'am.
- 13 Q. And you all are six years apart, you and [minor]
- 14 A. Yes.
- 15 Q. Who are your parents?
- 16 A. Tammy and James.
-
- 17 Q. And were they married throughout your childhood?
- 18 A. Yes.
- 19 Q. You said you have a twin [minor two] Is she a fraternal
- 20 twin or identical twin?
- 21 A. Identical.
- 22 Q. Where does she live now?
- 23 A. She lives in California.
- 24 Q. What took her to California?
- 25 A. Her husband is active duty. He's in the Navy.

Minor

- DIRECT BY MS. CAVANAUGH

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1 Q. So how long has she lived in California?

2 A. Uhm, I'm not sure. Almost a year maybe.

3 Q. Are you and [minor] close?

4 A. Yes.

5 Q. So you said you lived in several different towns in
6 South Carolina. Where were you born?

7 A. North Carolina.

8 Q. Do you know how long you lived in North Carolina?

9 A. I don't.

10 Q. Do you know about how old you were when you moved to
11 South Carolina?

12 A. I don't remember.

13 Q. Were you young?

14 A. Yes.

15 Q. Okay. Do you remember where you went to elementary
16 school?

17 A. I don't remember. It was a couple different ones.

18 Q. Okay. So did y'all, did your family move often
19 during your childhood?

20 A. Yes.

21 Q. Can you estimate how many times you moved?

22 A. Around 20.

23 Q. So from the time that you were born until 18, 19,
24 around 20 times?

25 A. Yes.

1 Q. Were you eventually home schooled?

2 A. Yes.

3 Q. When did that start?

4 A. Uhm, we became home schooled a couple times. I
5 can't remember exactly what grades, but we went back and forth
6 between home schooling and public school.

7 Q. Do you remember what time -- What about all through
8 high school. Were you in public school during high school?

9 A. We were not.

10 Q. So were you home schooled during high school?

11 A. Yes.

12 Q. What about middle school?

13 A. I believe we went to one or two grades in middle
14 school and home schooled the other.

15 Q. So from essentially that last grade in middle school
16 about eighth grade on you were home schooled?

17 A. Yes.

18 Q. Who did most of your -- Who taught you most of your
19 subjects and went through your assignments and everything
20 with you?

21 A. My mom.

22 Q. Did she work during your childhood?

23 A. Not that I can remember.

24 Q. What about your father James, did he work?

25 A. He did.

Minor

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1 Q. What type of work did he do?

2 A. He was in construction.

3 Q. So that involved manual labor?

4 A. Yes.

5 Q. What type of construction projects would he work
6 on?

7 A. All sorts. He built homes, remodeled. Along those
8 lines.

9 Q. So you can see that he's in a wheelchair today.
10 Throughout your childhood was he in a wheelchair?

11 A. Never.

12 Q. Going back to you and your twin sister **minor two** even
13 though y'all are twins, did y'all have a lot of the same
14 interests and activities?

15 A. We did not.

16 Q. How would you describe y'all's differences?

17 A. She enjoyed being inside and drawing and helping my
18 mom with the kids and I preferred to be outside, uhm, and
19 doing physical work and playing outside.

20 Q. So would you describe yourself as a tomboy?

21 A. Yes.

22 Q. Okay. Did you like to hunt?

23 A. Yes.

24 Q. Did you fish?

25 A. Yes.

1 Q. Who taught you how to do those things?

2 A. James.

3 Q. And what about -- So **minor** was more of an inside
4 child?

5 A. Yes.

6 Q. Was she, would you say she was closer with your mom
7 or your growing up?

8 A. Uhm, probably my mom.

9 Q. What about you? Did that change over time?

10 A. Occasionally it did, but for the most part I was
11 closest with James.

12 Q. Okay. Did you ever go to work with him?

13 A. I did. Almost every day.

14 Q. So when did that start?

15 A. I can't remember what age, uhm, but I worked with my
16 dad for a few years, I think.

17 Q. During high school?

18 A. Yes.

19 Q. Before -- When did you move to Camden?

20 A. We moved to Camden in 2011.

21 Q. That summer?

22 A. Yes.

23 Q. So before you moved to Camden, did you go to job
24 sites with him and projects with him before you moved to
25 Camden?

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- DIRECT BY MS. CAVANAUGH

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1 A. I did.

2 Q. Did he teach you how to help him with the
3 projects?

4 A. Yes.

5 Q. So what all types of remodeling and work did you
6 know how to do?

7 A. We reroofed a lot of roofs, tile. Just along those
8 lines.

9 Q. Okay. So you said you went with him often to his
10 job sites. What about how would that work with your home
11 schooling?

12 A. When I would go during the day, I would finish my
13 school in the evening and sometimes I would stay home and do
14 school.

15 Q. So when did you -- You said you moved to Camden
16 around the summer of 2011?

17 A. Yes.

18 Q. Can you describe how that decision was made? What
19 were you all doing when you learned that you were going to be
20 moving to Camden?

21 A. We were on vacation around the Fourth of July, I
22 think, and we all stayed at a friend's house. We had a camper
23 and we were there for the week. We decided that it would be a
24 good idea to move to Camden to get a fresh start.

25 Q. So that decision was made while y'all were in Camden

1 on vacation?

2 A. Yes.

3 Q. To your knowledge, was there any discussions prior
4 to that vacation of moving?

5 A. No.

6 Q. And you said you were on vacation in a camper. Can
7 you describe, was it a big camper?

8 A. It was a medium to large camper that had a pull out
9 in the front and a couch and table, they all folded down into
10 beds and there was a bunk bed in the back so we all could
11 fit.

12 Q. How many days were you and your, approximately days,
13 were you and your family together in that camper on
14 vacation?

15 A. Approximately a week.

16 Q. Okay. Describe the -- Do you remember who slept
17 where in the camper on vacation?

18 A. My mom and dad slept in the front. I believe I
19 slept on the couch and my twin and **minor** slept on the table
20 which was turned into a bed and the boys slept in the bunk
21 beds.

22 Q. Where was the camper parked?

23 A. In a friend's backyard.

24 Q. Which friend was that?

25 A. Mike Norwood.

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1 Q. Where they family friends?

2 A. Yes.

3 Q. Did they have children?

4 A. They did.

5 Q. So your siblings played with those kids?

6 A. Yes.

7 Q. Okay. What happened once a decision was made that
8 you all were going to move there?

9 A. We decided -- We found a house. It needed a little
10 bit of work. We decided that my mom was going to take my
11 sister and the little kids back home to pack and me and my dad
12 would stay behind and fix the house.

13 Q. When you say "back home", where did your mom take
14 the rest of the kids?

15 A. I think Summerville is where we lived.

16 Q. And you stayed behind with your dad James?

17 A. Yes.

18 Q. And at that time did that seem unusual that you were
19 the to be the one to stay behind?

20 A. No.

21 Q. Why was it not unusual?

22 A. Because I was always the one with him helping him
23 work.

24 Q. Did you want to stay behind?

25 A. Uhm, I did, uhm, but I did want to say good-bye to

1 my friends before we moved because I knew it would be a
2 while.

3 Q. Did you have that opportunity?

4 A. No.

5 Q. But the fact that you stayed with James to help, you
6 knew how to do that, right?

7 A. Yes.

8 Q. And did you fight your mom or your dad on that
9 decision at all?

10 A. I did not.

11 Q. So was the house that y'all found, was it already
12 furnished?

13 A. It was.

14 Q. What type of work still needed to be done?

15 A. There was a few minor things with the house. I
16 can't remember exactly, but there was a lot of yard work. It
17 was real overgrown. We had to fix the dock, I think.

18 Q. Was the house on the lake?

19 A. Yes.

20 Q. Is that -- What lake was that?

21 A. Lake Wateree.

22 Q. Okay. So when your mom and your siblings left and
23 you stayed behind, did something happened?

24 A. Yes.

25 Q. And what happened to you while you were alone with

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1 James during that period of time?

2 A. Oh, we ended up moving the camper to Mike Norwood's
3 boat shop.

4 Q. Speak up just a little bit.

5 A. We had moved our camper to Mike Norwood's boat shop
6 to keep it there so we could stay in the camper while the
7 house was being ready to move in. One night I was tired and I
8 wanted to go to bed and he was out of the camper by the fire
9 with a buddy. I don't remember who it was. Uhm, they were
10 drinking and just talking and I had went to bed, fallen asleep
11 and I don't remember what time it was, but a few hours, had to
12 have been a few hours because I had fallen asleep, I had woken
13 up to him performing oral sex on me.

14 Q. Okay. And when you say that he was performing oral
15 sex on you, what was he doing specifically?

16 A. He - he was - he had his mouth on me.

17 Q. What did you do when you woke up to that?

18 A. Uhm, when I woke up, he had my legs and I couldn't
19 move. I ended up pushing him off and I ran back to the
20 bathroom in the camper.

21 Q. And what part of the camper were you sleeping in
22 that night?

23 A. When I had fallen asleep, I was in the front bed
24 because he said I could have the full bed in the front and he
25 would sleep on the couch.

1 Q. Okay. So there's a bathroom in the back?

2 A. Yes.

3 Q. Did you say anything to him when you woke up?

4 A. I did. I said he was disgusting and I was really
5 upset and I ran to the bathroom.

6 Q. Did you do anything to try to get him to stop?

7 A. Uhm, I started pushing him off of me.

8 Q. And you went to the bathroom?

9 A. Yes.

10 Q. What happened after you went to the bathroom? Can
11 you estimate how long you stayed there?

12 A. Uhm, approximately 15 minutes. Uhm, I was really
13 scared. I didn't know what just happened. I was confused and
14 I remember thinking that I was just going to act like it never
15 happened and in the morning, because I didn't have a phone at
16 ~~the time so I couldn't call anybody and we were there. There~~
17 was nowhere to go. So I was going to wait until the morning
18 and just take his phone and call my mom. Uhm, he ended up
19 coming back to the bathroom, knocked on the door and said he
20 was sorry. He didn't know what just happened. It was an
21 accident. Please come back to bed. It will never happen
22 again. And I ended up opening the door and I went to the
23 couch because I was not going to get back in the bed and I
24 laid there maybe about 20 minutes and he was standing there
25 just saying he was sorry. He didn't mean to. He didn't know

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1 what he was doing. It just happened. And I can't recall why
2 but for some reason he said that he was going to stay on the
3 couch this time and that I could go back to sleep and that he
4 was sorry. So I did. I got back in the bed and I shut the
5 little door. It didn't lock. It slid shut and I laid
6 there for a while before I fell back asleep and I had woken up
7 again and he was on top of me trying to have sex with me.

8 Q. And so when you say -- Had you been able to fall
9 back to sleep at that point?

10 A. I wasn't fully asleep. I was dozing in and out a
11 bit. I was afraid to fall sleep but I was extremely tired.
12 We worked all day so I couldn't stay awake fully.

13 Q. So when you say you woke up to him trying to have
14 sex with you, was he actually in you at that point?

15 A. He had taken my shorts off and he - he had - he had
16 held my hips and he was trying to penetrate me.

17 Q. So what did you do when you woke up for the second
18 time that night to him doing that?

19 A. I immediately tried to push him off and I got really
20 upset. I started crying and told him to stop. I was pushing
21 him. I was hitting him and he would not let me get up.

22 Q. And did he - was he able to have sex with you?

23 A. Yes.

24 Q. Did you try to get up?

25 A. I did. I did.

1 Q. Were you able to?

2 A. I was not.

3 Q. Did he say anything to you while he was raping you
4 that night?

5 A. He - he said he needed to finish what he started.

6 Q. So after that happened, what did you do after
7 that?

8 A. He had finished and he had gotten up and walked back
9 to the bathroom. I don't know what he did. And I laid there
10 crying. I couldn't go anywhere. I couldn't run to the
11 bathroom. It was done. I didn't know what to do so I laid
12 there crying the rest of the night and he fell back to sleep
13 like nothing had ever happened. And at this point I still
14 wanted to get his phone and call my mom to try and get help
15 but by the time the morning came he had gotten up, gotten
16 ~~ready for work, went outside and I went to the bathroom,~~
17 gotten dressed like everything was okay. I didn't want to act
18 upset. I didn't want him to think that I was going to say
19 anything at that moment because I didn't know what would
20 happen. I walked outside and he was waiting at his truck and
21 he had grabbed my arm and he began telling me that if I ever
22 said anything, the family would be ruined. It would be gone
23 forever. We would be on the streets. We would be nothing
24 without him. And he just kept on repeating that. And at the
25 time we were very sheltered. We didn't have anybody. I

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1 didn't know better. I had no reason not to believe him
2 because my family was all I had so I ended up telling him I
3 wasn't going to say anything if he promised it would never
4 happen again. It was just a mistake. But I can't say
5 anything because the family would be ruined. They would be
6 gone and I wouldn't have anybody ever and so he went on that
7 day like nothing ever happened.

8 Q. Did he try to - did he blame anything for why he did
9 that that particular night?

10 A. He did. He said he was drinking and took a pill and
11 he couldn't control himself.

12 Q. So when he was telling you that the family would be
13 ruined, that y'all would be essentially on the streets without
14 him if you told, did he say that in a threatening manner?

15 A. He did.

16 Q. Did he touch you or hit you or anything when he was
17 saying this?

18 A. He didn't hit me but he had a hold of my arm.

19 Q. Okay. So how did you feel the rest of that day?

20 A. I was very sick. I didn't want to be around him. I
21 couldn't look at him. I just stayed away the whole day.
22 While he was working outside, I stayed inside and just trying
23 to figure out what exactly I needed to do.

24 Q. Okay. At about -- So at that point after he said
25 that to you while he was grabbing your arm, were you still -

1 what was your plan as far as were you going to tell your mom?

2 What were you thinking along those lines?

3 A. I wasn't going to say anything because I was scared
4 of losing my family.

5 Q. Did it happen again before your mom and your
6 siblings came back to Camden?

7 A. It did.

8 Q. And do you remember the next time it happened?

9 A. That night.

10 Q. Where did that occur?

11 A. At the house we were moving into.

12 Q. Okay. So you said earlier the house was already
13 furnished, it just needed some cleaning up?

14 A. Yes.

15 Q. So you all moved in that night. Where did it happen
16 in the house the second time?

17 A. Uhm, I - I - I think upstairs. I believe there was
18 a bed upstairs and a couch downstairs and there was a few
19 other random pieces of furniture in the house but I believe it
20 was upstairs.

21 Q. And again that particular night did you do anything
22 to try to get him off?

23 A. I did.

24 Q. What did you try to do?

25 A. I pushed him. I tried to get him off me. I was

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1 yelling at him and he just acted like I wasn't doing anything
2 and he just held me down and he just got what he wanted.

3 Q. You're small now. You were 16 at this point?

4 A. Yes.

5 Q. Do you remember what your size was? Were you small
6 then?

7 A. Yes.

8 Q. Okay. So about how long were you and James together
9 before your mom and your siblings came back to Camden?

10 A. Approximately two weeks, I think.

11 Q. Did it occur more than those two times over that two
12 week period?

13 A. Yes.

14 Q. And did you - were they -- Where did they occur?

15 A. In the house.

16 Q. Throughout that two week period did you continue to
17 try to fight him off?

18 A. I did.

19 Q. And was he still - did he still say anything to you
20 either while he was doing it or after he was doing it?

21 A. Every time after he would repeat what he said to me
22 the first time, that the family would be ruined and I wouldn't
23 have anybody.

24 Q. Did you believe him?

25 A. I did.

1 Q. While your mom and your siblings were in Summerville
2 over that two week period you said you didn't have a phone?

3 A. Right.

4 Q. Did James have a phone?

5 A. He did.

6 Q. Were you able -- Do you remember speaking to your
7 mom over that two week period?

8 A. Maybe one or two times.

9 Q. Okay. Were you looking forward to your mom and your
10 siblings coming back?

11 A. Yes.

12 Q. Why were you excited about that?

13 A. I was hoping that as soon as they got there it would
14 stop.

15 Q. Because prior to the camper and prior to the move to
16 Camden, had this ever occurred?

17 A. No.

18 Q. And prior to the camper, were you with your
19 family?

20 A. Yes.

21 Q. Your entire family?

22 A. Yes.

23 Q. So you were hoping that things would go back to
24 normal?

25 A. Yes.

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1 Q. Did he say anything as far as giving you a warning
2 or anything like that before your family came back?

3 A. He just - he wanted to reassure himself that I
4 wasn't going to tell them and he just continued the same
5 threats of me losing my family.

6 Q. So you made the decision not to tell your family at
7 that point?

8 A. Yes.

9 Q. Did the rapes stop when they came back?

10 A. They did not.

11 Q. When your mom and siblings came and moved in, how
12 were the bedrooms arranged?

13 A. There was a master bedroom downstairs. My mom and
14 dad took that bedroom. Me and my twin took the big upstairs
15 bedroom and my little sister had her own room and the two boys
16 shared a room upstairs.

17 Q. So the master bedroom is downstairs?

18 A. Yes.

19 Q. And that was where your mom and James were going to
20 sleep?

21 A. Yes.

22 Q. And then you and **minor** were going to share a room
23 upstairs?

24 A. Yes.

25 Q. I'm sorry. Did you say your little sister had her

1 own room?

2 A. Yes.

3 Q. And the boys had their room?

4 A. Correct.

5 Q. How long did that, were those the room
6 assignments?

7 A. Approximately a month or two. I can't remember
8 exactly.

9 Q. Okay. And while you shared a room with **minor** did
10 anything happen?

11 A. Yes.

12 Q. Okay. Can you describe what happened while you were
13 sharing a room with **minor two**

14 A. He would continue to come in the room occasionally.
15 It did happen a few times while she was asleep in the same

16 room. We had separate beds at the time. It was a large
17 room.

18 Q. And he would do it to you then?

19 A. Yes.

20 Q. Before the move -- Let me ask you this: Did he,
21 when you shared a room with **minor two** did he ever sleep in the
22 same bed?

23 A. No.

24 Q. So he would come in at night and then leave?

25 A. Yes.

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1 Q. How were you and [minor] -- Were you and [minor]
2 getting along at this point?

3 A. We were off and on.

4 Q. Y'all were 16?

5 A. Yeah. We were going through our sister phase. We
6 argued a lot.

7 Q. Okay. Over any big things or was it just little
8 small sister fights?

9 A. Sister fights about clothes or shoes and just things
10 like that.

11 Q. Okay. Because y'all weren't getting along so well
12 did you stay in the same room?

13 A. We did not.

14 Q. So eventually y'all got different rooms?

15 A. We did.

16 Q. Okay. Tell me about that.

17 A. Uhm, they had - my dad and my mom had gotten tired
18 of us arguing all the time and my dad said it would be a good
19 idea if we just separated rooms so we wouldn't be together all
20 the time and so my little sister moved in with [minor] to the
21 big room and I took over my little sister's bedroom.

22 Q. Okay. I'm going to show you some pictures. I'm
23 going to show you what's marked as State's Exhibit 15, 16, 17,
24 18, 19, 20, and 22. Glance through those and tell me if you
25 recognize these pictures. Take your time.

1 A. (Witness complies.) I do.

2 Q. Do these pictures depict the stairs and the upstairs
3 of your home?

4 A. Yes.

5 MS. CAVANAUGH: Your Honor, I have already shown
6 these to the defense lawyer. At this time I would ask
7 that 15 through 20 be admitted as well as 22.

8 THE COURT: Any objection?

9 MS. GOOD: No objection.

10 THE COURT: All right. They are so admitted.

11 BY MS. CAVANAUGH:

12 Q. These are the stairs. Where do these stairs lead
13 up?

14 A. The upstairs bedrooms. There's a bedroom to this
15 side and two bedrooms to this side.

16 Q. Okay. And is this the entrance to one of the
17 bedrooms?

18 A. Yes. That was my sister **minor two** That was her
19 bedroom.

20 THE COURT: Make sure the alternate jurors can see
21 that as well.

22 BY MS. CAVANAUGH:

23 Q. And that is the one that she moved into when you all
24 switched rooms?

25 A. No. When we switched rooms, she shared a room that

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1 was next to mine. It was the bigger bedroom.

2 Q. Okay. So this was her room and she shared it with
3 **minor** though?

4 A. No. We changed rooms again after this room
5 change.

6 Q. Okay.

7 A. So that was towards the end of everything **minor** had
8 gotten her own room.

9 Q. I got you. Did you ever stay in this room?

10 A. No.

11 Q. And which bedroom is this?

12 A. **minor two**

13 Q. So the same bedroom that we just looked at.

14 A. Yes.

15 Q. And I'm showing you what's marked as State's Exhibit

16 20. What room is that in the house?

17 A. That is the big bedroom that my twin sister **minor**
18 and **minor** shared when I got my own room.

19 Q. Okay. State's exhibit 18, 19, and 22, are these all
20 pictures of your room?

21 A. Yes.

22 Q. State's Exhibit 22, is that your bed?

23 A. It is.

24 Q. This is the bedroom that you moved into by yourself,
25 right?

1 A. Yes.

2 Q. Again State's Exhibit 18 with the encyclopaedias, is
3 that your bedroom?

4 A. Yes.

5 Q. Is that the entrance to your bedroom?

6 A. Yes.

7 Q. And all of those rooms are upstairs?

8 A. Yes.

9 Q. Okay. So approximately how long between the time
10 that you moved into the house until you told your mom what had
11 been happening did you have your own room?

12 A. Uhm, when we switched rooms?

13 Q. Did you have your own room for a period of time?

14 A. Yes.

15 Q. And about how long was that?

16 A. ~~I had my own room for the rest of the year.~~

17 Q. So would you say more than six months?

18 A. Yes.

19 Q. Once you got your own room, what started
20 happening?

21 A. He slept in my bed every night.

22 Q. So he began to sleep in your room?

23 A. Yes.

24 Q. Did your mom know that he was coming upstairs?

25 A. She did.

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1 Q. And did she - was she upset about that?

2 A. She was confused but he had said because he could
3 sleep in my bed because he fell asleep easier. My bed is more
4 comfortable than hers.

5 Q. And did she grow to be frustrated about this?

6 A. Very.

7 Q. Did you see them arguing about this very thing?

8 A. Uhm, maybe once or twice, but they kept their
9 arguments in private.

10 Q. When he would come and sleep in your bedroom, what
11 would he do while he was in there?

12 A. He would continue to rape me.

13 Q. Okay. Did you eventually stop fighting him off?

14 A. I did.

15 Q. And about how long into him sexually assaulting you
16 did you stop fighting?

17 A. Several months.

18 Q. To be clear, when you stopped fighting, did you want
19 him to be having sex with you?

20 A. No.

21 Q. Why did you stop fighting?

22 A. I was tired. I felt trapped. I felt like it was my
23 obligation to do, to just lay there because if - if days that
24 went by and he didn't get what he wanted, he would take out
25 his anger on the family and I felt like it was my fault.

1 Q. So when you wouldn't let him do it -- So there were
2 times that you wouldn't let him and he wouldn't do it?

3 A. Yes.

4 Q. Did you see a change in his behavior on those
5 days?

6 A. I did.

7 Q. Can you explain that change?

8 A. He - he would walk around really angry. He would
9 raise his voice at the kids. He would get mad at them for no
10 reason. He would get mad at my mom and he just treated them
11 like they should not be treated.

12 Q. And would he -- Was that different from when you
13 would just let him go ahead and assault you?

14 A. Yes.

15 Q. Now, you testified that him coming in your room
16 sleeping at night was a new thing, new to Camden and him
17 beginning to rape you was new to Camden. Did he start to
18 carry anything around his waist?

19 A. He did.

20 Q. What was that?

21 A. He began carrying a gun.

22 Q. Before he started raping you, did he ever have a
23 gun?

24 A. No.

25 Q. Did you ever see a gun on his person before this

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1 started happening?

2 A. No.

3 Q. Did he wear it every day?

4 A. Yes.

5 Q. Did you continue to go work with him?

6 A. I did.

7 Q. And just like you did before he started raping
8 you?

9 A. Yes.

10 Q. Why did you continue to go to work with him?

11 A. I didn't have a choice not to.

12 Q. Can you explain that?

13 A. Uhm, he needed help. He didn't have anybody to work
14 for him. He had his own business and I was the only one
15 there to help so it was my place to continue to go and help to
16 help provide for the family.

17 Q. So it was you didn't have a choice?

18 A. Correct.

19 Q. You were 16?

20 A. Yes.

21 Q. You lived in the home with him. Did your mom, at
22 this point did your mom know what was going on?

23 A. No.

24 Q. Did you ever tell her that you didn't want to go
25 with him?

1 A. Sometimes.

2 Q. What would her response be?

3 A. She would shrug it off and just say that I'll be
4 home soon. It will be okay. Just go to work and you will be
5 home.

6 Q. These job sites that you would go to, were they
7 houses?

8 A. Most of them.

9 Q. Were they empty houses?

10 A. Uhm, sometimes.

11 Q. Would he rape you in these houses?

12 A. He would.

13 Q. Was that during the day?

14 A. Yes.

15 Q. Do you remember some of the times that he would do
~~16 that at the houses?~~

17 A. I do.

18 Q. Was there -- Would it be different than when he
19 would go into your bedroom at night?

20 A. No.

21 Q. Would the houses be furnished?

22 A. Yes.

23 Q. So would he use the people's furniture to do this?

24 A. Occasionally.

25 Q. Occasionally what else would he do?

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1 A. Take me in the bathroom.

2 Q. Were there times when people were present at the
3 homes that y'all were working on?

4 A. Yes.

5 Q. And would he rape you when the people were home?

6 A. He would.

7 Q. How many times do you remember that happening?

8 A. Uhm, only a few times.

9 Q. Do you have a specific memory of one of those
10 times?

11 A. I do.

12 Q. Can you tell me about that? Tell the jury about
13 that.

14 A. We were working on Mike Norwood's mom's house
15 reroofing it and she was upstairs. We don't know what she was
16 doing. She was home. He just walked in the house and locked
17 the bathroom door.

18 Q. Do you remember anything specific about what he did
19 to you in the bathroom that day?

20 A. He just pulled my pants off and bent me over and got
21 what he wanted and left.

22 Q. So when you say bent you over, did he bend you over
23 anything?

24 A. The counter.

25 Q. The bathroom counter?

1 A. Yes.

2 Q. So was he behind you?

3 A. Yes.

4 Q. Speaking of being behind you, did he ever try to
5 have anything other than vaginal sex with you? Did he ever
6 try to put it in other areas?

7 A. He attempted to.

8 Q. Was he successful in doing that?

9 A. No.

10 Q. Why not?

11 A. I - I had already become so passive at this point
12 because I was scared of what would have happened if I said no,
13 uhm, and I had gotten to a certain point and I just, if I was
14 going to allow this, I can't - I can't allow anything else.

15 Q. So you did enough for him not to be able to have
16 anal sex with you?

17 A. Correct.

18 Q. Other than the time in the bathroom when Ms. Norwood
19 -- How old was Ms. Norwood?

20 A. I can't recall. She was elderly.

21 Q. When she was upstairs and he did that to you in the
22 bathroom, is there another time that you remember where
23 somebody was at a job that y'all were working on?

24 A. I don't think it was a different location. I think
25 it happened two or three times in that same house.

Minor

- DIRECT BY MS. CAVANAUGH

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1 Q. When he would come into your room or when he would
2 rape you at the job site, for instance, when you knew Ms.
3 Norwood was upstairs, did you think about screaming?

4 A. I did.

5 Q. What caused you not to scream?

6 A. I was scared of what could have happened.

7 Q. Now, you said that he always carried a gun. Did he
8 ever directly threaten you with that gun?

9 A. Not directly.

10 Q. Where would the gun be when he would rape you during
11 this period of time?

12 A. He had a gun holster that was attached to his belt
13 so it was always around his waist.

14 Q. So would he -- I mean, would he pull his -- How --
15 Would he pull -- What would he do with his pants when he would
16 rape you?

17 A. Most of the time he would just slide them down a
18 little bit.

19 Q. So the gun was always right below his waist?

20 A. It was.

21 Q. You said he never threatened you with it directly.
22 Did it still scare you that that gun was there?

23 A. I was very scared.

24 Q. Other than him saying to you, you know, this is
25 going to ruin the family, you're going to be homeless if you

1 tell, did he ever make any other threats to you?

2 A. He did.

3 Q. Do you remember what those were?

4 A. He would always say if he can't have me, nobody
5 can.

6 Q. How did that statement make you feel?

7 A. Personally it scared me a lot more because I took it
8 as if he really can't have me and nobody can have me, then I
9 would just - I would be gone.

10 Q. You were home schooled. Your mom did most of your
11 teaching?

12 A. Yes.

13 Q. Were there times during the day at your house that
14 you and James were alone?

15 A. Yes.

16 Q. Can you describe how that would occur?

17 A. We had a large family so they would have to make
18 grocery store runs often. I never was really allowed to go.
19 My dad made my mom take my sister and all the kids with her.

20 Q. And so she would go to the grocery store and she
21 would take your younger siblings?

22 A. Yes.

23 Q. Would **minor** go?

24 A. Yes.

25 Q. And, I mean, was she told to go? Did she want to

Minor

- DIRECT BY MS. CAVANAUGH

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1 go?

2 A. She wanted to go.

3 Q. So you were left behind. Did you want to go with
4 them?

5 A. I did.

6 Q. Did you get to go with them?

7 A. No.

8 Q. Why not?

9 A. Because he said he needed my help. My mom would say
10 stay and help him. We'll be right back.

11 Q. Again, she didn't know that he had been touching you
12 or --

13 A. No.

14 Q. -- sexually assaulting you at this point?

15 A. No.

16 Q. When they would go on errands and you would be left
17 alone, would he use some of those opportunities to rape you?

18 A. He would.

19 Q. Did you all have a long driveway?

20 A. We did.

21 Q. Was it paved?

22 A. We had two separate driveways actually. There was a
23 gravel driveway I guess would be in front of the house and
24 there was a long dirt driveway going to the back of the house
25 where the lake is.

1 Q. Okay. I'm going to show you what's marked as
2 State's exhibit 3 and 4. This road right here, would you
3 consider that part of the driveway?

4 A. No.

5 Q. Okay. So where does the driveway begin?

6 A. The first driveway, there's a car right here, that's
7 a gravel driveway that goes, I guess, I don't know if it's the
8 front or back. It goes around and you parked beside the
9 house.

10 Q. Okay. So would you say the front of the house faces
11 the lake?

12 A. Yes.

13 Q. So the back of the house faces the road?

14 A. Correct.

15 Q. Okay. Where would your mom -- Was there one car or
16 two cars?

17 A. One.

18 Q. Where would she typically park the car?

19 A. It would be on the dirt driveway towards the front
20 of the house.

21 Q. So when cars approach, can you hear them when you're
22 inside?

23 A. You can hear them and see them through the kitchen
24 window.

25 Q. So when he would -- When your mom and your siblings

Minor

- DIRECT BY MS. CAVANAUGH

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1 would go on errands and he would sexually assault you inside
2 the home, where would he do that mostly inside when they were
3 on errands?

4 A. Everywhere. Just depended on where I was at the
5 time.

6 Q. If a car came, could you hear the car from inside?

7 A. Yes.

8 Q. Was there ever a time that your mom came home
9 early?

10 A. Yes.

11 Q. Do you remember a specific time?

12 A. I do.

13 Q. Can you describe that?

14 A. She had just left for the grocery store. He waited
15 until the truck was gone out of the driveway and couldn't see
16 it anymore and I was on the couch and he started assaulting me
17 on the couch and we heard the truck come in and heard a door
18 shut and he jumped up and got in the shower and just acted
19 like he was taking a shower.

20 Q. So you were left on the couch?

21 A. Yes.

22 Q. Were your pants up or down at that point?

23 A. They were halfway. There was a blanket that he
24 threw over me so I just stayed on the couch like I was
25 watching TV.

1 Q. And he jumped up and ran to the shower?

2 A. Yes.

3 Q. So he heard your mom coming before she actually came
4 inside?

5 A. He did.

6 Q. Were there days when he would rape you more than
7 once?

8 A. Yes.

9 Q. How often would that occur when he would do it
10 multiple times during the day?

11 A. Some days it would be several and some days it
12 wouldn't be at all.

13 Q. That was over the course of the year?

14 A. Yes.

15 Q. Did he ever cause you, did that ever cause you pain,
16 physical pain down there?

17 A. Yes.

18 Q. And would it impact how you were able to move or
19 walk?

20 A. Occasionally I would get sores and bruises from
21 him.

22 Q. How were you able to keep the soreness or how were
23 you going to hide the pain from your mom?

24 A. Just acted like I had cramps and I just wanted to
25 lay down.

Minor

- DIRECT BY MS. CAVANAUGH

205

1 Q. What about, you said he caused bruises. How would
2 he cause -- What would he do to cause bruises?

3 A. There would be bruises on my arms and on my inner
4 thighs.

5 Q. What caused the bruises on your arms?

6 A. His hands.

7 Q. From holding you down?

8 A. Yes.

9 Q. And what about the bruises on your, the inside of
10 your thighs?

11 A. From his hips.

12 Q. How did you hide those bruises?

13 A. I just wore pants and baggy clothes to cover them up
14 and the ones that were showing he would ask if they were from
15 him and I would say I don't know and he would just laugh and
16 say I just fell. And that's what he said, I just fell.

17 Q. So he would ask you if those bruises were from
18 him?

19 A. Yes.

20 Q. And he laughed?

21 A. Yes.

22 Q. Now, the bruises that you speak of, were those there
23 everyday?

24 A. Sometimes.

25 Q. But not the entire year?

1 A. Right.

2 Q. So there would be times you had to cover them up and
3 times that you didn't?

4 A. Right.

5 Q. When he would rape you, did he try -- I mean, was it
6 a long drawn out intimate interaction?

7 A. No.

8 Q. How long would these last?

9 A. Not long. Maybe a minute or two.

10 Q. Did he ever try to make it intimate or romantic?

11 A. A few times.

12 Q. When was that, towards the beginning?

13 A. Uhm, I can't remember exactly.

14 Q. Okay. But did he eventually -- Most of the time
15 would you say they were that way or not?

16 A. No.

17 Q. So most of the time they were quick?

18 A. Yes.

19 Q. Did he ever rape you when other people -- I know you
20 mentioned the job sites, but apart from the job sites would he
21 ever do this -- Let me ask you this: Besides putting his
22 penis in your vagina, did he touch you in any other way?

23 A. He tried to occasionally.

24 Q. Would he use his fingers?

25 A. Yes.

Minor

- DIRECT BY MS. CAVANAUGH

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1 Q. Where would he put his fingers?

2 A. Inside of me.

3 Q. Okay. Would he touch your breasts?

4 A. Yes.

5 Q. What about your back area, your bottom?

6 A. Occasionally.

7 Q. Would he do any of these things when other people
8 were around like your family?

9 A. They would be in the area for say, I mean, if it was
10 summer, we were always swimming and laying in the sun. While
11 my mom and the kids were out swimming occasionally he would
12 drag me up to the house and do it then.

13 Q. Do you remember what room he would do it when they
14 were out by the lake?

15 A. Not exactly. Just depending on the day.

16 Q. Would he have a view of the lake from where he would
17 do it?

18 A. Sometimes.

19 Q. Did you ever go out of town with him by yourself?

20 A. I did.

21 Q. Where did you all go?

22 A. We took a trip to Kannapolis.

23 Q. Where is Kannapolis?

24 A. I believe North Carolina. We had bought another
25 truck prior to going and the engine, I believe, blew up and he

1 was going to get it fixed and so we took it to Kannapolis to
2 get a new engine.

3 Q. Did you stay overnight?

4 A. We did.

5 Q. Where did you stay?

6 A. It was at a hotel.

7 Q. Okay. Did he do anything to you at the hotel?

8 A. He did.

9 Q. Do you remember anything about that hotel like where
10 it was or what was around it?

11 A. Uhm, I remember it was right by the - there was a
12 race car track in the area. It was near that.

13 Q. Did you -- I mean, had you already gone through
14 puberty by the time you were 16?

15 A. Yes.

~~16 Q. So you had already started your period?~~

17 A. Yes.

18 Q. Would he use condoms?

19 A. He did briefly a few months in then stopped.

20 Q. So when he first started though did he wear those?

21 A. No.

22 Q. What caused him to start using the condoms for that
23 brief period?

24 A. He had mentioned that it feels too good and he just
25 can't help himself sometimes.

Minor

- DIRECT BY MS. CAVANAUGH

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1 Q. But did you say anything to him to cause him to
2 start wearing condoms?

3 A. I don't remember.

4 Q. Was your period late one time?

5 A. Yes.

6 Q. Did you tell him that?

7 A. I did.

8 Q. What was his response to you when you told him
9 that?

10 A. He said if you don't start in a few days, we'll go
11 take care of it.

12 Q. So after that he began to wear condoms?

13 A. Briefly.

14 Q. But he stopped?

15 A. Yes.

16 Q. Did he tell you why he stopped?

17 A. No.

18 Q. Did he ejaculate in you?

19 A. Uhm, maybe a few times he might have.

20 Q. What did he usually do though?

21 A. He would pull out and go off to the side or let it
22 go on me.

23 Q. And would he clean it up?

24 A. Immediately he would get a towel and wipe everything
25 up and go throw it in the laundry room.

1 Q. So you said, would he do that almost every time?

2 A. Yes.

3 Q. So, for instance, at a job site what would he -
4 would he try to clean it up then?

5 A. Yes.

6 Q. What would he use?

7 A. Most of the time toilet paper because we were in the
8 restroom.

9 Q. Were there times that you were on your period that
10 he would still rape you?

11 A. Yes.

12 Q. So he didn't care if you were on your period?

13 A. He didn't care.

14 Q. Were there places that you would go to try to escape
15 him?

16 A. Yes.

17 Q. Where?

18 A. I would go out to the dock because it was in the
19 open. I felt like I was safe out there.

20 Q. When you refer to the dock, I'll show you what's
21 marked as State's Exhibit 5. Is this the dock that you are
22 speaking of?

23 A. Yes.

24 Q. So you would go out to try to get away from him on
25 the dock?

Minor

- DIRECT BY MS. CAVANAUGH

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1 A. Yes.

2 Q. Did you have neighbors?

3 A. We did.

4 Q. Who are your neighbors?

5 A. The Penrods.

6 Q. Who lived in the house with the Penrods? Do you
7 remember their first names?

8 A. Martha Penrod was the wife. They had daughters,
9 grown daughters and I believe one of their daughters lived
10 with them. They had a couple people living there but I don't
11 remember all of their names.

12 Q. You said Martha Penrod. How old is Martha?

13 A. I didn't know at the time. She's maybe in her 50's
14 or '60s.

15 Q. Did she have a porch?

16 A. She did.

17 Q. Can you see that porch from the dock?

18 A. You can.

19 Q. So the porch has a view to the dock?

20 A. Yes.

21 Q. Would she spend a lot of time on that porch?

22 A. She would.

23 Q. Is that part of the reason you went to the dock
24 sometimes?

25 A. Yes. I knew she would be out there so I knew eyes -

1 eyes were going to be looking so I felt more safe.

2 Q. So did you go anywhere else besides the dock to try
3 to get away from him?

4 A. Not normally. That was the only place in the
5 open.

6 Q. Did you all have a hammock in the backyard?

7 A. We did.

8 Q. Did he -- Did you lay in the hammock often?

9 A. I did.

10 Q. Would he ever lay with you?

11 A. Yes.

12 Q. Were there times that anything happened to you even
13 when you would go to the dock?

14 A. Occasionally he would smack my butt or just hug on
15 me and rub on me.

16 ~~Q. Did anything ever happen in the water?~~

17 A. Yes.

18 Q. So did he try -- Did he touch you in the lake?

19 A. Yes.

20 Q. Can you describe -- How many times did that happen
21 that you remember?

22 A. I can remember just once.

23 Q. Can you describe that particular time?

24 A. I can't remember what time it was, but it was just
25 him and I were at the house and the neighbors were gone in

Minor

- DIRECT BY MS. CAVANAUGH

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1 their boat for the day. They had just left. He saw them
2 leave and I was in the water and he pulled me under the dock
3 and raped me in the water.

4 Q. When you say the neighbors had just left in the
5 boat, the Penrods?

6 A. Yes.

7 Q. Was Martha with them that day?

8 A. I believe so.

9 Q. Did y'all have a boat?

10 A. We did.

11 Q. Did you all go in the boat as a family?

12 A. We did.

13 Q. What kind of boat was it?

14 A. We had a pontoon boat.

15 Q. Would you ever go on the boat by yourself with
16 James?

17 A. Yes.

18 Q. And would anything happen out on the boat?

19 A. Yes.

20 Q. How many times -- Do you know how many times that
21 happened?

22 A. We went fishing a lot in the evenings but it
23 happened every time we went out.

24 Q. Would it just be you that would go fishing?

25 A. Yes.

1 Q. Didn't your brothers want to go?

2 A. They did.

3 Q. Would he take them?

4 A. No.

5 Q. Why?

6 A. Uhm, they were littler, made too much noise he said
7 and he wanted to get some dinner for tomorrow night so he just
8 took me.

9 Q. So he wouldn't let his sons go with y'all?

10 A. No.

11 Q. Or at least sometimes he wouldn't?

12 A. Right.

13 Q. Did you ever -- Did you think about running away?

14 A. All the time.

15 Q. Did you ever?

16 A. No.

17 Q. Did you have anywhere to go?

18 A. I didn't.

19 Q. What about -- You said -- Did he -- Other than that
20 first time that you remember about oral sex, did he continue
21 to perform oral sex on you, too?

22 A. He tried occasionally but I just - I couldn't.

23 Q. Was it easier for you to fight him off when he tried
24 to do that?

25 A. It was.

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- DIRECT BY MS. CAVANAUGH

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1 Q. Did he ever show you any type of pornography or
2 anything like that?

3 A. He did.

4 Q. When would he show you that?

5 A. In the evenings when we were alone.

6 Q. Where was your family when he would show you
7 those?

8 A. I can't remember. I don't remember.

9 Q. Now, you were 16 throughout this time. Were you and
10 minor allowed to date?

11 A. No.

12 Q. What was the rule regarding you and minor being
13 allowed to date?

14 A. We just were too young for boys and not allowed to
15 talk to them, not allowed to look at them without thinking
16 that we were doing something wrong so we just -- We didn't
17 know anybody anyway.

18 Q. Because you were home schooled?

19 A. Right.

20 Q. Did you have any girlfriends?

21 A. We had a few that lived in Summerville.

22 Q. Would they visit you all?

23 A. Uhm, they visited once or twice.

24 Q. Were you allowed to go visit them?

25 A. No.

1 Q. What about **minor two**

2 A. No.

3 Q. Did he act controlling in any way with your
4 girlfriends?

5 A. Very. He - every time we talked on the phone, he
6 would be right there listening. He would go through our
7 messages, go through searches on the computer just to make
8 sure that we didn't - that we weren't faking girl names for
9 boys and so he would always keep a close eye on us.

10 Q. And did he -- You said you had -- Who were some of
11 your -- How many close girlfriends did you have during that
12 period?

13 A. Two.

14 Q. What were their names?

15 A. Carol Ann and Erica.

16 Q. Carol Ann?

17 A. Yes.

18 Q. And Erica?

19 A. Mm-hmm.

20 Q. Where did they live?

21 A. Summerville.

22 Q. You said he was controlling even with your
23 girlfriends. Did he ever do anything to try to mess up or
24 control even relationships with your girlfriends?

25 A. He did. He was worried that I was going to talk to

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- DIRECT BY MS. CAVANAUGH

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1 them and tell them. He eventually --

2 Q. How did you know that he was worried that you were
3 going to tell them?

4 A. Uhm, by the time this happened it's been a lot.
5 It's been going on and my attitude started to change. I was
6 angry all the time. I was depressed. I couldn't control what
7 I said and I just - I was really upset and he knew. He knew
8 how upset I was and he was just getting really paranoid that I
9 was going to tell somebody.

10 Q. So would he say things directly to you about not
11 telling your girlfriends?

12 A. Yes.

13 Q. And so you were getting ready to say something about
14 what he did one time before I interrupted you. Can you
15 explain that?

16 A. Yes. One of my friends Carol Ann, he went online
17 and found a porn video that looked similar to my friend and
18 tried to convince me that she was doing porn and I couldn't
19 talk to her anymore.

20 Q. So, I mean, was it even her in the video?

21 A. No. It didn't look anything like her.

22 Q. How did he use that to keep you from being friends
23 with her?

24 A. Because he could. He was my dad. He could say no.
25 I didn't have a choice.

1 Q. So did he tell your mom that Carol Ann was in a porn
2 video?

3 A. Yes. He convinced her that she was so like maybe
4 she shouldn't be talking to her because she didn't know
5 anything. She just agreed with him.

6 Q. And that wasn't even her?

7 A. Right.

8 Q. What about Erica? Did he do anything to mess up
9 your relationship with Erica?

10 A. I can't remember specifics. He just -- He didn't
11 like her mom and so they were on drugs and stuff and he didn't
12 want us hanging out with her so we just kind of fell apart.

13 Q. Did he ever do anything to make sure that you didn't
14 tell Erica what was going on?

15 A. Uhm, he just never gave me a chance to be alone with
~~16 her. She actually visited one time and he was -- he had~~
17 convinced my mom that me and her were doing stuff in my
18 bedroom and so he put a tape recorder under my bed so he could
19 listen to what we were doing and what we were saying.

20 Q. How did you find out about that tape recorder?

21 A. We found it.

22 Q. Did he -- Did you -- Did anybody confront him about
23 the tape recorder?

24 A. I can't remember. I think I found out from my mom
25 that she had came to me and she was like look, he --

Minor

- DIRECT BY MS. CAVANAUGH

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1 MS. GOOD: Objection, Your Honor. Hearsay.

2 THE COURT: All right. Sustained.

3 BY MS. CAVANAUGH:

4 Q. Did James ever give you or your siblings any
5 gifts?

6 A. He did.

7 Q. What type of gifts?

8 A. He gave me and my twin sister, uhm, rings, promise
9 rings.

10 Q. Was that when y'all lived in Camden?

11 A. Yes.

12 Q. Do you remember the circumstances around when he
13 gave you the promise rings? What were y'all doing?

14 A. We all went out to lunch, me and my sister and
15 James. We were sitting down and he said I'll be right back.
16 He ran out of the restaurant and came back a few minutes later
17 with the rings.

18 Q. Did he say anything when he gave you those rings?

19 A. He said that they were promise rings to stay pure
20 until marriage.

21 Q. And he gave you both these rings?

22 A. He did.

23 Q. You all were in front of each other when he gave you
24 the rings?

25 A. We were side by side. He was in between us.

1 Q. Now, did your family have friends that you would
2 hang out with as families?

3 A. Yes. He had met some new friends, the Harrelsons.

4 Q. The Harrelsons?

5 A. Yes.

6 Q. Where did they live?

7 A. They lived a few miles away. They had a farm.

8 Q. Did they have children?

9 A. They did.

10 Q. How many?

11 A. I think seven.

12 Q. Do you remember all of their names?

13 A. I don't.

14 Q. Do you remember the age range of the children?

15 A. Uhm, they had, I think three of them were under the

~~16 age of 10 and there was maybe an 11, 12, and 13 year old. I~~

17 can't remember their ages exactly.

18 Q. Were they boys and girls?

19 A. Yes.

20 Q. Okay. Were your parents friends with their
21 parents?

22 A. Yes.

23 Q. Would they come to your house?

24 A. Uhm, the majority of the time we would go to their
25 house.

Minor

- DIRECT BY MS. CAVANAUGH

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1 Q. What was their house like? What kind of things were
2 there to do there?

3 A. They had a lot of land. They had horses. Lots of
4 things to do. Four wheelers. It was nice going over there.

5 Q. You said they had horses, too?

6 A. Yes.

7 Q. Were you ever alone by yourself with any of those
8 kids?

9 A. No.

10 Q. Did your dad James, did he ever say anything to you
11 about you hanging out with those children?

12 A. He did.

13 Q. What was that?

14 A. There was their eldest son, I can't remember if he
15 was 13 or 14, and since he was the eldest he got along better
16 with my sister and I, and he didn't like us hanging out with
17 him and there were so many kids nobody was ever alone because
18 we were always together. He just didn't think it was
19 appropriate for us to be talking to him.

20 Q. And how old was this little boy?

21 A. 13 or 14.

22 Q. He felt that way even though y'all were mostly
23 around other people?

24 A. Yes.

25 Q. Was there anything whatsoever romantic about you and

1 Henry?

2 A. No.

3 Q. What about **minor** and Henry?

4 A. No.

5 Q. Okay. So I'm going to take you towards the end,
6 towards July, August of 2012.

7 A. Okay.

8 Q. When is your birthday?

9 A. **[REDACTED]**.

10 Q. So most of the summer of 2012 how old were you?

11 A. 17.

12 Q. Okay. Did you start to notice a change in your
13 behavior towards around the summer?

14 A. I did.

15 Q. Can you describe that?

16 ~~A. I became very distant. I wouldn't talk to anybody~~

17 and if they talked to me, I would just get mad and argue and
18 walk away. I was just so emotionally confused. I didn't know
19 what to do anymore so I just kept to myself and stayed away
20 from everybody.

21 Q. Why did you -- Why were you feeling this way?

22 A. I started to feel helpless. I felt like this was
23 going to last forever and that I would never have a life.

24 Q. Did your mom -- Was he continuing to sleep in your
25 room?

Minor

- DIRECT BY MS. CAVANAUGH

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1 A. Yes.

2 Q. Did your mom do anything to try to prevent that from
3 happening?

4 A. She ended up moving her bed upstairs and she went in
5 the big bedroom upstairs next to mine.

6 Q. So she moved her bed from the master bedroom
7 upstairs?

8 A. Yes.

9 Q. So I'm going to show what's been introduced as
10 exhibit 20. Is that the big room that she moved into?

11 A. Yes.

12 Q. Which bed was hers?

13 A. I believe this one.

14 Q. Okay. So she physically moved her bed from the
15 master bedroom downstairs?

16 A. Yes.

17 Q. Why did she do this?

18 A. To try to get him to come back to her bed.

19 Q. Okay. So you said you started feeling helpless
20 around the summer of 2012?.

21 A. Yes.

22 Q. This is after the year that he's been raping you?

23 A. Yes.

24 Q. Did you eventually tell your mom?

25 A. I did.

1 Q. Did you also get sick during the summer?

2 A. I did.

3 Q. What was your condition? What did you have?

4 A. I had gotten mono.

5 Q. How did that make you feel? I mean, were you
6 tired?

7 A. I was stuck in bed for a few weeks.

8 Q. Did he continue to rape you while you had mono?

9 A. He was very touchy but I can't remember him ever
10 doing it while I was sick.

11 Q. Okay. Did he ever try to check for symptoms or
12 anything like that?

13 A. He did. He was rubbing on me and said he found a
14 lump in one of my breasts and he didn't know how to tell my
15 mom because he knew that he shouldn't have been rubbing on me
~~16 anyway and he ended up telling her. He said it was no big~~
17 deal. That I had come to him about it asking him to feel it
18 and that's what he told her.

19 Q. You said you felt helpless and it started to just
20 get overwhelming. Did you feel like you had pressure on
21 you?

22 A. Yes.

23 Q. What kind of pressure?

24 A. Uhm, I just -- I was -- I was so scared of losing my
25 family and I felt like if I were to run away, that they would

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1 be ruined. If I were to say anything, they would be ruined.

2 And I just -- I didn't know what to do.

3 Q. Do you remember the last time that he raped you or
4 that he tried to?

5 A. Uhm, not specifically. Uhm, I believe it was maybe
6 a week or two before I finally said anything.

7 Q. So going to that day, what was going on that day
8 that you told your mom? Describe how the day was progressing.
9 What were the plans?

10 A. Uhm, well, that evening there was plans to go to the
11 Harrelsons to ride horses and my mom and dad were arguing. I
12 don't know what about. But my mom had came into my bedroom
13 and she continued to say that --

14 MS. GOOD: Objection, Your Honor. Hearsay.

15 MS. CAVANAUGH: I'll rephrase the question.

16 THE COURT: Thank you. Your objection is sustained.

17 Thank you, Ms. Cavanaugh. Rephrase the question.

18 BY MS. CAVANAUGH:

19 Q. What was the plan originally?

20 A. To go to the Harrelsons.

21 Q. And at some point did that plan change?

22 A. Yes.

23 Q. Were you allowed to go to the Harrelsons that
24 night?

25 A. No.

1 Q. Did James say anything to you about why you couldn't
2 go?

3 A. No.

4 Q. But you were just told that you couldn't go?

5 A. Right.

6 Q. And were you upset?

7 A. I was very.

8 Q. Why were you upset?

9 A. Uhm, because he had convinced my mother of the facts
10 that he was - not the facts, but what he thought was going on.
11 That made me feel like she was always going to - that she was
12 never gonna catch it. That she was never gonna be there
13 because he was so manipulative he got his way and he did and
14 that's why I was upset is because she was convinced of what
15 was going on with the Harrelsons.

~~16 Q. And you said earlier that he was jealous of the~~
17 little 13 year old boy, right?

18 A. He was extremely jealous.

19 Q. Was **minor** going to be able to go?

20 A. Yes.

21 Q. Was anybody going to stay back with you that day?

22 A. No.

23 Q. What about James, was he going to stay back
24 with you?

25 A. No.

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1 Q. So what did you do when you found out that you
2 weren't allowed to go?

3 A. I - I ran outside and stood at the end of the dock
4 and I just cried. I was out there for a few hours just trying
5 to figure out what to do. I was debating on just walking
6 away. I was debating on jumping in the water and just ending
7 it there because I was desperate at this point.

8 Q. Did your mom come out to the dock?

9 A. She did.

10 Q. And over the course of this year without saying
11 specifically what she was asking you, did she appear worried
12 about your change in behavior?

13 A. Yes.

14 Q. Did she try to ask you what was going on?

15 A. She did.

16 Q. Were you able to tell her over the course of that
17 year?

18 A. No.

19 Q. Did you tell her that afternoon?

20 A. Yes.

21 Q. And what did you say?

22 A. She asked me what was wrong. That I couldn't be
23 this upset over not being allowed to go over there and my
24 first response was I can't tell you because I knew if I said
25 that, she wouldn't leave me alone because then she would know

1 something was wrong.

2 Q. And you wanted her to stay?

3 A. Yes. I wanted to tell her so bad. After a few
4 minutes I calmed down and I told her that he has been touching
5 me and it's been going on for a while.

6 Q. What was her reaction when you said that?

7 A. She just started crying and she hugged me and she
8 just - she was really angry and upset and then she just, she
9 just wanted to go up there and just take over herself. And I
10 said we need you. I need you. And she ended up, she had a
11 phone on her and from my understanding she called --

12 MS. GOOD: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MS. CAVANAUGH:

15 Q. She had - she had her phone?

16 A. Yes.

17 Q. And did she call -- Was she in front of you?

18 A. She had walked away so that she was not in view of
19 the door.

20 Q. What door are you talking about?

21 A. The door facing the lake because he was watching.

22 Q. Okay. From the dock where you were could you see
23 him?

24 A. Yes.

25 Q. Okay. That particular day did he have, did he carry

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1 his gun?

2 A. He had it on him earlier that morning.

3 Q. Did you stay out on the dock?

4 A. Yes.

5 Q. Did you say anything to -- You said that you told
6 her what had been happening. Did you give her significant
7 detail at that point?

8 A. No.

9 Q. But you told her enough --

10 A. Yes.

11 Q. -- for her to know what had been happening?

12 A. Yes.

13 Q. After you told her, did you say anything else about
14 -- I mean, you said she was hysterical, right?

15 A. Yes.

16 Q. What was your concern at that point?

17 A. I didn't know - I didn't know what was going to
18 happen. I didn't know if he, he knew, you know, that I had
19 told her. I didn't know if he knew. I didn't know if he had
20 his gun on him at this point. I didn't know what was going to
21 happen.

22 Q. So what did you say to your mom after you told
23 her?

24 A. I just -- That I needed her and that she just has to
25 stay with us.

1 Q. Okay. And did you stay on the dock?

2 A. I did.

3 Q. And she walked away?

4 A. She did.

5 Q. Before she walked away, did she calm down?

6 A. Yes.

7 Q. Had you told James or given him any indication that
8 you were telling that day?

9 A. No.

10 Q. What happened after she walked up towards the
11 house?

12 A. Uhm --

13 Q. Did you stay on the dock?

14 A. I stayed on the dock.

15 Q. Did the police come?

16 A. They did.

17 Q. Did you see when they arrived?

18 A. I did not see when they arrived.

19 Q. When was the first time that you noticed that the
20 police were there?

21 A. When I turned around, I heard footsteps on the dock
22 and he was walking down towards me.

23 Q. Who is "he"?

24 A. James.

25 Q. So is that the first time you saw the police?

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1 A. Yes.

2 Q. Where were they, as he's walking down the dock --
3 I'll show you real quickly --

4 MS. CAVANAUGH: May the witness stand up, Your
5 Honor?

6 THE COURT: She may.

7 BY MS. CAVANAUGH:

8 Q. State's Exhibit number 5, where were you sitting?

9 A. I was standing here.

10 Q. Okay. And when you turned around, where was he?

11 A. He was up right somewhere (indicating.)

12 Q. And at that point had the police reached -- Where
13 were the police when you turned around?

14 A. They were climbing the stairs. It was steep. They
15 were on the first flight coming down.

16 Q. Okay. You can sit back down.

17 A. (Witness complies.)

18 Q. Did James have the opportunity -- Did he say
19 anything to you before the police got down there?

20 A. He did.

21 Q. What did he say?

22 A. He - he saw them walking down and he leaned down and
23 he said, I wish you would have warned me so I could have said
24 bye to the kids, and that was it.

25 Q. Did you say anything to him after he said that?

1 A. I was - I was - I was crying so hard I couldn't
2 catch my breath. I didn't say anything.

3 Q. Did you tell him that you told your mom?

4 A. No.

5 Q. After he said that to you, what did you see him do
6 next?

7 A. He just - he began emptying his pockets, took off
8 his rings, his wallet and his belt and he - he, once he took
9 those off, I looked out at the lake. I didn't turn around to
10 see what they were going to do. I just, I turned away.

11 Q. Did you ever hear the police tell him why they were
12 there?

13 A. I didn't hear anybody talk about anything.

14 Q. Okay. When did you come off the dock?

15 A. Uhm, I think I was down there for another five to

~~16 ten minutes. I can't remember exactly how long I was down~~
17 there. One of the deputies or two of them, I can't remember
18 how many or who, came down, asked me to come up and wait in
19 the living room.

20 Q. Did you have any further interaction with James at
21 that point?

22 A. No.

23 Q. Were you asked to give a statement?

24 A. Yes.

25 Q. Was the deputy sitting there asking you questions?

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1 A. He asked -- I can't remember what questions but I
2 remember being asked a few questions.

3 Q. Okay. So when you gave that statement, did you know
4 what to write? I mean, did he tell you - did he give you any
5 indication as far as what you were supposed to write?

6 A. I had no idea.

7 Q. What was your understanding as far as what you were
8 supposed to do with the paper that he handed you?

9 A. Uhm, to write down what had been happening. But at
10 this point there was so much information and I didn't know
11 what to say so I thought that they wanted to know about the
12 first time and I felt that's what they wanted so that's all I
13 gave them.

14 Q. So you wrote about the first time?

15 A. Yes.

16 Q. And did you say -- Did you give the general concept
17 of what had been happening?

18 A. Yes.

19 Q. Did you say that it had occurred constantly?

20 A. Yes.

21 Q. And did you give the location of some of the times
22 that it occurred?

23 A. I think so.

24 Q. Okay. How would you describe your -- How did you
25 feel? How was your emotional state that afternoon?

1 A. I felt like I was in shock.

2 Q. And again this is the first time that you had ever
3 told anybody about what had been happening?

4 A. Yes.

5 Q. Did you go -- Where did you go? Did you go to the
6 Sheriff's Office or anywhere after that day?

7 A. I can't remember if we did. I believe we stayed at
8 the house.

9 Q. Okay. Did you go to the hospital a couple days
10 later?

11 A. Yes.

12 Q. And was that in Kershaw?

13 A. Uhm, I think so.

14 Q. Do you remember what type of -- Did they perform
15 tests or anything like that there?

~~16 A. Uhm, I -- I can't remember what exactly they did.~~

17 Q. But was it related to -- I mean, did you go there
18 because of what had been happening to you?

19 A. Yes.

20 Q. Uhm, did you go to see another doctor in Columbia?

21 A. I did.

22 Q. And was that a couple of days later?

23 A. I believe so.

24 Q. What kind of exam did you have at the doctor in
25 Columbia?

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1 A. It was a pap smear and I believe she did a little
2 bit of blood work.

3 Q. And so did you have to take your clothes off and
4 everything?

5 A. Yes.

6 Q. Was that the first exam you have ever had like
7 that?

8 A. Yes.

9 Q. Was that pap smear performed at the doctor the first
10 time?

11 A. I don't think so.

12 Q. Okay. Did you also go to a place in Laurens?

13 A. Yes.

14 Q. Do you remember the name of that place?

15 A. The CARE House.

16 Q. And did you know why you were going there?

17 A. I knew I was going to talk to somebody. That's all
18 I knew.

19 Q. Okay. Did you, in fact, talk to someone at The CARE
20 House?

21 A. I did.

22 Q. About how long -- What did you talk to her about?

23 A. We - we - we discussed what had been happening. Uhm

24 --

25 Q. Related to?

1 A. Related to James.

2 Q. Okay. And about how long did you spend at The CARE
3 House?

4 A. We were there a long while. I think I was maybe
5 talking to her an hour, maybe more. I can't remember exactly
6 but I know we were talking for a good bit.

7 Q. Okay. And to the best of your ability, did you tell
8 her everything that had been going on over the course of that
9 year?

10 A. Yes.

11 Q. Now, the person, the father person James, is he in
12 the courtroom today?

13 A. He is.

14 Q. And can you point out and describe what he's
15 wearing?

16 ~~A. He's right there. He's wearing a blue sweatshirt.~~

17 Q. And is this the first time --

18 MS. CAVANAUGH: Your Honor, let the record reflect
19 she's identified the defendant.

20 THE COURT: So reflected.

21 BY MS. CAVANAUGH:

22 Q. Is this the first time that you have seen him since
23 that day on the dock?

24 A. Yes.

25 Q. Did he attempt -- Did he contact you after he was

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1 arrested that day?

2 A. No.

3 Q. Okay. Do you know if he tried to?

4 A. I don't know.

5 Q. Okay. **minor one** did you want to have sex with your
6 father over that period?

7 A. No.

8 Q. Did you -- Did he ever try to hit you or display any
9 sort of direct violence against you?

10 A. No.

11 Q. But you were still scared of him?

12 A. Yes.

13 Q. And why were you so scared?

14 A. He was very moody. You never knew if he was going
15 to be happy. You never knew if he was going to be mad. And
16 you just didn't know what he was going to do or say next. So
17 it was easier to go along with it than to say no and deal with
18 the consequences.

19 Q. And the gun that was always around his waist, before
20 he started sexually assaulting you, did he carry a gun?

21 A. No.

22 Q. Is there a gun in the house?

23 A. Yes.

24 Q. Before?

25 A. No. Not before.

1 MS. CAVANAUGH: Be the Court's indulgence. Thank
2 you, **minor one** Answer any questions from Ms. Good.

3 THE COURT: Ms. Good, before we go into cross
4 examination, it is now ten to one. We're going to take a
5 lunch break and come back for your cross examination.
6 Let's get back here at - let's get back here at 2:10.
7 That should give you plenty of time to go out and grab
8 some lunch and get back here by 2:10. Thank you. And
9 Remember, don't discuss this case in the meantime. Thank
10 you very much.

11 (Whereupon, the jury was released for lunch recess.)

12 THE COURT: **minor one** you're off the stand and taking
13 a lunch break. You're still under oath so you cannot
14 talk to anyone about your testimony. You can't talk to
15 your lawyers about your testimony. You can't talk to
16 ~~your mother, your sister. Talk to no one. You can talk~~
17 about other things during lunch. Just don't talk about
18 your testimony. And we'll get you back on the stand
19 after lunch for cross examination. One other thing I
20 want to make sure that we're all clear on is the jury is
21 now sworn, the trial has started, so the defendant
22 remains in custody throughout the trial.

23 All right. We will be back at 2:10.

24 MS. GOOD: Your Honor, just real quickly, what is
25 the plan for scheduling today so I can make sure for

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1 child care purposes.

2 THE COURT: Sure. So we'll be doing cross
3 examination. Do we have other witnesses after Ms.
4 **minor one** I know the expert is tomorrow morning, I
5 think.

6 MS. CAVANAUGH: Yes, Your Honor. So this afternoon
7 we intended to call **minor one** mother this afternoon, Tammy
8 Miller Blessing is her name and then Investigator
9 Knafelc, **minor one** sister as well as two people from SLED,
10 so we - and then also Dr. Luberoff.

11 THE COURT: So you all have plenty of witnesses for
12 this afternoon. I'm just going to have to do a cut off
13 time.. I, too, have child care issues so we will probably
14 stop at the latest about 5:30.

15 MS. CAVANAUGH: Just to be clear when you said he's
16 taken into custody, that starts now?

17 THE COURT: Yes.

18 MS. GOOD: Do they have lunch for him?

19 THE COURT: I'm sorry.

20 MS. GOOD: Do they have lunch for him?

21 THE COURT: I need to ask that question to the -- Do
22 we have someone from the jail here? Someone will have to
23 bring him lunch then. Okay. We are at lunch break then.

24 (Luncheon recess.)

25 BAILIFF: All rise.

1 THE COURT: Thank you. Please be seated. Anything
2 before we bring the jury in?

3 MS. CAVANAUGH: Yes, Your Honor. Our next witness
4 is **minor one** mother Tammy so just to bring back up the
5 pretrial ruling regarding any mention of the defendant's
6 drug abuse history based on - and during our preparation
7 of the case obviously that was discussed in the context
8 of their relationship. It's my understanding from Tammy
9 that when she used drugs, it was with the defendant so I
10 just want to prevent --

11 THE COURT: Okay. Well, as I ruled yesterday the
12 drug use of the defendant is not allowed unless the
13 defense opens the door to that testimony so if it becomes
14 an issue based on the opening the door argument, which I
15 think is where you're going.

16 MS. CAVANAUGH: Yes. I was just trying to prevent
17 any sort of surprise.

18 THE COURT: Surprise to anyone.

19 MS. CAVANAUGH: Yes.

20 THE COURT: Okay. I think I understand that. Ms.
21 Good, do you understand that as well?

22 MS. GOOD: Yes.

23 THE COURT: All right. Let's bring the jury back in
24 please. Thank you.

25 (Whereupon, the jury returned to the courtroom at

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1 2:15 p.m.)

2 THE COURT: All right. Welcome back everyone. I
3 hope you enjoyed your lunch, and we will resume the trial
4 with Ms. Good on cross examining Ms. **minor one**

5 CROSS EXAMINATION

6 BY MS. GOOD:

7 Q. Good afternoon. You stated you grew up doing a lot
8 with your dad, correct?

9 A. Correct.

10 Q. He taught you how to hunt and fish?

11 A. Yes.

12 Q. How old were you when you started hunting with
13 him?

14 A. I don't remember.

15 Q. Approximately?

16 A. Uhm, we were always outside so it's kind of hard to
17 say what age because we were always outside doing things so I
18 don't know exactly what age.

19 Q. But is was before July of 2011 or whatever? Well
20 before any of the alleged sexual assaults?

21 A. Yes.

22 Q. And what did you all hunt?

23 A. Uhm, I - I don't know. I mean, it was like I said,
24 we were always outside doing things. I don't remember.

25 Q. So did you go hunting with your father or not?

1 A. We -- I think maybe once we went hunting for deer
2 but other than that I can't remember.

3 Q. And you used a gun to hunt for deer?

4 A. Uhm, I never shot it but...

5 Q. But your dad had one?

6 A. Mm-hmm.

7 Q. Yet you testified earlier that you never saw your
8 dad with a gun before July of 2011 when the sexual assaults
9 started?

10 A. I don't remember saying that he never held one
11 because it never was mentioned about hunting or carrying
12 weapons during hunting before.

13 Q. But he did have weapons in the home before 2011?

14 A. No. He did not.

15 Q. So what gun did he use to hunt with?

16 A. I don't know.

17 Q. So you don't know where you went hunting, what you
18 hunted for or where the gun came from?

19 A. I don't remember. I was younger.

20 Q. How much younger? You say you didn't know how young
21 you were. How much younger.

22 A. I don't -- I don't know.

23 THE COURT: Let's make sure we wait for each other.

24 Answer the question before we ask another question.

25 Thank you.

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1 BY MS. GOOD:

2 Q. So you can't remember any of those details from your
3 childhood?

4 A. Not specifically.

5 Q. You can't remember where you went to elementary
6 school either, can you?

7 A. I can't.

8 Q. Do you remember who your elementary school teachers
9 were?

10 A. No.

11 Q. Do you remember any of your teachers?

12 A. Not specifically.

13 Q. You stated y'all were here on vacation, correct?

14 A. Correct.

15 Q. In Camden and everybody was staying in the camper?

16 A. Correct.

17 Q. And you made the statement when you were testifying
18 we decided to move to Camden. Who is "we"? Who made that
19 decision?

20 A. My parents.

21 Q. So were you part of that decision?

22 A. Not at the moment, but in general they come to us
23 and made sure that it was okay so that's why I refer to them
24 as we, the family.

25 Q. So your mother was part of that decision?

1 A. Yes.

2 Q. And your dad was the only one who worked, correct?

3 A. Correct.

4 Q. He was the only one that did anything for the family
5 to bring money in?

6 A. Right.

7 Q. And you stated he worked construction, right?

8 A. Yes.

9 Q. So those jobs are kind of all over the place?

10 A. Yes.

11 Q. So you had to move continuously because of him being
12 the only one that worked, correct?

13 A. Correct.

14 Q. So it wasn't that he couldn't hold a job. It was
15 that he had to go to different places for these jobs so that
16 he could work?

17 A. From my understanding was that he had to go to new
18 places to find more work or different work.

19 Q. And you stated the first time that this happened
20 your father was outside with friends, right?

21 A. A friend.

22 Q. A friend. Do you remember his name?

23 A. I don't.

24 Q. Okay. And you stated that ultimately he came in.
25 You didn't have a phone. You couldn't call for help or

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- CROSS BY MS. GOOD

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1 anything, right?

2 A. Correct.

3 Q. At what age did you get a phone?

4 A. Me and my sister began sharing a phone I think maybe
5 a few months after moving to Camden. I can't remember
6 exactly.

7 Q. So when you all made the decision to move to Camden,
8 you're not aware if you had a phone or not or sharing at the
9 time with your sister, correct?

10 A. Whenever we did get a phone, we did share it. We
11 never had our own.

12 Q. Do you remember exactly when you got your phone with
13 your sister?

14 A. I don't.

15 Q. And do you remember the night of this first
16 allegation in the camper, you stated you just woke up and he
17 was having oral sex with you. What were you wearing that
18 night to bed?

19 A. I was wearing some pajama shorts and a T-shirt.

20 Q. You didn't feel him taking shorts off or underwear
21 off?

22 A. I did not.

23 Q. You stated you dozed back off after that. Just, you
24 were not fully asleep because you just couldn't sleep because
25 of this traumatic event which had just happened, correct?

1 A. Correct.

2 Q. Yet again you didn't feel anybody taking your pants
3 off or do anything to be having sex with you before you woke
4 up?

5 A. Uhm, it happened so fast. I woke up to it as it was
6 happening.

7 Q. But your pants were already off, correct?

8 A. No. They were back on.

9 Q. So earlier you testified when you woke up that
10 second time, he had already taken your pants off. Were they
11 on or were they off when you woke up?

12 A. When I woke up, they were half way down.

13 Q. And you didn't feel him come into the room or --

14 A. I did not.

15 Q. -- begin to take your pants off?

16 A. I did not hear him come into the room. Like I said,
17 it happened so fast. He just did it. There was no a minute
18 here, a minute there to figure out exactly what was happening
19 and what was going on.

20 Q. But you didn't feel him at all prior to that?

21 A. Not until he was holding me.

22 Q. And you stated that the second time it happened you
23 think it was upstairs, correct, at the new house where y'all
24 were working?

25 A. The second time after the first night?

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- CROSS BY MS. GOOD

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1 Q. Yes.

2 A. Yes.

3 Q. And you spoke with your mom several times on the
4 phone. You said you only spoke to her once or twice. Did you
5 speak with your sister during that time?

6 A. I can't remember.

7 Q. Do you remember anybody else you spoke to at that
8 time other than your mother one or two times?

9 A. I can't remember. It might have been maybe Mike
10 Norwood because we were still in the area. I think he might
11 have come out to help a few times.

12 Q. And you stated when y'all ultimately moved into the
13 house, you and minor shared a room, correct, because y'all
14 were close?

15 A. Yes.

16 Q. Before your sibling rivalries started I guess?

17 A. Right.

18 Q. And that she slept in the same room with you,
19 correct?

20 A. Correct.

21 Q. I'm going to show you what's marked as State's 20.
22 Is that the room that y'all were in at that time?

23 A. Yes.

24 Q. Which bed was yours?

25 A. Well, none of that was actually in there. We had

1 two separate beds.

2 Q. Okay. And where were they in kind of relation to
3 these?

4 A. She had a futon along the back wall and we had some
5 like a shelf and a dresser kind of separating the middle and I
6 had a full size bed right here by the windows.

7 Q. Okay. All right. And you stated that your father
8 would always tell you you're going to destroy the family if
9 you say something, right?

10 A. He - he said that the family would be gone and would
11 disappear and everything would be ruined.

12 Q. And he was very concerned about anybody in the
13 family finding out, correct?

14 A. Yes.

15 Q. Yet he would come into the room and do this to you
16 with your sister right next to you?

17 A. She was asleep.

18 Q. How do you know she was asleep?

19 A. I don't.

20 Q. How would he know she was asleep? Does she snore?

21 A. No.

22 Q. Does she talk in her sleep?

23 A. She doesn't.

24 Q. So nobody would know that she's asleep if she's over
25 there being quiet, correct?

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- CROSS BY MS. GOOD

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1 A. Correct.

2 Q. And then ultimately you separated from [minor two] Is
3 it [minor] or [minor two]

4 A. Breana.

5 Q. [minor two] And you had your own room. I guess you
6 took [minor] room --

7 A. Yes.

8 Q. -- is that right? And your dad would sleep in the
9 bed with you every single night?

10 A. Almost every single night.

11 Q. And when did your mom first realize he was sleeping
12 in the bed every single night?

13 A. She knew that he was because he wasn't in her bed so
14 she knew that he was in my bed so the first night she knew.

15 Q. And you only heard them argue about that twice?

16 A. Once or twice. They kept their arguments in
17 private.

18 Q. So they may have argued more about it but you don't
19 know?

20 A. I don't know.

21 Q. But your mother was definitely aware that your
22 father was sleeping in the same room with you every single
23 night for one year?

24 A. Almost every single night. She knew.

25 Q. But she never questioned you about it?

1 A. A few times she would ask is everything okay and I
2 would just cover up with what he told me to say about it. And
3 I would say it's more comfortable in that bed and he sleeps
4 better in that bed and that's what I always said.

5 Q. And this entire time that this was happening you
6 were not worried that he might be doing this to your other
7 sisters?

8 A. I was.

9 Q. And you didn't want to say anything to protect
10 them?

11 A. He had said that he would never do it to one of them
12 as long as he had me so I was always around so, I mean, it
13 wasn't like -- He was always with me. He never had a chance
14 to do anything to her a majority of the time.

15 Q. And you stated, when did he get the gun?

16 A. I can't remember the exact date but he got it within
17 maybe a month or two of living in Camden.

18 Q. Do you know how he got the gun?

19 A. I don't.

20 Q. So you don't know who bought him the gun?

21 A. I don't know.

22 Q. And were you all around horses a lot?

23 A. Not at the beginning, no. The last maybe two and a
24 half months we were around horses.

25 Q. Okay. And when you were around the horses, were you

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- CROSS BY MS. GOOD

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1 out in the woods a lot?

2 A. Uhm, not really. Uhm, the horses weren't through
3 the woods. They had a little road that went to it. Uhm,
4 everything was open.

5 Q. Okay. You stated, too, that it happened several
6 times at job sites?

7 A. Correct.

8 Q. And people were around, correct?

9 A. There was one time at Mike Norwood's mother's house
10 and she was upstairs.

11 Q. Yet he was still worried about people in the family
12 finding out?

13 A. Yes.

14 Q. But he did it with somebody else in the home?

15 A. Yes.

16 Q. And you stated he touched you multiple times while
17 you were out on the dock?

18 A. Correct.

19 Q. Where people could see?

20 A. Right.

21 Q. And he still was saying I'm worried about the family
22 when he's out in public doing stuff?

23 A. I guess he would - could take that risk. I don't
24 know.

25 Q. And when you first told your mother, you stated you

1 just told her he had been touching you, correct?

2 A. I - I - that's what I can remember is telling her
3 that.

4 Q. I mean, it was very vague. You were just saying --

5 A. It is vague.

6 Q. -- something happened?

7 A. Yes.

8 Q. And then when is the next time you spoke to somebody
9 about it?

10 A. Whenever one of the deputies came down to get me and
11 I went back upstairs.

12 Q. Okay. So that was Houser, I guess?

13 A. I can't - I don't know who it was. I can't
14 remember.

15 Q. And that's basically the one and a half page
16 statement you wrote?

17 A. Correct.

18 Q. And do you remember what he told you about writing
19 that statement?

20 A. No, ma'am.

21 Q. Do you remember what you told Investigator Houser
22 about that statement. Not Investigator Houser. Corporal
23 Houser?

24 A. Not specifically. I can't remember the questions
25 that were asked that day.

Minor

- CROSS BY MS. GOOD

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1 Q. So you don't remember telling him that it only
2 happened several times?

3 A. Several times within -- That can go both ways
4 because whenever he asked, I was too overwhelmed and, yes, it
5 happened several times that I put in my statement and it was
6 constant. I, at the time I answered, you know, to the best of
7 my ability. I didn't know what to say.

8 Q. Earlier you just testified it happened hundreds and
9 hundreds of times, correct?

10 A. It happened a lot. I don't know a number.

11 Q. But on that day when you first disclosed it, you
12 said only several?

13 A. Several meaning it could be a lot or it could be a
14 few.

15 Q. When you use the word several in everyday language,
16 what do you mean by "several"?

17 A. Could have been a few.

18 Q. So what's a few? One or two? Three or four?

19 A. Maybe.

20 Q. Several is 500? 600? I mean, wouldn't the
21 connotation several mean only several times, five or six
22 times?

23 A. I didn't know how to answer his questions at the
24 time. I was very, very emotional.

25 Q. After Houser left or Houser walks out, I don't know

1 how many were there at the time with you, after they left,
2 what happened then?

3 A. Uhm, I can't remember exactly what happened. Uhm, I
4 can't remember if we stayed at the house the rest of the day
5 or if we went somewhere. I can't remember.

6 Q. So you remember all these details about all this
7 stuff but you can't remember the most important day when you
8 finally told somebody and you were free from all this
9 happening to you?

10 A. I didn't know I was free yet. I didn't know he was
11 going to be gone.

12 Q. You didn't know the police took him away in the car?

13 A. They could have brought him back. He could have
14 been let go. I didn't know.

15 Q. But you don't remember anything from that day other
~~16 than you just told somebody something and you don't remember~~
17 what you told them, what questions they asked you or anything,
18 correct?

19 A. It's a blur. I don't remember.

20 Q. And you stated that it would happen several times
21 when your mother would go to the grocery store, correct?

22 A. It would happen when she did go but it may not have
23 happened several times while she was gone.

24 Q. I just meant several like if she went to the grocery
25 store?

Minor

- CROSS BY MS. GOOD

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- 1 A. Right.
- 2 Q. You stated you all had one car, correct?
- 3 A. I believe so.
- 4 Q. What kind of car was that?
- 5 A. Uhm, a Chevy Silverado, I think.
- 6 Q. Was it two door? Four door? Do you remember?
- 7 A. Four door.
- 8 Q. How many seats were in it?
- 9 A. Six.
- 10 Q. How many siblings do you have?
- 11 A. We have, there's five of us so four.
- 12 Q. Okay. So if y'all ever had to go somewhere as a
- 13 family, y'all crammed into this truck?
- 14 A. Uhm, yeah, but we very rarely did anything
- 15 altogether.
- 16 Q. If your dad had to work, how would he get to work?
- 17 How would y'all go?
- 18 A. His truck.
- 19 Q. And you would leave your mom there without a car?
- 20 A. Yeah. That's what I can remember.
- 21 Q. And you stated towards the end when it started to
- 22 slow down is because you were sick and you had mono,
- 23 correct?
- 24 A. Correct.
- 25 Q. How long did you have mono for?

1 A. A few weeks.

2 Q. And you stated he was very touchy feely with you and
3 always around you?

4 A. He was.

5 Q. Still sleeping in the same bed with you?

6 A. I can't remember if he did while I was sick.

7 Q. And did your dad ever get mono to the best of your
8 knowledge while you were with him?

9 A. No.

10 Q. And you stated that when he would ejaculate,
11 sometimes you would be down on the couch downstairs,
12 correct?

13 A. Yes.

14 Q. In your bed sometimes?

15 A. Mm-hmm.

16 ~~Q. Everywhere in the house is what you testified to,~~
17 correct?

18 A. Correct.

19 Q. And sometimes when he ejaculated, he would come off
20 to the side?

21 A. Yes.

22 Q. About how many times do you think that occurred?

23 A. I couldn't tell you.

24 Q. And he never used a condom or he did this several
25 times where you testified --

Minor

- CROSS BY MS. GOOD

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1 A. He did a few times, yes, but he never did use one
2 all the time.

3 Q. And you stated you would get bruises. Y'all live by
4 the lake, correct?

5 A. Correct.

6 Q. What would you wear when you would go swimming?

7 A. Uhm, we had to wear board shorts and swim shirts.

8 Q. So you wouldn't wear a bathing suit?

9 A. Occasionally we would, but if we had company over or
10 we were going somewhere on the boat, we would have to stay
11 covered up.

12 Q. So your sister wouldn't constantly tell you to put
13 extra clothes on?

14 A. My sister wouldn't.

15 Q. You stated you went out of town with him to
16 Kannapolis. You liked going out of town with him, correct?

17 A. I used to.

18 Q. You were excited to go to Kannapolis, weren't you?

19 A. I was not.

20 Q. Do you have a Facebook page, **minor one**

21 A. I - I used to. I don't have one currently.

22 Q. And, in fact, you used that Facebook page and you
23 were friends with your father on Facebook, correct?

24 A. At the time probably.

25 Q. And didn't your father post about going to

1 Kannapolis and you stated that you were happy to go?

2 A. I can't remember. And even if I were to say that,
3 what else am I going to say? I don't want to go? I'm not
4 happy?

5 Q. You wouldn't have to post anything on Facebook about
6 it, would you?

7 A. Friends and family are on there. They knew.

8 Q. But you wouldn't have to say anything, would you?

9 A. They knew I was going.

10 Q. At the time your name was minor one is that
11 correct?

12 A. Correct.

13 Q. Let me show you this and see if it refreshes your
14 memory. Do you recall writing about Kannapolis, that you were
15 excited to go?

16 ~~A. Is this a status or a message?~~

17 Q. It's what your father posted about going to
18 Kannapolis.

19 A. Right here?

20 Q. Yes, the comments.

21 A. I remember this.

22 Q. So you did state that you were excited to go?

23 A. I did.

24 Q. Yet you testified earlier that you did not want to
25 go and you were not excited about it at all, correct?

Minor

- CROSS BY MS. GOOD

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1 A. Deep down personally I knew what was going to
2 happen, but like I said, I couldn't act that way.

3 Q. You were talking about wanting to run away, correct,
4 because you were depressed and upset?

5 A. Yes.

6 Q. When you came to the doctor here in Columbia, did
7 she talk to you for a little bit about medical history
8 background?

9 A. Uhm, what doctor in Columbia?

10 Q. Dr. Luberoff.

11 A. The ARC or The CARE House?

12 Q. The ARC.

13 A. The ARC?

14 Q. Mm-hmm.

15 A. Uhm, I can't remember.

16 Q. So you don't remember telling her that you didn't
17 have any behavioral changes?

18 A. I - I was scared. I don't know. I don't know.

19 Q. That was several weeks later, correct? Your dad was
20 already in jail.

21 A. He was.

22 Q. Hadn't gotten out?

23 A. It was.

24 Q. So there was no reason to be scared at that point,
25 correct?

1 A. I didn't - I didn't know what to tell her. I mean,
2 I -- I don't know.

3 Q. And you stated these gifts, these promise rings, he
4 gave one to your sister, too, right?

5 A. He did.

6 Q. It wasn't just to you?

7 A. Correct.

8 Q. And he made it very clear as one of his rules he
9 didn't want you or **minor** dating boys, correct? It wasn't
10 just you?

11 A. Correct.

12 Q. And, in fact, prior to you disclosing on the day
13 down at the dock with your mother, you were upset because of
14 this Henry fellow, correct?

15 A. No.

~~16 Q. Didn't your father just tell you that he had caught~~
17 you the night before and he didn't want you dating this Henry
18 boy?

19 A. I wasn't dating him.

20 Q. You didn't like your dad's rules, did you?

21 A. I thought he was a bit overbearing about them
22 because we weren't allowed to go anywhere. We were very
23 sheltered and it was nice to get out of the house and go hang
24 out with the family and be kids again.

25 Q. You said you were sheltered. Your sister was

Minor

- CROSS BY MS. GOOD

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- 1 sheltered also, correct?
- 2 A. Correct.
- 3 Q. All of the children?
- 4 A. Correct.
- 5 Q. And you told this on August 11th, correct?
- 6 A. Correct.
- 7 Q. When did you and your mother move to Florida?
- 8 A. I don't remember exactly.
- 9 Q. It was within a couple weeks, correct?
- 10 A. It had to have been.
- 11 Q. And this is August 11th. When did you get your
- 12 driver's license?
- 13 A. I had gotten it maybe a week prior to leaving.
- 14 Q. So after your dad was out of the picture, you were
- 15 able to get your driver's license?
- 16 A. I had my permit. I just had to go and get the
- 17 actual license.
- 18 Q. In fact, also after your dad was out of the picture,
- 19 you got a nose ring within a couple of days, correct?
- 20 A. Because we weren't allowed to have one, my mom
- 21 wanted to do something nice.
- 22 Q. So your dad didn't allow that, but you got one as
- 23 soon as he was gone, right?
- 24 A. (No response.)
- 25 Q. Same thing with the tattoo?

1 A. I didn't get a tattoo.

2 Q. But you wanted to get one, correct?

3 A. Uhm, I can't say yes or no. It was a thought.

4 Q. And as soon as you got down to Florida you got a
5 boyfriend, didn't you?

6 A. Not immediately.

7 Q. How long afterwards?

8 A. A couple months.

9 Q. It wasn't earlier than that? Who is Zack?

10 A. My cousin.

11 Q. And you got to go to Frankie's Fun Park a couple
12 days with Zack and Taylor after your dad was out of the
13 picture, didn't you?

14 A. I - I can't remember.

15 Q. Basically you got to start to do a whole bunch of
~~16 fun things as soon as your dad was gone, didn't you?~~

17 A. Because we were able to.

18 Q. Because his rules weren't in place anymore, were
19 they?

20 A. They weren't because he wasn't there.

21 Q. After you gave your first statement to Investigator
22 Houser that day, the one in the house and then they left, when
23 is the next time you spoke to somebody about this?

24 A. Uhm, I can't remember who I went to first. Uhm, I
25 don't know if it was The ARC or The CARE House but it was

Minor

- CROSS BY MS. GOOD

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1 within a few days.

2 Q. Did you speak to your mother at all about it?

3 A. We spoke briefly.

4 Q. What's briefly?

5 A. I didn't feel like it was necessary to tell her the
6 details.

7 Q. Did you ever tell her the details?

8 A. No.

9 Q. Did you ever tell anybody the details other than the
10 person at The CARE House?

11 A. Uhm, I have talked to my sister. I talked to her a
12 long time afterwards just because she was wanting, she was
13 wanting to know.

14 Q. When you say your sister, that's **minor two**

15 A. **minor two** yes.

16 Q. Not **minor**

17 A. Yes.

18 Q. So you never told your mother anywhere he would have
19 ejaculated on the floor or the couch or anywhere?

20 A. No.

21 Q. The day down at the dock when your dad came down
22 there, how far away was he from you when the police got down
23 there?

24 A. Uhm, he was right beside me. I was sitting down and
25 he was standing up.

1 Q. And isn't it true that you stated to him if I could
2 take it back, I would and kept repeating that to him before
3 the cops got there?

4 A. I did not.

5 Q. You're denying today that you ever said that?

6 A. Yes.

7 Q. **minor one** when you all moved to Florida, who did you
8 move in with?

9 MS. CAVANAUGH: Objection, Your Honor. This Florida
10 is outside the scope of anything that she testified to.

11 THE COURT: I'll allow her to answer that.

12 BY MS. GOOD:

13 Q. Who did you move in with?

14 A. Melissa, one of my mom's friends.

15 Q. One of your mom's friends?

16 A. Yes.

17 Q. And did somebody end up moving in after that with
18 your mother?

19 A. I can't remember.

20 Q. Do you remember a guy named Jason?

21 A. He didn't move into Melissa's house.

22 Q. He didn't move in? I'm sorry. I didn't hear you.

23 A. He didn't move into Melissa's house.

24 Q. Okay. But your mom started dating him when y'all
25 moved to Florida?

Minor

- REDIRECT BY MS. CAVANAUGH

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1 A. It was several, several months after from what I
2 remember and understand.

3 MS. GOOD: Okay. No further questions, Your
4 Honor.

5 THE COURT: Any redirect.

6 MS. CAVANAUGH: Yes, Your Honor. Just a few
7 questions.

8 REDIRECT EXAMINATION

9 BY MS. CAVANAUGH:

10 Q. [minor one] just to be clear, in State's Exhibit number
11 20, this is the room that you and [minor] shared when you first
12 moved to the home?

13 A. Yes.

14 Q. And is that how the room was when you all shared
15 that room?

16 A. No.

17 Q. Okay. And how did you describe that room?

18 A. She had a futon against the wall away from the
19 windows. We had dressers and shelves kind of like a little
20 mini separation and then I had a full size by the windows.

21 Q. So y'all's beds were on the opposite sides of the
22 room?

23 A. Yes.

24 Q. And there was some furniture separating the beds?

25 A. Yes.

1 Q. She also, Ms. Good also asked you about what you put
2 in your first statement or narrative that you wrote when
3 Corporal Houser was at the house and she said that you only
4 said several times or a few times?

5 A. Right.

6 Q. I'm going to -- Is this the statement that you wrote
7 at that time?

8 A. Yes.

9 Q. Can you read that last sentence as far as what you
10 said about how many times it happened?

11 A. "When we moved into our new house to finish working
12 on it, he had sex with me constant."

13 Q. And she also asked you about when he would ejaculate
14 on the floor. And what did he do after he ejaculated?

15 A. He wiped it up and put the dirty towel in the
16 ~~laundry room to be washed.~~

17 Q. Then she also asked you about the bruises and you
18 living at the lake?

19 A. Yes.

20 Q. What type of bathing suit were you required to
21 wear?

22 A. Whenever there was company over or we were going
23 somewhere, we had to wear board shorts and swim shirts.

24 Q. Did those cover up the areas that you had bruises
25 on?

TAMMY PRICE - DIRECT BY MS. CAVANAUGH

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1 A. They did.

2 Q. Would you ever -- Would you wear any other types of
3 bathing suits when you had bruises?

4 A. Not when I had bruises.

5 Q. Why was that?

6 A. Because I didn't want them showing.

7 MS. CAVANAUGH: Thank you.

8 THE COURT: All right. Thank you, Ms. **minor one** You
9 may step down. Solicitor, you may call your next
10 witness.

11 MS. CAVANAUGH: The State calls Tammy Blessing.

12 Thereupon,

13 TAMMY LYNN PRICE

14 after having been first duly sworn, testified as follows,

15 THE CLERK: Please have a seat. After you're
16 seated, please state your full name for the record.

17 THE WITNESS: Tammy Price.

18 THE COURT: State your last name, ma'am, again.

19 THE WITNESS: It's Price. I'm remarried. It was
20 Miller.

21 DIRECT EXAMINATION

22 BY MS. CAVANAUGH:

23 Q. I apologize for that, Tammy. Good afternoon, Tammy.

24 A. Hello.

25 Q. Where do you currently live?

- 1 A. Pensacola, Florida.
- 2 Q. How long have you lived in Florida?
- 3 A. Almost four years.
- 4 Q. And where did you live prior to moving to Florida?
- 5 A. Camden, South Carolina. Here.
- 6 Q. Do you have children?
- 7 A. Yes, ma'am. Five.
- 8 Q. Five children. And what are their names?
- 9 A. **minor** Miller, **minor one** **minor three** **minor**
- 10 Miller and **minor four**
- 11 Q. How old are your children?
- 12 A. Uhm, the two oldest are the twins and are 20. Then
- 13 my son is 14, my daughter is 12 and I have a nine year old
- 14 son, too.
- 15 Q. Do they -- Who lives with you in Florida now?
-
- 16 A. ~~Me and my new husband and the three smaller~~
- 17 children.
- 18 Q. And when did you get remarried?
- 19 A. Last June.
- 20 Q. Who is the father of your children, Tammy?
- 21 A. James Miller.
- 22 Q. Were you married to James Miller?
- 23 A. Yes, ma'am.
- 24 Q. How long were you married to James?
- 25 A. About 20 years.

1 Q. When did y'all meet?

2 A. Third grade.

3 Q. When did you start -- When would you say you first
4 became a couple?

5 A. Uhm, we were boyfriend and girlfriend in third,
6 fourth, fifth. Didn't really become a couple until I was
7 about 14.

8 Q. How old were you when you married James?

9 A. 16.

10 Q. How old were you when you had your eldest daughters,
11 the twins?

12 A. I had just turned 17.

13 Q. When you married James, where did you live with
14 him?

15 A. Uhm, we lived with my parents in the beginning
16 because I had the twins and they wanted to make sure that we
17 could take care of them.

18 Q. So he lived with you and your parents for a little
19 while?

20 A. Mm-hmm.

21 Q. What year were [minor] and [minor] born?

22 A. '95.

23 Q. How long did you live with your parents and James?

24 A. Six months with my parents.

25 Q. Then where did you move after that?

1 A. Uhm, we lived in, I believe it was Monroe, North
2 Carolina. We moved into an apartment on our own.

3 Q. So when did you have -- When did you have minor

4 A. I had minor in 2002.

5 Q. How much younger is he than the twins?

6 A. Uhm, the girls were born in '95 so seven years.

7 Q. How long did you all live in Monroe, North
8 Carolina?

9 A. Uhm, I believe we lived there for about a year.

10 Q. Then where did you move after that?

11 A. Uhm, we bought a house in the next little city over.
12 I don't even remember. Beacon Hills or something.

13 Q. Do you know what year you moved to South Carolina?

14 A. Uhm, I was either 19 or 20, so I'm 38. I don't
15 know. I mean, it was --

16 Q. So a couple years after --

17 A. Right.

18 Q. -- North Carolina?

19 A. Yeah.

20 Q. Okay.

21 A. Probably '98, '99. Something like that.

22 Q. Once you moved to South Carolina is that where the
23 family stayed in South Carolina?

24 A. Mm-hmm.

25 THE COURT: Ma'am, can you just say yes or no.

TAMMY PRICE - DIRECT BY MS. CAVANAUGH

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1 THE WITNESS: Yes, ma'am. I'm sorry.

2 BY MS. CAVANAUGH:

3 Q. What type of -- Were you employed during the
4 marriage?

5 A. No, ma'am.

6 Q. Was James employed?

7 A. Yes, ma'am.

8 Q. What type of work did you do?

9 A. Construction.

10 Q. Was that -- Did he do construction throughout your
11 marriage?

12 A. Yes, ma'am.

13 Q. So did construction involve a lot of manual labor?

14 A. Yes, ma'am.

15 Q. Was he in a wheelchair during this marriage?

16 A. No, ma'am.

17 Q. Where did your children go to school?

18 A. I home schooled them for most of their lives.

19 Q. Were they all home schooled?

20 A. Yes, ma'am.

21 Q. When did the oldest children start being home
22 schooled?

23 A. Uhm, the oldest children started when they were in
24 kindergarten, uhm, and then I briefly put them in sixth grade
25 for about half a year because they wanted to go really, really

1 bad. Uhm, we did that. They didn't like it and really wanted
2 to be home and we really wanted them to be home again anyway
3 so we decided that they needed to be home.

4 Q. How many times would you say that y'all moved over
5 the course of your marriage?

6 A. Uhm, in the 20 years that we were together I would
7 say at least 29, 30 times.

8 Q. Was that due to James looking for work and finding
9 work or at least partially related to that?

10 A. Yes, ma'am.

11 Q. Did that also play into why you wanted to home
12 school your children as well?

13 A. Yes, ma'am.

14 Q. I know you were married for a long time but how
15 would you describe at least in the early years your

16 ~~relationship with James? Did y'all have a good loving~~
17 marriage?.

18 A. Yes, ma'am. I loved him very, very, very much.
19 Uhm, we were always together.

20 Q. And was he basically your only boyfriend ever
21 essentially?

22 A. I mean, I had had a few before that but nothing ever
23 serious.

24 Q. But y'all met when you were in third grade?

25 A. Yes, ma'am.

1 Q. And you got married when you were 16?

2 A. (Witness nodding head.)

3 Q. How did he interact with your children when they
4 were younger?

5 A. Uhm, sometimes it was really good and sometimes it
6 wasn't.

7 Q. And what do you mean by -- How was the change
8 observed by you? What do you mean by that as far as the
9 differences as far as they are concerned?

10 A. He would have highs and lows. He would play with
11 the kids and have fun and we would do stuff and then there
12 would be days when he was on the couch and nobody could bother
13 him.

14 Q. So it was obvious when he didn't want to be
15 bothered?

16 A. Yes, ma'am.

17 Q. Did he ever physically abuse the kids or hit the
18 kids or anything like that?

19 A. Other than spanking, he's never hit them, no,
20 ma'am.

21 Q. As the twins grew up, did he have - was his
22 relationship with **minor** different from **minor one**

23 A. Growing up, no, ma'am.

24 Q. What about as they became teenagers?

25 A. It started to change, yes, ma'am.

1 Q. Can you describe how that started to change?

2 A. Uhm --

3 Q. Let me interrupt you. Even before you moved to
4 Camden?

5 A. No, ma'am. It didn't change until after we moved to
6 Camden.

7 Q. Okay. So what -- How would you describe **minor two**
8 personality?

9 A. Very passive, quiet. A follower.

10 Q. **minor two**

11 A. Mm-hmm. Yes, ma'am.

12 Q. Was she -- What kind of activities did she enjoy?

13 A. Drawing and painting.

14 Q. And did she like to do inside activities or outside
15 activities?

16 ~~A. She's more inside with me. She would cook, clean,~~
17 help with the kids, help with the school work, draw.

18 Q. Was that different from what **minor** liked to do?

19 A. Yes, ma'am.

20 Q. What kind of activities did **minor** enjoy?

21 A. Uhm, anything outside. Anything. Climbing trees,
22 skinning foxes. Just anything outside.

23 Q. Literally skinning foxes?

24 A. Literally, yes, ma'am.

25 Q. Did she also -- Who would she -- Did she also learn

1 how to do some of the work that James did?

2 A. Yes, ma'am.

3 Q. What did he teach her how to do?

4 A. Uhm, everything. She could probably build a house
5 from the ground up if you let her. She could do tile, cut
6 tile, cut wood, measure and put down laminate flooring.

7 Q. And was that something that she enjoyed?

8 A. Yes, ma'am.

9 Q. Is that something that **minor** enjoyed?

10 A. No, ma'am.

11 Q. You testified that y'all moved over 20 times. Did
12 you eventually, did you move to Camden in the summer of
13 2011?

14 A. Yes, ma'am.

15 Q. When was that decision made?

16 A. We were here for the Fourth of July visiting some
17 friends. We lived here before so we still had friends here
18 and we just decided to move again.

19 Q. Who were the friends? What were their last names?

20 A. Norwood.

21 Q. So you were here. Were you visiting them?

22 A. Yes, ma'am.

23 Q. So was there any discussions about moving prior to
24 that vacation?

25 A. No, ma'am.

1 Q. How did you find the house that y'all moved to?

2 A. Uhm, actually they found it by boat. We were out on
3 the water and it looked empty and I think the Norwoods knew
4 the person that owned it or something along those lines. I
5 wasn't there like the first time that he found it but I know
6 it was by boat. Then they drove over there and talked to the
7 owner and he was trying to sell it and decided to let us rent
8 it.

9 Q. Okay. So was that house ready to move in?

10 A. Uhm, the inside was except it had some furniture
11 still from the previous owner because they used it as a lake
12 house. Uhm, the outside needed a lot of work. The trees were
13 blocking the view and so forth.

14 Q. So what happened after the decision was made that
15 that was the house that you were going to move into?

16 A. Uhm, we decided that **minor** would stay with her
17 father James in the camper and then me and **minor** and the

18 other children would go home to pack and as soon as we were
19 done packing he would come and get us and we would move.

20 Q. So did y'all stay in the camper while you were on
21 vacation?

22 A. Yes, ma'am.

23 Q. How did you get back to Summerville?

24 A. Uhm, he drove the truck. He left the camper at the
25 house, the Norwood's house and took us to our house in

1 Summerville.

2 Q. At the time did it seem unusual that [minor] was the
3 one who stayed behind?

4 A. No, ma'am.

5 Q. And again why was that?

6 A. Uhm, because at that time she started working with
7 her father more and just started doing things more with him
8 than normal really over that vacation. She skied. They were
9 just -- I don't know. They started to bond a little bit
10 differently over that vacation and it really wasn't a --

11 Q. At that point did she already know how to do some
12 remodeling and construction work?

13 A. Yes, ma'am. Because either I was with him or she
14 was with him. He never went to work alone.

15 Q. When you went back to Summerville, how did you
16 maintain contact? Did you talk to James or [minor] over that
17 period?

18 A. Yes, ma'am.

19 Q. About how long -- What was the plan as far as how
20 long you were going to be in Summerville?

21 A. Uhm, the plan was approximately two weeks that we
22 probably would need to pack. It was my end that was the
23 issue.

24 Q. Did you speak to [minor] or James over that two week
25 period?

1 A. I talked to [minor] more than I talked to James.

2 Q. Who had the phone? To your recollection who had the
3 phone? Who had a phone?

4 A. He had a phone. She did not have a cell phone.

5 Q. At some point over that two week period did you
6 become concerned?

7 A. Yes, ma'am.

8 Q. Was that after a conversation you had with [minor one]

9 A. Yes, ma'am.

10 Q. Without saying what she actually told you, why did
11 you become worried? How did she sound?

12 A. Uhm, not normal. She was very quiet and just asking
13 me questions. That's just not her normal character.

14 Q. After that conversation, what did you do?

15 A. I told [minor] we needed to hurry up and get the

~~16 house packed and we needed to go. So we had the house packed~~
17 within two days after that phone call.

18 Q. Did you let James know that you were ready early?

19 A. Yes, ma'am.

20 Q. And did he come get you early?

21 A. No, ma'am.

22 Q. Did he give you any reason why he wouldn't come get
23 you?

24 A. I -- He -- I had a hard time getting in touch with
25 him a lot. Uhm, he kept saying there was no service and when

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1 I would talk to him, he just wasn't ready. Things weren't
2 ready at the house.

3 Q. Did he come and get the family?

4 A. Yes, ma'am.

5 Q. After two weeks?

6 A. (Witness nodding head.) Yes, ma'am.

7 Q. What were the initial room -- How was the room --
8 Who shared what room initially in the house?

9 A. Downstairs was the master bedroom. Uhm, then
10 upstairs there were three bedrooms and [minor] and [minor]
11 shared the big room and then my youngest daughter had her own
12 room and then the boys shared the third bedroom.

13 Q. Did that change?

14 A. Yes, ma'am.

15 Q. How did it change?

16 A. Uhm, I don't recall how long into us being there but
17 I believe it was about a month or so, uhm, they ended up
18 changing rooms. [minor] got her own room and [minor] went in with
19 [minor two] Which [minor] and [minor] were not get along that well
20 so at that time, you know, I just thought, okay. Well,
21 they're teenagers and they need to kind of separate.

22 Q. So was there ever any big huge issue between [minor]
23 and [minor one]

24 A. There wasn't a huge issue but ever since we moved
25 there was definitely something. They weren't - they weren't

1 as close as they were.

2 Q. So [minor] was the one -- Who decided that [minor] got
3 her own room instead of [minor two]

4 A. Uhm, I'm honestly not sure who decided that.

5 Q. Okay. You stated the master bedroom is downstairs?

6 A. Yes, ma'am.

7 Q. Is that the room that James slept in?

8 A. No, ma'am.

9 Q. Before y'all moved to Camden, did y'all share a
10 bed?

11 A. Yes, ma'am.

12 Q. Throughout your marriage before Camden did y'all
13 share a bed?

14 A. Yes, ma'am.

15 Q. So is it fair to say it was unusual that he stopped
16 ~~sleeping in the master bedroom?~~

17 A. Yes, ma'am.

18 Q. How did you know that he wasn't sleeping in the
19 bedroom?

20 A. He wasn't in there with me. He was on the couch at
21 first.

22 Q. At first?

23 A. Yes, ma'am.

24 Q. And what do you mean by "at first"?

25 A. Uhm, he started on the couch and then over a little

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1 period of time I would find him in her bedroom in her bed and
2 would pull him out.

3 Q. So you would try to physically remove him from the
4 bed?

5 A. Yes, ma'am.

6 Q. When you would go up there, what was he doing at
7 night up there?

8 A. Sleeping.

9 Q. In the same bed?

10 A. Yes, ma'am.

11 Q. Did this concern you?

12 A. Yes, ma'am.

13 Q. How old is **minor** at this time?

14 A. Uhm, 16.

15 Q. Did you confront James about it?

16 A. Yes, ma'am.

17 Q. And what did you say to him about it?

18 A. Uhm, I told him that it was very inappropriate and
19 he cannot be sleeping in her bed. She's not ten anymore, you
20 know, and she's a grown woman and you can't sleep in her bed.
21 You can't lay in her bed, period, not just sleep.

22 Q. Did you ever catch him laying in **minor two** bed?

23 A. No, ma'am.

24 Q. So it was only **minor one**

25 A. Yes, ma'am.

1 Q. What reason did he give as to why, at least
2 initially, why he was sleeping in her bed?

3 A. Uhm, he didn't really give a reason. Uhm, just made
4 me feel like trash for even insinuating that he would do
5 anything with his daughter. Uhm, that was sick. You know,
6 him and her are just close and then I'm jealous because
7 they're close.

8 Q. Did he say anything about the bed, y'all's bed as far
9 as the comfort level?

10 A. Yes, ma'am.

11 Q. What did he say about that?

12 A. The day we moved in he was tossing and turning on
13 the bed and, uhm, got up and told me that he just couldn't
14 sleep on that bed even though that was the bed that he
15 supposedly slept in the whole time I was gone because I asked
16 him where he was sleeping.

17 Q. So he first said it was uncomfortable for him in
18 that particular bed?

19 A. Yes, ma'am.

20 Q. After he told you that as the reason for sleeping in
21 another bed, what did you do?

22 A. I changed beds.

23 Q. What do you mean you changed beds?

24 A. I took one bed out and swapped it for the one that
25 he kept -- When [minor] and [minor] were sharing the room, he

1 would go into that room and lay in **minor one** bed, not at night
2 but during the day because that was the bed he liked. So I
3 swapped the beds from, I took **minor one** bed and put it in which
4 we slept in the first few nights because we didn't have the
5 downstairs bed yet. Does that make sense?

6 Q. Yes.

7 A. Okay.

8 Q. So why did you switch out beds?

9 A. Because he wouldn't sleep in the first bed. He said
10 it was uncomfortable and he kept going and laying down during
11 the day and taking naps or whatever in **minor one** bed not
12 necessarily with her but just laying there in that bed.

13 Q. Okay. So after you changed the beds, did he then
14 begin to sleep in the same bed with you?

15 A. No, ma'am.

16 Q. So did you confront him about it then?

17 A. Yes, ma'am.

18 Q. What response did he give you then?

19 A. Uhm, excuses. I've had too much to drink or this
20 couch is more comfortable. Uhm, you know, I'm not ready to go
21 to bed, then he would sleep on the couch. That's when I was
22 upstairs the first week that we moved in.

23 Q. So basically the reason he gave you changed when you
24 tried to fix the first problem?

25 A. Yes, ma'am.

1 Q. How would you describe y'all's -- Did you have any
2 issues with your sexual relationship prior to the move to
3 Camden?

4 A. No, ma'am.

5 Q. Did you have a healthy sex life?

6 A. Yes, ma'am.

7 Q. How often would you have sex with your husband?

8 A. Almost every day.

9 Q. Did that change when you moved to Camden?

10 A. Yes, ma'am.

11 Q. How?

12 A. The night I got there, you know, I just, you know, I
13 took it for granted that that's what we would do and he
14 couldn't and I didn't know why. He kept saying it was the
15 alcohol, but the alcohol has never made him not touch me or
~~16 anything, you know. And it just, every night it was the same,~~
17 you know, excuse so I don't honestly even remember from the
18 time I moved in when the first time we actually had sex was.
19 I don't remember.

20 Q. How long did you live in Camden before you found out
21 what was happening with **minor one**

22 A. Uhm, it was a little over a year.

23 Q. Can you estimate how many times you all had sex
24 during that period?

25 A. Maybe two or three times.

1 Q. Did you try?

2 A. Yes, ma'am.

3 Q. Did you blame yourself?

4 A. Yes, ma'am.

5 Q. What else changed about James' behavior once y'all
6 moved to Camden? Did he start carrying anything that he
7 didn't have previously?

8 A. Yes, ma'am. He, uhm, kept a gun on him at all
9 times.

10 Q. Was this a new behavior?

11 A. Yes, ma'am.

12 Q. Once you moved -- How would you describe your
13 relationship with [minor] prior to moving to Camden?

14 A. Uhm, I mean, we were close. Uhm, me and [minor] were
15 a lot closer always because [minor] liked the same things I
16 liked. Uhm, you know, we were close. We were mother and
17 daughter. I love her. We did stuff. Uhm, I think we had a
18 pretty good relationship. She would talk to me, you know?

19 Q. Did you notice any changes once you moved into the
20 house on the lake in Camden?

21 A. Yes, ma'am.

22 Q. Describe those types of changes?

23 A. Uhm, from the very first day we got there I just
24 felt like something was off. Uhm, she didn't look at me. I
25 think for a couple days really she didn't even make eye

1 contact with me. She got to where she kind of stopped talking
2 to me a lot. She was very withdrawn. Uhm, she avoided me,
3 uhm, and was just quiet and extremely moody. Like we always
4 were walking on egg shells around her. It wasn't me and the
5 little children because she could just flip out. You know,
6 just get mad.

7 Q. And that was a new behavior?

8 A. Yes, ma'am.

9 Q. And she was also 16?

10 A. Yes, ma'am.

11 Q. Did [minor] have those same types of changes when
12 y'all moved to Camden?

13 A. No, ma'am.

14 Q. So in your opinion as her mother it was more than
15 her just being 16?

16 A. Yes, ma'am.

17 Q. Did you try to ask her what was going on?

18 A. Yes, ma'am. I asked her many times like what's
19 wrong with you? You know, what's going on? And she would say
20 nothing and walk away.

21 Q. Did you ever try to over the course before that day
22 did you ever try to dig a little deeper?

23 A. Yes, ma'am. There was two to three times that I sat
24 her down and asked her what was going on and told her that
25 it's not right that he's laying in her bed and I feel like

1 there's something going on and, you know, I can't fix it if
2 she doesn't tell me. I can't do anything. I did that two or
3 three times.

4 Q. And what would she say when you would try to go a
5 little bit deeper?

6 A. Uhm, she would not look at me. She would always
7 look away and say, mom, you know, no, and that was basically
8 the end of the conversation.

9 Q. You already mentioned that you switched the beds
10 out. Did you try to do anything else to remedy him sleeping
11 in her bed?

12 A. Yes, ma'am.

13 Q. What did you do?

14 A. I took the master bed that was downstairs that I
15 slept in alone and I moved it upstairs. I gave **minor** her own
16 room and I took the room beside **minor one** room with the two
17 boys and the girl.

18 (Whereupon, State's exhibit #26 and #27 marked for
19 identification.)

20 BY MS. CAVANAUGH:

21 Q. I show you what's marked as State's Exhibit 26 and
22 27 and ask you if you recognize these photographs?

23 A. Yes, ma'am.

24 Q. What do those photographs depict?

25 A. Uhm, the first one is the downstairs master bedroom

1 that I destroyed and I took the master bed upstairs. The
2 second picture is the upstairs where I slept with three
3 children and turned that room into just a junk room to move
4 everything out of the way.

5 MS. CAVANAUGH: Your Honor, at this time I would ask
6 that State's Exhibit 26 and 27 be admitted.

7 THE COURT: Any objection?

8 MS. GOOD: No objection.

9 THE COURT: They're so admitted.

10 BY MS. CAVANAUGH:

11 Q. So is there a bed in what used to be the master
12 bedroom?

13 A. No, ma'am.

14 Q. And is this the picture of the big room?

15 A. Yes, ma'am.

16 Q. Is that the room that you said you moved your bed
17 into?

18 A. Yes, ma'am.

19 Q. And the house is a little -- Well, the master
20 bedroom is a little bit messy. Can you explain that?

21 A. Uhm --

22 Q. Was that how it always looked as far as the --

23 A. I mean, it was -- Our house was always cluttered,
24 uhm, but I believe those pictures were taken after, uhm, he
25 was taken away and at that point I didn't do anything for a

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1 few weeks and we started going through stuff because we knew
2 we were going to have to move so I didn't really clean
3 anymore.

4 Q. But that is the master bedroom?

5 A. Yes, ma'am.

6 Q. With your bed?

7 A. Yes, ma'am.

8 Q. Going back to the home schooling, who taught the
9 children? Who gave them their education?

10 A. Me.

11 Q. That was your role?

12 A. Yes, ma'am.

13 Q. When did you do that?

14 A. Uhm, during the day. Sometimes in the evenings.
15 Mainly during the day.

16 Q. So you were often with **minor** during the day?

17 A. Yes, ma'am. When we weren't working, that's when we
18 did our school work.

19 Q. And the other children, too?

20 A. Yes, ma'am.

21 Q. Were there opportunities that James was with **minor**
22 by herself during the day?

23 A. Oh, yes, ma'am.

24 Q. Can you expand on that for us?

25 A. Uhm, before we moved, primarily it was me that went

1 to work with him. She did go. Occasionally we all three went
2 sometimes. [minor] would stay with the little kids. Uhm, and
3 then after we moved, I think I maybe went to work with him a
4 handful of times. Not very often. It was primarily [minor]
5 that went and I had to stay home.

6 Q. What about the errands? Would you go to the grocery
7 store?

8 A. Yes, ma'am.

9 Q. Did you go by yourself?

10 A. No, ma'am.

11 Q. Why not?

12 A. I just always took the children.

13 Q. What about [minor two] did she go with you?

14 A. Most of the time, yes, to help me because I had the
15 children.

16 Q. Did [minor] go with you?

17 A. Uhm, not really. No, ma'am.

18 Q. I mean, there were probably times that she did?

19 A. Yes, ma'am. Yeah, there's been a few. But
20 primarily when I would go, like, it would be like, [minor one]
21 you want to go to the store? And then, you know, my husband
22 would be like, well, no. We're Gonna build this or we're
23 gonna go fishing or we're gonna go swimming or we're gonna,
24 you know, whatever, and that just kind of became the norm.

25 Q. But he didn't do that with [minor two]

1 A. No, ma'am.

2 Q. What about, do you have any sisters?

3 A. Yes, ma'am.

4 Q. Okay. Did you visit your sisters?

5 A. Uhm, I have one sister and, yes, I did visit her I
6 think twice.

7 Q. During that year period?

8 A. Yes, ma'am.

9 Q. On those occasions who did you take with you?

10 A. **minor** and the children, the small children, all
11 three of the small children.

12 Q. Not **minor** though?

13 A. No, ma'am.

14 Q. We talked about him seemingly constantly sleeping in
15 her bed. Did you ever observe any other things that James did
16 that made you feel uncomfortable?

17 A. Uhm, there was a couple, I think three different
18 instances towards the end that really, really made me realize
19 that there was something not right, something going on. Uhm,
20 one time I walked up -- This is probably the last time that he
21 was ever in her bed -- I walked upstairs and they were both
22 laying there and I pulled the cover back and her leg, he had
23 her leg wrapped around him from behind. It wasn't in the
24 front or anything, but it was from behind and I freaked out.
25 Uhm, I actually left the house for about 30 minutes trying to

1 figure out what I was going to do. You know? I talked to her
2 again. Talk to him. He made me think that I was absolutely
3 nuts. Uhm, couldn't get anything out of her. Didn't know
4 what to do. Felt like if I called the police and neither one
5 of them were saying anything, that I'm crazy. And I thought
6 that I was going crazy for a long time.

7 Uhm, The second time was she got really sick and she
8 had mono and he came to me, before we knew what she had it, he
9 came to me and said that she had a lump on the side of her
10 breast. And I was like, how do you know she has a lump on the
11 side of her breast? He said, oh, well, I had the, you know,
12 the warm rag on her, the cool rag on her and I accidentally
13 maybe pushed on it or something and I felt there was a lump.
14 Uhm, I went up and felt and sure enough her lymph nodes were
15 swollen so we went to the emergency room. So that was -- You

~~16 know, and I asked her about that, too. I was like, you know,~~
17 what happened? And she was sick. She was like I don't know.
18 You know, nothing. She had a fever of like 104 so she wasn't
19 in any shape to be telling me anything. Uhm, and then as she
20 was recovering and this was all a good month and a half before
21 all this came out that all this stuff took place, uhm, we were
22 on the boat and she was laying on the back of the pontoon boat
23 laying out in the sun and he walked over to her and undid her
24 bathing suit top and I immediately freaked out again and went
25 and buckled it and told him if he ever does something like

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1 that again, that I was going to leave because that was very -
2 you don't undo your daughter's top, period.

3 Q. You mentioned undoing her top. Did you ever notice
4 bruises on **minor one**

5 A. Uhm, I have seen a couple. Uhm, most of the time
6 though even during the summer **minor** would wear sweat pants
7 and she'd pull them up to like around her knees and she would
8 have on a tank top and a sweat jacket when she was inside.
9 Uhm, when she was outside when it was hot obviously she wasn't
10 dressed that way. So but yes, I have seen bruises on her.

11 Q. Did you ever ask her about the bruises?

12 A. Uhm --

13 Q. First where did you see those?

14 A. Uhm, on her arms and on her legs.

15 Q. Lower?

16 A. Her, you know, her thighs.

17 Q. Okay.

18 A. You know, I don't really recall if I specifically
19 said where did those bruises come from? You know, because
20 even my sons have bruises, you know. It wasn't -- At that
21 time it wasn't like this huge red flag that said -- You know
22 what I mean? My mind wasn't there so I didn't really -- I
23 don't think I said anything about it.

24 Q. Okay. Were **minor** and **minor** allowed to date?

25 A. No, ma'am.

1 Q. Whose rule was that?

2 A. Uhm, their father's.

3 Q. Okay. What about girlfriends? Did they have a lot
4 of girlfriends?

5 A. No, ma'am. They each had one.

6 Q. Okay. Do you know -- I mean, they were home
7 schooled?

8 A. Yes.

9 Q. Do you know other reasons why they might not have
10 had many girlfriends?

11 A. Uhm, they were not allowed to go spend the night
12 places so it kind of dampens your personal life. People get
13 tired of coming to the same house over and over if you can't
14 go to their house.

15 Q. Did y'all have a family that you hung out with as a
16 family like?

17 A. In Camden?

18 Q. Yes.

19 A. Yes, ma'am.

20 Q. Who were they?

21 A. The Harrelsons and the Norwoods.

22 Q. What type of activities would y'all do together?

23 A. Uhm, go out on the lake tubing, fishing. We would
24 go to their house. They had like a little farm which was our
25 thing. Uhm, ride horses, which was amazing and just hang

1 out.

2 Q. Was the whole family involved?

3 A. Yes, ma'am.

4 Q. And their whole family?

5 A. Yes, ma'am.

6 Q. What about the neighbors? Did you have neighbors at
7 the lake house?

8 A. Yes, ma'am, one.

9 Q. What were their names?

10 A. Uhm, their last name is Penrod. I do not know - I
11 do not remember what the husband's name was, but the wife was
12 Martha and then they had a daughter who I don't remember her
13 name and then she had three children that were about the age
14 of the twins and I don't remember their names either.

15 Q. Did their kids play together sometimes?

16 A. Sometimes.

17 Q. How did you get along with Martha Penrod?

18 A. Uhm, it was touchy. Uhm, she didn't seem to care
19 for us for some reason too much and, uhm, I spoke to her. We
20 were cordial. Uhm, she was never like nasty to me or mean but
21 there was some issues between our family and her.

22 Q. I'm going to take you to August 11th, 2012. What
23 was happening earlier that day? What was the plan for the
24 day?

25 A. Uhm, we were all going to go to the Harrelsons. We

1 had just got [minor] a horse, [minor] and [minor] but mainly
2 [minor two] It was her horse.. She wanted one and we found a free
3 one and they delivered it so we allowed her to get a horse to
4 keep at the Harrelsons because they had two horses already so
5 we were going to go to their house and cookout and let the
6 kids ride the horses, play.

7 Q. And the Harrelsons, did they have -- How many kids
8 were in that family?

9 A. Uhm, I believe they had five also.

10 Q. How many -- Do they have sons and daughters?

11 A. Yes, ma'am. Their ages were, uhm, I think at the
12 time six was the youngest, and then the oldest was 12 or 13.

13 Q. Who was the oldest?

14 A. Henry.

15 Q. Were there any issues related to Henry?

16 A. Uhm, as far as I'm concerned no, but there was
17 between Henry and [minor one] father.

18 Q. What was the issue?

19 A. Uhm, he kept saying that he thought that she was
20 messing with him.

21 Q. How old was Henry?

22 A. He was 12 or 13.

23 Q. Can you describe Henry?

24 A. Uhm, he was probably about four foot tall, freckles,
25 braces, a little country, little sweet little boy. Just a

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1 little boy. That's how I would describe him, a little boy.
2 He had not hit puberty yet. No, ma'am.

3 Q. So were you concerned about Henry whatsoever?

4 A. Not whatsoever.

5 Q. So that particular day you said y'all were going to
6 go to the Harrelsons. Did the plans change at some point
7 during that day?

8 A. Yes, ma'am.

9 Q. What had changed?

10 A. Uhm, **minor** and her father got into some type of
11 little scuffle or argument. I'm not exactly sure to this day
12 what was said, uhm, but then he came in and said that she's
13 not going and she's not allowed to ever go there again.

14 Q. Was **minor** going?

15 A. Yes, ma'am.

16 Q. And the other children were going?

17 A. They were supposed to but I said that if **minor**
18 can't go, none of the kids are going and we would go alone and
19 leave the kids at home.

20 Q. What was his response to that?

21 A. Uhm, he agreed to that.

22 Q. So what happened? Did you go to the Harrelsons that
23 day?

24 A. Excuse me.

25 Q. Did you go to the Harrelsons that day?

1 A. No, ma'am.

2 Q. Okay. What did you do at some point that afternoon?

3 Where was **minor one**

4 A. Uhm, at this point she was on the end of our dock,
5 uhm, sitting down like holding her knees at the very, very end
6 of our dock. She was upset. I could tell she was upset.
7 Uhm, he was in the house laying on the couch. Uhm, I got up.
8 I noticed she was out there. Uhm, I said I was going to go
9 talk to her. He got up and he grabbed my arms and said, you
10 know, leave her alone. She'll be all right. And I said no.
11 And I went down to speak with my daughter and find out what
12 was wrong. I knew she was upset because they couldn't go but,
13 you know, I knew there was something more than that and I went
14 down to the end of the dock.

15 Q. You said he grabbed you and said don't go. Was he
16 ~~carrying a gun that day?~~

17 A. Yes, ma'am.

18 Q. Around his waist?

19 A. Yes, ma'am.

20 Q. Did you go down to the dock?

21 A. Yes, ma'am.

22 Q. What did you observe about **minor** when you went to
23 the dock?

24 A. Uhm, she was sitting at the end of the dock kind of
25 rocking and crying like she couldn't even breathe and I leaned

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1 down. I said, what is wrong? I said, is he touching you?
2 And she said everyday. And I stood up and I said I was going
3 to kill him. And she grabbed my arm and she said no because
4 we need you and I immediately like stopped. I sucked it up
5 and I looked up at the house and he's standing at the door.
6 We had a glass door with nothing in the way, you know, like a
7 solid glass door and he's standing there staring at me at the
8 end of the dock. I'm walking around the dock trying to stop
9 crying and not let him know that I'm upset. And I said, all
10 right. I'll be right back. Uhm, and I started walking up the
11 dock and once I got to where he couldn't see me, I called my
12 sister to tell her to call the police.

13 Q. You called your sister?

14 A. Yes, ma'am.

15 Q. Why didn't you just call 911?

16 A. Because I was afraid. I didn't have time to have
17 911 on my phone. I didn't have time to explain to them where
18 I lived, what was going on. Uhm, I felt like it was a matter
19 of life and death. I knew if he got my phone, he would know
20 that I called 911 and he would know that she had told me and
21 that it finally had come out.

22 Q. What was -- Was there an issue with your phone
23 before? Were you concerned that he would go through your
24 phone?

25 A. Yes, ma'am.

1 Q. Had he done that before?

2 A. Yes, ma'am.

3 Q. What did you tell your sister?

4 A. Uhm, I told her that he had been touching her and
5 she needed to call the police and tell them to get here
6 immediately because either he was fixing to die or I was
7 fixing to die or we were all fixing to die. Somebody was
8 probably fixing to die if he found out I knew. And I hung up
9 and proceeded to go inside my house.

10 Q. When you say that somebody was gonna die, can you --
11 Did he ever physically harm you?

12 A. He's never physically harmed me, no, ma'am.

13 Q. Can you explain where that fear came from that
14 day?

15 A. I was always worried, uhm, with him wearing a gun
16 ~~because he was always so unstable as far as emotionally and,~~
17 you know, he's happy. He's mad. He's sad. He's happy. You
18 know, like all over the place. Uhm, and he had always said if
19 I can't have you, no one can. He's made comments before
20 about, you know, he would never go to jail. And he's made
21 comments about suicide before, uhm, so that's why I was
22 afraid.

23 Q. You were afraid?

24 A. Yes, ma'am.

25 Q. Is it fair to say that the emotions were high that

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1 day?

2 A. Absolutely. Yes.

3 Q. Had you spoken to your sister before about any
4 concerns related to him sleeping in **minor one** bed?

5 A. Yes, ma'am.

6 Q. So she was already aware of this?

7 A. Yes, ma'am.

8 Q. Okay. After you called your sister and told her to
9 call 911, what did you do?

10 A. I proceeded to go inside and act like nothing was
11 wrong. I asked him if he was, you know, about ready to go.
12 What we were going to do. Just have a conversation because I
13 know that he thought that if I knew, I would flip out and I
14 didn't do that so I went inside and made sure everything was
15 fine and at that point he laid back down on the couch. Uhm, I
16 sat down beside him for a couple minutes and touched him
17 because I knew what was fixing to happen and I knew my world
18 was fixing to get taken from me. Then I heard the cop cars so
19 I looked out the window. I saw that they were here, uhm, and
20 I told him, I said, oh, the police are here. We lost a gun
21 previously like two weeks ago. He was riding a horse and I
22 guess it fell out of his holster and I called to report it
23 missing and they never did come out to get the serial numbers
24 so when they pulled up, I told him, oh, they're finally here
25 to get the serial numbers. I proceeded to go outside with the

1 gun box acting like that's what I was gonna do. So you want
2 me to continue?

3 Q. So you went outside?

4 A. Yes, ma'am. I went outside to meet the police.

5 Q. Where was **minor** and the younger kids at this
6 point?

7 A. Uhm, she was upstairs. I had -- I don't remember
8 when that me and her saw each other. I believe James Miller
9 was laying on the couch at one point and I grabbed her and I
10 said he's been touching her. Take the little children
11 upstairs. The police are coming and she immediately grabbed
12 the children and took them upstairs.

13 Q. Okay. Do you remember if you said that
14 specifically?

15 A. I am - I can't say for a hundred percent that's my
~~16 exact words, but I did tell her that he was doing something to~~
17 her, uhm, and that she needed to take the children upstairs so
18 they didn't see what was fixing to happen.

19 Q. When you talked to her and asked her to take the
20 kids upstairs, was he anywhere near you?

21 A. No, ma'am.

22 Q. Where was he?

23 A. He was on the couch.

24 Q. So the police came and you went outside?

25 A. Yes, ma'am.

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1 Q. With the gun box?

2 A. Yes, ma'am.

3 Q. Did he say anything to you before you went
4 outside?

5 A. No, ma'am.

6 Q. What did you do? Where did you talk to the
7 police?

8 A. Uhm, to the right of the house there's like a hill.
9 There's our driveway and there's like a little hill.

10 Q. When you're talking about the right of the house or
11 the left of the house, are you saying as if you are looking
12 from the driveway or from the lake?

13 A. If the lake is behind you and you're looking at the
14 house, to the right because to the left would be the neighbor,
15 to right would be the driveway.

16 Q. I'm going to show you what's already been admitted
17 as State's Exhibit number 4. What area are you referring
18 to?

19 A. Uhm, I was literally like right over here. You can
20 see from that window. I saw the police and this is the
21 driveway. It goes that way so I was probably right about here
22 (indicating.)

23 Q. Okay. What did you tell them when they came?

24 A. I just started crying and I said that my daughter
25 just told me that her father has been touching her and I just

1 like collapsed on the ground.

2 Q. So you were upset?

3 A. Yes, ma'am.

4 Q. And how else did you feel?

5 A. Hurt, scared, disgusted, pissed off.

6 Q. Why do you think you collapsed?

7 A. I just couldn't believe it was really happening. I
8 knew that something was not right for a long, long time.

9 Q. Earlier when you mentioned that he was staring out
10 of the, staring out of the window watching you talking to
11 **minor one** let me show you what's marked as State's Exhibit 9.
12 Do you recognize that?

13 A. Yes, ma'am. That's our front door.

14 Q. Is that what you are referring to?

15 A. Yes, ma'am.

16 ~~MS. CAVANAUGH: Your Honor, at this time I would ask~~
17 that State's exhibit number 9 be admitted into evidence.

18 THE COURT: Any objection?

19 MS. GOOD: No objection.

20 THE COURT: It's so admitted.

21 MS. CAVANAUGH: Thank you.

22 BY MS. CAVANAUGH:

23 Q. So that was the window?

24 A. Yes, ma'am. It had blinds in the door but you could
25 raise and lower them and they were usually raised. There I

1 think they're actually lowered, but most of the time we keep
2 them raised so we could see the lake.

3 Q. Okay. When you went outside to talk to the police,
4 did James go with you?

5 A. No, ma'am.

6 Q. When was the next time that you saw James?

7 A. I saw him taking off down to my daughter **minor one**

8 Q. And that was after the police were there?

9 A. Yes, ma'am.

10 Q. What did you do when you saw him going down towards
11 the dock?

12 A. I started freaking out and telling them they better
13 hurry up and get down there because I thought he was going to
14 kill her.

15 Q. Did you know whether or not he had the gun on him at
16 that time?

17 A. I thought that he did because he had it him five
18 minutes ago, three minutes ago even.

19 Q. So you didn't know?

20 A. I had no idea.

21 Q. Did they go down there after him?

22 A. They did. Not as quickly as I liked but they did.

23 Q. When they went down there, where did you stay?

24 A. I stayed on the ground crying.

25 Q. Did you see anything on the dock as far as what he .

1 was doing?

2 A. Yes, ma'am.

3 Q. What did you see?

4 A. Uhm, the officers got I think a little bit more than
5 half way down there when I saw him walking up the dock taking
6 his gun holster -- there was no gun -- but his gun holster and
7 his belt off, taking the stuff out of his pockets setting it
8 in the chair and then he put his hands behind his head and
9 proceeded to walk towards them.

10 Q. Were you within hearing distance of where the
11 officers and James were at that point?

12 A. No, ma'am.

13 Q. Did they walk towards you our toward where you
14 were?

15 A. With him?

16 Q. Yes.

17 A. Yes, ma'am. Once they -- Well, when they pulled up,
18 they told me they couldn't just arrest him and that's what
19 made me collapse initially. I was like, oh, my, God. He's
20 not going to admit that he did it so you can't leave him with
21 us because he's gonna kill us. Once they put the handcuffs on
22 him, I felt better, and then they started walking up towards
23 me with him with the handcuffs on.

24 Q. And so did he say anything to you when he was
25 walking by you?

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1 A. Yes, ma'am.

2 Q. What did he say?

3 A. He said it wasn't all his fault and he asked me for
4 one last kiss.

5 Q. He said it wasn't all his fault?

6 A. Yes, ma'am.

7 Q. At this point had you told him why the police were
8 there --

9 A. No, ma'am.

10 Q. -- other than what you had said earlier about the
11 gun?

12 A. No, ma'am. He thought, initially he thought they
13 were there for the gun.

14 Q. Did Corporal Houser take you and minor inside?

15 A. Uhm, one of them did. I don't know which one. I
16 don't remember. But yes, ma'am. Once they put him in the
17 car, one of the officers asked us if we could go inside.

18 Q. Were you asked to give a statement?

19 A. Yes, ma'am.

20 Q. Was it something that he sat there and asked you
21 like a question and answer session?

22 A. No, ma'am.

23 Q. What type --

24 A. He give me a piece of paper with a pen and said we
25 need a statement. And I was like, right now? Really? I

1 didn't know what to say. I didn't know how to write it and I
2 just threw something down.

3 Q. And at this point had [minor] told you anything else
4 besides what she said on the dock?

5 A. No, ma'am.

6 Q. So you gave them the information that you had at
7 that time?

8 A. Yes, ma'am.

9 Q. And then your other observations over the course of
10 that period, the year?

11 A. Repeat that please.

12 Q. Did you also just give a little but more about your
13 concerns over that year?

14 A. I believe so. I have not reread my statement. I
15 really don't know what I said. I was like mentally not
16 there.

17 Q. Okay. When you gave your written statement, were
18 you and [minor] together?

19 A. Uhm, I know I was sitting in the living room on the
20 couch and I don't remember if she was outside doing hers or if
21 she was in the living room as well. I know there was an
22 officer standing there with us but I don't remember where she
23 was.

24 Q. Did you have any conversations whatsoever about what
25 you were going to put in yours and what she was going to put

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- 1 in hers?
- 2 A. No, ma'am.
- 3 Q. Did you take her to a doctor?
- 4 A. Yes, ma'am.
- 5 Q. Did you -- How many?
- 6 A. Uhm, gosh, I know we went to two different places.
- 7 Uhm, and I don't remember if it was just a forensic interview.
- 8 I know we went to The CARE House. Uhm, then there was another
- 9 place that they told me I needed to take her.
- 10 Q. Okay. Did you do that?
- 11 A. Yes, ma'am.
- 12 Q. Did you also take her to the hospital in Kershaw?
- 13 A. I don't remember.
- 14 Q. Was James arrested that afternoon?
- 15 A. Yes, ma'am.
- 16 Q. And did he make any -- Did you have any further
- 17 interaction with law enforcement that afternoon?
- 18 A. I don't believe so.
- 19 Q. At some point did you speak to -- Uhm, did you know
- 20 whether this was going to be assigned to an investigator?
- 21 A. Yes, ma'am.
- 22 Q. At some point did you speak to an investigator?
- 23 A. Yes, ma'am.
- 24 Q. Who did you speak to?
- 25 A. Uhm, his last name I believe starts with a K.

1 Q. Investigator Knafelc?

2 A. Yes, ma'am.

3 Q. Do you remember anything about speaking to him?

4 A. Uhm, I do. I remember how nice he was and how he
5 made us feel safe.

6 Q. Okay. Did you reach out to him several days later,
7 uhm, about anything, any concerns about the house?

8 A. Uhm, gosh, I don't remember.

9 Q. Did you have more conversations with **minor** about
10 the sexual assaults after he was arrested?

11 A. Yes, ma'am.

12 Q. Okay. Did you learn more details as far as about
13 where it might have occurred?

14 A. Yes, ma'am.

15 Q. Did she tell you where?

16 A. Yes, ma'am.

17 Q. Where did she say it happened?

18 A. Uhm, it happened in the truck. It happened in my
19 bed. It happened on the couch. It happened in the house next
20 door because we had both houses, her room and other places in
21 Camden.

22 Q. So did you reach out to the investigator after you
23 learned where?

24 A. Yes, ma'am.

25 Q. And why did you do that?

1 A. Uhm, because I wanted them to come and look for
2 evidence.

3 Q. And did they come out to your house?

4 A. Yes, ma'am.

5 Q. You said that [minor] told you where the sexual
6 assaults occurred. Did she tell you, uhm, what time frame
7 they occurred? When they occurred?

8 A. Uhm, what do you mean? Like time of day?

9 Q. When it started?

10 A. Uhm, I mean, it started the two weeks that we were
11 separated, uhm, and it happened a lot. We didn't get into too
12 much detail because obviously it was a very uncomfortable
13 situation for both of us to talk about.

14 Q. Did she indicate to you when it ended?

15 A. Uhm, I believe it was at least a month before it
16 came out. I believe it was about the time frame because
17 things started getting really, really weird between the two of
18 them.

19 Q. After he was arrested that day, did you have any
20 further contact with James?

21 A. Briefly, yes, ma'am.

22 Q. Can you describe that contact?

23 A. He kept calling the house and calling the house and
24 calling the house, uhm, and I would answer like an idiot and,
25 uhm, he would say, you know, just make it go away. I'll leave

1 you guys alone. You know, I'll pay you whatever you want.
2 Just, you know, I'll leave you alone. Just make it go away is
3 what he would say.

4 Q. Did he ask to speak to **minor one**

5 A. Yes, ma'am.

6 Q. Did you let him talk to **minor one**

7 A. I did put her on the phone I think once. I thought
8 that if I did that, that he would say I'm sorry.

9 Q. So that's why you did it?

10 A. Yes, ma'am. Something that would hopefully give her
11 some type of closure and also kind of put the nail in the
12 coffin, I guess.

13 Q. Was that the only time that he actually called
14 you?

15 A. Yes, ma'am. After - after those few phone calls

~~16 that first two days I think it was, because it got to where~~

17 the phone was constantly ringing and constantly ringing and I
18 wasn't answering it anymore. Once I knew that he was not, you
19 know, he wasn't --

20 Q. Right. Did you go see him at the jail after that?

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

22 Q. Why did you do that?

23 A. Uhm, I had a title to a vehicle, uhm, that I needed
24 him to sign so that I could sell it. The registration was in
25 my name but the title was in his.

1 Q. Did he do it?

2 A. No, ma'am.

3 Q. Did he say anything to you after you tried to get
4 him to sign over the title?

5 A. Uhm, he had his Bible in his hand and told me that
6 he had found God. I had recently been saved and we've had
7 some conversations about that. So he did that and, uhm, told
8 me I wasn't being the wife I'm supposed to be because
9 apparently somebody told him to read Proverbs and he was very
10 distraught trying to rip off his clothes. And at one point I
11 did kind of chuckle at him because he was acting ridiculous
12 and he snapped at me real quick and I just, I realized that
13 I'm not doing this and, uhm, I turned around and said I love
14 you and I walked away.

15 Q. Okay. Did you -- How long did you stay in Camden
16 after --

17 A. That happened?

18 Q. -- that day?

19 A. Uhm, August, September. We moved less than two
20 months later. More like a month and a half later once I got
21 everything sold because I had no car. I had no money. I had
22 no job so I had to sell everything that we had to try to get
23 away.

24 Q. Because James was the source of income for y'all's
25 family, right?

1 A. Yes, ma'am.

2 Q. Where did you move after Camden?

3 A. Pensacola, Florida.

4 Q. What did you do when you moved to Pensacola,
5 Florida?

6 A. Uhm, I got a house. Uhm, I got a job at State Farm.
7 I was doing car insurance for a little while, then I
8 challenged the board and got my life, health and annuities
9 license, then I started working for a global insurance
10 company. Uhm, I did so well that within eight weeks they
11 promoted me to territory manager. I took care of everything
12 from Alabama to Tallahassee. I did that for almost two years
13 and then the traveling just, it took its toll on me, flying to
14 Chicago, flying to Charlotte, flying here and flying there,
15 driving to Tallahassee. Uhm, I wasn't around as much as I
~~16 should be so I quit and I challenged the board to get my CNA~~
17 and I now --

18 Q. When you say challenged, what do you mean?

19 A. Uhm, that means that I believe I'm smart enough to
20 study and challenge the board without going to school and pass
21 the state exam.

22 Q. Is that something that is like Florida
23 terminology?

24 A. Uhm, I don't know if they do it in ever state. I
25 was just told that it can happen and when I did my life,

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1 health and annuities, I made the highest score of anybody in
2 20 years. And I made a hundred on my CNA state exam which
3 they were very impressed.

4 Q. Okay. So you took steps to improve your life and
5 provide for your family?

6 A. Yes, ma'am.

7 Q. Did the children move with you initially?

8 A. Yes, ma'am.

9 Q. Okay. How long did they live, uhm, with you in
10 Pensacola, Florida?

11 A. Uhm, the whole time we have been there which has
12 been -- Oh, you're talking about the twins or all of them?

13 Q. Well, the younger kids, are they still with you?

14 A. Yes, ma'am. The younger kids are still with me.

15 Q. What about the twins?

16 A. The twins, uhm, **minor two** my sister ended up talking
17 me into sending **minor** to her because she was in a bad
18 relationship. The boy was cheating on her and, uhm, my sister
19 made me believe that if I didn't do it, I would lose her so I
20 sent her to my sister's probably, I don't know, maybe six
21 months after we moved down there. Uh, I sent her there. Uhm,
22 **minor** remained with me until -- That was the last time **minor**
23 lived with me because she got very upset with me. And **minor**
24 lived with me until, gosh, 2014 when she moved out and got her
25 own little apartment, she and her fiance.

1 Q. Okay. When you said that [minor] got upset with you,
2 again what was your understanding as to why she was upset
3 with you?

4 A. Well, what happened was, uhm, when I sent her, I
5 sent her with two of the other children. Uhm, I was working a
6 lot. I was struggling. I really couldn't afford to put the
7 kids in after school care. They were in school. I couldn't
8 afford after school care. Uhm, my sister said they need a
9 break. Just let me have them all, you know, all except my son
10 [minor] so she took three of them. Uhm, and then once she got
11 there, my sister started telling [minor] --

12 MS. GOOD: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MS. CAVANAUGH:

15 Q. Just in general was she upset with you about a
16 boyfriend?

17 A. She was upset with me about a boyfriend and, uhm, we
18 weren't allowed to talk anymore. Let's just say that.

19 Q. Okay. You weren't allowed to talk to [minor two]

20 A. No, ma'am.

21 Q. Why not? Who told you that you weren't allowed to
22 talk to [minor two]

23 A. My sister said that she didn't want to talk to me.
24 She told me that.

25 Q. Okay. Is y'all's relationship okay now?

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1 A. It's much, much, much better than what it was. It's
2 still not one hundred percent. This has been hard on all of
3 us. But yeah, we talk. We text. We call regularly so it's -
4 it's good.

5 Q. And are both the twins married now?

6 A. Yes, ma'am.

7 Q. Where do they live?

8 A. [minor] lives in California and [minor] lives in
9 Virginia.

10 Q. Since the day that you described going to see him
11 when you were trying to get him to sign over the title, have
12 you seen him since?

13 A. No, ma'am.

14 Q. Is this the first day since that day three and a
15 half years ago?

16 A. Yes, ma'am.

17 Q. What about contact? Has he made any contact with
18 you since then?

19 A. No, ma'am.

20 Q. And can you point out to the jury who your former
21 husband is?

22 A. (Indicating.)

23 Q. What's he wearing?

24 A. Blue sweatshirt.

25 MS. CAVANAUGH: Your Honor, let the record reflect

1 she has identified the defendant.

2 THE COURT: It so reflects.

3 BY MS. CAVANAUGH:

4 Q. Have you since remarried?

5 A. Yes, ma'am.

6 Q. Okay. When did you say you got remarried?

7 A. June 6th of this past year or last year. It will be
8 a year this June.

9 Q. What's your husband's name?

10 A. Jason.

11 Q. What's his last name?

12 A. Price.

13 Q. Does he have kids?

14 A. Uhm, he does. They don't live with us. They are
15 older.

~~16 Q. Do your younger siblings live with y'all?~~

17 A. Yes, ma'am.

18 MS. CAVANAUGH: Thank you, Tammy.

19 THE COURT: All right. Before we get into cross
20 examination, we have been hearing testimony for over an
21 hour and a half so we're gonna take a ten minute break.
22 It is 3:50 now. Be back in the courtroom at 4:00. And I
23 again tell the jurors not to speak about the case when
24 you're back there in the jury room. Thank you.

25 (Short recess.)

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1 BAILIFF: All rise.

2 THE COURT: Thank you. Before the jury comes in, I
3 remind you that you remain under oath. All right. Go
4 ahead and bring in the jury.

5 (Whereupon, the jury returned to the courtroom at
6 4:15 p.m.)

7 THE COURT: All right. We'll resume with the cross
8 examination of Ms. Price. Ms. Good.

9 CROSS EXAMINATION

10 BY MS. GOOD:

11 Q. Good afternoon, Ms. Price.

12 A. Good afternoon.

13 Q. How many guns were in the home?

14 A. Uhm, approximately four or five.

15 Q. And did [minor] have a gun?

16 A. Uhm, she had a, some type of hunting rifle.

17 Q. So there were guns in the home long before July of
18 2011?

19 A. No, ma'am. That gun was purchased after July.

20 Q. [minor one] gun was?

21 A. Yes, ma'am.

22 Q. When was it purchased?

23 A. Uhm, it would have been probably around March. When
24 my mother passed away, I got a settlement and that's when,
25 uhm, the majority of the guns were purchased. There were two

1 prior.

2 Q. And the two prior, who bought those guns?

3 MS. CAVANAUGH: Objection. Can we approach briefly?

4 THE COURT: Sure.

5 (Side bar off the record.)

6 BY MS. CAVANAUGH:

7 Q. Prior to July of 2011, how many guns were in the
8 home?

9 A. Zero.

10 Q. When was the first gun purchased?

11 A. I'm not a hundred percent sure but I believe it was
12 the end of July, beginning of August.

13 Q. And who had that gun?

14 A. He did.

15 Q. And this gun that was lost, when did that gun get
16 lost?

17 A. Uhm, that gun got lost about two weeks before the
18 police came to the house.

19 Q. When was that gun bought though?

20 A. Oh, it was bought, uhm, in March.

21 Q. Okay. So between July and March how many guns were
22 in the home?

23 A. Two.

24 Q. What was the second gun?

25 A. Uhm, one of them was a Ruger nine millimeter.

1 Q. Whose gun was that? Which one was he carrying on
2 him?

3 A. He carried - well, he carried one and I don't
4 remember the name of it. And he carried a Smith and Wesson.
5 I honestly don't know. I know there was one Ruger.

6 Q. So he carried two guns?

7 A. Sometimes, yes, ma'am.

8 Q. How often did he have a gun on him?

9 A. He had a gun on him everyday.

10 Q. So where was the other one the entire time?

11 A. Uhm, we bought a safe and the other, all the ammo
12 and the other rifle was in the safe.

13 Q. Okay. Do you know if **minor** was aware that that gun
14 was in the home?

15 A. Which gun?

16 Q. The one that stayed in the safe.

17 A. Yes, ma'am.

18 Q. Yes, you are aware, or yes, she knew?

19 A. I mean, there was a gun safe so, yes, she knows
20 there's guns in the safe.

21 Q. Okay.

22 A. Yes, ma'am.

23 Q. And you're familiar with how a criminal sexual
24 conduct investigation goes, correct?

25 A. I'm familiar with what?

1 Q. How a criminal sexual conduct investigation goes?

2 A. Somewhat.

3 Q. That's because you have been through it before with
4 your son?

5 A. Yes, ma'am.

6 Q. And that was prior to any of this coming out with
7 **minor one**

8 A. Yes, ma'am.

9 Q. And, in fact, you put your father away in jail for
10 that, correct?

11 A. Uhm, no, ma'am, I did not.

12 Q. He is in prison, correct?

13 A. Uhm, he is in prison and I did call the police.

14 Q. When was that? What year was that?

15 A. That was 2006.

~~16 Q. You stated you home schooled the children,~~
17 correct?

18 A. Yes, ma'am.

19 Q. When did the twins go into elementary school that
20 one time?

21 A. They went to sixth grade, uhm, elementary school.

22 Q. Were they public schooled?

23 A. They were in public school for half of sixth grade
24 so that would have been, I think, 2007.

25 Q. Okay. So they were only in public school for half

TAMMY PRICE - CROSS BY MS. GOOD

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1 of a year?

2 A. Yes, ma'am.

3 Q. And you did the home schooling?

4 A. Yes, ma'am.

5 Q. What was your education level?

6 A. Uhm, high school. I have got a diploma.

7 Q. And when you were home schooling, how often would
8 y'all be together during the day?

9 A. Uhm, it varied.

10 Q. Explain a regular day for me.

11 A. Uhm, it depended on the week. Uhm, we could be
12 together three days a week or we could be together five days a
13 week or seven days a week or sometimes two days a week.

14 Q. So you didn't have a set schedule with home
15 schooling?

16 A. No, ma'am.

17 Q. But it's fair to say that you were close to all of
18 your children because you were home schooling them every day,
19 correct?

20 A. Yes, ma'am.

21 Q. Because you stayed at home?

22 A. Well, I was at home when I wasn't at work with
23 him.

24 Q. Essentially you were a stay at home mom?

25 A. Essentially, yes, ma'am, I was a stay at home mom.

1 Q. All right. And you were the primary care giver for
2 all of them coming up, correct?

3 A. Yes, ma'am.

4 Q. So you knew their behaviors?

5 A. Yes, ma'am.

6 Q. You knew what they liked to do or didn't like to
7 do?

8 A. Yes, ma'am.

9 Q. And you stated earlier that [minor] was the outgoing
10 one. [minor] --

11 A. [minor two]

12 Q. [minor two] I'm sorry. [minor] was the passive one?

13 A. Yes, ma'am.

14 Q. And she liked to draw and kind of keep to herself?

15 A. Yes, ma'am.

16 Q. Who were you closer with, [minor] or [minor two]

17 A. I was close with both of them, uhm, but [minor] was
18 with me more because she helped with the dishes more. She
19 helped cooking more. She helped with her younger siblings
20 more. But I was very close with both of them.

21 Q. And you stated when y'all decided to move to Camden,
22 you used the word "we" when you testified.

23 A. Mm-hmm.

24 Q. It was yours and James' decision?

25 A. Well, not exactly. Uhm, he said let's move. Fresh

TAMMY PRICE - CROSS BY MS. GOOD

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1 start. More work, you know, and we -- I say we because I
2 didn't say, oh, no, no, no.

3 Q. And the children wanted to move, too, correct?

4 A. Yes, ma'am.

5 Q. Uhm, so those two weeks you said you talked while
6 James was up here with [minor] working on the new house. Uhm,
7 how often did you talk to [minor one]

8 A. Uhm, I probably talked to her not every day. I
9 tried to contact her every day. Uhm, I would probably say I
10 talked to her, gosh, I really don't remember how many times.

11 Q. Was it more than twice? More than five times? More
12 than ten times?

13 A. I wouldn't say more than five times, no, ma'am.

14 Q. So about five times you think you talked to her?

15 A. I know more than twice. I know that.

16 Q. And you stated that you became concerned at that
17 time, right?

18 A. Yes, ma'am.

19 Q. And that you wanted to hustle back?

20 A. Yes, ma'am.

21 Q. That didn't cause you concern to think that
22 something might be going on if you wanted to hustle back?

23 A. Between him and her?

24 Q. Yes.

25 A. No, ma'am.

1 Q. So you didn't think to do anything at that point if
2 you were that concerned?

3 A. I finished packing my house and told him to come get
4 us.

5 Q. Then when you got back, you said you never had sex
6 with him again but about eight times. Did that concern you?

7 A. I didn't say eight times. I said two to three.

8 Q. I'm sorry. Two to three.

9 A. And, yes, ma'am, it did concern me.

10 Q. At that point you never got worried and said I need
11 to talk to somebody or send her to somebody?

12 A. I couldn't have sent her to anybody.

13 Q. Couldn't send her to a counselor?

14 A. No.

15 Q. Because this isn't the first time you have gone
16 through this process?

17 A. Yes. No, ma'am. No. We have no friends other than
18 the two. The Harrelsons. And the Norwood family wasn't even
19 really around at all. We don't -- I wouldn't have been
20 allowed to do that, to get her counseling. But it wasn't her.
21 It was us that I thought at that point. I thought it was
22 me.

23 Q. But you testified earlier that you were worried
24 about her voice when you spoke with her on the phone during
25 those two weeks. Were you not concerned then?

TAMMY PRICE - CROSS BY MS. GOOD

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1 A. That day, yes, I was concerned.

2 Q. Immediately when he moved back, he was not sleeping
3 in bed with you anymore, correct?

4 A. Correct.

5 Q. And he moved into the bed with **minor one** correct?

6 A. Uhm, I wouldn't say he moved into the bed with her.
7 I would constantly find him. He would say I'm going to sleep
8 on the couch and I wouldn't sleep and then I would get up and
9 go upstairs because he wouldn't be on the couch.

10 Q. And at that point that didn't cause you concern?

11 A. Yes, ma'am, it did cause me concern.

12 Q. Did you ask her at that point?

13 A. Uhm, I asked her in the beginning, yes, ma'am.

14 Q. And it didn't continuously concern you?

15 A. Yes, it continuously concerned me.

16 Q. Yet you did nothing about it, correct?

17 A. Well, I feel like I did everything that was in my
18 power. Without somebody telling me something I felt like I
19 had no choice but to try to figure it out. I didn't know what
20 was going on. I was extremely confused. Uhm, he made me feel
21 like I was going crazy and I thought for a while I was.

22 Q. And then towards the end you said there was several
23 things that caused you concern. Uhm, the first being that
24 you went up there and her leg was wrapped around him and you
25 freaked out, correct?

1 A. Yes, ma'am.

2 Q. You said you left the house?

3 A. Yes, ma'am.

4 Q. You left all your children in the house with him?

5 A. Yes, ma'am.

6 Q. Thinking that something might have been going on?

7 A. I still at that point could not believe that
8 something like that could be going on. It was inappropriate,
9 but at that point I still could not even fathom that he was
10 having sex with her.

11 Q. And the second thing was the mono. How long did she
12 have mono?

13 A. She was sick for two to four weeks.

14 Q. And those two to four weeks did he have contact with
15 her?

16 A. Yes, ma'am.

17 Q. And did he ever get sick?

18 A. No, ma'am.

19 Q. And you said you saw a couple of bruises on her arms
20 and legs. What kind of bathing suit was she wearing?

21 A. She would always wear a two piece.

22 Q. Two piece?

23 A. Yes, ma'am.

24 Q. When you say two piece, do you mean a bikini?

25 A. Yes, ma'am.

TAMMY PRICE - CROSS BY MS. GOOD

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1 Q. And you would see these on her while she was wearing
2 a bikini during the summer or spring months?

3 A. Occasionally, yes, ma'am. May I answer that
4 further?

5 Q. Yes.

6 A. Because her and her dad, they did like to wrestle
7 sometimes and sometimes, you know, he would gooch her leg. So
8 every time I would see bruises on her that's immediately what
9 I would even think about.

10 Q. But when she would go outside when it was hot, she
11 would wear a bikini?

12 A. Sometimes, yes, ma'am.

13 Q. You stated the day that she came forward to you that
14 she was in an argument with her father?

15 A. A spat is what I would say.

16 Q. Over this boy Henry about everybody going to the
17 Harrelsons?

18 A. It had nothing to do with Henry.

19 Q. Earlier you testified that she wasn't allowed to go.

20 A. She wasn't allowed to go to their house, but it had
21 nothing to do with Henry.

22 Q. Why wasn't she allowed to go to their house?

23 A. Because she would not stay right beside of him at
24 all times. She wanted to go play with the other children.

25 Q. Including Henry?

1 A. Including Henry, yes, ma'am. Uhm, they sat and
2 talked on the swing. I mean, they did have conversations.
3 Uhm, they were friends. Nothing more than that. But the last
4 time we went, she would not stay beside of him when the other
5 kids were out playing and that's what caused him not to let
6 her go.

7 Q. You testified earlier that you had a discussion with
8 him that she wasn't allowed to go over there anymore,
9 correct?

10 A. Yeah. I did not say that she was not allowed.

11 Q. Right.

12 A. But yes, we had - he said that she is no longer to
13 go to that house.

14 Q. And he actually agreed to go with you that day,
15 correct?

16 ~~A. He agreed to go with me. I agreed to go with him.~~

17 We were supposed to go.

18 Q. So you were going to go together?

19 A. Yes, ma'am.

20 Q. And when y'all determined to go together, what did
21 he do next? Did he go take a shower?

22 A. I believe he was already dressed.

23 Q. Okay. So you don't remember going into the shower
24 to tell him that they were coming about the lost gun?

25 A. No, ma'am. He was laying on the couch and I told

TAMMY PRICE - CROSS BY MS. GOOD

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1 him that.

2 Q. When did you tell him that? Was it after you came
3 back up from the dock?

4 A. Yes, ma'am.

5 Q. So he was no longer standing at the door at that
6 time?

7 A. No. When I came up from the dock, as soon as he saw
8 me, he turned around and he was not at the door and he went
9 and laid down and I went inside. He said, like, what's going
10 on?

11 Q. That's when you told him that they were coming about
12 the gun?

13 A. I didn't -- No. No. No. Hold on. Hold on.
14 You're putting words in my mouth here. Hold on. After she
15 told me, I called my sister. I walked back up. He was
16 standing in the door. Then he moved and then I walked in. I
17 had never told him they were coming for the gun until they
18 pulled up.

19 Q. That's when you --

20 A. Yes, ma'am.

21 Q. You said you went outside. You said at some point
22 you collapsed on the ground?

23 A. Yes, ma'am.

24 Q. And you told the deputies to go down and get him
25 from the dock?

1 A. Yes, ma'am. Before he got to the dock.

2 Q. And at the time when Minor told you, you left her
3 down on the dock by herself?

4 A. Yes, ma'am.

5 Q. Why did you leave her by herself?

6 A. I couldn't stay down there because he would know.

7 Q. Why would he know if you consistently talk to your
8 daughter?

9 A. Because I was not allowed to consistently talk with
10 my daughter. Every time I would try to talk with her, he
11 would either be at the door or he would be around.

12 Q. And you stated in earlier testimony that the cops
13 told you that they couldn't just arrest him, but they did that
14 anyway, correct?

15 A. Yes, ma'am. They said that they could not just
16 arrest him. That he would have to, uhm, admit to what he
17 done.

18 Q. And you stated that **minor** just said down at the
19 dock, all she said to you was he's touched me every day,
20 correct?

21 A. I said is he touching you? And she said every
22 day.

23 Q. And that's all she said?

24 A. That's all I remember.

25 Q. And did you talk to her again about it before giving

TAMMY PRICE - CROSS BY MS. GOOD

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1 your statement to law enforcement that day, that written
2 statement?

3 A. I honestly do not remember.

4 Q. In fact, in your written statement, you actually put
5 a lot more detail into what you said she said to you that day,
6 correct?

7 A. Obviously.

8 Q. So what you testified to earlier was not the truth
9 when it came to what she told you?

10 A. Uhm, that's what she told me on the dock, yes,
11 ma'am.

12 Q. Just that he touched her, that's it?

13 A. I said is he touching you? And she said every
14 day.

15 Q. And you stated you were not next to her when she
16 gave her statement. You're not sure but you don't remember
17 her giving her statement in the house that day, correct?

18 A. Uhm, I know that I verbally did not hear her. If
19 she was sitting there writing her statement on the other
20 couch, that is a possibility. I do not remember that.

21 Q. That's what I mean. You're not sure what she said
22 that day, correct?

23 A. Repeat that please.

24 Q. You're not sure what she said to the officers that
25 day?

1 A. Correct.

2 Q. You ultimately took her to The CARE House?

3 A. Yes, ma'am.

4 Q. And you took her to another doctor, correct?

5 A. Yes, ma'am.

6 Q. Between the time you took her to The CARE House and
7 the time she disclosed to you, did you speak with her about
8 the case?

9 A. Uhm, we have had a few conversations about some of
10 the stuff that was going on.

11 Q. And she gave you details?

12 A. Not explicit details. It was a very uncomfortable
13 situation for both of us but we did - she was opening up a
14 little bit with me and we did have a couple discussions.

15 Q. You say a couple. About how many times do you think
16 you talked to her? Two? Three?

17 A. I don't know. You know, I don't know.

18 Q. That was between when she told you on the dock and
19 when she went to The CARE House you think?

20 A. I think.

21 Q. And after The CARE House, did she talk to you about
22 what happened?

23 A. I don't think too much in detail. Uhm, I just know
24 she was very upset and I don't remember.

25 Q. And you said you had some conversations and contact

TAMMY PRICE - CROSS BY MS. GOOD

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1 with Investigator Knafelc. In fact, didn't you call him to
2 tell him to come check some spots in the house?

3 A. Yes, ma'am, I did.

4 Q. And how would you know where to look in the house?

5 A. Because it was something that **minor one** I asked her,
6 you know. Like where was this happening? When was this
7 happening?

8 Q. So your testimony is that you and **minor** spoke about
9 it and **minor** told you all these details?

10 A. Uhm, some details. That's what I said. We didn't
11 like get into graphic details, no. But did we get into where
12 and when and how did this happen? Yes, ma'am, we did.

13 Q. When they came out, did you instruct them where to
14 go?

15 A. I told them where her room was. There was one spot
16 that she told them - she told me that it was in the house next
17 door and I don't remember if I'm the one that said she said it
18 happened next door, too, to go look over there but it was too
19 old.

20 Q. And you said he would continue calling from the
21 jail. You actually put **minor** on the phone with him?

22 A. I did one time, yes, ma'am.

23 Q. That didn't concern you that you're gonna put your
24 daughter who he's allegedly assaulted over and over again for
25 the past year on the phone?

1 A. Uhm, my reasoning for doing it was, one, hoping that
2 he would apologize or, two, hope that he would say, well, he
3 was sorry. Say something that I know that we wouldn't be here
4 today.

5 Q. This was after he was arrested, correct?

6 A. Yes, ma'am.

7 Q. How long did that conversation last between him and
8 **minor one**

9 A. Not long.

10 Q. 30 seconds? A minute?

11 A. Probably a minute, yeah. 30 seconds. It wasn't -
12 it wasn't long.

13 Q. And after he was arrested, you stated you moved to
14 Florida, correct?

15 A. Yes, ma'am.

16 ~~Q. Who did you move in with in Florida?~~

17 A. Uhm, I moved in -- I got my own house. I didn't
18 move in with anybody.

19 Q. You didn't move in with some friends when you first
20 moved down there?

21 A. I spent two nights -- I still had my stuff in the
22 truck and I found a house within two days so no, ma'am, I did
23 not live with them.

24 Q. What were their names?

25 A. Melissa and Ryan Albrook.

TAMMY PRICE - CROSS BY MS. GOOD

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1 Q. And how did you get money to move into a new
2 house?

3 A. I sold everything that we owned.

4 Q. And when did you get a divorce from Mr. Miller?

5 A. The papers finally got signed, I think, the
6 beginning of last year.

7 Q. When did you file for divorce?

8 A. Uhm, I filed six to eight months before that.

9 Q. So this happened in 2012. You filed in
10 approximately 2014, two years later?

11 A. Yes, ma'am. Yes, ma'am.

12 Q. And you're now married, correct?

13 A. Yes, ma'am.

14 Q. To Jason Price?

15 A. Yes, ma'am.

16 Q. When did you first start dating Jason Price?

17 A. About two months after I moved down there.

18 Q. So while you were married to Mr. Miller?

19 A. Yes, ma'am.

20 Q. Did Mr. Price move in with you?

21 A. Yes, ma'am.

22 Q. And while you were living with Mr. Price and still
23 married to Mr. Miller, you continued to get money by filing
24 joint taxes?

25 A. No, ma'am. I filed joint taxes for that first year.

1 Mr. Price did not move in until after the beginning of the
2 next year. He did not move in immediately.

3 Q. And before you moved, when you were staying here,
4 y'all were still in that home on [REDACTED] correct?

5 A. Yes, ma'am.

6 Q. And at that time you said you had friends, the
7 Norwoods and the Harrelsons, correct?

8 A. We did until all this happened.

9 Q. Okay. And who is Mark Stokes?

10 A. Uhm, that is a son of the Norwood's neighbors.

11 Q. How old is he?

12 A. 24 then maybe. I'm not --

13 Q. About 24 at that time?

14 A. I think so.

15 Q. Didn't he spend the night at the house with y'all

16 after this happened?

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

18 Q. When you took [REDACTED] to the doctor here in Columbia,
19 The ARC doctor, did you fill out a questionnaire or speak with
20 the doctor?

21 A. Uhm, I'm sure I did. Yes, ma'am.

22 Q. About the background of [REDACTED] just so she has a
23 medical background?

24 A. Yes, ma'am.

25 Q. What's going on?

TAMMY PRICE - REDIRECT BY MS. CAVANAUGH

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1 A. Mm-hmm.

2 Q. Isn't it true that day you told her there had been
3 no behavioral changes?

4 A. I do not remember.

5 MS. GOOD: Okay. No further questions, Your Honor.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY MS. CAVANAUGH:

9 Q. Did Tammy -- Did your family have health insurance
10 during this period?

11 A. No, ma'am.

12 Q. Does counseling cost money?

13 A. Yes, ma'am.

14 Q. Who made the money in y'all's household?

15 A. Mr. Miller.

16 Q. And would he be the one to pay for counseling if you
17 were to take **minor** there?

18 A. Yes, ma'am.

19 Q. And did he agree or allow you to try to take **minor**
20 to counseling?

21 A. No, ma'am.

22 MS. CAVANAUGH: Thank you.

23 THE COURT: All right. You may step down. Ms.

24 Cavanaugh, it's now 4:40. I don't know if you have a

25 short witness or otherwise I don't want to keep this jury

1 much past 5:00 so I just want to see what you have, if
2 you have anybody to go quickly or we may just go ahead
3 and stop for the day and resume tomorrow morning.

4 MS. CAVANAUGH: Yes, Your Honor. Dr. Luberoff is
5 here and she has to go this afternoon and that would be
6 the only witness I intend on calling this afternoon.

7 THE COURT. Okay. Let's go ahead and call her.
8 Like I said it's 4:40. I'm not going to keep the jury
9 past 5:30. So let's get her done within that amount of
10 time. Go ahead and call your next witness.

11 MS. CAVANAUGH: Thank you, Your Honor. The State
12 calls Dr. Susan Luberoff.

13 Thereupon,

14 SUSAN LUBEROFF, M.D.

15 after having been first duly sworn, testified as follows,

16 ~~THE CLERK: Please have a seat. After you're~~
17 seated, please state your full name for the record.

18 THE WITNESS: Susan Breeland Luberoff.

19 DIRECT EXAMINATION

20 BY MS. CAVANAUGH:

21 Q. Dr. Luberoff, what is your profession?

22 A. I'm a pediatrician.

23 Q. How long have you been a pediatrician?

24 A. I graduated from medical school in 1983.

25 Q. Where did you attend medical school?

SUSAN LUBEROFF, M.D. - DIRECT BY MS. CAVANAUGH

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1 A. I was in the third class to graduate from the
2 Medical School in Columbia, the University of South Carolina
3 School of Medicine.

4 Q. Where did you attend your undergraduate schooling?

5 A. University of South Carolina.

6 Q. Okay. And can you describe the type of training
7 that you went through in order to become a pediatrician?

8 A. So when I finished medical school, I did a three
9 year residency at Children's Hospital in Richland Memorial in
10 pediatrics and since then I have been a pediatrician. I have
11 worked in various settings in pediatrics. Pediatrics clinic
12 at Richland Hospital. I was in private practice in Columbia
13 for a while. I worked a little bit in rural pediatrics in
14 Hartsville, but the largest amount of my time has been in the
15 field of child abuse pediatrics which is a subspecialty that
16 was just established about five years ago.

17 Q. So even though the field that you just mentioned,
18 child abuse pediatrics, even though it was just established
19 you said five years ago, did you still have training and
20 education in that area?

21 A. Yes. In the end of 1989 I actually started working
22 in that field. I went away to Denver to the Kemp National
23 Center on Child Abuse for a six week scholar and residence
24 program in the summertime. There wasn't really formal long
25 term training in child abuse at that time. I have attended

1 numerous workshops and specific training over my career in the
2 different areas of child abuse pediatrics and the American
3 Academy of Pediatrics established it as a subspecialty and
4 developed a board exam for that subspecialty which was first
5 offered in 2011. So it's a boarded, what we call a boarded
6 subspecialty like pediatric cardiology is a boarded
7 subspecialty. You take a separate board exam in cardiology to
8 be a pediatric cardiologist. Child abuse pediatrics is the
9 newest boarded subspecialty in pediatrics.

10 MS. CAVANAUGH: Your Honor, at this time I would ask
11 that Dr. Susan Luberoff be qualified as an expert in the
12 area of child abuse pediatrics.

13 THE COURT: All right. Any objection?

14 MS. GOOD: No objection.

15 THE COURT: All right. She is so qualified.

16 ~~BY MS. CAVANAUGH:~~

17 Q. Where are you currently employed, Dr. Luberoff?

18 A. I'm with the University of South Carolina School of
19 Medicine Department of Pediatrics and I'm stationed at the
20 Assessment and Resource Center which is a clinic that
21 evaluates children where there's a concern for physical or
22 sexual abuse or neglect. I do the medical part of the
23 evaluation for children that come through that clinic.

24 Q. And what type of examinations do you perform at the
25 Assessment and Resource Center?

SUSAN LUBEROFF, M.D. - DIRECT BY MS. CAVANAUGH

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1 A. Children come there for a number of different kinds
2 of worries about abuse like physical abuse or sexual abuse or
3 severe neglect, medical neglect and so on. So when we examine
4 a child there regardless of what they were sent for we examine
5 for all kinds of abuse. So the exam actually entails a very
6 careful look at all of the child, skin, looking for any kind
7 of injuries, any evidence of neglect. We do a careful
8 examination of the genitalia. Look inside the mouth. We can
9 often find if there's neglect in the mouth. Look at the
10 weight and height. Listen to the heart. Look at the ears.
11 It's basically a very careful complete physical examination
12 but with particular attention to the skin, the genitalia and
13 areas that sometimes show evidence of abuse or neglect.

14 Q. And how many of these types of exams can you
15 estimate that you have performed over the course of your
16 career?

17 A. Uhm, probably close to 10,000.

18 Q. And I didn't ask you this before, but have you been
19 qualified as an expert before in any court?

20 A. I have.

21 Q. Approximately how many times?

22 A. I stopped counting many years ago at a hundred.

23 Q. Did you actually perform an exam on minor one

24 A. I did.

25 Q. And what day did you perform that exam?

1 A. I believe August 17th of 2012. Is it okay if I
2 refer to my notes?

3 Q. Of course.

4 A. Yes. That's correct.

5 Q. Okay. And was this at the Assessment and Resource
6 Center?

7 A. It was.

8 Q. What type of room do you conduct your exam in?

9 A. It's an examination room that's specifically set up
10 for this. We have the regular things that you would expect in
11 a normal examination room like a stethoscope to listen to the
12 heart, the instruments to look at the eyes and ears and so on.
13 We also have a specific piece of equipment called a colposcope
14 that essentially is a pair of binoculars with a very bright
15 light so that we can get a really good look at the genital

16 area. Some of what we are looking at is kind of recessed and
17 it just gives us a good light source to magnify things and see
18 things very carefully. The room is set up for children so it
19 has a comfortable chair for the child to sit in prior to the
20 exam, an examination table that allows me to move around to
21 all the different sides of the child, put the child's feet in
22 stirrups if I need to do that for part of the exam.

23 Q. And what type of agencies typically refer the
24 children to the Assessment and Resource Center?

25 A. Typically DSS or law enforcement refer children to

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1 us. Occasionally another agency, but usually law enforcement
2 or DSS because usually there is an investigation going on
3 about a concern.

4 Q. With [minor one] who actually referred [minor] to the
5 Assessment and Resource Center?

6 A. Detective Steve Knafelc with the Kershaw County
7 Sheriff's Office.

8 Q. Were you the first doctor that she saw after the
9 allegations came out?

10 A. No.

11 Q. Where did she go before you?

12 A. She had been seen at the Kershaw County Health
13 Center or the Kershaw County emergency room. It's a Kershaw
14 facility on August the 14th so about three days before I saw
15 her.

16 Q. And were blood tests drawn during that first
17 examination?

18 A. Uhm, no. No blood tests were done during that first
19 examination. She had a urine test done.

20 Q. Okay. Was that for purposes of detecting a
21 pregnancy?

22 A. They did a urine pregnancy test and they also did
23 what's called a urinalysis which essentially looks to see if
24 there is any sign of infection in the urine and they did a
25 culture of that urine also looking for infection.

1 Q. And did they perform the full gynecological exam
2 that you performed?

3 A. No. According to that record they were aware that
4 she had an appointment already with us and they deferred that
5 part of her exam for me.

6 Q. Okay. Prior to your examination, were you aware of
7 what type of abuse was alleged for **minor** to be referred to
8 y'all to The ARC?

9 A. I was.

10 Q. What type of abuse was that?

11 A. Sexual abuse.

12 Q. Okay. And where did you get that information
13 from?

14 A. Uhm, from the detective that had referred her.

15 Q. Okay. Before you actually start your physical exam
16 of **minor one** is anyone else in the room with you when you're
17 doing that?

18 A. During the exam?

19 Q. Yes.

20 A. Yes.

21 Q. Who is in the room with you?

22 A. Before the child has an exam, we have an employee
23 called a child life specialist who is a specialist in
24 explaining things to children and in understanding children's
25 developmental comprehension of what they are being told. She

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1 actually goes over the exam with the child in advance so she
2 explains everything that's going to happen, shows the child
3 all of the equipment that we are going to use like the light
4 to look in the ears, the stethoscope, the colposcope because
5 it has a little bit of a sound to it so she turns it on and
6 let's the child hear it so that none of that will be
7 frightening during the exam. She explains the positions that
8 I'm going to need for the child to be in and then she assesses
9 the child's understanding all of that. And the exams that we
10 do it's very, very important that we get a really good
11 cooperative child in order for us to see everything that we
12 need to see adequately. So I'm actually not even, according
13 to our protocol I'm not allowed to come in and start the exam
14 until the child life specialist determines that the child
15 understands and is comfortable and understands what I'm gonna
16 need for her to do and so that child life specialist had done
17 that part with [minor] and then the child life specialist stays
18 in the room usually. And then I also have a nurse that comes
19 in so there were two people present besides me for [minor one]
20 exam.

21 Q. Okay. And did you obtain a previous medical history
22 as well on [minor one]

23 A. Yes.

24 Q. Did you also see that she had been diagnosed with
25 mononucleosis, I'll just say mono, that she had been diagnosed

1 with mono prior to the exam?

2 A. I think it was a couple of weeks before the exam.
3 That's the information that I have, yes.

4 Q. Okay. Once you obtained the basic medical
5 background, I shouldn't say basic, but the detailed medical
6 background, did you start your exam?

7 A. Yes, I did.

8 Q. And what did you -- How did you begin that exam?
9 What did you do?

10 A. I always start with the hands. It's a very non
11 threatening part to start with. So I looked at her hands, her
12 arms, her feet, her legs, and then I would have had her lie
13 down on her back to examine her abdomen or her belly, and then
14 I would have done her genital examination. Children of her
15 age are given a choice of what position to do that in. They
16 can do it by putting their feet up in the stirrups like a
17 women would do at the gynecologist or by putting the soles of
18 their feet together with their knees out to the side. Either
19 way gives me a good view of the genital area. So we did her
20 genital exam using the colposcope for a good light source and
21 magnification. Then I examined her back, her ears, her heart,
22 her eyes, her mouth, her scalp. We do the genital exam kind
23 of in the middle of the examination so that if it ends up
24 being embarrassing to the child, the child has sometime after
25 that to do parts that are more familiar so they can get past

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1 being embarrassed and she tolerated the whole thing fine.

2 Q. And specifically related to your examination of the
3 genital area, what were the results of your examination?

4 A. Uhm, [minor] chose to have her feet in the stirrups
5 for her examination which gave me a good look at the outside
6 genitalia. Then to see the more interior parts I have to
7 actually move the labia or the lips to the side so that I can
8 see the hymen and the beginning of the vagina. She didn't
9 have any discharge or rash that concerned me. I got a good
10 look at her hymen and part of the vaginal wall and her anal
11 area as well.

12 Q. Okay. Did you note any injuries on her hymen?

13 A. She did have a finding on her hymen that can be the
14 result of trauma or injury to the hymen and I made a note of
15 that.

16 Q. And as far as you describing your examination of the
17 hymen and different -- I mean, would a diagram assist you with
18 that?

19 A. That would be really helpful for me.

20 MS. CAVANAUGH: Okay. Your Honor, may Dr. Luberoff
21 step off the stand?

22 THE COURT: She may.

23 BY THE WITNESS:

24 Q. Now, I'm not an artist, but this helps me to explain
25 about the hymen, where it is and what I saw. So [minor] is on

1 her back for the examination and her feet are up in stirrups
2 so this would be her right thigh and her left thigh and her
3 buttocks. The labia or lips are pulled to the side. I do
4 that with my hands and then the vaginal area is visible at
5 that point. The hymen is a piece of tissue that surrounds
6 part of the opening of the vagina. It comes in different
7 shapes. **minor one** was round. It was circular. It has an
8 opening in it. Almost all girls are born with an opening
9 already in their hymens. This allows when they become old
10 enough to have a period it allows for the menstrual blood to
11 get out. Before they are old enough to have a period there is
12 secretions in the vagina and the uterus all the time all day
13 long and so the secretions have to get out and so there's an
14 opening in most girls hymen. If there's not an opening,
15 that's a problem and we have to fix that. So she had an
16 opening in her hymen.

17 Hymens in young girls look really different than in
18 girls after they have gotten to puberty. In young girls you
19 can almost see light through that hymen. It looks real thin.
20 At puberty it grows a lot and gets thicker and thicker and
21 thicker until it's really about as thick as my thumb is so you
22 can't see through it anymore and while it's growing, it also
23 grows on its surface area so that before puberty if you were
24 to look at the opening in the hymen when the labia or lips are
25 pulled to the side, it looks sort of round like that with sort

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1 of smooth edges. But after puberty, after it's done all the
2 growing it's going to do, this ends up folding in on itself so
3 it ends up being sort of scalloped looking or folded looking.

4 So to be able to see all of the surface of that
5 hymen we actually have to take a Q-tip and run that along the
6 edge to unfold all the bits of it and make sure that we're
7 seeing everything that we need to see.

8 So **minor one** hymen actually had -- I can't draw the
9 folds and the findings so I'm just going to put the findings
10 down here and I'm going to simplify the folds of her hymen.
11 When I stretched it all out, instead of being smooth all the
12 way around, she actually had a notch or a V shaped defect down
13 in the 7:00 position of her hymen. If you're looking at this
14 like a clock, where this is 12:00 and down at the bottom
15 towards the anus is 6:00, it was at about 7:00 and that notch
16 in the hymen went through the hymenal tissue almost but not
17 quite completely down to the wall of the vagina. So when I
18 separated the two edges of that, I could see the vagina floor
19 all through it. There was a little bit of hymen still left at
20 the base or the bottom of the notch before the wall of the
21 vagina.

22 Q. Okay. What is the significance of the notch at that
23 7:00 point on her vaginal opening?

24 A. If we see an interruption in the hymen that goes all
25 the way to the vaginal wall, all the way through the hymen and

1 to the vaginal wall, then that's actually diagnostic of
2 penetrating trauma to the vagina. [minor one] interruption
3 wasn't all the way to the vaginal wall so all by itself it
4 doesn't a hundred percent mean that it's from trauma and
5 that's when we put the history with what we are actually
6 seeing. Uhm, this finding on [minor] is likely the result of
7 penetrating trauma to her vaginal area, to her hymen.

8 Q. And when you say penetrating trauma, what do you
9 mean by trauma?

10 A. Injury. A tear whose edges did not find each other
11 in the healing process so it left a V shaped defect.

12 Q. And is that finding along with her history
13 consistent with sexual abuse?

14 A. It is.

15 Q. Is it consistent with chronic sexual abuse?

16 A. It's consistent with a healed injury. Uhm, that
17 finding alone wouldn't give any indication as to, for example,
18 how many times it had happened. It was completely healed.
19 When injuries happen there and they finish healing, they
20 usually finish healing within a matter of days or up to two
21 weeks so it was at least a couple of weeks old but it could
22 have been years old. Once it's finished healing, it's
23 finished healing.

24 Q. But it is consistent with penetrating injury?

25 A. It is.

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1 MS. CAVANAUGH: No further questions. Answer any
2 questions from Ms. Good.

3 CROSS EXAMINATION

4 BY MS. GOOD:

5 Q. Good afternoon, Dr. Luberoff.

6 A. Good afternoon.

7 Q. You can't say with any certainty that there was any
8 penetrating trauma, correct?

9 A. Based on just the finding without any history I
10 would not be able to diagnose a penetrating trauma just with
11 that finding.

12 Q. In this type of finding, a notch at the 7:00 mark,
13 in fact, that could be caused in different ways, correct?
14 What's considered a penetrating trauma?

15 A. Force applied to that area that causes an injury.

16 Q. Does something actually have to go into that area?

17 A. If it's an injury, something has to go into that
18 area, yes, to cause the injury.

19 Q. Could it be caused by skiing or wake boarding?

20 A. There have been injuries to vagina from skiing or
21 wake boarding but they're deeper injuries. Also they involve
22 the vagina beyond the hymen. This only involved the hymen.

23 Q. So this could have come from a skiing injury?

24 A. This would not be consistent with any of the
25 published accounts of skiing injuries, no.

1 Q. And you said that you get a medical history prior to
2 **minor** coming to see you, correct?

3 A. At the time of the visit.

4 Q. And what do you call it, the child - not - the child
5 life specialist?

6 A. Yes.

7 Q. They ask her questions?

8 A. Uhm, no. They are not asking her questions.
9 They're explaining the exam.

10 Q. But when you go to do your report, you get
11 information to make sure you understand everything that's
12 going on, correct?

13 A. I use whatever information is available to me at
14 that time, yes.

15 Q. And all of that is important to you, correct?

16 A. It is.

17 Q. And, in fact, wasn't it reported to you that she had
18 had no behavioral changes?

19 A. Yes.

20 Q. And you also diagnosed her with mono, correct?

21 A. No. She had been diagnosed with mono prior..

22 Q. Are you familiar with mono?

23 A. I am.

24 Q. Can you explain to the jury a little bit about mono
25 and how contagious it could potentially be?

1 A. Mono is short for mononucleosis which is a viral
2 infection. In lay terms it's called the kissing disease.
3 It's spread by contact with secretions most commonly saliva so
4 it tends to be spread from person to person that has close
5 contact and it's an infection that affects the throat. It can
6 also affect other body systems.

7 Q. When you did your initial look over of **minor one** her
8 hands, her head, her belly, her legs, did you notice any
9 bruises?

10 A. Let me just refresh my memory. I don't recall there
11 being any significant bruises. No. The only skin injury I
12 noted was some small scars on her forearms that she said was
13 laser surgery to remove some warts.

14 Q. How did **minor** seem during this evaluation?

15 A. Uhm, she was cooperative. She was fine. She was
16 able to participate effectively during the exam.

17 Q. She wasn't crying or upset?

18 A. No. She wasn't.

19 Q. And based on your examination without any history or
20 anything else you cannot state that she was abused, can you?

21 A. Based just on the examination, no.

22 MS. GOOD: No further questions, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. CAVANAUGH:

25 Q. Again, Dr. Luberoff based on the history that was

1 provided to you regarding -- First of all, again why was she
2 referred to the Assessment and Resource Center?

3 A. For a concern of sexual abuse.

4 Q. And you obtained the history regarding these sexual
5 abuse allegations?

6 A. Yes.

7 Q. And based on that history combined with that injury
8 what is that consistent with?

9 A. Sexual abuse. I did make a diagnosis of sexual
10 abuse.

11 MS. CAVANAUGH: Thank you.

12 THE COURT: Thank you, doctor. You may step down.

13 Thank you. If I could have the lawyers up here for
14 one second to discuss the schedule for tomorrow briefly.

15 (Side bar off the record.)

16 ~~THE COURT: All right. Ladies and gentlemen of the~~
17 jury, we are going to start at the same time tomorrow
18 morning which is 9:30. Just like this morning, I ask you
19 to be here at 9:15 so that we can start promptly at 9:30.
20 Thank you for your service. Again for this evening no
21 talking to family, friends. No independent research on
22 the case. Just go, enjoy being home and enjoy dinner and
23 we'll see you tomorrow morning at 9:15. Thank you.

24 (Whereupon, the jury was excused for the evening at
25 5:10 p.m.)

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1 THE COURT: All right. We will be adjourned for the
2 day.

3 MS. GOOD: Your Honor, I would like to make a motion
4 at this time to allow Mr. Miller to stay out on bond
5 during the pendency of the trial. This has been pending
6 for three and a half years. When he did bond out, he's
7 been on electronic monitoring and off electronic
8 monitoring and despite all the back issues and everything
9 he's had he's still been here. He's never missed a court
10 date or anything so we would ask that he remain out.

11 THE COURT: Your motion is denied. Thank you.

12 MS. CAVANAUGH: Thank you.

13 (Whereupon, court adjourned for the day at 5:15
14 p.m.)

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25

1 March 16, 2016

2 BAILIFF: All rise.

3 THE COURT: Good morning. Thank you. Please be
4 seated. Are we getting the defendant or doing something
5 else?

6 MS. GOOD: I didn't know if you had something else
7 or not first.

8 THE COURT: I think I have -- Is this for probation?
9 I don't see anybody else here for probation. I think
10 maybe we might be doing that during lunch perhaps. Maybe
11 not. My understanding was that we were doing the
12 probation violations at lunch time, during lunch break.
13 I don't see anybody from the Solicitor's Office for that
14 purpose so I think it's fine from my perspective if he
15 wants to stay and watch the trial until lunch time or
16 whatever y'all want to do.

17 MS. GOOD: I'm sorry. Just so -- Can I ask that you
18 instruct the jury that he has nothing to do with this
19 case whatsoever? I just don't want there to be any
20 confusion with them wondering why --

21 THE COURT: Sure. Absolutely. No problem. All
22 right. Anything from either the State or the defense
23 before we bring in the jury?

24 MS. GOOD: Not from the defense, Your Honor.

25 THE COURT: Okay.

1 MS. CAVANAUGH: No, Your Honor.

2 THE COURT: You may bring in the jury, please.

3 (Whereupon, the jury returned to the courtroom at
4 9:35 a.m.)

5 THE COURT: Good morning, ladies and gentlemen. You
6 all continue to impress me with your punctuality in the
7 mornings and I thank you for that. Before we begin today
8 I want to make so there is no confusion. We have an
9 inmate sitting over here. He has nothing to do with the
10 case before you. I like to do a lot of things while I'm
11 holding court and so when we are on breaks or a lunch
12 break, I do other things and so I just wanted to make
13 sure if you happen to notice someone new in the
14 courtroom, that you didn't think that that had anything
15 to do with the case in front so just in the case you were
16 curious I thought I would just let you know that
17 beforehand. So with that being said, we will go ahead
18 and not waste any time and start back with the case.

19 Madam Solicitor, you may call your next witness.

20 MS. SENN: The State calls minor Keeter.

21 Thereupon,

22 B.K.

23 after having been first duly sworn, testified as follows,

24 THE CLERK: Please have a seat. After you're
25 seated, please state your full name for the record.

1 THE WITNESS: minor Keeter.

2 DIRECT EXAMINATION

3 BY MS. SENN:

4 Q. Good morning. How are you?

5 A. Good.

6 Q. Are you nervous today?

7 A. Yes.

8 Q. Okay.

9 THE COURT: And can you be sure to speak up. It's
10 sometimes hard to hear in this big cavernous courtroom.

11 THE WITNESS: Yes.

12 BY MS. SENN:

13 Q. How do you know the defendant in this case?

14 A. Uh, he is my dad.

15 Q. Okay. So you're sisters with minor one

16 A. Yes.

17 Q. Are you her twin?

18 A. Yes, ma'am.

19 Q. Where do you live now?

20 A. I live in California.

21 Q. What took you to California?

22 A. My husband.

23 Q. What does he do?

24 A. He is in the U.S. Navy.

25 Q. How long have you been in California?

B.K.

- DIRECT BY MS. SENN

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- 1 A. Uh, for about eight months now.
- 2 Q. Before that, where did you live?
- 3 A. I lived in Pensacola, Florida.
- 4 Q. Before that, where did you live?
- 5 A. I lived in South Carolina.
- 6 Q. Did you grow up in South Carolina?
- 7 A. For the most part.
- 8 Q. Where did you live?
- 9 A. Uh, we lived in Camden, South Carolina. We lived in
- 10 Summerville. A few different locations.
- 11 Q. Did you move fairly often?
- 12 A. Yes.
- 13 Q. Where did you go to school growing up?
- 14 A. Uhm, we were on and off with public schools and we
- 15 were home schooled most of the time.
- 16 Q. Do you remember when you began home schooling?
- 17 A. Uhm, it was on and off.
- 18 Q. Throughout high school?
- 19 A. Yes.
- 20 Q. You were home schooled throughout high school?
- 21 A. Yes.
- 22 Q. Can you describe your relationship with James Miller
- 23 growing up?
- 24 A. Uhm, it was different. Our relationship was always
- 25 different than my other siblings, I guess.

1 Q. What do you attribute that to?

2 A. I don't know.

3 Q. What about you and **minor one** Y'all are twins. Were
4 you very close growing up?

5 A. Sometimes.

6 Q. What about you and your mother, were you close with
7 your mother growing up?

8 A. Very.

9 Q. Were you closer with your mother than you were with
10 your father?

11 A. Yes.

12 Q. Describe your personality.

13 A. I'm very soft spoken. Uhm, kind of passive
14 sometimes. I don't really stand up for myself when I should.
15 Uhm, just very go with the flow kind of person.

16 Q. How would you describe **minor one** personality?

17 A. Uhm, she's very head strong. Very stubborn. She's
18 a go-getter.

19 Q. Do you remember going on vacation in Camden in the
20 summer of 2011?

21 A. Yes.

22 Q. What do you remember about that trip?

23 A. Uhm, we went to stay, uhm, on a lake with our
24 friends and we were there for two weeks.

25 Q. Did anything significant happen while you were

B.K.

- DIRECT BY MS. SENN.

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1 there?

2 A. I don't know.

3 Q. Did you decide to move to Camden?

4 A. Yes.

5 Q. Whose decision was that?

6 A. Uhm, my father's.

7 Q. Okay. Did [minor] and James stay behind in Camden?

8 A. Yes, ma'am.

9 Q. Where did you go?

10 A. Me and my mom and my siblings moved back to
11 Summerville, South Carolina.

12 Q. What were you doing there?

13 A. Uhm, we were packing our house.

14 Q. Do you remember about how long you stayed in
15 Summerville before y'all moved to Camden?

16 A. At least a few weeks.

17 Q. Okay. So your understanding was that [minor] was
18 going to stay with James and you were going to go with your
19 mother; is that correct?

20 A. Yes.

21 Q. Do you remember what [minor] and James were doing in
22 Camden before you got there?

23 A. Uh, they were fixing up the house that we had just
24 got on the lake.

25 Q. Okay. And did they stay at the house the whole

1 time?

2 A. Uhm, we also had a camper that they were staying
3 in.

4 Q. Okay.

5 THE COURT: If you could just speak up a little bit.
6 I think people are having a hard time hearing you.

7 THE WITNESS: Okay.

8 BY MS. SENN:

9 Q. Can you describe, once you moved to Camden, can you
10 describe the lay out of the room, of the house?

11 A. Of the entire house?

12 Q. Yes. Sorry.

13 A. Uhm, it was a two story house. Uhm, when you first
14 walked in, you had a living room and the other side was the
15 kitchen and behind the kitchen was a bedroom, master bedroom,
16 ~~then a bathroom. As soon as you opened the door the staircase~~
17 is straight ahead and when you walk up, there is a small
18 hallway. Uhm, on the left side there were two bedrooms. Uhm,
19 on the front bedroom there is another bathroom and then to the
20 right of the stairs there is another bedroom and a bathroom.

21 Q. So there are three bedrooms upstairs and one bedroom
22 downstairs?

23 A. Yes, ma'am.

24 Q. And who did you share a room with in the beginning?

25 A. In the beginning I shared one with my sister

B.K.

- DIRECT BY MS. SENN

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1 [minor one]

2 Q. Okay. And all growing up who had you shared a room
3 with?

4 A. [minor one]

5 Q. Okay. So when you and [minor] moved into the room,
6 can you describe the layout of your room with [minor one]

7 A. Uh, yes. Our room was upstairs to the left. We had
8 a balcony in our room. Uhm, we always had separate sides of
9 the room. We would divide it. We had a bathroom and a closet
10 towards the other side of the room so it was separate from the
11 room itself.

12 Q. What about the beds? Where were the beds located?

13 A. Uhm, my bed was located towards the window by the
14 lake on one side of the room and hers was on the other side of
15 the room by the door leading out to the hallway.

16 Q. So you had beds on opposite sides of the room and
17 you said that you had, it was separated somewhat?

18 A. Yes. Yeah. We had a slight divider like a three
19 way divider to divide our two beds.

20 Q. And why was that?

21 A. I'm not sure.

22 Q. And then at that point in time were you and [minor]
23 getting along?

24 A. No.

25 Q. No? Were you fighting? Were you arguing?

1 A. We were just always arguing.

2 Q. Was it bickering like sisterly fights?

3 A. I don't know.

4 Q. Do you remember any of the disagreements that you
5 had?

6 A. No.

7 Q. You just remember being kind of frustrated with one
8 another?

9 A. Yes. We were always aggravated with each other.

10 Q. Okay. So when you first moved into the house, you
11 and **minor** shared a room. Did that change?

12 A. Yes. She - shortly after she got her own room.

13 Q. When did that change happen?

14 A. Uhm, I want to say a few weeks into getting the
15 house when we were sharing the room.

16 Q. Do you remember whose decision that was?

17 A. Uhm, I don't know.

18 Q. Do you know why **minor** got her own room?

19 A. I'm guessing because we weren't getting along.

20 Q. So where did you go from there?

21 A. Uhm, I actually stayed in that room and she is the
22 one who moved out of the room that we were sharing together.

23 Q. Okay. Once you and your family moved to Camden, did
24 you notice anything different about **minor one** demeanor?

25 A. Yes.

B.K.

- DIRECT BY MS. SENN

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1 Q. What did you notice?

2 A. Uhm, she was always angry almost.

3 Q. It's okay. Take your time.

4 A. She seemed off. She seemed different. She wasn't
5 the same.

6 Q. Did she seem like she wanted to be alone?

7 A. She seemed very distant.

8 Q. Okay. Do you remember ever talking to her about
9 that?

10 A. (Witness shaking head.)

11 Q. No?

12 A. No.

13 Q. So during the day, what was your average day when
14 you lived in Camden? What did you do during the day?

15 A. Uh, during the day I would go outside and play with
16 my younger siblings or I would sit in my room and I would draw
17 or paint usually by myself or with my younger siblings.

18 Q. What did **minor** do?

19 A. Uhm, she was either with my dad working, uhm, with
20 him mostly.

21 Q. So they, your dad and **minor** spent a lot of time
22 together?

23 A. Yes.

24 Q. What exactly were they doing?

25 A. Uhm, he was in construction so when he had work, he

1 would take her with him to help him work on whatever he was
2 doing.

3 Q. Why didn't you go?

4 A. Uhm, I wasn't needed all the time and I just didn't
5 really want to, I guess.

6 Q. You would prefer to stay at home with your mother
7 and the rest of the children?

8 A. Yes.

9 Q. Okay. So did **minor** and James spend a lot of time
10 alone?

11 A. Yes.

12 Q. Okay. Did you ever notice any differences in the
13 way that James treated you versus the way he treated your
14 sister **minor one**

15 A. Yes.

16 Q. Can you describe some of those?

17 A. Uhm, it's like he was choosing favorites almost.
18 Uhm, I was never his first choice for anything. There was a
19 lot more attention towards her than me.

20 Q. Uhm, when you were growing up, was your father, was
21 he controlling? Was he affectionate? Can you kind of
22 describe him?

23 A. He's - he's always been controlling, uhm, and
24 affectionate.

25 Q. Did you notice any differences with that between you

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- DIRECT BY MS. SENN

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1 and minor one

2 A. Uhm, I'm not sure what you mean.

3 Q. Like was he more controlling over minor or was he
4 more affectionate with you or --

5 A. Growing up?

6 Q. Mm-hmm.

7 A. I don't remember.

8 Q. Okay. Do you remember James carrying a gun?

9 A. Yes.

10 Q. And how would he carry it?

11 A. He would carry it in a holster on his side.

12 Q. When did that start?

13 A. It started when we moved to Camden.

14 Q. Did you ever notice it before -- Did you ever notice
15 him carry a gun before Camden?

16 A. No.

17 Q. Okay. Did you ever notice that James was sleeping

18 --

19 MS. GOOD: Objection, Your Honor. Leading at this
20 point.

21 THE COURT: I haven't heard the question. Finish
22 your question and then I'll make a determination.

23 BY MS. SENN:

24 Q. Did you notice that James was sleeping in minor one
25 bed?

1 A. Yes.

2 MS. SENN: I can rephrase it.

3 THE COURT: Okay. I'm going to sustain the
4 objection, but strike that from the record and I tell the
5 jury not to pay any attention to the answer that the
6 witness just gave. And, Ms. Senn, you can rephrase your
7 question.

8 BY MS. SENN:

9 Q. Where did James sleep?

10 A. In my sister's bedroom.

11 Q. Did you see that?

12 A. Yes.

13 Q. Did James ever sleep with anyone other than

14 **minor one**

15 A. My mother.

16 Q. Did he sleep in your bed?

17 A. No.

18 Q. What did you think about the fact that **minor** and
19 James were sleeping in the same bed?

20 A. I thought it was weird.

21 Q. Did you ever say anything about that?

22 A. No.

23 Q. Was there anything that you felt was inappropriate
24 between James and **minor one**

25 A. Yes.

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1 Q. Can you tell the jury what you thought was
2 inappropriate?

3 A. Uhm, there was one time when I had came into our
4 living room and they were both laying on the couch. My dad
5 was behind her and they had a comforter, like a big blanket
6 over them, uhm, and the blanket was all the way up to their
7 necks and for some reason the way they were positioned, when I
8 saw that, my heart kind of dropped. I felt just real
9 uncomfortable with how they were laying together. Uhm,
10 afterwards I had carried on with what I was doing because I
11 didn't know how to act or say anything to my dad about how
12 they were laying on the couch.

13 Q. Can you describe how they were laying? Were they
14 facing each other?

15 A. No. It's like they were spooning. Like he was
16 behind her holding her from behind and they were facing in the
17 same direction.

18 Q. And just to clarify, you said that their bodies were
19 covered?

20 A. Their bodies were covered with a blanket all the way
21 up to their faces.

22 Q. Did you -- Did [minor] wear anything unusual --

23 A. Yes.

24 Q. -- for the season? Or what do you mean?

25 A. During the summers she would occasionally wear jeans

1 and long sleeve shirts during 80 degree days. She stayed
2 covered a lot.

3 Q. What about you?

4 A. Normally if it was hot, I would wear shorts and a
5 tank top.

6 Q. Do you ever remember a time that James made you feel
7 uncomfortable?

8 A. Yes.

9 Q. When did that occur?

10 MS. GOOD: May we approach, Your Honor?

11 THE COURT: Sure.

12 (Side bar off the record.)

13 BY MS. SENN:

14 Q. Did your father James ever give you and **minor**
15 rings?

16 A. Yes.

17 Q. Can you describe that event?

18 A. Uhm, he took us out for the day. Uhm, he took us
19 out to lunch and me and my sister, we were all sitting at the
20 restaurant. We had got our drinks and he had disappeared off
21 somewhere. He came back shortly with, uhm, two jewelry boxes
22 and they both had matching promise rings in them.

23 Q. When you say promise rings, what did that mean?

24 A. I don't remember what the meaning was behind it.

25 Q. But you got one and **minor** got one?

B.K.

- DIRECT BY MS. SENN

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1 A. Yes, ma'am.

2 Q. And how did he give them to you?

3 A. He gave me mine and then he gave my sister hers.

4 Q. Was there any difference in the way --

5 A. He put hers on her hand and not on mine.

6 Q. So he took hers out of the box or can you describe
7 that? Go into more detail.

8 A. He took his time with hers. He took it out of the
9 box and he had said the promise. I don't remember what the
10 promise was, but there was more time spent with her promise
11 ring than there was with mine.

12 Q. But you both got rings, right?

13 A. Yes.

14 Q. But you just noticed that he spent more time giving
15 **minor** her ring?

16 A. Yes, ma'am.

17 Q. Do you remember the Harrelsons?

18 A. Yes.

19 Q. How many kids did they have?

20 A. Six. Five or six. I'm not sure.

21 Q. How did you know them?

22 A. Uhm, we met them one night. We had a bonfire and
23 they also. Both of us were staying on the lake and we had
24 heard a commotion a few houses down from ours and they also
25 had a fire, and me, my did and my sister walked over there to

1 introduce ourselves that night.

2 Q. So you said they had six children. What were the
3 ages, do you remember?

4 A. Uhm, the oldest I want to say was 14 at the time.
5 Uhm, next was 12 and I don't remember the younger ones.

6 Q. Do you remember any of their names?

7 A. Uhm, Henry, John, Sarah, and I don't know the other
8 ones.

9 Q. How old was Henry?

10 A. Henry was 14.

11 Q. Okay. Were you all close with the children?

12 A. Uhm, we played together. We played manhunt in the
13 woods and such. We were friends.

14 Q. How often would you see them?

15 A. Uhm, maybe a couple times a week to hang out.

16 Q. ~~Would you ever go over to their house?~~

17 A. Yes.

18 Q. What kind of things would you do there?

19 A. We would ride horses. We would take walks in the
20 woods. We would just play because they had a lot of land.

21 Q. Did **minor** play with them as well?

22 A. Yes.

23 Q. Who did **minor** play with?

24 A. Uhm, we would mostly all play together.

25 Q. Did you ever see anything romantic between **minor**

B.K.

- DIRECT BY MS. SENN

375

1 and Henry?

2 A. No.

3 Q. You said that you were always together with their
4 kids?

5 A. For the most part, yes.

6 Q. Okay. Taking you back to August of 2012, what do
7 you remember about [minor] on the day that she disclosed to
8 your mother?

9 A. Uhm, I'm not sure what you mean.

10 Q. Did she act differently than she normally did?

11 A. [minor one]

12 Q. Mm-hmm.

13 A. Yes.

14 Q. What do you mean?

15 A. She was very - she was just very off. She was real
16 uptight and emotional.

17 Q. Did you know why she was upset?

18 A. No.

19 Q. Did [minor] ever leave the house?

20 A. Yes.

21 Q. Where did she go?

22 A. She walked down to our dock.

23 Q. Did your mom, did you see your mom go down to the
24 dock?

25 A. Yes.

1 Q. What happened next?

2 A. Uhm, they stayed down there talking for a little
3 while. Uhm, after a certain period of time I believe I walked
4 out, too, walk down there to see what was going on.

5 Q. Sorry to stop you. Could you see them from the
6 house?

7 A. Yes.

8 Q. How could you see them?

9 A. I could see them out of our, uhm, our door and then
10 to the kitchen we had a big window and you could also see them
11 through both of those ways.

12 Q. So you walked outside?

13 A. Yes.

14 Q. What happened after that?

15 A. I started walking and my mom started walking out

16 ~~as well, uhm, and she had this panicked look on her face, uhm,~~

17 and I asked her what was wrong with **minor** and she, she was in
18 shock, but she didn't know how to word it to me, uhm, and she
19 had told me that --

20 MS. GOOD: Objection, Your Honor. Hearsay.

21 THE COURT: Sustained. Don't say what somebody told
22 you.

23 MS. SENN: I'll rephrase.

24 BY MS. SENN:

25 Q. Let me back you up a little bit. What was **minor**

B.K.

- DIRECT BY MS. SENN

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1 doing on the dock?

2 A. She was upset. She was, I guess, taking a moment of
3 her time to be alone.

4 Q. Okay. So you saw your mother when you were going
5 down to the dock and she was coming up. And did you know what
6 was going on?

7 A. No.

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

9 A. After I walked down?

10 Q. Mm-hmm.

11 A. I asked her what was going on.

12 Q. Okay. And then after she told you what was going
13 on, don't say what she said, but what did you do?

14 A. I went back in the house and I grabbed my three
15 other siblings and I went upstairs and shut the door.

16 Q. Okay. Did you see the police cars arrive at your
17 house?

18 A. I don't remember.

19 Q. Okay. So you were upstairs?

20 A. Yes.

21 Q. Could you hear -- Did you have -- What kind of
22 driveway did you have?

23 A. Uhm, it was a dirt driveway. There was two parts of
24 it. When you first saw the house, they were right next to
25 each other and then the driveways kind of wrapped around the

1 house like a tear drop almost.

2 Q. Did you know why the deputies were there?

3 A. Yes.

4 Q. Okay. Did you talk to any of the deputies?

5 A. No.

6 Q. Where did you stay during that, while they were
7 there?

8 A. I stayed upstairs with the kids.

9 Q. Over the course of the next few days what
10 happened?

11 A. Uhm, I really don't remember.

12 Q. Did you ever go to The CARE House?

13 A. Yes.

14 Q. What did you do there?

15 A. Uhm, we talked with, uhm, someone.

~~16 Q. Did you and minor talk about what had happened with~~
17 her and James?

18 A. Very briefly.

19 Q. When did that occur?

20 A. Uhm, I want to say a few months after.

21 Q. That was after your interview at The CARE House?

22 A. Yes.

23 Q. Okay. Did she tell you when the abuse began?

24 A. It began the night, uhm, that we had left back to
25 pack up our home in Summerville.

B.K.

- DIRECT BY MS. SENN

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1 Q. So the night she was in the camper?

2 A. Yes.

3 Q. Okay. Did she ever tell you where it happened aside
4 from the camper?

5 A. She -- Mm-hmm. Yes.

6 Q. Where?

7 A. Uhm, at our home. At job sites that they were
8 working on. Uhm, those two places that I know.

9 Q. Did she say when the abuse stopped?

10 A. It stopped the day that he was arrested.

11 Q. How long did you stay in Camden after James was
12 arrested?

13 A. I don't remember.

14 Q. Where did you go from there?

15 A. From there I went to stay with my aunt with the
16 three younger siblings.

17 Q. Where was that?

18 A. It was in Harleyville, South Carolina.

19 Q. Did you move anywhere after that?

20 A. We moved to Pensacola, Florida.

21 Q. How long did you stay there?

22 A. For about three months myself.

23 Q. Have you spoken to James since his arrest?

24 A. Yes.

25 Q. When was that?

1 A. It was about three or four months after I had moved
2 to Florida I had went back to South Carolina.

3 Q. Who were you with in South Carolina?

4 A. My aunt.

5 Q. Which aunt?

6 A. My mom's sister.

7 Q. Is that the one in Harleyville?

8 A. Yes.

9 Q. Okay. So you said that you spoke to James. Did you
10 talk to him over the telephone or --

11 A. I don't recall speaking on the telephone with him.

12 Q. So you saw him in person?

13 A. Yes.

14 Q. Where was that?

15 A. It was at my aunt's house in Harleyville.

16 Q. Did you invite him there?

17 A. I don't remember.

18 Q. Did you want to see him?

19 A. I don't remember how I felt about the entire
20 thing.

21 Q. How old were you when this happened?

22 A. I was 17.

23 Q. Okay. Did you ever attend any kind of court --

24 A. Yes.

25 Q. -- where your dad was the defendant? Okay. What

B.K.

- DIRECT BY MS. SENN

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1 happened there?

2 A. It was his bond hearing and he got out on bond.

3 Q. Why did you go?

4 A. Uhm, I was put in a very awkward situation with my
5 aunt in Harleyville. I - I don't - I don't know why I went.

6 Q. Did you speak on his behalf?

7 A. No.

8 Q. Were you comfortable being there?

9 A. Not at all.

10 Q. Did you see James anymore after that?

11 A. Yes.

12 Q. When? Describe that, please.

13 A. Uhm, a few weeks I think after the bond he and my,
14 one of my other aunts had came to pick me up from my aunt's
15 house in Harleyville. Uhm, I don't remember the reasoning
16 behind it. Uhm, I don't remember the question. I'm sorry.

17 Q. I was asking you to describe the next time you saw
18 James.

19 A. When I saw him, when he picked me up, it was heart
20 breaking. I was so uncomfortable. I didn't feel safe. Uhm,
21 and then I just, my heart was about to beat out of my chest.
22 I don't know what, how it came about to where he was standing
23 in front of me.

24 Q. So did you want to spend time with him?

25 A. No, but I did.

1 Q. Did you ask to spend time with him?

2 A. I don't remember.

3 Q. But how did it make you feel?

4 A. Very uncomfortable.

5 Q. Have you seen him anymore since then?

6 A. I don't think so.

7 MS. SENN: No further questions, Your Honor.

8 THE COURT: All right. Ms. Good.

9 CROSS EXAMINATION

10 BY MS. GOOD:

11 Q. **minor two** you actually have had contact with your dad
12 in the past month, haven't you?

13 A. Yes, ma'am.

14 Q. You were sending him e-mails and texts?

15 A. No e-mails.

16 ~~Q. Didn't you send him e-mails and pictures of your~~
17 siblings?

18 A. I don't remember.

19 Q. You don't remember if you sent him an e-mail or
20 not?

21 A. I have never sent him an e-mail before.

22 Q. Just a second ago you said you don't remember if you
23 sent him an e-mail. You don't remember or you didn't?

24 A. I remember texting him, yes. I do not remember
25 e-mailing him.

B.K.

- CROSS BY MS. GOOD

383

1 Q. So you never e-mailed him pictures of [minor] or any
2 of your other siblings?

3 A. I have never e-mailed him before.

4 Q. And you stated growing up y'all had a lot of rules.
5 Can you explain what those rules were?

6 A. Uhm, growing up we weren't to have boyfriends. Our
7 friends were limited. Uhm, it was strict.

8 Q. Okay. And who made all those rules?

9 A. Uhm, my parents.

10 Q. It wasn't just [minor] who wasn't allowed a
11 boyfriend. You weren't allowed a boyfriend either, correct?

12 A. Correct.

13 Q. And I assume she was still a lot younger, but your
14 little sister neither, correct?

15 A. Yes.

16 Q. And she was what, 11?

17 A. She's younger than 11.

18 Q. And when he gave y'all rings, he gave both of you
19 rings, correct?

20 A. Correct.

21 Q. Not just [minor one]

22 A. Yes.

23 Q. Growing up when you were going to school, about how
24 many public schools do you remember going to?

25 A. I don't remember.

1 Q. Do you remember any of your teachers?

2 A. No.

3 Q. Your mother was one of your teachers, correct?

4 A. Correct.

5 Q. How often would y'all do school with your mother?

6 A. Everyday.

7 Q. And how long would school last?

8 A. Uhm, until we finished our school work for the
9 day.

10 Q. Approximately about how long would that be on
11 average?

12 A. Five or six hours.

13 Q. And would y'all start early in the morning?

14 A. We would start when we got up and ate breakfast.
15 There was no time since we were home schooled.

16 Q. And all of y'all would be together when you were
17 being home schooled?

18 A. Yes, ma'am.

19 Q. So you were together approximately 9:00 to 3:00
20 everyday?

21 A. For the most part.

22 Q. And you were with minor that entire time,
23 correct?

24 A. For the most part.

25 Q. When would she go to work with your dad if y'all

B.K.

- CROSS BY MS. GOOD

385

1 were in school?

2 A. During the day. She would either do school at
3 different times, when she would get home or she would do it
4 the next day when she stayed home from work with him.

5 Q. And you stated that y'all slept in the same room
6 together and James would sleep with your sister, correct?

7 A. Mm-hmm.

8 Q. You also stated he slept with your mom, too,
9 right?

10 A. Yes.

11 Q. How often would he sleep with your mom?

12 A. I don't remember.

13 Q. And you said one time you saw them laying on the
14 couch together. Is the living room downstairs?

15 A. Yes.

16 Q. Everybody walks through the living room?

17 A. Yes.

18 Q. So anybody who walked in there could have seen them
19 on the couch?

20 A. Yes.

21 Q. They weren't trying to hide that they were laying on
22 the couch?

23 A. No.

24 Q. And during the summer, y'all lived on the lake,
25 correct?

1 A. Correct.

2 Q. Would y'all go swimming or skiing?

3 A. Yes.

4 Q. When y'all went swimming or skiing or tubing, what
5 would y'all wear?

6 A. Board shorts and tank tops.

7 Q. Did **minor** ever wear a bikini?

8 A. We would wear one if we were sunbathing, but we
9 would never be allowed to walk around in one.

10 Q. But she would wear a bikini?

11 A. For sunbathing, yes.

12 Q. Did you ever notice any bruises on her?

13 A. If she wore a bikini, no.

14 Q. And how many guns were in the home?

15 A. Uhm, a few. I don't remember how many.

16 Q. Did **minor** have a gun?

17 A. She did.

18 Q. And your little brother **minor** had a gun?

19 A. I don't remember if he did.

20 Q. Your mom had a gun?

21 A. I'm not sure.

22 Q. James had a gun?

23 A. He did have a gun.

24 Q. But you're sure **minor** had a gun, too, correct?

25 A. Yes.

B.K.

- CROSS BY MS. GOOD

387

1 Q. What did she use that gun for?

2 A. For hunting.

3 Q. How often would she go hunting?

4 A. Not very often.

5 Q. Do you remember when she first went hunting?

6 A. No.

7 Q. And who would she go hunting with?

8 A. My father and his friends.

9 Q. Did they go more than once? More than five? More
10 than ten times? Do you remember?

11 A. I don't remember.

12 Q. And the day all of this happened you stated you saw
13 **minor** on the dock?

14 A. Yes.

15 Q. And how long had she been down there?

16 A. Uhm, I want to say an hour or two. She was down
17 there for a little bit.

18 Q. Where was your dad this whole time?

19 A. He was in the house.

20 Q. Did you ever see him go down there?

21 A. I don't remember.

22 Q. Do you remember meeting with the Solicitor and
23 somebody else to discuss this case or talk to them on the
24 phone?

25 A. Uhm, I don't remember.

1 Q. You don't remember speaking with them in January of
2 this year?

3 A. Oh, yes. Yes.

4 Q. Do you remember telling them that James went down to
5 talk to **minor** on the dock?

6 A. Uhm, I don't remember.

7 Q. And later you said your mom went down there and then
8 you went down there also, correct?

9 A. Not all the way down.

10 Q. How far did you get down?

11 A. I got down to the middle between the first dock and
12 the dirt leading to the dock.

13 Q. You said at some point you were standing in the door
14 looking down there?

15 A. Mm-hmm.

16 ~~THE COURT: Just so I can interrupt you. You just~~
17 said mm-hmm. Say yes or no for the record because he has
18 to type everything.

19 THE WITNESS: Yes.

20 THE COURT: Thank you.

21 BY MS. GOOD:

22 Q. Where was your dad?

23 A. Uhm, in the house.

24 Q. Do you remember what he was doing in the house?

25 A. I don't remember.

B.K. - CROSS BY MS. GOOD

389

1 Q. Was he standing at the door with you?

2 A. I saw him standing at the door several times, I
3 think.

4 Q. And at any point did he take a shower?

5 A. I don't remember.

6 Q. When you went back in the house, you used the
7 computer, correct?

8 A. Correct.

9 Q. You didn't go straight to your brothers and
10 sisters?

11 A. Uhm, I don't remember the time frame of
12 everything.

13 Q. About how long did you use the computer?

14 A. I don't remember.

15 Q. And your mom came in the house and you went upstairs
16 with the kids. Where did she leave **minor one**

17 A. **minor** stayed on the dock.

18 Q. So she left her down there --

19 A. Yes.

20 Q. -- by herself? And after all this happened, your
21 mom sent you and the siblings down to Summerville; is that
22 correct?

23 A. Yes.

24 Q. And about how long after that day did you go down to
25 Summerville?

1 A. I don't remember.

2 Q. Were you still here when you went to The CARE
3 House?

4 A. I believe so. I don't remember.

5 Q. So you were here approximately about a week, is that
6 about right?

7 A. I'm not sure.

8 Q. Do you remember anybody staying at the house with
9 y'all?

10 A. Uhm, I don't remember.

11 Q. Do you know a man named Mark Stokes?

12 A. I know that name, yes.

13 Q. Do you remember him staying at the house?

14 A. I don't remember.

15 Q. And how long were you in Summerville with your aunt

16 --

17 A. I really don't --

18 Q. -- before your mother came?

19 A. I'm not sure.

20 Q. And that's your mom's sister, correct?

21 A. Correct.

22 Q. And after your mom came back, you moved to Florida
23 with your mom, right?

24 A. Yes.

25 Q. And how long were you in Florida with her?

B.K.

- CROSS BY MS. GOOD

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1 A. For about three months.

2 Q. And where did y'all live in Florida?

3 A. We lived with -- When we first got there, we lived
4 with our friends that were in Florida already.

5 Q. How long did you live with them?

6 A. I want to say three weeks to a month. I'm not
7 entirely sure.

8 Q. And then where did you move?

9 A. We got our own house, uhm, five minutes down the
10 road from their house.

11 Q. Who lived with you there?

12 A. My sister, my mom, my three younger siblings.

13 Q. What about her boyfriend Jason Price, when did he
14 move in?

15 A. I don't remember.

16 Q. But he moved in with you down in Florida?

17 A. I don't remember when he did.

18 Q. But he did move in with you?

19 A. I'm not sure.

20 Q. You don't know if he lived with you or not?

21 A. I don't remember.

22 Q. And then you moved back with your mom's aunt in
23 Harleyville, correct?

24 A. Yes.

25 Q. And your mom's sister let James come to the house?

1 A. Yes.

2 Q. And you said you don't remember if you invited him
3 to the house or not. Wouldn't you remember if you invited
4 your dad to the house where all these allegations were thrown
5 around?

6 A. I was really confused at that time. We were
7 sheltered as children. I was super confused. I was 17. I
8 really don't remember.

9 Q. But you're 20 now, right?

10 A. Correct.

11 Q. And you don't remember if you sent an e-mail to your
12 dad a month ago?

13 A. I never sent an e-mail to him.

14 Q. How many text have you sent to him?

15 A. There was probably 10 or 11 text between us.

16 ~~Q. You initiated the text, correct?~~

17 A. No. He text my phone first.

18 Q. How did he get your phone number?

19 A. I was trying to call Columbia to figure out when
20 this trial was because I live so far away and I couldn't just
21 up and leave and I left a message with somebody and whoever
22 held the message gave my father my phone number.

23 Q. And you didn't think to talk to your sister or your
24 mother to find out when the trial would be?

25 A. They weren't sure so I was trying to figure it out

B.K.

- CROSS BY MS. GOOD

393

1 for myself because I needed to know.

2 Q. After all this happened, you said you actually
3 talked to [REDACTED] about it, correct?

4 A. About?

5 Q. What she said happened.

6 A. The?

7 Q. Allegations.

8 A. Oh, yes.

9 Q. Sorry. The allegations.

10 A. Yes.

11 Q. About how many times did you talk to her?

12 A. I'm not sure.

13 Q. More than once?

14 A. Might have been.

15 Q. And she gave you some of the details about it?

16 A. No details. I don't know the details about it.

17 Q. Then how do you know where it happened, when it
18 happened?

19 A. Those are the few things that she did tell me.

20 Q. So you think you probably had two or three
21 conversations with her about it?

22 A. Just about.

23 Q. Okay. And was that before or after y'all went to
24 The CARE House?

25 A. That was after.

1 Q. Did you ever talk to your mom about it?

2 A. I don't remember if I did.

3 Q. So you don't remember if you talked to your mom
4 about all this stuff about your dad?

5 A. I really don't remember.

6 Q. When y'all went to Florida, what was **minor one**
7 demeanor like?

8 A. She was healing. Uhm, she -- Honestly I don't
9 remember. We were still trying to patch everything together
10 from what had just happened to our family.

11 Q. How long after James was arrested did she get a nose
12 ring?

13 A. I really don't remember.

14 Q. Was it fairly soon?

15 A. I don't think so.

16 ~~Q. You don't think it was about two weeks after?~~

17 A. I don't think it was that soon but I'm not sure.

18 MS. GOOD: No further questions, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. SENN:

21 Q. **minor two** you just said that the day that **minor**
22 disclosed that you went back inside after you saw your mom
23 coming up. You said that your mom was shocked?

24 A. Very shocked.

25 Q. And then you said that you went back inside and used

B.K.

- REDIRECT BY MS. SENN

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1 the computer?

2 A. I don't remember if I used the computer or not. I
3 do remember getting the kids and going upstairs shortly after
4 that.

5 Q. Did your mother tell you to act normal?

6 A. She did mention to try to not act like she had just
7 told me that.

8 Q. So with that information you went back inside and
9 you either used the computer or what did you do?

10 A. I - I might have used the computer to act normal but
11 I really don't remember how that went about.

12 Q. And just to be clear, did you initiate contact with
13 James about a month ago?

14 A. No.

15 Q. Did you want to contact him?

16 A. I did not want to contact him.

17 Q. Did you give him your phone number?

18 A. No. And I gave no one permission to give him my
19 phone number.

20 MS. SENN: Thank you, Your Honor. No further
21 questions.

22 MS. GOOD: I have one, Your Honor.

23 THE COURT: Go ahead.

24 RE CROSS EXAMINATION

25 BY MS. GOOD:

1 Q. You said that you did not want to have contact with
2 your dad about a month ago but you continued to text him back
3 and forth, correct?

4 A. Correct.

5 MS. GOOD: No further questions.

6 THE COURT: All right. Thank you. You may step
7 down. All right. The State can call their next
8 witness.

9 MS. CAVANAUGH: The State calls Melissa Skipper.
10 Thereupon

11 MELISSA SKIPPER WALLACE
12 after having been first duly sworn, testified as follows,

13 THE CLERK: Please have a seat. After you're
14 seated, please state your full name for the record.

15 THE WITNESS: My name is Melissa Skipper Wallace.

16 ~~DIRECT EXAMINATION~~

17 BY MS. CAVANAUGH:

18 Q. Ms. Wallace, where are you employed?

19 A. I'm employed by the South Carolina Law Enforcement
20 Division which is commonly known as SLED.

21 Q. How long have you been with SLED?

22 A. About 11 years.

23 Q. And what is your position currently at SLED?

24 A. I'm currently assigned to the Piedmont region with
25 investigative services.

1 Q. Back in 2012 what was your position with SLED?

2 A. At that time I was assigned to the crime scene and
3 latent print department within the forensic laboratory of
4 SLED.

5 Q. In your role with the crime scene unit at SLED, what
6 were some of your responsibilities?

7 A. I responded to and processed crime scenes in all 46
8 counties of the state when we were requested by state, local
9 or federal agencies. I also processed evidence collected from
10 those scenes as well as evidence submitted to the laboratory
11 for latent fingerprints, fingerprint comparisons, footwear
12 comparisons, tire tread comparisons, blood stain pattern
13 analysis and crime scene reconstruction.

14 Q. So when you would be called to process scenes, what
15 type of processing would you do at crime scenes?

16 A. It would depend on the case and what was requested
17 of us, but generally speaking we took photographs, we took
18 notes, we documented the scene, collected evidence.

19 Q. When you would collect evidence, how would you
20 collect evidence? Like in what form do you collect evidence?
21 Were there different forms of evidence as far as swabs
22 sometimes or actual physical items?

23 A. Yes, ma'am.

24 Q. In August of 2012 did you become involved in the
25 investigation against James Miller?

1 A. I did.

2 Q. And who actually made contact with you about this
3 investigation?

4 A. Chief Deputy Marvin Brown with the Kershaw County
5 Sheriff's Office.

6 Q. What were you asked to do with this investigation?

7 A. Myself and another agent were asked to come and
8 process the residence of Mr. Miller the following day.

9 Q. And was it your understanding that there was a
10 search warrant obtained for that evidence?

11 A. They were in the process of working on that.

12 Q. Where was that residence located?

13 A. If I can refer to my notes.

14 Q. Of course.

15 A. The address I have is [REDACTED] Road,

16 Camden.

17 Q. Is that in Kershaw County?

18 A. Yes, ma'am.

19 Q. What day did you actually -- What day were you
20 notified that you needed to go to that home?

21 A. That was on August 23rd, 2012.

22 Q. What day did you actually go to process the house?

23 A. On the 24th.

24 Q. When you arrived at the house, did you go with
25 anyone else from SLED?

1 A. Agent Hezel (phonetic) also in the crime scene
2 unit.

3 Q. Who else was at the house when you arrived?

4 A. Lieutenant Knafelc with Kershaw County as well as
5 Investigator Justin Dill, Kershaw County.

6 Q. Is Detective Knafelc right here?

7 A. Yes.

8 Q. You said Justin Dill was also there?

9 A. Yes, ma'am.

10 Q. Upon arrival did you first speak with the
11 investigators involved in the case?

12 A. We did.

13 Q. And once you got the information from Lieutenant
14 Knafelc -- Before I get to that, what did you take with you to
15 process the scene that day? What type of equipment?

16 A. Uhm, we keep, at that time we kept equipment in our
17 trucks that we regularly used. It was - we had cameras,
18 measuring devices, latent print kits, uhm, alternate light
19 sources. There was a lot of different equipment. Actual hand
20 tools. Things like that.

21 Q. Okay. So those items that you just mentioned, that
22 equipment is normally in your truck?

23 A. It was, yes.

24 Q. So after you spoke with Lieutenant Knafelc, before
25 you spoke with him, did you have any specific information

1 about the case?

2 A. We were given some background information, uhm, and
3 what we were to be searching for. We were advised it was a
4 sexual assault type case. They were particularly looking for
5 bodily fluids or seminal fluids inside the residence. We
6 understood that there were family members that were
7 involved.

8 Q. As far as -- So you were aware that it was the
9 suspect's home, correct?

10 A. Correct.

11 Q. So, uhm, would you expect like his fingerprints to
12 be throughout that home?

13 A. Yes.

14 Q. So that wasn't really something that you collected
15 that day?

16 A. No.

17 Q. Because that would be normal for his prints to be in
18 that home anyway?

19 A. That's correct.

20 Q. Okay. Uhm, did you - how did you begin processing
21 that home?

22 A. As with every crime scene processing, we started by
23 documenting the scene as it was when we arrived by taking
24 photographs. Photographs include the exterior of the
25 residence as well as the interior of the residence. We would

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1 walk around the outside of the house and take photographs of
2 the outside of the house 360 degrees. Once we entered the
3 house, we did the same thing with each room.

4 Q. Where specifically -- Uhm, so you took photographs
5 throughout the home?

6 A. That's correct.

7 Q. And after you photographed the house, uhm, what else
8 did you do?

9 A. I drew a diagram, wrote some notes about information
10 that was provided as well as of how we were processing the
11 scene. Then we proceeded to use alternate light source or a
12 UV light to look for bodily fluids.

13 Q. Describe the alternate light source that you are
14 referring to. What does it look like?

15 A. The kit that I had at that time had individual
16 flashlights for different wave lengths and there were
17 appropriate filters that you use with those lights. Uhm,
18 ultraviolet light or alternate light sources, it's light
19 that's outside of the normal vision that you see everyday so
20 that just helps you see things and can be used for trace
21 evidence for locating fingerprints, for bodily fluids, things
22 like that that are outside that normal spectrum of light that
23 we see and it helps to visualize those things that we can't
24 see normally.

25 Q. Okay. And when you talk about -- Uhm, you said it

1 can pick up on fingerprints?

2 A. Yes.

3 Q. And also bodily fluids?

4 A. That's correct.

5 Q. When you speak of bodily fluids, what type of fluids
6 are you speaking of?

7 A. Saliva, urine, semen, vaginal secretions. Those
8 types of things.

9 Q. Okay. So when using that light source, did you go
10 all throughout the home with the light source?

11 A. We did not.

12 Q. What areas -- How did you know which areas to
13 actually, uhm, use the light source in?

14 A. Based on the information provided the day before,
15 once we arrived there were certain areas within the house that
~~16 they were particularly interested in. One area being the~~
17 victim's bedroom, another area being the sofa in the living
18 room so those are the areas that we initially focused on.

19 Q. Okay. Did you also, uhm, focus in the master
20 bedroom as well?

21 A. Yes. During the course of the process and on the
22 scene, we decided we would go ahead and search the master
23 bedroom of the residence as well.

24 Q. When you say, uhm, they gave you the information,
25 are you referring to investigators in the case?

1 A. That's correct.

2 Q. You said you made a diagram of the home. Uhm, why,
3 why did you make the diagram?

4 A. Uhm, it makes it a little bit easier for others to
5 see and understand the layout of the residence and also makes
6 it easier for me as well. It's just to orient the house.
7 It's sometimes a little hard to do with just photographs,
8 birds eye view you can see where the rooms are in relationship
9 to each other.

10 Q. Do you also label that diagram as far as which room
11 is which?

12 A. Sometimes.

13 Q. Okay. Then when you collect the evidence, do you
14 also label what room you collect the evidence from like in the
15 actual bags?

16 A. Yes. Usually.

17 Q. And there's a diagram to assist with that later
18 on?

19 A. Yes.

20 Q. And you said that Agent Hezel? Hezel, is that
21 correct?

22 A. That's correct.

23 Q. Attended the processing with you. What was her role
24 in this?

25 A. I was the lead agent for this case. She was

1 there to assist me. Generally in that type situation the
2 assisting agent takes the photographs and things like that.
3 Those photographs were taken in my presence.

4 Q. So she took the photographs?

5 A. That's correct.

6 Q. But you were there and you saw the home while she
7 was taking the photographs?

8 A. That's correct.

9 Q. When you actually used the light, did you actually -
10 did the light, I guess, detect any sort of possible bodily
11 fluid?

12 A. It did. When you're searching with those lights,
13 what you are looking for is something to fluoresce or
14 luminesce. That means to glow a white color. Those are the
15 areas we are looking for with those lights with the
16 ~~appropriate filters in place. Those are the areas that would~~
17 be of interest to collect.

18 Q. When you say the appropriate filters in place, what
19 do you mean by the filters?

20 A. For the kit that I had in particular there were
21 goggles, there were colored goggles, red, yellow and orange.
22 Each one of the lights had on them which filter you were
23 supposed to use so you may use a blue light and have orange
24 glasses that you need to wear in order to see that
25 luminescence or fluorescence.

1 Q. So did, uhm, did the light source, uhm, illuminate
2 any particular areas in the home that afternoon?

3 A. There were some areas, yes.

4 Q. Did you notate which areas detected potential of a
5 bodily fluid?

6 A. Uhm, we noted areas that fluoresced.

7 Q. Okay. So you can't say with certainty that it was
8 definitely bodily fluid, it's just the light source reacted?

9 A. That's correct.

10 Q. Okay. And so when it reacts, what does that mean to
11 you?

12 A. To me that indicates that an area that I need to
13 collect or collect that item of evidence, submit it to the
14 laboratory and have DNA conduct an analysis on it to determine
15 what that was.

16 Q. So it indicates to you that there was a potential
17 for bodily fluid to be there?

18 A. That's correct.

19 Q. But not certainty that that's what it's illuminating
20 on?

21 A. That's correct.

22 Q. So along those same lines it certainly doesn't mean
23 that there's going to be DNA where it illuminates?

24 A. That's correct.

25 Q. Going back to where your light source actually

1 illuminated on, can you describe slowly since we're gonna be
2 showing pictures, too, which areas of the home your light
3 reacted?

4 A. Yes.

5 Q. Okay. In your report do you actually have the order
6 that you went through the house or is that just necessarily in
7 chronological order?

8 A. It's not.

9 Q. So let's just start with the first room that's
10 actually notated on your report.

11 A. The first room will be the victim's bedroom. We
12 collected a pillow from the victim's bed, a pillow case from
13 the victim's bed, a set of swabs from the carpet to the right
14 of the victim's door, a set of swabs from the carpet in front
15 of the dresser in the victim's bedroom.

16 ~~MS. CAVANAUGH: Okay. I'll ask you to just hold on~~
17 ~~for a second.~~

18 (Whereupon, State's exhibits #28 through #34 marked
19 for identification.)

20 BY MS. CAVANAUGH:

21 Q. I'll show you State's 28 through 34 and ask you if
22 you recognize those photographs?

23 A. Yes, I do.

24 Q. And do those photographs depict the victim's bedroom
25 as you saw it that particular afternoon?

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1 A. They do.

2 MS. CAVANAUGH: Your Honor, at this time I would
3 like to admit State's exhibits 28 through 34 into
4 evidence.

5 THE COURT: Any objection?

6 MS. GOOD: No, ma'am.

7 THE COURT: They are so admitted. If you want her
8 to step down to go closer to the jury, that's great.

9 MS. CAVANAUGH: Sure.

10 BY MS. CAVANAUGH:

11 Q. Agent Skipper -- Or I'm sorry. Agent Wallace, come
12 down here for me. What does this particular photograph
13 depict?

14 A. State's exhibit 28 is a photograph of the victim's
15 bed and the victim's bedroom.

16 Q. Before you actually -- What is the process of taking
17 photographs? Do you - before you zoom in, do you try to take
18 a bigger picture of the actual bedroom?

19 A. Yes. You take general photographs, a range of
20 photographs generally overall to get as much information on
21 the photograph as possible. Mid range would be a little bit
22 closer up photograph, and then close up is obviously a full
23 frame picture of that particular item.

24 Q. And this particular photograph, what is that a
25 picture of?

1 A. State's exhibit 29 is a close up photograph of a
2 pillow from that bed.

3 Q. Does there appear to be a stain on that pillow?

4 A. There is some type of white stain on that pillow,
5 yes.

6 Q. And that particular stain is actually visible to the
7 naked eye?

8 A. It was.

9 Q. So that wasn't necessarily detected by the ALS?

10 A. Correct.

11 Q. And is this also a pillow in the bedroom?

12 A. State's exhibit 30 is a photograph of that same
13 bedroom from the doorway. There is a pillow laying on the
14 bed.

15 Q. As well as this particular photograph, what does
16 that depict?

~~17 A. State's exhibit 31, that's a close up photograph of~~
18 the pillow and the pillow case from that bed.

19 Q. And there appear to be pen markings on the pillow
20 case. What are those pen markings from?

21 A. Those are marks that we made after we had searched
22 with that alternate light source.

23 Q. So would that be the area that your light
24 illuminated on?

25 A. That's correct.

1 Q. State's exhibit 32 is also the victim's bedroom?

2 A. Yes, it is. That's a photograph of the floor next
3 to the bed.

4 Q. Again are those markings that you made on the carpet
5 there?

6 A. They are. Those were made so that we can actually
7 photograph and document where those areas of luminescence were
8 found.

9 Q. And State's exhibit 33, is that also the carpet of
10 the victim's bedroom?

11 A. Yes. That's behind the door.

12 Q. And are there pen markings on that particular
13 carpet?

14 A. Yes, ma'am.

15 Q. And finally State's exhibit 34, is that also a
16 photograph of the carpet in the victim's bedroom?

17 ~~A. It is.~~

18 Q. And beside the camouflaged hat, are those markings
19 that you made as well?

20 A. They are.

21 Q. Thank you. You may sit down, Agent Wallace.

22 A. (Witness complies.)

23 Q. Now, again just because the light luminesced -- Is
24 that the correct term?

25 A. Yes, ma'am.

1 Q. -- on the areas that you made markings on, does that
2 necessarily mean that that is definitely bodily fluid?

3 A. No, it doesn't.

4 Q. Does that necessarily mean that those are areas
5 where DNA could be located?

6 A. No, it doesn't.

7 Q. Once you took - once you made the markings on the
8 carpet, what did you do with those particular areas?

9 A. We swabbed those to collect a sample of it.

10 Q. You stated that you also collected certain items,
11 physical items of evidence from the victim's bedroom?

12 A. We did.

13 Q. And what were those?

14 A. There was a pillow from the bed and a pillow case
15 from the bed.

16 Q. So can you explain why you would take whole items
17 such as those versus swabs from a certain area?

18 A. Generally speaking I would swab areas that would
19 either cause severe damage or something that wasn't easily
20 transportable. In this case like a pillow and a pillow case,
21 it was easy to package up and carry it with me. I didn't
22 necessarily want to cut up carpet and tear up the residence.

23 Q. Did you also use the light source in other areas of
24 the home?

25 A. We did, yes.

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1 Q. What other rooms did you also use the light source
2 in?

3 A. In the master bedroom and the sofa in the living
4 room.

5 Q. I'm going to show you what's already admitted into
6 evidence as State's exhibit 26. Is that the master bedroom of
7 the home that day? It's hard to tell.

8 A. I'm not sure.

9 Q. Okay. That's fine. Did your light source
10 illuminate on any areas in the master bedroom?

11 A. Yes.

12 Q. And did you collect swabs from those particular
13 areas?

14 A. Yes, ma'am.

15 Q. What areas in the master bedroom did the light
16 react?

~~17 A. Uhm, there was, of course, some areas from the futon~~
18 mattress in the master bedroom. Swabs were collected from
19 three different places on that futon mattress as well as a
20 large body pillow from that bedroom.

21 Q. So going back to your -- I apologize. I realize why
22 you are confused now. Going back to your diagram where did
23 you indicate that the master bedroom was?

24 A. It was upstairs next to the victim's bedroom.

25 Q. Upstairs, not downstairs?

1 A. That's correct.

2 Q. I'm showing you what's State's 27 and introduced in
3 evidence. Is this the master bedroom that you notated on your
4 diagram?

5 A. Yes.

6 Q. Okay. And again that particular room was
7 upstairs?

8 A. Correct.

9 (Whereupon, State's exhibits #35 through #37 marked
10 for identification.)

11 BY MS. CAVANAUGH:

12 Q. I'm showing you what's not been admitted into
13 evidence yet, State's exhibits 35, 36, and 37. Do you
14 recognize those photographs?

15 A. Yes, I do.

16 Q. And what do those depict?

17 ~~A. These are photographs from that master bedroom of~~
18 the futon mattress and the body pillow.

19 MS. CAVANAUGH: Your Honor, at this time I would ask
20 State's exhibits 35 through 37 be admitted into
21 evidence.

22 THE COURT: Any objection?

23 MS. GOOD: No, Your Honor.

24 THE COURT: They are so admitted.

25 BY MS. CAVANAUGH:

1 Q. Agent Wallace, stand close to the jury. So did your
2 light source detect any, did it react in the master bedroom?

3 A. It did.

4 Q. And what does this depict?

5 A. Uhm, State's 35 is a general photograph of that
6 futon mattress.

7 Q. Is this a closer photograph of that mattress?

8 A. It is. It also includes markings for the areas that
9 we saw fluorescence or luminescence under the lights.

10 Q. And if you look closer, you can actually see those
11 particular spots with the naked eye as well, right?

12 A. Correct.

13 Q. 37, is that also the master bedroom?

14 A. It was.

15 Q. Is that another marking?

16 A. That's another marking on that pillow.

17 ~~Q. Please have a seat. Thank you.~~

18 A. (Witness complies.)

19 Q. Did you - what did you collect from those particular
20 areas in the master bedroom? Were they swabs or were there
21 actual items of evidence?

22 A. They were swabs.

23 Q. And within the pen mark that you put on those
24 areas?

25 A. That's correct.

1 Q. And again some of those you can actually see with
2 the naked eye; is that right?

3 A. Yes, ma'am.

4 Q. Once again just because it reacted does that
5 necessarily mean that it is going to be bodily fluid?

6 A. No, it does not.

7 Q. Does it mean there is going to be DNA there?

8 A. No, it does not.

9 Q. Finally, did you also process the living room and
10 use the light source in the living room?

11 A. We did for the couch.

12 (Whereupon, State's exhibits #38 through #41 marked
13 for identification.)

14 BY MS. CAVANAUGH:

15 Q. I'll show you what's marked as State's exhibit 38
16 through 41 and ask you if you recognize those pictures?

17 A. I do.

18 Q. What do those pictures depict?

19 A. Those are photographs of the couch in the living
20 room. They include markings for areas that luminesced or
21 fluoresced and some close ups as well.

22 MS. CAVANAUGH: Your Honor, at this time I ask that
23 State's exhibits 38 through 41 be admitted into
24 evidence.

25 THE COURT: Any objection?

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1 MS. GOOD: No objection.

2 THE COURT: All right. They are so admitted.

3 BY MS. CAVANAUGH:

4 Q. One more time I'm gonna ask you to stand up.

5 A. (Witness complies.)

6 Q. Is this the couch in the living room?

7 A. State's 38 is a photograph of the couch in the
8 living room.

9 Q. And State's 39, is that also the same couch?

10 A. It is. It's a closer photograph of the cushion and
11 the back of the couch.

12 Q. Are those markings that you made on the couch and
13 the pillow?

14 A. They are.

15 Q. And does State's exhibit 40 show a different pillow
16 as well as the other pillow that we just saw?

17 ~~A. It does.~~

18 Q. And are those markings that you made as well?

19 A. They are.

20 Q. State's exhibit 41, is that also a pillow from the
21 living room couch?

22 A. It is. It's just a closer view of one of the
23 pillows.

24 Q. I see you made a number 1 and a number 2 on that
25 particular pillow. What does that indicate? Or am I just --

1 A. That should just be a number 2. It's just a
2 reference so that I know when I'm making my notes and logging
3 the evidence in I can differentiate where the different areas
4 were on the couch.

5 Q. Thank you. Please sit back down.

6 A. (Witness complies.)

7 Q. And as far as, did you note whether your light
8 reacted -- You said you use different filters depending on,
9 uhm, what does it depend on as far as which glasses you use?

10 A. Different wave lengths require different filters so
11 depending on the wave length of that particular light we would
12 use the appropriate filter and set of glasses to go with it so
13 that we can see those areas of luminescence.

14 Q. And in your report do you indicate which filter you
15 actually used?

16 A. I do not.

~~17 Q. Okay. And again with that couch you made markings~~
18 where the light source reacted?

19 A. I did.

20 Q. And does that mean there was bodily fluid on that
21 particular couch?

22 A. That has to be tested in the lab for DNA.

23 Q. Okay. And the same thing, you don't necessarily
24 know whether that means if there is DNA there either?

25 A. Correct.

1 Q. When you actually collect the swabs, how do you
2 package those?

3 A. The swabs actually come in a pair of two. They are
4 sterile. We moisten them and we collect the sample and then
5 they are placed in an individual envelope, allowed to dry and
6 then they're sealed and packaged and submitted to the
7 appropriate department within the lab.

8 Q. Okay. Did you take the items of evidence back to
9 SLED or were those transferred to someone at the Kershaw
10 Sheriff's Department?

11 A. There were two items that were maintained by the
12 Sheriff's Office. The rest were transported by myself and
13 submitted by myself to the lab.

14 Q. Did you also obtain a buccal swab from **minor one**
15 that afternoon?

16 A. Yes.

~~17 Q. What was your purpose in doing that?~~

18 A. That was to have a standard for comparison in the
19 event there was DNA found. That way the DNA department would
20 have something to compare the evidence to.

21 Q. Do you remember whether **minor** or anyone else was at
22 the home that afternoon?

23 A. There were other people there. I don't remember
24 exactly who was there.

25 Q. Did you communicate with those other people at the

1 house during your investigation?

2 A. I don't remember. I may have instructed on how to
3 provide those buccal swabs but I don't remember communicating
4 with anybody.

5 Q. But is it fair to say that most of your interaction
6 was with the investigators on the scene?

7 A. That's correct.

8 Q. And then, of course, Agent Hezel who was taking the
9 photographs as well?

10 A. Yes, ma'am.

11 Q. Did you provide Lieutenant Knafelc a copy of the
12 photographs at that time or a later date?

13 A. They were provided at a later date but yes, they
14 were provided.

15 Q. Agent Wallace, was that the extent of your
16 involvement in this case?

17 ~~A. It was.~~

18 MS. CAVANAUGH: Thank you. Answer any questions
19 from the defense.

20 CROSS EXAMINATION

21 BY MS. GOOD:

22 Q. Good morning, Agent Wallace.

23 A. Good morning.

24 Q. You stated you got the original call on August 23rd
25 of 2012, correct?

MELISSA WALLACE - CROSS BY MS. GOOD

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1 A. Yes, ma'am.

2 Q. And at that time a search warrant had not been done
3 yet?

4 A. It was my understanding that they were obtaining a
5 search warrant.

6 Q. So once they got the search warrant, that's when
7 you went on the 24th?

8 A. We scheduled for the following day, yes, ma'am.

9 Q. And who is in charge of getting a search warrant, is
10 that you or someone else?

11 A. Someone else.

12 Q. In this case do you know who obtained the search
13 warrant?

14 A. I don't remember.

15 Q. When you arrived at the scene, you spoke with
16 Investigator Knafelc. That's where you got your information
~~17 from. You don't know where his information came from but~~

18 that's where you got your background, correct?

19 A. From him and Investigator Dill.

20 Q. Dill, yes. When you arrived at the home, you said
21 Investigator Knafelc was there, Dill, and do you remember how
22 many other people were there?

23 A. I don't.

24 Q. But the occupants of the house were there?

25 A. At least some of them, yes.

1 Q. Do you remember if it was more than two or just one
2 or two or do you just not remember? That's fine if you don't.

3 A. I don't remember.

4 Q. But you do remember some of the people who lived
5 there were there?

6 A. Yes, ma'am.

7 Q. And were you aware of when the alleged sexual
8 assaults occurred or when they were reported?

9 A. No, ma'am.

10 Q. Prior to you arriving at the home, you don't know
11 what occurred at the home, correct?

12 A. That's correct.

13 Q. When you arrived, was the scene secure?

14 A. Well, there were occupants inside the residence but
15 the investigators were there.

~~16 Q. And you used, I guess -- Explain to me a little bit~~
~~17 ~~more about this blue light, the alternate light source?~~~~

18 A. It's not necessarily blue. That's just one of the
19 colors.

20 Q. Sorry.

21 A. It's an alternate light source. It's light that's
22 outside the normal vision spectrum.

23 Q. And what all does it pick up?

24 A. Trace evidence which could include hairs and fibers,
25 latent fingerprints, bodily fluids. Those are primarily

1 things that are searchable.

2 Q. And you stated earlier on your direct that just
3 because it lights up, doesn't mean that there is bodily fluid,
4 correct?

5 A. Correct.

6 Q. What other things can light up?

7 A. Sometimes detergents, cleaning products. Things
8 like that.

9 Q. So when you flagged the light source, you have no
10 idea what kind of fluid is there, correct?

11 A. That's correct.

12 Q. If it's detergent. If it's a bodily fluid, saliva
13 or what, correct?

14 A. That's correct.

15 Q. And you swabbed and did the light source over the
16 places that Knafelc told you, correct?

~~17 A. The rooms, yes, the areas.~~

18 Q. That was the victim's bedroom, the master bedroom
19 and the living room couch?

20 A. Yes, ma'am.

21 Q. Once you get these swabs, you take them to SLED,
22 correct?

23 A. Yes, ma'am.

24 Q. At that point it's up to somebody else to do the
25 DNA? You have nothing to do with that; is that correct?

1 A. That's correct.

2 Q. That's the end of your involvement?

3 A. Yes, ma'am.

4 MS. GOOD: No further questions.

5 THE COURT: Any redirect.

6 MS. CAVANAUGH: None, Your Honor.

7 THE COURT: All right. Thank you very much. You
8 may step down. It is now about 11:00. We've been going
9 for almost an hour and a half. This is a good time to
10 take a ten minute break. We'll get back on the record at
11 10 after 11. I ask everybody on the jury not to speak
12 about the case when you're back in the jury room just as
13 my instruction has been throughout this trial.

14 (Whereupon, the jury entered the jury room.)

15 THE COURT: Can we address scheduling?

16 ~~MS. CAVANAUGH: We have the serologist or the~~
17 ~~analyst here and then we also have, of course,~~

18 Investigator Steve Knafelc and one other lay witness that
19 should be fairly short. Dr. Foster and then Investigator
20 Dill will be the longer witnesses. And then, of course,
21 we still have the proffer of Dr. Foster. So I didn't
22 want them to wait here for longer than they needed to so
23 I just wanted to see what your thinking was.

24 THE COURT: Sure. Let's get in as much as we can
25 until about 1:00. We have got lunch coming in for the

1 jurors. We will be able to eat lunch but I want to
2 respect y'all so you can get a bite to eat. You're the
3 ones who are on your feet all day. We'll give you time
4 to get some lunch as well. Do you want to do the proffer
5 right after lunch to give the jurors a little longer for
6 lunch?

7 MS. CAVANAUGH: I would like to do the proffer. She
8 was gonna be here right around 11:45 so I'm thinking we
9 can do that.

10 THE COURT: What about if we try to do it at 12:30?
11 I'll send the jury out at 12:30 for lunch. Their lunch
12 probably won't arrive until about 1:00, but they'll be
13 back there. They won't have to wait that long until
14 lunch gets here. Lunch will be hot when it arrives. We
15 can be working on the proffer and we just need to make
16 sure, I want to make sure y'all have lunch. I remember
~~17 being on the other side of the bench and skipping lunch~~
18 and it was not a good recipe for being a good advocate
19 for your clients. We'll make sure you get to eat. Let's
20 plan on that. I don't know how long your witnesses are
21 going to take so you take that in mind that it's going to
22 be ten after 11 when we get back on the record so we can
23 try to stop around 12:30 to take that proffer, okay? Or
24 whatever we decide on. She's going to be here at 11:45
25 you said?

1 MS. CAVANAUGH: Yes.

2 THE COURT: Okay. So yes, 12:30.

3 (Short recess.)

4 BAILIFF: All rise.

5 THE COURT: Thank you. Please be seated. Let's
6 bring the jury back in.

7 (Whereupon, the jury returned to the courtroom at
8 11:25.)

9 THE COURT: Madam Solicitor.

10 MS. SENN: The State calls Courtney Thompson.
11 Thereupon,

12 COURTNEY THOMPSON

13 after having been first duly sworn, testified as follows,

14 THE CLERK: Please have a seat. After you're
15 seated, please state your full name for the record.

16 THE WITNESS: My name is Courtney Thompson.

17 ~~DIRECT EXAMINATION~~

18 BY MS. SENN:

19 Q. Good morning, Ms. Thompson. How are you?

20 A. I'm good. How are you?

21 Q. I'm well. What do you do?

22 A. I'm a forensic serologist in the DNA case work
23 department.

24 Q. Where are you employed?

25 A. I'm employed at the South Carolina Law Enforcement

1 Division also referred to as SLED.

2 Q. How long have you been with SLED?

3 A. I have been at SLED for approximately three and a
4 half years.

5 Q. Before you were at SLED, do you have any other
6 relevant experience?

7 A. I have a degree from the Southern Wesleyan
8 University in forensic science and biology.

9 Q. Do you have any education specific to your field?

10 A. Besides my Bachelor's degree from Southern Wesleyan
11 University, I have also completed graduate level course work
12 from the University of Florida in biological evidence
13 screening and serology.

14 Q. Have you ever had any training in your field?

15 A. Yes. I was trained inhouse at SLED under a court
16 qualified analyst who taught me proper evidence handling,
~~17 chain of custody, test preparation and evidence examination as~~
18 well as report writing and courtroom testimony training.

19 Q. Have you ever testified as an expert before?

20 A. Yes, I have.

21 Q. How many times?

22 A. Approximately four times.

23 Q. Where was that?

24 A. I have been qualified as a witness before in
25 Darlington County and in Allendale County and in Lee County.

1 MS. SENN: Your Honor, the State moves to qualify
2 Courtney as an expert in the field of serology.

3 THE COURT: You said what field?

4 MS. SENN: Expert in the field of serology.

5 THE COURT: Any objection?

6 MS. GOOD: No, ma'am.

7 THE COURT: She will be so qualified.

8 MS. SENN: Thank you.

9 BY MS. SENN:

10 Q. Ms. Thompson, can you please explain what serology
11 is?

12 A. Forensic serology is the identification of various
13 types of body fluids through different types of testing.

14 Q. So when you say body fluids, what do you mean?

15 A. Typically we test blood, semen, and saliva.

~~16 Q. When you say that you're testing that, what is the~~
~~17 significance of any results that you get?~~

18 A. Those body fluids are significant to the DNA
19 department because they are good sources of DNA.

20 Q. Did you have an occasion to examine evidence that
21 was submitted in this case?

22 A. Yes, I have.

23 Q. Where did you receive that evidence? From what
24 department?

25 A. I received that evidence from the evidence control

1 department which is located in the forensics laboratory at
2 SLED.

3 Q. What evidence did you examine?

4 A. In this particular case I happened to examine a
5 pillow from the victim's bed, a pillow case from the victim's
6 bed, as well as several swabs from around the area of the
7 victim's residence.

8 Q. What were you testing those items for?

9 A. I was screening them for the presence of semen.

10 Q. So walk me through this testing process. What are
11 the tests that are available to test for the presence of
12 semen?

13 A. For larger items of evidence such as the pillow and
14 pillow case which I examined we have a test that is a quick
15 chemical test. It's good for screening larger items of
16 evidence. It screens for a component found in very high
17 ~~concentrations in male seminal fluid. Additionally, for~~

18 smaller items of evidence such as the swabs that I also
19 screened we have another type of test that also looks for
20 another component found in very high concentrations in male
21 seminal fluid. Additionally, all of the items that I tested
22 -- I'm sorry. I misspoke. All of the swabs that I tested in
23 this case I happen to also perform a microscopic examination
24 on to try and identify the presence of sperm cells.

25 Q. Okay. So you said that you did some testing on a

1 pillow and pillow case. Which of those types of testing did
2 you do on the pillow and pillow case?

3 A. For that type of testing I did what is called a
4 presumptive test. It's a chemical test that is good for
5 screening larger items of evidence. It is a test that in the
6 presence of this particular component will turn a different
7 color which can be an indicator to me that there could
8 possibly be semen present and that I should do additional
9 screening.

10 Q. You said that's a presumptive test. Can you explain
11 that?

12 A. Yes. Presumptive essentially means that it can
13 indicate the possibility that semen is present, but it does
14 not confirm it so additional testing is required if that test
15 is positive.

~~16 Q. If the test is negative, what do you do from that~~
~~17 point?~~

18 A. At that point our testing will stop and we consider
19 the item that we are screening to be negative for the presence
20 of semen.

21 Q. Okay. Did you arrive at any conclusion on the test
22 that you conducted with respect to the pillow case and pillow
23 specifically?

24 A. Yes. Uhm, for the pillow and the pillow case my
25 screening for semen in those cases was negative.

1 Q. Is your conclusion within the bounds of reasonable
2 scientific probability?

3 A. Uhm, yes.

4 Q. So can you explain your conclusion one more time for
5 the jury with regard to the pillow and pillow case?

6 A. For the pillow and pillow case my screening for the
7 presence of semen was negative.

8 Q. Okay. And you said that you performed some testing
9 on some swabs?

10 A. That is correct.

11 Q. And again what were you looking for in those
12 swabs?

13 A. The presence of semen as well.

14 Q. What test did you perform on the swabs?

15 A. We have another type of test that I mentioned
16 earlier that screens for a component found in very high
~~17 concentrations of semen and this test runs very similarly to a~~
18 pregnancy test. A sample is placed on this particular test
19 that looks like a pregnancy test and as the liquid sample
20 migrates up a strip of paper similar to the pregnancy test, a
21 certain number of lines can indicate a positive result and a
22 certain number of lines indicate a negative result. After we
23 complete that testing, we will do a microscopic examination of
24 that sample to try and identify any sperm cells that might be
25 present.

1 Q. So with the swabs that you tested what was the
2 result of that test?

3 A. For both the chemical test that I performed as well
4 as the microscopic examination they were both negative.

5 Q. Okay. And again is that conclusion within the
6 bounds of reasonable scientific probability?

7 A. Yes, it is.

8 Q. Okay. Does that conclusion allow you to say that
9 semen was never present in those areas?

10 A. I cannot make any conclusions as to that. What I
11 can say is that the items that I examined were negative for
12 semen.

13 Q. Okay. What other factors could give you a negative
14 result?

15 A. There are various other things that could possibly
~~16 degrade a semen sample. Uhm, things like cleaners as well as~~
~~17 the length of which the stain had been potentially deposited~~
18 and then left there. So basically wear and tear on a
19 particular area or item can all lead to the degradation of a
20 semen stain.

21 Q. Can I back you up for a second? Can you explain
22 what degradation is?

23 A. Yes. I'm happy to explain it. That basically means
24 that the stain that is there is breaking down and it is
25 becoming, is less likely that our screening tests and anything

1 that we are going to be looking for is going to still be
2 available. Because it is a biological fluid in our body
3 eventually it does break down and our testing cannot exactly
4 pick up everything once that sample starts to wear away and be
5 less concentrated.

6 Q. So once semen begins to degrade it will not yield a
7 positive result in the test that you perform?

8 A. That's a possibility, yes.

9 Q. Okay. So you said that a cleaning agent could
10 degrade something. Could you go into more detail about that?
11 What kind of cleaning agents do you mean?

12 A. Anything that is considered a household cleaner like
13 bleach, detergents, strong caustic chemicals. Things that you
14 might clean your floors or bathrooms with. Things like
15 that.

16 Q. So when you say detergents, do you mean laundry
17 detergent?

18 A. That or maybe perhaps like soaps that you would wash
19 your dishes with or your hands with. Things like that that
20 have antibacterial components in it.

21 Q. Could washing a pillow case cause semen to
22 degrade?

23 A. It could, yes.

24 Q. Could washing a pillow cause semen to degrade?

25 A. It could, yes.

1 Q. Would wiping semen up off of a surface, could that
2 potentially cause semen to degrade?

3 A. It could definitely aide in removing a large
4 majority of the sample. It would not necessarily breakdown
5 the semen but it could potentially remove a lot of what would
6 possibly have been there.

7 Q. You said earlier that repeated use could degrade a
8 sample. What do you mean by repeated use?

9 A. For example, there were some swabs that were
10 submitted that were from the carpet and because most carpet is
11 walked on quite frequently, something like that could
12 potentially wear away a possible sample just from everyday use
13 and wear and tear.

14 Q. What about vacuuming, could that cause semen to
15 degrade?

16 A. It could potentially remove some of the sample,
17 yes.

18 Q. Ms. Thompson, can you say with reasonable scientific
19 certainty that James Miller's semen was never present on any
20 of the items that you tested for?

21 A. I can only say that the items that I screened, yes,
22 were negative for any semen at all.

23 Q. But can you say that semen was never present on
24 those items?

25 A. I cannot say that because I only tested them in the

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1 state that they arrived to me so...

2 MS. SENN: No further questions. Answer any
3 questions the defense may have.

4 THE COURT: Ms. Good.

5 CROSS EXAMINATION

6 BY MS. GOOD:

7 Q. Ms. Thompson, you stated there are several different
8 tests to use to detect semen; is that correct?

9 A. That's correct.

10 Q. That's to ensure that the appropriate tests are used
11 for the appropriate types of material or whatever you're
12 testing at that time?

13 A. That's correct.

14 Q. You used multiple types of testing in this case,
15 correct?

16 A. I did.

17 Q. With the different multiple types that you used to a
18 reasonable scientific probability you found all of those
19 samples to be negative for semen, correct?

20 A. That is correct.

21 Q. And if there had been even a little bit of semen
22 there on the sample that you had that you were able to test it
23 would have showed up, correct?

24 A. There is a possibility of that. Our tests our very
25 sensitive and specific so they are typically able to detect

1 lower levels of semen but we cannot quantify how much semen
2 would need to be present in order for our samples to be
3 testing positive.

4 Q. And what was the date that you were asked to perform
5 your test on these samples?

6 A. The way that evidence flows into our laboratory is
7 after it is submitted to our evidence control department, it
8 is placed onto a what we call case assignment table and this
9 is done by our case coordinator in our department and the way
10 that cases are worked is that they are worked based off of the
11 time they are submitted so essentially chronologically.

12 Q. Do you know when this one was submitted?

13 A. I can reference my chain of custody. Is that okay?

14 Q. That's fine. Go ahead.

15 A. From my chain of custody it appears that this case
16 was initially submitted on August 24th of 2012.

17 ~~Q. And then it was initially sent back from there,~~
18 correct?

19 A. That is correct. On December 12th of 2012 it was
20 returned.

21 Q. And then when did you do your test on these? When
22 were they returned to SLED for you to do your test?

23 A. They were returned to SLED on December 2nd, 2015 and
24 I started my analysis on these items on December 9th of
25 2015.

1 Q. So you received them approximately three months
2 ago?

3 A. That is correct.

4 Q. Within two weeks you were doing the tests on them,
5 correct?

6 A. That is correct.

7 Q. And that's the first time that you had any contact
8 with them was December of 2015, correct?

9 A. Yes. That's correct.

10 MS. GOOD: No further questions.

11 THE COURT: Any redirect?

12 MS. SENN: Yes.

13 REDIRECT EXAMINATION

14 BY MS. SENN:

15 Q. Ms. Thompson, you testified a minute ago that
16 someone else schedules the testing; is that correct?

17 ~~A. That is correct.~~

18 Q. So you are not responsible for scheduling testing in
19 any way, shape or form?

20 A. No. We cannot hand pick cases. They just are given
21 to us and assigned to us based off of when they come in and
22 when they are submitted. We are not allowed to typically give
23 priority over one or the other.

24 Q. Is it fair to say that the SLED lab has a
25 significant backlog of cases?

1 A. That is a fair assumption to make, yes.

2 Q. Do you know how many counties SLED is responsible
3 for testing materials in?

4 A. I do not know the exact county, but we can service
5 every county in the State of South Carolina.

6 Q. Do you know the exact number of that?

7 A. I do not have that number off the top of my head.
8 I'm not sure.

9 Q. But every county in the State; is that correct?

10 A. That is correct. That is the function of our
11 department is to service every county.

12 MS. SENN: Thank you. No further questions.

13 MS. GOOD: Just a couple.

14 THE COURT: Go ahead.

15 RECROSS EXAMINATION

16 BY MS. GOOD:

17 Q. ~~So are you aware of when these swabs or samples were~~
18 actually sent to SLED to be tested and requested to be
19 tested?

20 A. Yes. I am aware of when that occurred.

21 Q. And when was that?

22 A. That would have been whenever they were returned,
23 whenever they were resubmitted to SLED, December 2nd of
24 2015.

25 Q. So is that when they were actually submitted to SLED

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1 to be --

2 A. That was when they were resubmitted to SLED and that
3 was when I started my testing on them.

4 MS. GOOD: No further questions.

5 THE COURT: Thank you. You may step down. The
6 State may call their next witness.

7 MS. SENN: The State calls Martha Penrod.

8 Thereupon,

9 MARTHA PENROD

10 after having been first duly sworn, testified as follows,

11 THE CLERK: Please have a seat. After you're
12 seated, please state your full name for the record.

13 THE WITNESS: Martha David Penrod.

14 DIRECT EXAMINATION

15 BY MS. SENN:

16 Q. Good morning, Ms. Penrod. How are you?

17 A. I'm fine. Thank you.

18 Q. Are you nervous today?

19 A. Very much so.

20 Q. Ms. Penrod, what do you do?

21 A. I'm retired.

22 Q. Before that, what was your career?

23 A. I taught school for 29 years.

24 Q. 29 years. Where did you teach?

25 A. Uhm, here in Kershaw County. I taught at Lugoff

1 Elgin Middle School and Stover Middle School.

2 Q. You say you taught middle school. What grade
3 specifically?

4 A. Eighth grade.

5 Q. Where do you live, Ms. Penrod?

6 A. [REDACTED] Road out at Wateree Lake.

7 Q. How do you know the defendant in this case?

8 A. Uhm, they moved into the house next door to us out
9 at the lake.

10 Q. Ms. Penrod, do you remember when you first met the
11 Miller family?

12 A. Uhm, I believe it was in July of 2011 and, uhm, they
13 came, I believe they came up on a pontoon and parked next
14 door, docked next door and they came up looking at the house
15 next door and my husband and I went out to meet them at that
16 time.

17 Q. What, did you go out there and just introduced
18 yourselves?

19 A. Gosh, you know, I don't know. I believe we
20 introduced ourselves. It was kind of like they were - he was
21 saying that they were going to rent the house next door.

22 Q. When was the next time that you saw James Miller?

23 A. I don't know the exact time. It might have been a
24 week. Might have been two weeks, but James and [REDACTED] minor came to
25 the house next door and they came down to work and get it

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1 ready for the family. They were there for about a week or two
2 weeks.

3 Q. Were they alone?

4 A. They were alone.

5 Q. Okay. Do you remember when the rest of the family
6 moved in?

7 A. I can't -- I don't recall. It was shortly after
8 that.

9 Q. That's fine. Do you know whether Minor and James
10 worked together?

11 A. Yeah. **minor** worked with her dad. She went off
12 everyday to work with her dad and **minor** was the motherly
13 type. She was the cook. She was the artistic type. She
14 stayed at home.

15 Q. Okay. So did you get to know the Millers very well
16 while they lived in Camden?

17 A. The children and Tammy, you know, got to know. They
18 were with - my grandchildren played with Xavier and **minor** and
19 **minor** and I had twin granddaughters at the house at the time,
20 too, and they got to know **minor** and **minor**.

21 Q. Okay. And you said earlier that **minor** would go to
22 work with her dad. Is there anything else you remember about
23 Minor ?

24 A. **minor** could seem like she could do just about
25 anything.

1 Q. Did you ever see her do anything unusual?

2 A. Oh, yeah. I think it was **minor** that skinned the
3 fox. She was just very outgoing and, well, not particularly
4 outgoing but very - very much into nature and things like
5 that, yeah.

6 Q. You said she skinned a fox?

7 A. Yeah.

8 Q. Okay. Can you describe your house in relation to
9 the Miller's house?

10 A. Fairly close. It was - the house was fairly close.
11 It was a house that was put up on a lot that already had a
12 house on it.

13 Q. Are you next door neighbors? Were you next door
14 neighbors with the Millers?

15 A. Yes. We were right next door, yeah.

16 Q. Were you outside very often?

17 A. I was out a lot because I had my daughter and four
18 grandchildren living at the house.

19 Q. So what were you doing when you were outside?

20 A. Uhm, usually watching them or else we would take
21 them out on the boat or work in the yard.

22 (Whereupon, State's exhibits #42 through #45 marked
23 for identification.)

24 MS. SENN: Your Honor, may I approach the witness?

25 THE COURT: You may.

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1 BY MS. SENN:

2 Q. I'll show you what's marked as State's exhibit 42
3 through 45. Do you recognize those?

4 A. That's our deck, yeah.

5 Q. Look through all of them please.

6 A. (Witness complies.)

7 Q. Do you recognize them?

8 A. Yeah.

9 Q. Okay.

10 A. Mm-hmm.

11 Q. What do they show?

12 A. This one shows standing on my deck looking down and
13 seeing the deck, the dock next door.

14 Q. What about the rest?

15 A. This is showing the house but the house that the
16 Millers were living in was in between our house and this other
~~17 house and this is our deck looking out over the lake.~~

18 Q. What about the next one?

19 A. This one looks like this is standing on the Miller's
20 porch and that's the garden that Tammy had.

21 Q. What about the final one?

22 A. This one is standing on my deck, my deck looking
23 down on the Miller's dock.

24 MS. SENN: Your Honor, I move to introduce exhibits
25 42 through 45 into evidence.

1 THE COURT: I'll give the defense attorney a chance
2 to look at those and see if she has any objection.

3 MS. GOOD: No objection.

4 THE COURT: All right. They are so admitted.

5 MS. SENN: May the witness step off the witness
6 stand?

7 THE COURT: She may. Please step down towards the
8 jury.

9 BY MS. SENN:

10 Q. I'll get you to show the jury what's in these
11 pictures. I'll reorganize them quickly. Keep your voice up,
12 okay? What is this a picture of?

13 THE COURT: And can you identify what exhibit you're
14 looking at, too.

15 MS. SENN: Yes, Your Honor. This is State's exhibit
16 number 42.

17 BY THE WITNESS:

18 A. Uhm, this is my deck. Uhm, this house right back
19 here is another, it's like an abandoned house on the other lot
20 and the Miller's house is in between our house and that house
21 and that's looking out on the lake over in that direction over
22 towards their house.

23 Q. What about State's exhibit number 43, what is
24 that?

25 A. This picture was taken off of the Miller's porch.

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1 That's looking down in their yard with the garden and they had
2 a deck right here.

3 Q. And this is a small sign. What does that say?

4 A. Beware of dog - or it's a little blurred. Looks
5 like beware of dog.

6 Q. Did you put that up?

7 A. Oh, no.

8 Q. Do you know who put that up?

9 A. James.

10 Q. Can you tell the jury what is in State's exhibit
11 number 44?

12 A. This is off of my deck, my yard and then this is the
13 Miller's dock.

14 Q. So how would you describe your view of the Miller's
15 dock? Is it obstructed by anything?

16 A. No. We let - we let these trees grow up over the

17 past four years. These real thin trees, we let them grow up.

18 No. We needed to be able to see because the children played
19 together and they would be in the water and --

20 Q. And this fence right here, who put that up?

21 A. James put that fence up probably about three months
22 before he left.

23 Q. So it wasn't there the whole time he was there?

24 A. No. There was no fence there.

25 Q. Again, this is State's exhibit 45. Can you tell the

1 jury what's in this picture?

2 A. This is again standing off my deck and that's the
3 dock, the Miller's dock.

4 Q. Thank you. Take your seat.

5 A. (Witness complies.)

6 Q. Ms. Penrod, you said that you saw the Millers a good
7 bit. Did you observe anything that you thought was unusual
8 about James?

9 A. Uh, I don't quite know what you're asking me.

10 Q. Did you ever notice anything unusual between minor
11 and James?

12 A. Yes.

13 Q. What did you notice?

14 A. Uhm, a couple of times their behavior in the water,
15 in the lake, uhm --

~~16 Q. Can you describe that for the jury?~~

~~17 A. Uhm, facing each other his arms around her, uhm,~~
18 pulling her in close, playing with her, you know, just --

19 Q. And you said that was in the water?

20 A. -- splashing water.

21 Q. That was in the water?

22 A. Yeah.

23 Q. Is there anything else that you observed that you
24 thought was unusual at the time?

25 A. Uhm, together, uhm, on the hammock.

1 Q. Where was that hammock?

2 A. The hammock was right - it was in one of the
3 pictures. It shows two trees. The hammock was right there.

4 Q. You're talking about State's exhibit number 45?

5 A. Here. The hammock was right here.

6 Q. State's exhibit 43. Show the jury really quickly.

7 A. The hammock was right on these two trees. The fence
8 wasn't there, and that's my house.

9 Q. Thank you. And where were you when you saw James
10 and **minor** on the hammock?

11 A. I was either in the yard or I was on the deck
12 checking on the kids.

13 Q. But you had a clear view of them?

14 A. Yes. I was able to see them.

15 Q. What did you see?

16 A. On the hammock?

17 Q. Yes.

18 A. They were just kind of snuggling.

19 Q. Were their heads together or were they facing each
20 other?

21 A. You know, I think they were spooning.

22 Q. Okay. And you thought that that behavior was
23 unusual?

24 A. I thought it was, yes.

25 Q. Was there anything else that you observed between

1 [minor] and James that made you concerned?

2 A. Uhm, I saw them down on the dock and they were
3 sitting on the dock, their legs were hanging over the dock and
4 he had his arm around her and he had her pulled over on his
5 chest and they were sitting side by side and then all of a
6 sudden, I don't know, she had her head down, down. You know,
7 I don't know if she was crying. I don't know what was going
8 on. But then I saw him take his leg, and it's hard to do
9 that, and swing it around her back so that he could slide up
10 and he had his leg around her back and had her closer to
11 him.

12 Q. So she was between his legs?

13 A. Yes.

14 Q. Was he doing anything at that point?

15 A. I went in.

16 Q. Where were you standing?

17 A. I - I - I was either in the yard or I was on the
18 deck - on the dock - the deck.

19 Q. Just so we are clear, [minor] is a twin. Can you
20 identify [minor one]

21 A. Gosh, it's been four years. They're so grown up.
22 Uhm, Minor , I think [minor] is the one sitting on this side.

23 Q. On the left of her twin?

24 A. Yes. [minor]. Yes. On the left of [minor].

25 MS. CAVANAUGH: Your Honor, can the record reflect

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1 she has identified [minor] Miller.

2 THE COURT: Let the record reflect that she has
3 identified [minor one] [minor one].

4 BY MS. SENN:

5 Q. Did you ever observe James acting differently
6 towards [minor] than towards the other Miller children?

7 A. He just always seemed to be around [minor], but I saw
8 him play ball with the kids. He did interact with the other
9 kids but his attention seemed more focused on her, but then
10 she worked with him all the time.

11 Q. You said his attention seemed more focused on
12 [minor one]

13 A. Mm-hmm.

14 Q. Okay. And after the family moved in, can you
15 describe your relationship with James Miller?

16 A. Uhm, it got a little more difficult with James. We
~~17 had -- Tammy and the kids were wonderful. There were no~~
18 problems with Tammy and the kids. Uhm, James was fine until
19 his buddies started hanging out and they started drinking all
20 the time.

21 Q. Did you ever have any disagreements with James?

22 A. We had to ask a number of times if they would keep
23 the music down because we had children, grandchildren that
24 went to school in the morning and had to get up early and
25 needed to sleep and so we had to talk to him about the noise.

1 And then we actually sat down with Tammy and James over at our
2 house for about 45 minutes, I think, and we had just asked
3 them, uhm, to be aware of the noise. Uhm, that we were having
4 problems with the drinking and the partying and the noise.

5 Q. And you said that they were playing music and your
6 grandchildren had to get up early the next morning. What time
7 was it that you had an issue? What time of day was it?

8 A. Well, we had asked - we had worked out a time with
9 James that the partying during the week, weeknights, I think
10 we asked that the music, you know, would end or be turned down
11 around 10:00 during the week days, but James would turn it up
12 so loud that you could hear and actually feel the bass. It
13 was like the bass vibrated the house it was so loud.

14 Q. After you sat down with James and Tammy, did they
15 abide by whatever standard you set for the music?

~~16 A. For a little while, yes. But they would have, you~~
~~17 know, people that would come over and they would - the people~~
18 would be partying also.

19 Q. Did you ever have any confrontations with James
20 Miller?

21 A. Yes.

22 Q. Can you describe -- How many times?

23 A. I think -- Oh, I don't know. I think I had two
24 confrontations with him by myself.

25 Q. Can you tell me what was happening?

1 A. The one time I had just come home and getting ready
2 to drive down my driveway and he and some of his friends had
3 put up a post and a chain across the driveway so I couldn't
4 drive down and, uhm, I had a confrontation with him then.

5 Q. What did you say?

6 A. Well, I just told him that he couldn't do it. That
7 that road had been there and it was illegal for him to block
8 the driveway. Even though we had put in another driveway on
9 the other side of our house, we used both of those
10 driveways.

11 Q. Did the confrontation escalate or did it end
12 there?

13 A. I didn't -- I had -- I had -- I confronted him in
14 front of his buddies, you know, and there were people there
15 and so he argued back and I don't recall what all was said.
16 Uhm, I know that -- Shall I say what I said to him? I don't
17 remember everything that I said. I remember how I ended the
18 conversation.

19 Q. How did you end the conversation?

20 A. I ended the conversation by saying, uhm, and I know
21 you're sleeping with your daughter.

22 Q. You said I know that you're sleeping with your
23 daughter?

24 A. Yes.

25 Q. What was James' reaction to that?

1 A. He was shocked. I mean, he just looked surprised
2 and that kind of ended the conversation.

3 Q. Was anyone else around?

4 A. Yes.

5 Q. Who?

6 A. His friends were there. Uhm, I don't remember if
7 the girls, the girls were there or out there. I don't
8 remember. I thought Tammy was out there. I thought her
9 sister was there at that time. But, you know, I just -- I
10 don't remember. Four years.

11 Q. That's fine.

12 A. But there were other people there when I said it.

13 Q. Was there another confrontation or what that the
14 only one?

15 A. No. There was another confrontation and I think
~~16 that was when he put the fence up and he was putting a gate in~~
~~17 so that, you know, because he had to take the chain off. He~~
18 couldn't block the driveway. But he put the fence up and then
19 he was putting a gate up. He said that all we had to do was
20 get out and open the gate and then close it. We said no, you
21 can't do that. It's our road.

22 Q. How did that confrontation end?

23 A. It ended the same way. I said I know you're
24 sleeping with your daughter.

25 Q. Was anyone around that time?

1 A. I don't recall if anyone was there at that time.

2 Q. How did James react to you saying that a second
3 time?

4 A. I don't think he said anything after that.

5 Q. And even after -- What time of year did those
6 confrontations take place, the first one and the second one?

7 A. Those were closer to the spring of 2012.

8 Q. Around this time of year?

9 A. Yeah. Everything was kind of coming to an end.

10 Q. After those confrontations, did you and James remain
11 cordial or how was your relationship?

12 A. Uhm, I don't think there was a lot of conversation.
13 You know, when James wasn't drinking and when he didn't have
14 his buddies around, you could talk to him.

15 Q. Okay. So under what circumstances was James a
16 nuisance to you?

~~17 A. When he was drinking and he had his friends.~~

18 Q. Okay.

19 A. His buddies.

20 Q. I want to take you back to the event on the hammock.
21 Did you often see people on the hammock?

22 A. The kids always played on the hammock. **minor** and
23 **minor** and **minor** always played on the hammock. I think that
24 was the first time that I had seen James.

25 Q. So you never saw James on the hammock with any of

1 the other Miller children?

2 A. Oh, no, I can't say that. I'm not sure. I don't
3 recall seeing James on the hammock.

4 Q. Okay. And back to the event that took place on the
5 dock, you testified that when you saw James with his legs
6 around **minor one** you went inside. Why did you go inside?

7 A. It seemed very private and I didn't want to see
8 it.

9 Q. Okay. What part of James' body was touching
10 **minor one**

11 A. Uhm, her side would have been in between his legs.
12 One leg was around her back and one leg was hanging down on
13 the dock.

14 Q. So would that be his genitalia?

15 A. Yeah, I guess you could say that.

16 MS. SENN: Thank you, Your Honor.

17 THE COURT: Thank you. Ms. Good.

18 MS. GOOD: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. GOOD:

21 Q. Good morning, Ms. Penrod.

22 A. Good morning.

23 Q. You still live on Lane, correct?

24 A. Pardon.

25 Q. You still live on next door to where

MARTHA PENROD - CROSS BY MS. GOOD

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1 they were, right?

2 A. Yes.

3 Q. And you just testified James was a nuisance to you,
4 correct?

5 A. No. I don't think I said a nuisance. I said the
6 only time that he bothered us is when, that it ever bothered
7 us was when he was drinking and partying and playing the loud
8 music.

9 Q. So they had friends over?

10 A. Mm-hmm. Yes.

11 Q. How often did they have friends over?

12 A. Uhm, gosh, toward the end of 2012 it was, it seemed
13 like there were always people there.

14 Q. Okay. Would Tammy be outside also with them?

15 A. Uhm, she would be in and out.

16 Q. You said the girls were outside some, too?

~~17 A. The kids were always outside playing.~~

18 Q. You stated that you always saw the kids out playing
19 because you were always outside also?

20 A. No. I was in and out because I had grandchildren
21 living with me.

22 Q. So you were outside a lot --

23 A. I was in and out, yes.

24 Q. -- watching grandchildren. And during the summer
25 and the spring your grandchildren went swimming?

1 A. Mm-hmm.

2 Q. Did [minor] and [minor] and all of their children go
3 swimming?

4 A. Yeah, they would swim too.

5 Q. What would they wear when they were swimming?

6 A. Uhm, [minor] always had a life jacket on. Uhm, my
7 youngest grandchildren had to wear life jackets also. And I'm
8 not sure about [minor] or [minor], but [minor] always had a life
9 jacket on.

10 Q. What about [minor] and [minor two]

11 A. No. I don't think they wore life jackets. To swim?
12 No.

13 Q. Did they wear swim suits?

14 A. Yeah.

15 Q. What kind of swim suits were they wearing?

16 A. Two-piece.

17 Q. Bikinis?

18 A. I believe they were two piece bathing suits.

19 Q. Did you ever notice any bruises or anything on
20 [minor one]

21 A. I was never -- I don't ever remember being close
22 enough to see any bruises. I was never -- Let me rephrase
23 that. I was never -- I did not swim and so I also tried to
24 stay out of the sun so I was never that close to them when
25 they were in bathing suits. I usually saw the girls in

MARTHA PENROD - CROSS BY MS. GOOD

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1 clothing.

2 Q. I'll show you State's 44. This is your porch?

3 A. Yes, it is.

4 Q. And that's the dock?

5 A. Yes.

6 Q. About how far is your porch from the dock?

7 A. Oh, gosh, I have never measured so, uhm --

8 Q. Is it farther than this (indicating)?

9 A. I think a little further probably.

10 Q. Tell me when to stop.

11 A. About that. Yeah. Let me see. Maybe a little

12 further.

13 Q. (Indicating.)

14 A. Yeah. About like that, I think.

15 Q. About here (indicating)?

16 A. Yeah.

17 Q. And how is your eyesight, Ms. Penrod? Do you wear
18 glasses?

19 A. I wear magnifying. I wear just the reading glasses.
20 Magnifying glasses for reading from the Dollar Store, not
21 prescription.

22 Q. How did you know from your porch down to the dock
23 that it was **minor** and not **minor two**

24 A. Well, I guess I figured that it was **minor** because
25 she was always with him.

1 Q. So you don't know if it was **minor one**

2 A. And she - their hair was not the same color. Their
3 -- Well.

4 Q. Okay. And the conversations, altercations you got
5 into with Mr. Miller where you said, well, I just know you're
6 sleeping with your daughter, you said Tammy was around one of
7 those times?

8 A. I thought so.

9 Q. And was she close enough where she would have heard
10 you?

11 A. I was -- I was closer to James and I believe, uhm,
12 Tammy and I thought it was her sister or there was another
13 woman, they were coming out of the door so I was from about
14 here to that door so she could have heard, yes.

15 Q. And you said she was with her sister and another
16 person?

17 A. No. She was with another woman.

18 Q. Another woman?

19 A. I'm not sure if it was her sister or not or if it
20 was the wife of one of the buddies.

21 Q. Okay. And when did you see **minor** on the dock with
22 James? Do you remember what time of the year it was?

23 A. No, I don't.

24 Q. Okay. In this picture, when do you believe this
25 picture was probably taken?

1 A. That was just taken.

2 Q. Recently?

3 A. Yeah.

4 Q. There's no leaves on the trees?

5 A. No leaves on the trees. All of these trees here,
6 all these young trees, those we let grow up since for the past
7 four years. We let them grow.

8 Q. Just so --

9 A. So they were not there at the time. It was just --

10 Q. All these big trees were there though?

11 A. Just these trees, big trees. These little tiny
12 trees we let them grow. We call them trash trees, but we let
13 them go ahead and grow.

14 Q. When these trees have leaves on them, can you see
15 out towards the lake down by the dock clearly?

16 A. You can still see the dock, yes. You have to shift

17 but you can still see it. If I wanted to go out with
18 everything in full bloom in the middle of the summer and I
19 wanted to see if anyone was on their dock, I could shift on my
20 porch and see the dock.

21 Q. You said several times you saw James with minor.
22 It was outside?

23 A. Yeah.

24 Q. Was there other people around?

25 A. There were always kids around.

1 Q. So it was out in public where anybody could see?

2 A. Yeah. Other people saw. Now, I don't know about
3 the dock. When they were down on the dock, I don't know if
4 anyone else was out there.

5 Q. And in August when the police came to their home,
6 were you there that day?

7 A. I was there that day.

8 Q. When did you find out about the allegations that
9 were made and everything that was going on?

10 A. I - we really didn't even know what was going on.
11 Uhm, just all the cars pulled up and, uhm, I don't know who
12 told us what was going on at that time but I had a
13 conversation. After he was arrested, I had a conversation
14 with Tammy and --

15 Q. So you found out at that point what the allegations
16 were?

17 A. Uhm, yes, I believe so.

18 Q. And at that point did you call law enforcement or
19 anybody to tell them about these statements you made to him
20 and the observations that you saw about him and **minor one**

21 A. We had called the police twice because of the noise
22 and because of the taunting that was going on from James' side
23 and I told the police, both sets of police that came out two
24 different times, I believe I told both of them that we thought
25 that he was sleeping with his daughter.

1 Q. So after he was arrested, did you talk to any
2 investigator or anything about your observations?

3 A. No. Mmm-mmm. No. The first time I talked to
4 someone was a month ago, three weeks ago when the investigator
5 came to my door.

6 MS. GOOD: No further questions, Your Honor.

7 THE COURT: Any redirect?

8 MS. SENN: Yes, Your Honor, one question.

9 REDIRECT EXAMINATION

10 BY MS. SENN:

11 Q. Ms. Penrod, from your porch could you clearly see
12 the dock?

13 A. Yes. We can still clearly see it even during the
14 summer.

15 Q. And could you clearly see the hammock?

16 A. Yes. There was no fence at the time so you could
17 clearly see the hammock.

18 Q. Did you ever at any point in time see James spooning
19 any of his other children on the hammock --

20 A. No.

21 Q. -- or anywhere else?

22 A. No.

23 MS. SENN: Thank you, Your Honor.

24 THE COURT: Thank you, Ms. Penrod. You may step
25 down. Madam Solicitor, would you like to take up the

1 matter of law now or call your next witness? I leave it
2 to you.

3 MS. SENN: Your Honor, the State calls Steve
4 Knafelc.

5 Thereupon,

6 CAPTAIN STEVEN KNAFELC
7 after having been first duly sworn, testified as follows,

8 THE CLERK: Please have a seat. After you're
9 seated, please state your full name for the record.

10 THE WITNESS: Steven John Knafelc.

11 DIRECT EXAMINATION

12 BY MS. SENN:

13 Q. Thank you. I'm glad you said that. I can spell it,
14 but not say it. How are you today?

15 A. I'm good.

16 ~~Q. Captain Knafelc, what do you do?~~

17 ~~A. I'm a captain in criminal investigations with the~~
18 Sheriff's Office.

19 Q. With what Sheriff's Office?

20 A. Kershaw County.

21 Q. How long have you been with the Sheriff's
22 Department?

23 A. I have been with the Sheriff's Office about 19
24 years.

25 Q. Before that, do you have any other relevant law

CAPTAIN STEVEN KNAFELC - DIRECT BY MS. SENN

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1 enforcement experience?

2 A. No, ma'am.

3 Q. In August of 2012 in what capacity were you
4 employed?

5 A. I was lieutenant over investigations. If I'm not
6 mistaken, I believe there was a captain above me and a
7 sergeant below me.

8 Q. Can you tell the jury a little bit about how - you
9 said you were captain over investigations. What kind of
10 investigations? General crime or is there a specific unit
11 that you have always worked in?

12 A. It's general crime. We handle everything from
13 mailbox vandalism to murder.

14 Q. In 2012 was that the same way?

15 A. Yes.

16 Q. What kind of training have you had as a result of
~~17 your law enforcement employment?~~

18 A. Obviously basic academy when I first graduated back
19 in '95. I have been through several classes. Just different
20 crime scene investigation classes, negotiation classes. I
21 mean, it varies throughout the years.

22 Q. Okay. Can you describe for the jury what an
23 investigator does?

24 A. Well, obviously it depends on what type of crime was
25 committed. Obviously the road deputies take the report, the

1 initial report. They get the basic information before the
2 investigator's report is submitted. Back then our captain
3 would actually, once the report was submitted, would actually
4 assign it to an investigator and then move forward from
5 there.

6 Q. Did you have an occasion to become involved in this
7 case?

8 A. I did.

9 Q. When was that?

10 A. It was the, I believe the 11th of August. Justin
11 Dill or Investigator Dill at the time was on-call. I believe
12 I was out of town, and he called me just to let me know what
13 he had and what he was doing.

14 Q. So when you say he called to let you know what he
15 had, do you mean that he told you that there was an

16 investigation about sexual assault?

17 A. Yes.

18 Q. What did you do with that information?

19 A. He just, like I said, he was right below me. He was
20 sergeant over investigations and had the experience to know
21 what he needed to do that day.

22 Q. So what did you do from there?

23 A. Like I said, I believe I was out of town. I didn't
24 do too much that particular day. He told me what he was going
25 to do as far as what his steps were going to be taken and I

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1 think later that day I actually went to Sheriff's Office.

2 Q. Did you ever make contact with Tammy Miller or
3 minor one

4 A. That day?

5 Q. Yes, sir.

6 A. No, ma'am.

7 Q. When did you make contact with them?

8 A. That day I called and I left a message for Tammy and
9 obviously she wasn't in the house or she wasn't available to
10 take my phone call. I believe the next day is actually when I
11 made contact with Tammy.

12 Q. So when you made contact with Tammy, did you refer
13 her anywhere?

14 A. I did. I believe I went to a friend's residence.
15 They were riding horses and just doing things outside and I
16 instructed her what the next steps were going to be. If I'm
17 not mistaken, I'm not sure if it was on a weekend or not, but
18 I believe soon after that was when I told her that we needed
19 to go ahead and make an appointment to The CARE House and also
20 The ARC.

21 Q. The ARC. What is The ARC?

22 A. Assessment and Resource Center. Susan Luberoff
23 instructed what she did there and that's in Columbia.

24 Q. What about The CARE House? What is that?

25 A. The CARE House is the Child Assessment and Resource

1 Center where the forensic interview was done. That's in
2 Florence.

3 Q. Did you refer Tammy or Minor to go to the emergency
4 room to have a rape kit performed?

5 A. No, ma'am, I didn't.

6 Q. Why not?

7 A. Well, based on what Justin Dill had told me what was
8 going on, there wasn't anything that was freshly committed.
9 There was no reason for any sexual assault kit at that time.

10 Q. So because it wasn't a fresh assault, you didn't
11 think it would be helpful or beneficial to go to the ER?

12 A. No, ma'am. I did not. And also I knew that Susan
13 Duberoff was going to see her within the next few days.

14 Q. Did you ever go out to the Miller's house?

15 A. Yes, ma'am, I did. If I'm not mistaken, I think I
~~16 went the next day and took pictures and then also I went out~~
~~17 with SLED.~~

18 Q. You said when you went out with SLED, is that when
19 the search warrant was performed?

20 A. Yes, ma'am.

21 Q. Who was responsible for requesting that search
22 warrant?

23 A. Myself. I spoke with our Chief Marvin Brown. I
24 believe he's the one that actually called for SLED.

25 Q. What made you try to get a search warrant of the

CAPTAIN STEVEN KNAFELC - DIRECT BY MS. SENN

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1 house?

2 A. I believe I got a search warrant on the 23rd of
3 August. The 24th is when SLED came out. I received a phone
4 call from Tammy. She just told me of something on some carpet
5 and some bed spreads and pillows that possibly could be some
6 sort of bodily fluid.

7 Q. Tammy called you and said that you needed to come
8 out and take more evidence?

9 A. Well, I wouldn't say she needed me to take. She
10 just wanted me to be informed of it.

11 Q. At that point is it your duty to investigate that
12 further?

13 A. Yes, ma'am.

14 Q. Thank you. Can you summarize the rest of your role
15 in this case?

16 A. Well, as I stated, I just went ahead and called The
~~17 CARE House and I'm not sure who I spoke with at The CARE House~~
18 Usually it's one of the VA's there or the intake person that I
19 speak with and I give them just a brief detail of what we knew
20 at that time. I fax over or e-mail a copy of the written
21 report so they can have some information and also my VA at the
22 time was Marybeth Eubanks. I instructed her --

23 Q. I'm sorry. When you say VA, what does that mean?

24 A. I'm sorry. Victim's advocate at the Sheriff's
25 Office.

1 Q. What does that person do?

2 A. She just assists the victims of all types of crimes.
3 She was the one who actually spoke with Tammy. I don't ever
4 speak with a victim of a case like this. I always just get
5 the interview and forward it from there for the forensic
6 interview. That's why I use a third party. Once we got that
7 taken care of, Marybeth spoke with I'm assuming Tammy and set
8 it all up as far as if they needed to be transported to
9 Florence or not. I believe she was a witness here. Also
10 Susan Luberoff.

11 Q. Did you ever have an opportunity to read or look at
12 The CARE House interview before the search warrant was
13 executed?

14 A. I did. I believe I would have or I should have.
15 I'm sure I did.

16 Q. It would be your normal practice?

17 A. Yeah. Sometimes it takes a week or two for the
18 written report to come back. Usually I always try to have
19 someone to go with the person that needs to be interviewed
20 with the Sheriff's Office.

21 MS. GOOD: Your Honor, can we approach?

22 THE COURT: Yes.

23 (Side bar off the record.)

24 BY MS. SENN:

25 Q. Were you at the house when the search warrant was

CAPTAIN STEVEN KNAFELC - CROSS BY MS. GOOD

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1 conducted?

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

3 Q. What did you see them do?

4 A. SLED?

5 Q. Yes.

6 A. I just saw them just process what we needed to be
7 processed, pictures, samples.

8 Q. Did you see them take swabs?

9 A. Yes, ma'am. Yes, ma'am. They just did their thing.
10 We just asked them what they needed to do and they did what we
11 requested.

12 Q. Did you see them take pictures?

13 A. I did.

14 Q. From that point on what was your role in this
15 investigation?

16 A. Like I said, once everything was taken care of with
17 prior to SLED coming to The CARE House and The ARC interview,
18 or excuse me, The ARC exam, that was pretty much it. I went
19 to the bond setting. I'm not sure when that was.

20 MS. SENN: No further questions.

21 THE COURT: Ms. Good.

22 MS. GOOD: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MS. GOOD:

25 Q. So you did become involved on the 11th just whenever

1 you got back in town, correct?

2 A. Yes, ma'am. I believe I was out of town. Like I
3 said, Investigator Dill was just talking to me over the phone
4 a couple times.

5 Q. You stated you're an investigator. How long have
6 you been an investigator?

7 A. Oh, geez.

8 Q. Approximately. .

9 A. 12 years.

10 Q. As an investigator it's your job to follow up on a
11 case once the deputy hands it over to you, correct?

12 A. Yes, ma'am. If it's assigned to me, yes, ma'am.

13 Q. How do you document what you do in a case?

14 A. I do, sometimes I do case notes. Sometimes I don't.

15 Sometimes I just do with whatever, you know, it tells me or

16 whatever my investigation points towards.

17 Q. How often do you do that? Do you do that in every
18 case?

19 A. As far as case notes?

20 Q. Yes.

21 A. No, ma'am, not every case.

22 Q. Why not?

23 A. It just depends on what case. Sometimes I just know
24 what I need to get done at that moment.

25 Q. Wouldn't you think it's important to do an

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1 investigative report in the cases that you do, especially the
2 serious cases?

3 A. Yes, ma'am.

4 Q. Did you do an investigative report in this case?

5 A. As far as an investigative report, no, ma'am. I did
6 some notes but nothing as far as an actual report, if that's
7 what your speaking of.

8 Q. So when you come to testify today, how do you
9 remember everything that occurred from three and a half years
10 ago?

11 A. Just based on what my case report states.

12 Q. How long is your case report in this case?

13 A. How long is it?

14 Q. Yes.

15 A. There were several forms, sheets, reports,
16 pictures.

17 Q. Can you check for me how long your case report
18 actually is?

19 A. I don't know what you mean by case report.

20 Q. Did you do an investigative report in this case?

21 A. I already said, no, ma'am. No. I did some brief
22 notes but as far as my report goes -- Obviously you have a
23 Rule 5 discovery.

24 Q. You said you went to the scene that day or the next
25 day maybe?

1 A. I'm not certain. Uhm, I remember going to speak
2 with Tammy there at a friend's house and I spoke with her
3 briefly about what the next steps would be.

4 Q. Did you see minor that day? Was she around?

5 A. Uhm, I believe I saw her. She was riding horses.
6 As far as me interacting, no, ma'am.

7 Q. But she was riding horses and seemed to be okay?

8 A. Well, I don't know.

9 Q. From what you could observe?

10 A. She was riding horses. I'm not saying she was
11 okay.

12 Q. And when you went to the scene, you said, did you
13 ever go to the home and take pictures of the home?

14 A. I did take pictures. Again, as far as I can
15 remember I'm not sure if it was the next day or when we went
16 out with SLED.

17 Q. What were you taking pictures of at that time?

18 A. Just pretty much the same things that SLED was
19 taking. Maybe not as detailed, but just overall.

20 Q. Was the house clean at that time or was it cluttered
21 in any way?

22 A. It was cluttered, yes, ma'am, but nothing out of the
23 way that I normally see with my job.

24 Q. Did it seem as if anything had been vacuumed
25 recently?

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1 A. I don't know, ma'am.

2 Q. And when you went for the search warrant, what day
3 did you get the search warrant?

4 A. I believe I signed it on the 23rd.

5 Q. And the two weeks between August 11th when
6 everything occurred and August 23rd, why would you have not
7 done a search warrant previously to get any potential evidence
8 as quickly as possible?

9 A. I just -- I don't know, ma'am. I just -- I mean, I
10 just didn't.

11 Q. You stated that you left the message for Tammy on
12 the 11th, correct?

13 A. I believe I did, yes, ma'am.

14 Q. And she didn't call you back?

15 A. Well, I'm not sure exactly what time that was, but I
16 did speak with her the next day.

17 Q. You didn't write that down in your notes or your
18 investigative report what time you called and left her the
19 message?

20 A. I just stated that I need you to come to the office
21 on 8/11 to complete the warrants. Called the victim's mom at
22 the number where I did leave a message.

23 Q. How did you know she was at a friend's house?

24 A. I think it was like -- Excuse me. It was -- I think
25 my time was 7:35, I believe, p.m. so it was late in the

1 evening.

2 Q. How did you know she was at a friend's house the
3 next day?

4 A. She returned my phone call.

5 Q. So she did get your message and called you back the
6 next day?

7 A. Yes, ma'am.

8 Q. Did she call you back on the 11th or the 12th, do
9 you remember?

10 A. I would assume the 12th because it was so late in
11 the day on the 11th.

12 Q. And when you went for the search warrant, who all
13 was at the home?

14 A. Uhm, I know Tammy was there, **minor one** her sister. I
15 think it was just the twins and the mother, if I'm not
16 mistaken.

17 Q. Do you know where the younger children were?

18 A. I do not.

19 Q. What was the mother and the twins doing during the
20 search warrant?

21 A. They were just there. They weren't really doing
22 anything. I don't even think, like I said, I make it a point
23 not to speak with -- I spoke with Tammy. But as far as
24 speaking with anybody else, I don't believe I did.

25 Q. And once you received, or once SLED took everything

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1 that day of the search warrant, did you request any evidence
2 be tested?

3 A. Oh, at the scene? Yes, ma'am, I did.

4 Q. When did you request SLED to test that evidence?

5 A. They just collected it and they sent it to wherever
6 they needed to send it to.

7 Q. So you never requested that they run DNA samples?

8 A. Yes.

9 Q. When did you do that?

10 A. At the scene. I just request what type of samples
11 or what type of analysis that I'm requesting and they do
12 whatever they need to do in Columbia.

13 Q. And it was sent back to you at the end of August of
14 that year, correct?

15 A. That's what I'm understanding, yes, ma'am.

16 Q. So when is the next time you sent it off to actually
~~17 be tested?~~

18 A. I believe it was a few years later.

19 Q. December of 2015?

20 A. That's what it states, yes, ma'am.

21 Q. Did you ever speak with the neighbor, Ms. Penrod, in
22 this case?

23 A. No, ma'am.

24 Q. When you were there that day for the search warrant,
25 do you remember if she was home or not, if you saw her?

1 A. No, ma'am.

2 Q. Did she ever contact you to say anything?

3 A. Me personally? No, ma'am.

4 Q. When the mother called you to ask you to come look
5 at these stains, do you know where she got her information
6 from about why to look at those?

7 A. No, ma'am.

8 MS. GOOD: No further questions, Your Honor.

9 THE COURT: All right. Any redirect?

10 MS. SENN: Yes, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. SENN:

13 Q. Did you conduct the interview of James Miller?

14 A. No, ma'am.

15 Q. And you couldn't do the medical exam, could you?

16 A. No, ma'am.

17 Q. ~~You said that in all cases of sexual assault someone~~
18 else performs the interview; is that correct?

19 A. We use a third party, yes, ma'am.

20 Q. Okay. But you have the case jacket so you're aware
21 of everything that's going on in the case; is that correct?

22 A. Yes, ma'am.

23 Q. You just said that you asked the people on the
24 scene, I think you were referring to when the search warrant
25 was being executed, the SLED agent that was on the scene, you

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1 said that you communicated that items should be tested to
2 those people. Do you know if they ever communicated that
3 directly to the DNA lab?

4 A. Well, they do their evidence and then they send it
5 to SLED to intake and then whoever gets it from there does the
6 actual lab testing. They are just there to collect and then
7 it goes to Columbia to SLED to the lab.

8 Q. So it's two totally different departments; is that
9 correct?

10 A. Yes. Yes, ma'am.

11 Q. Okay. And is it fair to say in this case that your
12 role was as a supervisory capacity as investigator?

13 A. Yes. Yes, ma'am.

14 MS. SENN: Nothing further, Your Honor.

15 THE COURT: All right. You may step down. Thank
16 you. All right. Ladies and gentlemen, it's a little

17 ~~after 12:30. We have a matter of law that we need to~~

18 take up. We have lunch coming in for you as well, but I

19 do just want to warn you that since we will be out here

20 in the courtroom working, I will also need to give the

21 attorneys and my court reporter, my law clerk and myself

22 the opportunity to eat as well on this lunch break.

23 We'll try to get you back in as soon as possible, but we

24 will probably be out until about 1:45 or 2:00. Like I

25 said, your lunch should be, if it's not here yet, it will

1 be on the way shortly.

2 Remember not to talk about this case with anyone,
3 your fellow jurors. I will allow the jury, if they would
4 like to be on their cell phones or electronic devices
5 during this longer lunch break while they're still here
6 in the courtroom, they are allowed to be on those
7 devices. Again, don't do any independent research, but
8 if you want to check your Facebook page or whatever
9 you want to do, I'm fine with that during this break.
10 All right. We'll get you back in the courtroom as soon
11 as we can. Thank you. I don't even mind if you want to
12 go outside and take a little walk. Whatever you want to
13 do. We just need to make sure we get you back.

14 (Whereupon, the jury entered the jury room for lunch
15 break at 12:40 p.m.)

~~16 THE COURT: All right. If you would like to call~~
~~17 your expert and proffer the testimony.~~

18 MS. CAVANAUGH: Yes, Your Honor. The State calls
19 Dr. Allison Foster.

20 Thereupon,

21 ALLISON FOSTER, Ph.D.
22 after having been first duly sworn, testified as follows,

23 THE CLERK: Please have a seat. After you're
24 seated, please state your full name for the record.

25 THE WITNESS: My name is Allison Marie Foster.

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1 MS. CAVANAUGH: Your Honor, I do have a copy of Dr.
2 Foster's CV that I provided to Ms. Good. Would you like
3 a copy as well?

4 THE COURT: I would, please.

5 MS. CAVANAUGH: (Proffering.)

6 DIRECT EXAMINATION

7 BY MS. CAVANAUGH:

8 Q. Good afternoon, Dr. Foster.

9 A. Good afternoon.

10 Q. What is your profession?

11 A. I'm a licensed clinical psychologist.

12 Q. Okay. Do you also have a Ph.D.?

13 A. Yes, Ph.D.

14 Q. Okay. Can you describe your education? First of
15 all, where are you currently employed?

16 A. I'm employed as chief psychologist at the Assessment

17 and Resource Center in Columbia. That's a children's advocacy

18 center there. And then I also have a private practice known

19 as Forensic Family Associates.

20 Q. When did you begin to work at the Assessment and
21 Resource Center?

22 A. I started there as a pre-doctoral intern in 1994 and
23 I worked there as the program director from 1995 until 2012
24 and then I shifted into a half time position beginning in
25 2012.

1 Q. You said you were in, you started your private
2 practice in 2012?

3 A. I actually started my private practice in the late
4 '90s and then it just sort of grew to such a degree that I
5 decided to shift to a half time position at The ARC and then
6 contribute the rest of my time to private practice.

7 Q. What has been your primary focus as a
8 psychologist?

9 A. Everything I have done has been forensic work with
10 children and families and, uhm, situations where children are
11 suspected as victims or witnesses or nowadays also I do family
12 law cases involving child custody and parenting evaluations as
13 well. So I have been conducting forensic interviews of
14 children who are suspected of being victims for 21 years.

15 Q. Okay. What about your educational background?

~~16 A. College. I went to Emory University in Atlanta,~~
~~17 graduated in 1988, and then I worked for a year at a~~
18 residential treatment facility in Kennesaw, Georgia, then I
19 moved to Columbia, South Carolina and entered the Ph.D.
20 program and graduated with a Ph.D. in clinical psychology in
21 the spring of 1996.

22 Q. Have you also taught any courses or been in any
23 positions with academic institutions?

24 A. Yes. I was an appointment with the University of
25 South Carolina School of Medicine, Department of

1 Neuropsychiatry and Behavioral Science. I'm considered, it's
2 called the Department of Mental Health Assistant Professor so
3 I teach psychiatry residents, fellows and residents in family
4 practice and pediatrics. But also I'm senior faculty for a
5 five day forensic interview training course called Child First
6 that we have been providing in this case for 15 years now.

7 Q. And along those lines, uhm, do you develop training
8 and programs for different agency personnel regarding
9 suspected child abuse either physical or sexual?

10 A. Yes. Physical, sexual, psychological abuse and I
11 train in national conferences as well as developing the
12 curriculum for the Child First forensic interview training
13 course and so I teach law enforcement, child protective
14 services, professionals, children's advocacy centers, forensic
15 interviewers, therapists and other professionals.

16 Q. So do you also -- Have you been published in any, I
17 guess, articles? Have you published any articles or have you
18 been published in any articles in this field?

19 A. Yes. I have published a monograph for the American
20 Prosecutors Research Institute on child development. Uhm, I
21 have got a book chapter published about the assessment of
22 mental disorders in custody evaluations. Uhm, I have got
23 research in preparation on a couple of matters involving
24 forensic interview techniques. But those are not published at
25 this time.

1 Q. Okay. Do you also stay updated on the research
2 related to this field?

3 A. I do. I attend continuing education annually and
4 essentially all of the conferences and literature I read has
5 to do with children, dynamics of abuse, forensic evaluations
6 and the other matters in which I practice.

7 Q. You said, I apologize if you have already stated
8 this, but you have given multiple, more than ten presentations
9 nationally on this subject as well?

10 A. Yes.

11 Q. And when we are talking about this subject and this
12 field, what is the term? Is it child abuse assessment?

13 A. Uhm, yes. I have been qualified as an expert in
14 child abuse assessment or dynamics of child abuse.

15 Q. I'll just stop you there. Why is this field
16 actually studied?

17 A. Because, uhm, there are a lot of factors that are
18 not necessarily a lay person, within a lay person's
19 understanding and also because it's important for us to
20 understand children's development, linguistics, how memory
21 works, how processes like coercion, parent/child relationships
22 or offender/child relationships, how those play into the
23 dynamics of abuse. So there are a lot of behavioral issues as
24 well as developmental issues that are researched and published
25 in the behavioral science literature to help us understand the

1 best way to evaluate these situations as well as the best way
2 to explain to lay people dynamics that they might not
3 otherwise understand.

4 Q. What type of - when you say dynamics that they might
5 not understand, what type of dynamics?

6 A. So things like the fact that delay in reporting by
7 victims is a very robust finding in the research. We know
8 behaviorally that the majority of substantiated cases of child
9 sexual abuse include a very large delay even into adulthood
10 before victims often report childhood sexual abuse. That's
11 not necessarily logical to somebody who is not trained in the
12 field. They might think that it would be self evident that
13 somebody would, a child would find an adult that they could
14 report to. So delay disclosure. Some of the ways children
15 accommodate abuse in situations that they can't control. Uhm,
16 recantation sometimes is an aspect in cases that jurors might

17 not otherwise understand if they didn't have the benefit of
18 education.

19 Q. And then other things like secrecy as well?

20 A. Yes.

21 MS. CAVANAUGH: Your Honor, I believe that it would
22 be at this point that I would ask that Dr. Foster be
23 qualified as an expert in the field of child abuse
24 assessment only. I believe that she has the necessary
25 education, employment, history, training and background

1 in these areas. She testified that she gives national
2 presentations regarding dynamics and behavioral issues
3 that often arise in the study of suspected child abuse
4 specifically sexual abuse behaviors.

5 THE COURT: All right.

6 MS. GOOD: No objection to that.

7 THE COURT: She is so qualified. I agree that she
8 has the requisite amount of experience and education and
9 the courts in this state have recognized child abuse
10 assessment as an expertise and she is so qualified.

11 BY MS. CAVANAUGH:

12 Q. Dr. Foster, were you involved in any way in the
13 investigation against James Miller?

14 A. No.

15 Q. Did you in any way, have you ever met **minor one**,
16 the victim in this case?

17 A. No.

18 Q. Have you ever interviewed **minor one**

19 A. No.

20 Q. Have you ever reviewed the forensic interview that
21 she gave to Sally Williamson?

22 A. No.

23 Q. Does Sally Williamson even work at the Assessment
24 Resource Center?

25 A. She does not, no.

1 Q. Dr. Luberoff does work at the Assessment and
2 Resource Center, correct?

3 A. Yes, she does.

4 Q. I'm not even sure if you know this, but did you have
5 any communication with Dr. Luberoff about her examination of
6 minor one

7 A. No.

8 Q. You stated earlier that there are some behavioral
9 issues that fall outside the scope of ordinary, I guess,
10 ordinary knowledge of lay people regarding child sexual abuse;
11 is that correct?

12 A. Yes.

13 Q. What are some of those behavioral characteristics
14 that are not known to the average individual?

15 A. Sure. Well, of course, there are different fact
16 patterns or scenarios for child sexual abuse. But one thing
17 that is in terms of typical patterns, a lot of child sexual
18 abuse occurs at the hands of a family member, an adult who is
19 in a role of an authority figure, a parental figure or step
20 parent figure. As such the abuse tends to be chronic meaning
21 that it occurs over a sustained period of time and so for that
22 relationship to be sustained without the offending behavior
23 being detected there are certain dynamics that are known to
24 occur in those cases along the lines of how an offender
25 exploits his authority, the sense of love, dependency, the

1 complexities of that kind of relationship and how they can
2 manipulate that to maintain a victim's secrecy and cooperation
3 or compliance.

4 There are dynamics that the victims experience that
5 typically capture under describing their feeling of
6 helplessness, their sense of entrapment and the fact that they
7 need to accommodate the abuse because they're really in a
8 situation that they feel powerless to change. So there could
9 be a period of accommodation followed sometimes by a process
10 of disclosure that they often reach an age of maturation. In
11 other words, they reach an age where they can consider maybe
12 that they have options to tell or to get out of the situation,
13 options that they perhaps couldn't recognize when they were
14 younger. Uhm, so we know that disclosure may occur at a later
15 point in time.

16 Q. Are there statistics that have been, are there
17 statistics related to delayed disclosures?

18 A. Yes, there are.

19 Q. What are those statistics?

20 A. Well, there's been about 30 years of what we call
21 retrospective research. So in other words, where researchers
22 have looked back over a 30 year time span of studies that
23 conclude that two-thirds of child sexual abuse victims in
24 America don't come to anybody's attention until adulthood so
25 that's become a fairly well established fact that disclosure

1 is a common, delayed disclosure is a common aspect to the
2 experience of child sexual abuse.

3 Q. And, of course, the sample that these statistics are
4 coming from are related to children that have come forward
5 with the allegation of sexual abuse; is that right?

6 A. Yes. And beyond that it's cases that are ultimately
7 substantiated by videographic evidence, confession, jury
8 conviction. So there is a wide range of different studies but
9 looking at - or pregnancy or definitive medical evidence. So
10 it's not just that adults might say, hey, I was abused as a
11 child, but these are statistics that come from cases that have
12 been well substantiated.

13 Q. So does that, the two-thirds statistic that you
14 gave, is that referring to, is that including both the known
15 victims that have been substantiated based on evidence such as
16 confession or pregnancy, does that include that population as

17 well as the people that have come forward with allegations?

18 A. So, yes. So the idea is that amongst the universe
19 of cases that in society we end up substantiating that the
20 vast majority, not all, a third come forward and are resolved
21 in childhood. But two-thirds, the delay is so long that they
22 will not come to anybody's attention until they are legal
23 adults. So we just know that while the process of disclosure
24 can be different in different cases, it's just becomes well
25 understood that it's common for children to find themselves

1 secret keepers and sort of stuck in a situation they can't get
2 out of and they don't tell about for an extended period of
3 time in many cases.

4 Q. Okay. When you say delay disclosure, is there
5 a certain, what time frame makes it delayed?

6 A. It could be - certainly it's defined different ways,
7 but generally speaking it can be anywhere from months to
8 years.

9 Q. So as far as the reliability of the behavioral
10 science that you are speaking of, what type of, again what is
11 the sample that you're basing the research on and the
12 statistics on?

13 A. Uhm, there are a lot of studies but there was a
14 substantial kind of, it would be called a meta analytic study
15 that was published a few years ago by Steven Ceci, Carl
16 London, Maggie Roth, there were several authors, and they
17 reviewed research spanning this 30 plus year time frame and
18 that's an often cited research study because it does kind of
19 pull together a lot of different data. But there's been
20 numerous studies really since the 1980's some looking at older
21 cases, some looking at younger cases and using different
22 methodologies.

23 Q. So along the lines of factors that are commonly
24 observed like behavioral characteristics that are commonly
25 observed in victims of sexual abuse, you said delayed

1 disclosure and what were the other common behavioral
2 characteristics that have been studied?

3 A. Right. So there is sort of a theoretical
4 orientation that was published in the 1980s and it has
5 provided the basis for professionals to kind of proceed
6 forward and study these dynamics. Basically a psychiatrist by
7 the name of Dr. Roland Summit published on the phenomenon of
8 chronic sexual abuse and delayed disclosure. Talked about the
9 manner in which children become trapped first by a stage of
10 secrecy. So the idea that they are manipulated, lured,
11 threatened into believing they need to keep the behavior
12 secret even if they recognize that the behavior is wrong.
13 That this renders that stage of helplessness which comes from
14 the fact that they can't discern. They may feel that they
15 have agreed. They may feel that they have essentially
16 abdicated the right to say no or to change the dynamics. The

17 ~~state of helplessness causes them to kind of live in some~~
18 period of time that's described as a state of entrapment and
19 accommodation. What that means is that they are still going
20 along with the business of life. They're going to school.
21 They're going to friend's houses. They're participating in
22 whatever activities. Doing their chores. They are acting
23 normally because they are, in fact, working to avoid
24 detection. To not tell. To not have a secret revealed. So
25 that's called accommodation.

1 And then as we have talked about obviously some
2 number of cases do become discovered. We do get reports and
3 we do investigate cases. Those are the result of a delayed
4 disclosure that comes under whatever circumstances. Maybe
5 because like I said, the individual has matured to a state
6 where they see the option to tell or maybe somebody confronts
7 them. You know, maybe there is an eyewitness who says I saw
8 something happen and they ask a question. So something will
9 ultimately release the discovery or the disclosure and so that
10 phenomenon taking all of that together is often referred to as
11 child sexual abuse accommodation dynamics.

12 Q. Okay. In this particular -- And this isn't
13 necessarily the dynamics and the behavioral characteristics
14 aren't used as a diagnostic tool?

15 A. Correct.

16 ~~Q. What are those? What are they used for?~~

17 ~~A. They're really used to describe phenomenon that~~
18 could otherwise seem illogical or counter intuitive much like
19 the manner in which people can have difficulty understanding
20 how an adult can endure domestic violence and maybe even make
21 a report and take it back, stay in a relationship, go back to
22 the relationship. And that can seem counter intuitive. And
23 yet if understand some of those behavioral dynamics that have
24 to do with manipulation, coercion, the different sort of power
25 dynamics that are in relationships, it can assist the trier of

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1 fact in understanding the phenomenon.

2 Q. And that actually does exist?

3 A. That actually exists. That doesn't mean that it
4 diagnosis whether it has happened in one case versus another
5 but in helping them understand that these are real dynamics
6 and in real cases that have been substantiated in the past.

7 MS. CAVANAUGH: Thank you, Dr. Foster. Please
8 answer any questions for Ms. Good.

9 CROSS EXAMINATION

10 BY MS. GOOD:

11 Q. Good afternoon.

12 A. Hello.

13 Q. So you just testified as to secrecy, entrapment,
14 helplessness, I believe delayed disclosure, and potential
15 recantation, correct?

16 A. Yes.

17 Q. And those are all five of the factors in this Summit
18 study, I guess, which he created child sexual abuse
19 accommodation syndrome?

20 A. Long ago, yes. That's how that language was first
21 proffered.

22 Q. That's what everything is based on, correct?

23 A. No.

24 Q. That's the beginning of it where it kind of --

25 A. Right.

1 Q. -- came from. And since then the studies that have
2 been done, have they been done in a clinical setting?

3 A. No. More have been -- Some, yes. But more have
4 been conducted out of data analysis from forensic cases, from
5 jury trials, from child protective trials, tracking the
6 outcomes in the court systems.

7 Q. And you said that's done using different
8 methodologies, correct? There's not one way to determine
9 that?

10 A. That's true.

11 Q. You said all this started about a few years ago?

12 A. Well, about 30 years ago.

13 Q. And it's not peer reviewed, is it, for
14 reliability?

15 A. It absolutely is peer reviewed.

16 Q. Which methodologies are peer reviewed?

17 A. Anything that's published in a journal. For
18 example, a journal that's an American Psychological
19 Association Journal or anything like that, they all, nobody is
20 publishing, unless it's in a peer -- Or I'm not citing
21 research unless it's the product of peer review and has been
22 published in a journal or a book that would be considered a
23 treatise edited by experts in our field.

24 Q. And you stated that most of this is typical
25 patterns, correct?

1 A. Uhm, I may have said patterns. I don't remember but
2 yes.

3 Q. And it's not available in all cases, is it?

4 A. No.

5 Q. And, in fact, can't these be used in cases where
6 something is unsubstantiated?

7 A. I don't understand the question.

8 Q. I guess during these clinical reviews there's been
9 victims that have been unsubstantiated that these apply to,
10 correct?

11 A. What I would say is -- I'm not sure I'm
12 understanding your question because the studies that look at
13 the phenomena of delayed disclosure, recantation, the process
14 of disclosure, those are all looking retrospectively at cases
15 where there was a substantiation whether it be a confession, a
16 child welfare finding, a jury conviction, et cetera. But if

17 you are asking me can't there be a delayed disclosure and then
18 have the case be unsubstantiated or have it be proven to be
19 false, then the answer would be yes.

20 Q. Explain to me theoretical orientation. That term.
21 I believe you stated that. Can you explain what theoretical
22 orientation is?

23 A. Sure. I don't think I said theoretical orientation.

24 Q. Or maybe I heard it wrong.

25 A. But I think I said that Dr. Summit put forward a

1 theory based on his clinical findings and that since that time
2 that the sort of, the elements of that theory have been the
3 source of much study as we have continued to learn more about
4 behavioral dynamics and the investigation, prosecution and
5 defense of child abuse cases.

6 Q. And you said all this is done as a retrospective
7 research where the cases are ultimately substantiated. That's
8 by conviction or pregnancy or something where you are one
9 hundred percent sure this occurred, correct?

10 A. Or, you know, beyond a reasonable doubt. Sure, I
11 mean. But yes.

12 Q. And this word phenomenon, is that a scientific
13 term?

14 A. Yes, it is.

15 Q. What does it mean? What's the definition of a
16 phenomenon?

17 A. Phenomenon is an occurrence. Something which
18 occurs. Same as like the word dynamics which would describe
19 sort of the interplay of various behaviors.

20 Q. So it indicates that something actually occurs?

21 A. Yes. It's a very generic kind of term that could be
22 applied in the hard sciences or the softer sciences.

23 MS. GOOD: No further questions, Your Honor.

24 THE COURT: Any redirect?

25 MS. CAVANAUGH: No redirect, Your Honor.

1 THE COURT: All right. Dr. Foster, you may step
2 down. I'll hear any arguments, Ms. Good, that you have
3 with regard to the testimony that was proffered.

4 MS. GOOD: Thank you, Your Honor. It's our position
5 that this is gonna be something that ultimately is going
6 to bolster the victim in this case. She's testified that
7 these five different things are from substantiated cases
8 only. She used the word substantiated over and over
9 again which indicates that this occurs in all sexual
10 assault cases that have been substantiated which would
11 indicate that these things are present and the victim
12 that's testifying, even though she's never spoken to them
13 or read anything, that that case is substantiated and
14 it's bolstering the victim in that case. It's not
15 explaining her behavior. It's basically saying it's
16 substantiated.

17 In addition, Your Honor, she's saying there are
18 several different methodologies all done with
19 retrospective research. You can't apply to one
20 particular person. In fact, you see these things in some
21 cases that are ultimately unsubstantiated. So it's not
22 something that can definitely say this occurred or is a
23 dynamic or anything. She used the word phenomenon, Your
24 Honor, which she described as where something has
25 occurred. I believe that bolsters the victim.

1 And, Your Honor, what she is testifying to is this
2 child sexual abuse accommodation syndrome. This syndrome
3 has been found in other states to be inadmissible.
4 Specifically, Your Honor, in Louisiana, in State versus
5 Foret which was in 1993. The court held under a Daubert
6 analysis that this study is not substantiated to the
7 point that it's peer reviewed enough that it showed the
8 dynamics that are definitely something that fall within
9 Rule 702.

10 THE COURT: But South Carolina doesn't follow
11 Daubert. We have Rule 702 and our Supreme Court has
12 specifically said that we don't follow Daubert.

13 MS. GOOD: Correct, Your Honor. But it's
14 essentially the same in the fact that this is not a
15 diagnostic tool. She's testified that it's not a
~~16 diagnostic tool. It's not tested in the clinical sense.~~
~~17 It's done in a social sense and that she is applying this~~
18 to all substantiated cases which essentially bolsters the
19 victim as to what she just said is substantiated because
20 these things could potentially apply to her.

21 I believe that it's outside the course of Berry and
22 Weaverling that have recently come down in that in Berry
23 and Weaverling one was related to post traumatic stress
24 disorder which is a recognizable medical syndrome where
25 in this case this is not a medical syndrome. It's

1 something that, it's just kind of developed over the
2 years.

3 In addition, Your Honor, I believe it does bolster
4 the victim. So I would ask that she not be allowed to
5 testify.

6 THE COURT: All right. Ms. Cavanaugh.

7 MS. CAVANAUGH: Thank you, Your Honor. Dr. Foster
8 actually, she did not testify to anything about a
9 syndrome. She just testified as to behavioral
10 characteristics that are often displayed in victims that
11 have come forward related to sexual abuse. She stated
12 that -- First of all, under Rule 702 I do believe that
13 she would be allowed to testify as an expert because this
14 behavioral science does fall outside of the normal
15 understanding or the general knowledge of the jury and in
16 behavioral science we actually, are state follows State
~~17 v. White and so we don't have the Daubert factors to~~
18 actually deal with. We have to show obviously the
19 qualification. The first prong is to demonstrate the
20 expert actually has the necessary qualifications to
21 testify as an expert in that particular field. Then the
22 second prong is reliability.

23 Dr. Foster testified that over 30 years there have
24 been studies conducted of victims that come forward with
25 allegations of sexual abuse. I believe what she

1 testified on direct is that a portion of that sample that
2 have been studied are further substantiated. She said
3 that in direct and in response to one of Ms. Good's
4 questions. But I don't believe that she said all of them
5 were substantiated. But she did say that some of that
6 sample that was studied in this particular field have
7 been substantiated.

8 But, however, it is a recognized field. It is
9 heavily researched and there are studies that are
10 conducted because these behavioral characteristics are so
11 often displayed in the victims of sexual abuse. And I
12 believe that State v. Berry -- Well, State v. Kromah
13 obviously those cases, the State v. Kromah, the cases
14 that follow that line of thinking don't allow testimony
15 from the forensic interviewer that has been directly
~~16 involved in this case. They have all ruled that if the~~
~~17 forensic interviewer who has been involved with the~~
18 victim testifies and is qualified as an expert, then that
19 does tend to bolster the credibility of the victim. So
20 that was why we were careful to choose someone who has
21 had absolutely no association directly with the forensic
22 interview or with the victim herself so she is a blind
23 expert so we don't run into the bolstering of the victim
24 that the courts have been concerned about in recent
25 years.

1 State v. Berry actually allows for a child, this
2 came after State v. Kromah, but it was focused on,
3 actually it cited Weaverling which is one of the first
4 cases to allow expert testimony in this field and then it
5 did allow testimony from an expert regarding typical, not
6 typical but characteristics that are often observed of
7 victims of sexual abuse.

8 So we do believe that we are complying with the
9 current law as it stands and that her testimony as a
10 blind expert in this field that is recognized is
11 allowable and admissible.

12 THE COURT: All right. Well, I appreciate both of
13 y'all making such good arguments on this. Obviously as
14 you both are aware our Supreme Court has had a lot to say
15 about experts in child abuse cases. You all clearly have
16 researched this issue as I have and I am going to allow

17 ~~Dr. Foster to testify.~~

18 In State versus Chavis which is a 2015 case from the
19 Supreme Court, our Supreme Court acknowledged that expert
20 testimony in child sexual assault cases is permissible so
21 long as it meets the requirements of State versus White.

22 As Ms. Cavanaugh pointed out, State versus White has
23 two threshold determinations. The first, that the
24 qualifications of the expert must be sufficient.
25 Everybody here has already conceded to the sufficiency of

1 Dr. Foster's qualifications.

2 And the second determination that has to be made is
3 reliability. I find that child abuse assessment is
4 reliable based on Dr. Foster's testimony, that these
5 factors that she testified to are based on 30 years of
6 research. Some of those are from a clinical setting.
7 Many of those are from data analysis. There are journal
8 articles that are peer reviewed that discuss this
9 particular science and again our own Supreme Court in
10 State versus Chavis acknowledge that expert testimony in
11 child assault cases is permissible.

12 State versus Schumpert, that was back in 1993, also
13 allowed expert testimony in a child sexual assault case.

14 And I also want to note a couple of other cases.
15 State versus Weaverling, and I'm going to quote from that
16 case. There the Court of Appeals stated, "Expert
17 testimony concerning common behavioral characteristics of

18 sexual assault victims and the range of responses to
19 sexual assault encountered by experts is admissible.
20 Such testimony is relevant and helpful in explaining to
21 the jury the typical behavior patterns of adolescent
22 victims of sexual assault."

23 In State versus White, that's a Supreme Court case
24 that we have referred to for the factors to be
25 considered, it's a 2009 case from our Supreme Court, the

1 court stated, "Expert testimony on rape trauma may be
2 more crucial in situations where children are victims."

3 And then, of course, our most recent case from the
4 Supreme Court, State versus Anderson which confirmed all
5 those findings of White and Weaverling and again
6 recognized that there is an expertise in child abuse
7 assessment but explained that to avoid improper
8 bolstering the better practice is to not have a forensic
9 interviewer who examined an alleged victim as an expert
10 but rather to call an independent witness to testify to
11 the characteristics of the victims.

12 Here that's exactly what the State is doing with Dr.
13 Foster. She testified that she had no involvement with
14 the investigation of this case and therefore I find her
15 testimony to be admissible.

16 MS. CAVANAUGH: Thank you, Your Honor.

~~17 THE COURT: With that being said, let's break for~~
18 lunch.

19 MS. GOOD: Can I just ask very briefly?

20 THE COURT: Sure.

21 MS. GOOD: I do make the motion that she not be able
22 to use the word substantiated. It's found in only
23 substantiated cases. I believe that does bolster the
24 victim. It's essentially the same as using the word
25 compelling. So I would ask that she not be able to use

1 the substantiated.

2 THE COURT: My memory of her testimony was that it
3 could have happened in both substantiated and
4 unsubstantiated cases so, I mean, I don't think that her
5 testimony would be prejudicial in that respect.
6 Certainly if she were to testify on direct that it was in
7 substantiated cases, you could cut her off there and on
8 cross get the exact testimony you got from her before,
9 but I don't think that the word substantiated is
10 something that is verboten as my mom would say,
11 forbidden, so I deny your motion.

12 MS. CAVANAUGH: Your Honor, I guess just for
13 clarification for Dr. Foster because it is such a hot
14 bottom issue as far as when she describes what is meant
15 by substantiated cases, she included both cases that have
~~16 been investigated, I'm concerned about the phrase jury~~
~~17 verdict. I'm not sure if that's going to later create an~~
18 issue or not so I guess we'll discuss that with her.

19 THE COURT: I was going to say, that's something for
20 you to discuss with Dr. Foster. You can work on what
21 wording she wants to use and then Ms. Good I know will be
22 on her toes as she has been throughout this trial and
23 will object and we'll discuss specifics as they come up.
24 But what I heard from Dr. Foster just now in her
25 proffered testimony gives me no concern.