

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable Daniel F. Pieper, Trial Judge
The Honorable Kenneth G. Goode, Post-Conviction Relief Judge

Appellate Case No. 2009-112367

Mark E. Vail, #307052, ...Respondent,

v.

State of South Carolina, ...Petitioner.

APPENDIX
VOLUME 1 of 3

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kenneth G. Goode, Circuit Court Judge

Case No. 06-CP-10-1652

MARK E. VAIL, #307052

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

APPENDIX
Volume 1 of 3

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Volume I

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

vs.)

MARK VAIL,)

DEFENDANT.)

TRANSCRIPT OF RECORD

2004-GS-10-2733

2004-GS-10-2734

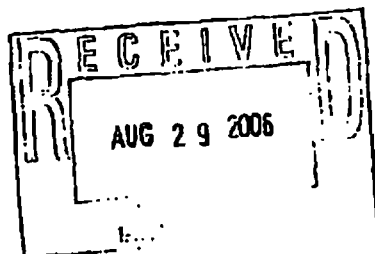
2004-GS-10-8316

COPYJanuary 10 - 14, 2005
Charleston, South Carolina

B E F O R E:

THE HONORABLE DANIEL P. PIEPER, JUDGE; and a jury.

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

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Attorneys for the StateV. CRAIG JONES, JUNIOR, Esq.
Attorney for the DefendantHOLLY HIOTT O'QUINN, RPR
Circuit Court Reporter

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<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Map of downtown	8	17
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11	Letter from O	8	17

1 (WHEREUPON, the following proceedings were held
2 before the court on Monday, January 10, 2005, outside the
3 presence of the jury.)

4 (WHEREUPON, State's Exhibits Nos. 1 THROUGH 28
5 were marked for identification only.)

6 (WHEREUPON, Defendant's Exhibits Nos. 1 THROUGH
7 11 were marked for identification only.)

8 THE COURT: All right. While we are waiting for
9 the jury panel, a couple matters let's just go ahead and
10 take care of. You had a motion -- well, you had a motion
11 for the court?

12 MR. JONES: I do, Your Honor. One of them we
13 may be able to discuss. One of them is I wanted to renew
14 the motion to continue that --

15 THE COURT: Yes, sir, and you can go ahead and
16 place it on the record.

17 MR. JONES: -- that I addressed.

18 Your Honor, we would move for this motion to
19 continue on the basis there have been some new allegations
20 of actual sexual acts that have arisen. Some of the dates
21 are unknown. Some of them -- we have gotten more than one
22 date. We did get this information, not due to any part of
23 the solicitor's office, after the status conference on
24 Wednesday. At least in one case, it doesn't appear it is
25 going to be an issue now. I just talked to the solicitor.

1 But we've talked to the solicitor, and we've let a witness
2 go because we didn't need them at that time because that
3 date wasn't an issue.

4 Again, there's at least two unknown dates that
5 we don't know.

6 For our purpose, you know, if this information
7 just came to her mind the week before trial, there is at
8 least some question as to why it came at this point and
9 time, why it became an issue now, why it was raised the
10 last week of trial.

11 THE COURT: Well, if she never reported it,
12 obviously, you can make it an issue on cross-examination,
13 right?

14 MR. JONES: Well, I can. But the thing is is if
15 further therapy or further -- and we're only dealing with
16 37 days that we're talking about. We can eliminate
17 probably 10 of those by virtue of the other instance that
18 happened, so we may be looking at 25 to 30 days out of the
19 month. And, again, if there is an alibi to that or
20 something, then, again, that would create, give us an
21 extra -- other opportunities to create reasonable doubt as
22 to the credibility of the stories and be able to present a
23 defense in that matter.

24 THE COURT: Do you now have those dates?

25 MR. JONES: We don't have those dates. But I

1 don't think that -- I think the solicitor's office just
2 got this on Tuesday, so I'm not sure they've even had an
3 ample opportunity to really question her on these matters
4 or even see why these matters arose. Just the timing of
5 it would be a little bit questionable, as far as the week
6 of trial that now she comes forward with these.

7 I think that -- you know, I think the state
8 would have a duty to at least inquire further to
9 determine, one, why these dates have arisen now the week
10 of trial. And two is if there is any credibility to these
11 dates, and three is if they can pin these dates down and
12 give us an opportunity to possibly present a defense to
13 these dates.

14 THE COURT: What is the state's position?

15 MRS. HERRING-LASH: Your Honor, I have met with
16 the little girl since then. She does not remember the
17 dates. You know, she has done -- she has remembered
18 several dates, and she's given me those dates. She
19 remembers that -- you know, whether it was night or
20 morning. I have given him that. She remembers that it
21 was a school day, possibly a game day, but she just
22 doesn't remember. I don't know that therapy will ever
23 make her remember something that she never took note of.
24 It was never written down.

25 Because, as Mr. Jones said, this began at the

1 end of October and carried over to the beginning of
2 December. And they saw each other almost every day,
3 except probably on Sundays. So she never reflected those
4 dates.

5 She has told me, just in general, how all of
6 this went on. When we were preparing for trial is when I
7 tried to get very much more specific with her as to
8 exactly what happened is when I found out she doesn't know
9 every date, but she has given dates that I have given
10 Mr. Jones. And they are all within the time frame -- all
11 of the sexual batteries are within the time frame of the
12 indictment which is between November and December, and the
13 first date and the last date have not changed.

14 MR. JONES: And, again, Your Honor, I understand
15 that a lot of this came out with the preparation of trial,
16 and she could have called at any time and said I remember
17 this stuff.

18 MRS. HERRING-LASH: Your Honor, I don't think it
19 is something that she just remembered. The information,
20 of course, was given to us because there is an indictment
21 for one of the instances because it was when the fellatio
22 happened. She just doesn't know the exact date for me to
23 give to the defense. But I knew it back, I guess,
24 whenever it was indicted. And the defense has always
25 known there was an indictment for fellatio. We just don't

1 know the dates and we are not ever going to, as is most
2 common in these kind of cases.

3 THE COURT: You have always been on notice that
4 there was an indictment for fellatio?

5 MR. JONES: Is that for the lewd act?

6 MRS. HERRING-LASH: No, for fellatio.

7 MR. JONES: One of those is the -- we're talking
8 one of those is from November 6, right, and one of them --
9 December 6 and one was November 4.

10 MRS. HERRING-LASH: The fellatio was the day
11 that she went to his home, in between those two dates.

12 MR. JONES: Well, then those would be the ones
13 that we found out about on Wednesday. Those I didn't know
14 about. I mean, I knew there was one incident on each --
15 an indictment on each of those counts, on the November
16 count and the December count.

17 MRS. HERRING-LASH: But, actually, that's not
18 the way the indictments read. They read between November
19 and December, so the indictment time frame for the
20 intercourse is that entire time and the fellatio was that
21 entire time and the lewd acts that entire time because
22 there is no way to -- as is very common, Your Honor, this
23 child could get on the stand and under cross-examination
24 remember something else.

25 MR. JONES: Your Honor.

1 THE COURT: Yes, sir.

2 MR. JONES: I understand. But both sides would
3 be under a position of, I would say, surprise at that
4 point and time. My concern somewhat is, again, where this
5 has arisen the week of trial after we have submitted at
6 least an alibi witness to one of those. Whether credible
7 or not, that's for the jury to determine. But at least we
8 submitted an alibi witness.

9 There's concern over some of the conference --
10 originally, this whole case was reported by an attorney
11 here, and I would assume just probably talking with the
12 family. And I don't have any -- again, the timing is
13 questionable. And, again, if this goes by surprise and
14 she pops out with stuff, we're --

15 THE COURT: Well, I mean, I don't know what
16 she's going to say, so I guess you will have to address me
17 at that point.

18 MR. JONES: But we do know that at least --

19 THE COURT: I mean, but you concede that the
20 cases suggest that a date range is acceptable on these
21 types of indictments?

22 MR. JONES: I do. But the thing is is all along
23 we've known two dates. And actually we had witnesses to
24 cover every single weekend until the point that we did
25 know there were specific dates, and we actually did not

1 call witnesses for the -- and that's not to say that those
2 dates are going to arise because the solicitor has already
3 assured me that the date that we have released that
4 witness from is not in question.

5 But the point is is that the dates we were --
6 the dates were so firm that we were able to release
7 witnesses for the other dates because we were dealing with
8 two dates this whole time.

9 I mean, for a year, we've been working on the
10 defense to that point. And, obviously, we didn't know
11 what may come up at trial otherwise. But at least at this
12 point, we --

13 THE COURT: Well, where are those witnesses at?

14 MR. JONES: They will be called. They will be
15 here. Now, one of the witnesses --

16 THE COURT: The ones you say you released?

17 MR. JONES: Well, we released one for
18 November 12 and that date is not in question.

19 MRS. HERRING-LASH: The new -- she will say it
20 wasn't on the weekend. But, Your Honor, what he's talking
21 about --

22 THE COURT: Well, which ones did you release
23 that you say --

24 MR. JONES: Well, none of the others, Your
25 Honor. The reason I say that is to illustrate that we

1 had -- there are one or two dates. I understand the
2 indictment covers that time period.

3 THE COURT: Well, why would you say that to
4 illustrate the concept that you're asking me to use that
5 as a basis for which you say that you have been
6 prejudiced?

7 MR. JONES: For the purpose of you understanding
8 that there have been two dates in question since this
9 thing started.

10 THE COURT: Well, I mean, what is it that you
11 would be doing differently, though, if something does come
12 out?

13 MR. JONES: Your Honor, I'm not sure
14 particularly that we need to do something different.

15 Again, you are going to see that this was a
16 substantial crush, a substantial -- and I think that she
17 is going to note the dates. If there are five times that
18 they had sex -- this is probably the most important person
19 in her life at that time -- she is probably going to know
20 when those days are. I mean, she's got cards that she's
21 given out. She knows the other dates. I mean, we're only
22 dealing, like I said, with about 30 days that are eligible
23 based on the other acts that occurred.

24 You know, there were certain days that it
25 couldn't have happened because he didn't have a class off

1 in the afternoon, so we can eliminate other days.

2 THE COURT: Again, you are asking me to
3 speculate about something she may say. I don't know what
4 she is going to say.

5 MRS. HERRING-LASH: Your Honor, I don't know
6 what two firm dates they ever had until right before
7 Christmas, because her statement to the police says early
8 November and late November. And the indictment says
9 November and December, so there were no firm dates ever
10 given.

11 THE COURT: All right.

12 MRS. HERRING-LASH: Except for to the doctor
13 when she says the last day she thinks was December 6,
14 which is still the last day she says.

15 THE COURT: Anything further?

16 MR. JONES: Nothing further, Your Honor.

17 THE COURT: I deny the motion to continue.
18 However, if something comes up that you feel that presents
19 some problem, I guess, at that point, you will tell me
20 what that problem is.

21 MR. JONES: Thank you, Your Honor.

22 THE COURT: And I will decide if there is an
23 appropriate way to remedy it. Anything else?

24 MRS. HERRING-LASH: Yes, Your Honor. If we
25 could go ahead and put on the record, if this is the

1 appropriate time, that the state we have entered and had
2 marked into evidence State's 1 through 28 without
3 objection, already in evidence.

4 THE COURT: Is that correct?

5 MR. JONES: That is correct.

6 THE COURT: All right. State's 1 through 28 are
7 in evidence without objection so you do not need to
8 formally move them in since they are now in by agreement.

9 (WHEREUPON, State's Exhibits Nos. 1 through 28
10 were admitted into evidence.)

11 MRS. HERRING-LASH: The defense also has some.

12 THE COURT: Defense, you have some?

13 MR. JONES: And, Your Honor, the same thing with
14 Defense Exhibits 1 through 11.

15 THE COURT: Defendant's 1 through 11 are in
16 evidence without objection?

17 MRS. HERRING-LASH: Yes, Your Honor.

18 THE COURT: And so you can consider them in for
19 purposes of referencing them during the trial.

20 (WHEREUPON, Defendant's Exhibits Nos. 1 through
21 11 were admitted into evidence.)

22 MRS. HERRING-LASH: Your Honor, the other thing,
23 State's Exhibit Number 2 is a stipulation. And I would
24 like to read that to the jury before the first witness, if
25 that would be appropriate. Because this -- it is a

1 stipulation to some of the records that we will be using
2 with the first witness.

3 MR. JONES: No objection, Your Honor.

4 THE COURT: I'm sorry, that's a stipulation?

5 MRS. HERRING-LASH: Yes, Your Honor. May I
6 approach?

7 THE COURT: And you have read the stipulation?

8 MR. JONES: I have, Your Honor.

9 THE COURT: All right.

10 MRS. HERRING-LASH: He has signed it, Your
11 Honor.

12 THE COURT: All right.

13 MRS. HERRING-LASH: And, Your Honor, for the
14 record, those records that we have entered in also came
15 with a letter of certification from the business that is
16 marked as an exhibit.

17 THE COURT: And you want to publish that?

18 MRS. HERRING-LASH: Yes, Your Honor.

19 THE COURT: Okay. How about sequestration?

20 MRS. HERRING-LASH: We agree that witnesses will
21 be sequestered, Your Honor.

22 THE COURT: All right. And you both agree on
23 the motion to suppress that there be no reference to any
24 new charge pending?

25 MRS. HERRING-LASH: Yes, Your Honor. That is a

1 different victim that the state is not going forward on.

2 THE COURT: Okay. If you would like to address
3 the bond issue, Mr. Vail has posted with the clerk's
4 office. Do you have any problem with him staying on his
5 current cash bond?

6 MRS. HERRING-LASH: No, Your Honor.

7 MR. JONES: Thank you, Your Honor.

8 THE COURT: Who posted the cash bond, he did?

9 MR. JONES: He did not, Your Honor. It's a
10 Dr. Jeffrey Deal (phonetical).

11 THE COURT: Well, then that person would have to
12 sign this form before that bond can be continued. I was
13 thinking he signed it, but -- that he posted it.

14 MR. JONES: I'll get him in here.

15 (WHEREUPON, the jury panel entered the
16 courtroom).

17 MRS. HERRING-LASH: Your Honor, may we approach?

18 (WHEREUPON, a bench conference was held in the
19 presence of the jury panel but out of the hearing of the
20 jury panel.)

21 THE COURT: All right. Good morning, ladies and
22 gentlemen. We are ready to proceed with the selection of
23 our case. If you will call the case, Madam Solicitor,
24 please.

25 MRS. HERRING-LASH: Your Honor, the state calls

1 the case State versus Mark Vail, Indictment 2004-2733 for
2 lewd act upon a minor; State versus Mark Vail, Indictment
3 2004-GS-10-8316 for criminal sexual conduct with a minor;
4 State versus Mark Vail, Indictment 2004-GS-10-2734,
5 criminal sexual conduct with a minor.

6 THE COURT: All right. Ladies and gentlemen, in
7 this regard, I'm going to ask you a series of questions.
8 Should any of these questions be applicable to you, please
9 stand and identify yourself by name and number. Please
10 don't raise your hands. Just go ahead and stand up
11 because it's hard to see hands in this courtroom.

12 If the defendant will please stand and face the
13 panel.

14 (The defendant stood.)

15 THE COURT: Are any of you related by blood,
16 connected by marriage or have any social, business or
17 professional relationship with Mr. Mark Vail? If so,
18 please stand.

19 Yes, sir, your name and number?

20 THE JUROR: 218, Jeffrey W. Stevens.

21 THE COURT: What is your connection?

22 THE JUROR: My stepdaughter attended the First
23 Baptist School.

24 THE COURT: Would that in any way affect your
25 ability to give everyone in this case a fair and impartial

1 trial?

2 THE JUROR: I don't believe that it would, no,
3 sir.

4 THE COURT: Yes or no?

5 THE JUROR: No.

6 THE COURT: Thank you, sir.
7 Anyone else?

8 (There was no response from the jury panel.)

9 THE COURT: Thank you. Please be seated.

10 If defense counsel will please introduce
11 yourself to the panel and tell us about yourself.

12 MR. JONES: Attorney Craig Jones. I'm with the
13 Bostic Law Firm..

14 THE COURT: Are any of you related by blood,
15 connected by marriage or have any social, business or
16 professional relationship with Mr. Craig Jones? If so,
17 please stand.

18 (There was no response from the jury panel.)

19 THE COURT: Thank you. Prosecuting the case on
20 behalf of the state is the solicitor's office. If you
21 will please stand and identify yourself, please.

22 MRS. HERRING-LASH: Assistant Solicitor Deborah
23 Herring-Lash and sitting with me is Assistant Solicitor
24 Shaw Goodrich.

25 THE COURT: Are any of you related by blood,

1 connected by marriage or have any social, business or
2 professional relationship with Mrs. Herring-Lash or
3 Mrs. Goodrich or any dealings or connections with the
4 solicitor's office? If so, please stand.

5 (There was no response from the jury panel.)

6 THE COURT: At this time, I'm going to call out
7 a list of names of individuals that may or may not testify
8 in the case. If any of you are related by blood,
9 connected by marriage or have any social, business or
10 professional relationship with any of these individuals,
11 please stand.

12 : -- and if any of these people are
13 here, we can go ahead and bring them in.

14 MRS. HERRING-LASH: My investigator is getting
15 her right now.

16 THE COURT: All right. _____

17 MRS. HERRING-LASH: This is _____

18 THE COURT: All right. That's fine. You can
19 step back. Thank you.

20 Kelsey R ____ Dr. John R ____ Mamie R ____ Sergeant
21 Billy Crews of the Charleston County Sheriff's Office.

22 All of these individuals will not be here,
23 ladies and gentlemen.

24 Virginia Murray, Thomas Mullins of First Baptist
25 School, John Hill of First Baptist School, Adam Larrick,

1 Lindy Clifton, Dr. Elizabeth Baker with Gibbs Care Center,
2 Brittany B , Caroline O , Lauren Bee, Mary Whilden
3 Hills, Otis Coffey, Anne Porcher, Tommy Hotchkiss, Amanda
4 Mullins, Cesurian Champagne, Dr. Michael -- Doug Finelli,
5 Cathy Vail, Chris Rollinson, John C .

6 Does anyone have any relationship by blood,
7 marriage, social, business or otherwise to any of these
8 individuals?

9 THE JUROR: Do I have to stand on this one?

10 THE COURT: Yes, sir.

11 THE JUROR: I don't know all of them, but I know
12 a lot of them at First Baptist.

13 THE COURT: Your name and number again? It's
14 not that I'm forgetting it. I have to put it on the
15 record.

16 THE JUROR: 218, Jeff Stevens.

17 THE COURT: All right. And you're saying that
18 you know most of these First Baptist individuals that I
19 called out?

20 THE JUROR: Yes.

21 THE COURT: Would that in any way affect your
22 ability to give everyone in this case a fair and impartial
23 trial?

24 THE JUROR: No.

25 THE COURT: Thank you. Anyone else?

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

2 THE JUROR: Patricia McIntyre, 262. I work with
3 Dr. Baker and Dr. R. _____

4 THE COURT: Would that in any way affect your
5 ability to give everyone in this case a fair and impartial
6 trial?

7 THE JUROR: No.

8 THE COURT: Thank you. Anyone else?

9 THE JUROR: Granger Osborne, 265. I work with
10 Dr. Baker.

11 THE COURT: Would that in any way affect your
12 ability to give everyone in this case a fair and impartial
13 trial?

14 THE JUROR: No.

15 THE COURT: Thank you. Anyone else?

16 (There was no response from the jury panel.)

17 THE COURT: Were any of you a member of the
18 grand jury which returned any of the indictments in this
19 case?

20 (There was no response from the jury panel.)

21 THE COURT: Has any member of the panel
22 expressed or formed any opinion about this case or as to
23 the guilt or innocence of this defendant?

24 (There was no response from the jury panel.)

25 THE COURT: Has any of you or any member of your

1 family or close friend been accused of or a victim or a
2 witness in a sexual assault matter?

3 And in response to any of my questions, ladies
4 and gentlemen, if you would rather discuss it up at the
5 bench in private, you are free to do so.

6 Anyone?

7 THE JUROR: My wife when she was a child.

8 THE COURT: Would you like to come up front or
9 do it from there.

10 THE JUROR: That's really it.

11 THE COURT: I need your name and number.

12 THE JUROR: Gregory Ryan, 269.

13 THE COURT: All right. Would that in any way
14 affect your ability to give everyone in this case a fair
15 and impartial trial after you hear all of the evidence in
16 this case?

17 THE JUROR: I don't believe so.

18 THE COURT: Yes or no?

19 THE JUROR: No.

20 THE COURT: Thank you. Yes, ma'am, your name
21 and number?

22 THE JUROR: Number 39, Mary Casey. My sister
23 was raped.

24 THE COURT: All right. Would that in any way
25 affect your ability to give everyone in this case a fair

1 and impartial trial?

2 THE JUROR: No.

3 THE COURT: Thank you.

4 THE JUROR: Barbara Pundt, 188.

5 THE COURT: Would you like to come forward?

6 (The juror nods.)

7 THE COURT: Come forward.

8 (WHEREUPON, a bench conference was held in the

9 presence of the jury panel but out of the hearing of the

10 jury panel.)

11 THE COURT: What was your number again?

12 THE JUROR: 188.

13 THE COURT: 188. Yes, ma'am.

14 THE JUROR: I was molested as a child.

15 THE COURT: All right. Would that in any way

16 affect your ability to give everyone in this case --

17 THE JUROR: This is affecting me right now.

18 THE COURT: You couldn't do it?

19 THE JUROR: I don't think so.

20 THE COURT: Okay. I will excuse you from this

21 case. Thank you. You may take your seat.

22 (WHEREUPON, the bench conference was concluded.)

23 THE COURT: 188 is excused.

24 Did you want to come forward or not?

25 THE JUROR: Here is fine, Your Honor.

1 THE COURT: Your name and number?

2 THE JUROR: Roger Walker, 231, and I have a
3 couple of cousins who were sexually abused.

4 THE COURT: Would that in any way affect your
5 ability to give everyone in this case a fair and impartial
6 trial in this case?

7 THE JUROR: I don't believe it would, Your
8 Honor.

9 THE COURT: Yes or no?

10 THE JUROR: No, it would not affect me.

11 THE COURT: Thank you.

12 THE JUROR: Keith Rising, Juror 195. I was a
13 juror on a case in Atlanta that involved sexual abuse.

14 THE COURT: Would that in any way affect your
15 ability to give everyone in this case a fair and impartial
16 trial?

17 THE JUROR: No.

18 THE COURT: Thank you. Anyone else?

19 (There was no response from the jury panel.)

20 THE COURT: Have you or any member of your
21 family been accused of or the victim of any violent crime?

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

23 THE JUROR: I'm Sandra Gorman, Number 89. And
24 my son was attacked when he was 19 years old and hurt
25 pretty seriously.

1 THE COURT: Would that in any way affect your
2 ability to give everyone in the case a fair and impartial
3 trial?

4 THE JUROR: No.

5 THE COURT: Thank you. Anyone else?

6 (There was no response from the jury panel.)

7 THE COURT: Does anyone on the panel watch any
8 kind of television shows like CSI or Law and Order such
9 that you think it would affect your ability to give
10 everyone in this case a fair and impartial trial?

11 Sometimes you have to ask.

12 (There was no response from the jury panel.)

13 THE COURT: Is there anyone on the panel that
14 has any relationship with First Baptist Church School?

15 THE JUROR: 218, Joe Stevens.

16 THE COURT: All right. And the relationship is
17 you have a child there?

18 THE JUROR: Stepdaughter.

19 THE COURT: And would that in any way affect
20 your ability to give everyone a fair and impartial trial?

21 THE JUROR: No.

22 THE COURT: Thank you, sir. Anyone else?
23 Please stand.

24 THE JUROR: I work for the Russ Pye Painting
25 Company, and we painted First Baptist School.

1 THE COURT: And your name and number?

2 THE JUROR: Juror 196.

3 THE COURT: Would the fact that you work with
4 them in any way affect your ability to give these people a
5 fair and impartial trial?

6 THE JUROR: No, sir.

7 THE COURT: Thank you, sir. Anyone else?

8 (There was no response from the jury panel.)

9 THE COURT: Does anyone on the panel have any
10 affiliation with the National Children's Advocacy Center?

11 (There was no response from the jury panel.)

12 THE COURT: Does any member of the panel have
13 any bias or prejudice in connection with this case or with
14 any of the individuals involved herein?

15 (There was no response from the jury panel.)

16 THE COURT: Does anyone on the panel know of any
17 reason why you could not give everyone in this case a fair
18 and impartial trial; whether it's some religious
19 conviction, philosophical or moral belief or political
20 philosophy, any reason or view that you might hold, any
21 reason whatsoever that you could not hear everything in
22 this case and give everyone a fair and impartial trial?

23 (There was no response from the jury panel.)

24 THE COURT: Anything further from the state?

25 MRS. HERRING-LASH: Nothing from the state, Your

1 Honor.

2 THE COURT: Defense?

3 MR. JONES: No, Your Honor.

4 THE COURT: Any objection to the clerk drawing
5 the jury?

6 MRS. HERRING-LASH: None from the state, Your
7 Honor.

8 MR. JONES: No, Your Honor.

9 THE COURT: All right. Ten and five, Mr. Clerk.
10 Give us a jury.

11 THE CLERK: Yes, Your Honor.

12 (WHEREUPON, twelve members were duly selected
13 and seated with one alternate. Please see attached sheet
14 at end of transcript.)

15 THE CLERK: Your Honor, the jury has been
16 selected and has been seated.

17 THE COURT: Any motions or matters pertaining to
18 the jury selection process or as to the selected jury,
19 state?

20 MRS. HERRING-LASH: None, Your Honor.

21 THE COURT: Defense?

22 MR. JONES: None, Your Honor.

23 THE COURT: All right. Mr. Ozmore, I'm going to
24 designate you as the foreperson. When you come back in,
25 if you will go ahead and sit in the first seat. I'm going

1 to go ahead and send you to the jury room. If you will
2 first please stand and be sworn by the clerk. Thank you.

3 (WHEREUPON, the jury was duly sworn by the clerk
4 of court.)

5 THE COURT: All right. Ladies and gentlemen,
6 let me go ahead and send you to the jury room. Do not
7 discuss this case in any way.

8 While you are back there, they will give you
9 some notepads and pencils. Flip them open and write your
10 name on the notepad so they can keep up with those pads
11 during any breaks or overnight recesses.

12 Again, do not discuss this case in any way. We
13 will be with you very shortly, as soon as I figure out the
14 schedule. Thank you very much.

15 (WHEREUPON, the following proceedings were held
16 outside the presence of the jury.)

17 (WHEREUPON, the remaining jury panel was excused
18 by the court.)

19 THE COURT: All right. Bring them back in.
20 We'll do the openings.

21 (WHEREUPON, the following proceedings were held
22 in the presence of the jury.)

23 THE COURT: All right. Ladies and gentlemen,
24 what we'll do is go ahead and make some brief introductory
25 remarks to you, and then I'll go ahead and send you to

1 lunch.

2 As we begin the trial of the case, generally I
3 find it's helpful if I just explain to you basically how
4 the trial will proceed. First, each side will make an
5 opening statement.

6 Now, an opening statement is not evidence. It
7 is simply an outline to help you understand what that
8 party thinks the evidence will show. Following the
9 opening statements, you will hear the testimony and the
10 evidence in the case. This will consist of any evidence
11 from the witnesses as well as any physical exhibits or
12 stipulations which may be introduced into evidence during
13 the course of the trial.

14 There are rules of evidence which control what
15 can be received into evidence. When a lawyer asks a
16 question or offers an exhibit as evidence and a lawyer on
17 the other side does not think it is permitted by our rules
18 of evidence or procedure, that lawyer may object. If I
19 overrule the objection, that means I do not believe there
20 is a legal basis for that objection, then the question may
21 be answered or the exhibit may be received into evidence.
22 If I sustain the objection, that means I agree there is a
23 legal basis in our rules for that objection, then the
24 question cannot be answered or the exhibit cannot be
25 received into evidence.

1 Whenever I sustain an objection to a question or
2 deny a motion to admit an item into evidence as an
3 exhibit, you must not guess or speculate what the answer
4 would have been or what the exhibit would have shown. If
5 during the process of a question and answer, part of an
6 answer is indicated and an objection is made and if I
7 ultimately sustain that objection, then, of course, you
8 must disregard any such part of that answer as you may
9 have heard and must not consider it in any way whatsoever
10 during your deliberations.

11 This is not any attempt to hide anything from
12 you. Everyone has the right to have the case presented to
13 you in accordance with our rules. Those rules have been
14 tested over and over again to make sure cases are
15 presented in an orderly and in a fair fashion.

16 Now, in that regard, there may be times when I
17 call counsel up to the bench and we whisper amongst
18 ourselves. We may be discussing something like scheduling
19 or breaks or witnesses, or we might be discussing an
20 evidentiary issue, something that I believe I can resolve
21 in just a few brief moments up here. And it allows me to
22 not have to send you out to the jury room and bring you
23 right back in. If it is anything that is going to take
24 any period of time, then, of course, I'm just going to
25 send you to the jury room so you can at least take a break

1 while we take the particular matter up on the record.

2 Following the completion of the testimony, the
3 attorneys will again have an opportunity to address you to
4 make what is called a closing argument or a closing
5 statement. This is an opportunity for counsel to
6 summarize the evidence from their respective points of
7 view, to put the pieces of the puzzle together, so to
8 speak. Again, these arguments by counsel are not to be
9 considered as evidence.

10 Upon completion of those closing statements, I
11 will instruct you on the law of South Carolina as it
12 pertains to the issues in this case. When I have
13 completed my instructions to you, you will then be
14 permitted to begin your deliberations in order to reach
15 your verdict.

16 Now, as I indicated, I will instruct you on the
17 law at the conclusion of the case. As a preliminary
18 matter, I now instruct you that a defendant is presumed in
19 law innocent of any charge contained in an indictment. An
20 indictment is not evidence. The fact that a grand jury
21 returned an indictment is of no consequence to you. It is
22 merely the method by which the case is brought to court
23 for your review.

24 The state has the burden of proof in this case
25 and must prove a defendant's guilt beyond a reasonable

1 doubt. Consistent with the state's burden, the
2 presumption of a defendant's innocence is sufficient to
3 compel a verdict of not guilty, unless the jury concludes
4 that the state has satisfied its obligation to prove the
5 defendant guilty beyond a reasonable doubt, which is a
6 doubt that would cause a reasonable person to hesitate to
7 act.

8 Now, it is very important for you to pay close
9 attention because it will be your job and your job alone
10 to decide what the facts are in this case. I do not sit
11 up here and tell you what I think about the case. I don't
12 answer questions about, well, what time did this happen,
13 was it dark, was it light -- not that I have any way of
14 knowing whether those have anything to do with this case.
15 Those are examples of factual questions, ladies and
16 gentlemen. And I will merely respond by saying I cannot
17 answer factual questions. And the reason is that's why we
18 have jurors for you to decide those factual questions. I
19 might believe one person. You might believe another. You
20 might see it one way, I might see it another way. It
21 doesn't matter what I think in that regard. That's why we
22 have you so that you collectively and unanimously decide
23 who and what you want to believe, apply it to the law,
24 which is my job and which you must follow, and reach your
25 verdict.

1 Now, for that reason, if you can't hear
2 something, don't be afraid to raise your hand. I will be
3 happy to have the question repeated to you or the answer
4 repeated to you.

5 A few instructions, you must not discuss this
6 case in any way whatsoever with anyone, including
7 yourselves, until such time as I direct you to begin your
8 deliberations. You must not conduct any type of
9 independent investigation on your own. Don't go to the
10 internet and don't go to the library or do whatever kind
11 of research you think might be appropriate. That would be
12 violating your oath, ladies and gentlemen. This case will
13 be presented here during this trial.

14 With those brief comments, ladies and gentlemen,
15 we are ready to proceed with the opening statements. Go
16 ahead, please.

17 MRS. HERRING-LASH: May it please the court,
18 counsel.

19 THE COURT: Yes, ma'am.

20 MRS. HERRING-LASH: Good morning, ladies and
21 gentlemen.

22 John and Mamie R sent their daughter
23 _____ to school every day expecting her to learn and to be
24 protected and that if anything happened the persons that
25 she could turn to for safety and protection would be her

1 teachers. As we all do as we send our children out the
2 door in the morning to school, we expect they will be safe
3 at school.

4 So every school morning back in the beginning of
5 2003, _____ who was in the eighth grade, she was 13
6 years old, went off to First Baptist School? They knew
7 that she had a teacher and coach named Mark Vail, had met
8 him, even had shaken hands with him before. _____ had
9 gone to First Baptist for several years. Mr. Vail had
10 been there since her seventh grade year. He came when she
11 was in the seventh grade. She was 12.

12 When he first came to the school, she did have a
13 crush on him? Everyone knew it. She wasn't the only one.
14 They talked about it. They discussed that they had to
15 wait until May 16th of 2007 when she would be 17 years
16 old. She writes this date down in her correspondence with
17 him.

18 Mr. Vail accepted that. He discussed it with
19 her, and they talked about that. He knew that she had a
20 crush on him. Everyone at the school knew that she had a
21 tremendous crush on him.

22 As eighth grade came, it became more serious.
23 They exchanged phone numbers, as he did with many
24 students. But they began to talk on the phone. You will
25 have the phone records in evidence. In excess of close to

1 30 hours during a few months period, they talked on cell
2 phones all hours of the day and night. During the day,
3 during school, text messaging each other while she was in
4 class.

5 Around the end of October, beginning of
6 November, he set up for them to meet away from the school.
7 He came to her community, and they met in a parking lot.
8 Another time he came to her community, and they met in a
9 half built house. It was mostly built. It was wrapped,
10 but the siding wasn't on yet.

11 Then on November 4 he sat up for her to skip the
12 seventh period and meet him in an alleyway near the
13 church, and they got in his car and drove to his apartment
14 where they had sexual intercourse.

15 _____ thought that she was in love with
16 Coach Vail, which is what she called him, even when they
17 were alone. So much so that on November the 22nd, she
18 found a letter written about him from another girl,
19 Caroline O _____, her sister's good friend. She was upset
20 about that letter and called Caroline and blurted out
21 while they were talking Coach Vail and I have had sex.

22 Well, Caroline said, well, we have to confront
23 him. _____ begged, please, don't let him know I said
24 this. Please, don't let him know. I don't want him to be
25 in trouble. I don't want anybody to know. So they

1 decided to -- Caroline was insistent that he should be
2 confronted. So they decided just to call him up, she and
3 Kelsey -- 's older sister -- and say someone has
4 seen you-all together away from school in the car.

5 Well, he knew what was going on. The
6 conversations, you will see the phone records, go back and
7 forth between these girls and him throughout this day. He
8 was angry at ; she will tell you, for telling,
9 although he wasn't told she was told by Caroline -- so
10 much so that the next day she goes to her sister and said
11 nothing happened. So they go on and the relationship
12 continues until December when John and Mamie R who have
13 been wondering all this time, why 's behavior has
14 changed. She stays in her room. She goes on mysterious
15 walks at night with a friend they have never met, which is
16 very unusual.

17 Then they find the phone bill ripped up. They
18 order a new copy and put it together. They see who the
19 calls have been to. They find cards hidden in her room to
20 him. They find gifts for him. They think about that
21 mysterious friend and they confront confront her
22 for a while until she finally buckles down and says, yes,
23 we have kissed.

24 So of course what John R does is goes to the
25 school and talks with the principal. He shows him the

1 phone records. Mr. Vail resigns that day. They waited to
2 send _____ to school until after he is off campus.

3 When she gets to school and finds out that he is
4 not on campus, she becomes hysterical. One of her
5 teachers, Virginia Murray, tries to comfort her. And in
6 the midst of her hysteria, she says I lost my virginity to
7 him. From there, of course, it gets reported to the
8 principal, to the parents. And even though _____ did not
9 want it reported to the police and did not want to talk
10 with the police about it, of course, her parents and the
11 school did the right thing and reported it to the police.
12 And we end up here today with Mr. Vail charged with
13 criminal sexual conduct with a minor.

14 Criminal sexual conduct with a minor, and he is
15 charged in the second degree. A person is guilty of
16 criminal sexual conduct in the second degree if the actor
17 engages in a sexual battery -- and I will explain to you
18 in a moment what a sexual battery is -- with a victim who
19 is 14 years of age or less but who is at least 11 years of
20 age.

21 Now, when you think of criminal sexual conduct,
22 many of you may be thinking of what would be criminal
23 sexual conduct first or second, which is when there is
24 force or coercion or some kind of force like with a weapon
25 or holding down or something like that. He is not charged

1 with that. He is charged with criminal sexual conduct
2 with a minor. The battery and the conduct being because
3 the child is under the age of consent. Some people refer
4 to it as statutory rape. She was 13 and he was an adult,
5 26 years old.

6 A sexual battery means intercourse, cunnilingus,
7 fellatio, anal intercourse or any intrusion, however
8 slight, to any part of a person's body or any object into
9 the genital or anal openings of another person's body,
10 except when such intrusion is accomplished for medically
11 recognized purposes.

12 This case will involve sexual intercourse and
13 fellatio. Fellatio is oral sex with the male penis in the
14 female's mouth. And, as I said, it requires no force.
15 The age, her being under 14 and above 11, is the element
16 that makes it a sexual battery.

17 He is also charged with committing or attempting
18 a lewd act upon a minor. It is unlawful for a person over
19 the age of 14 to willfully and lewdly commit or attempt a
20 lewd or lascivious act upon or with the body of its parts
21 of a child under the age of 16 with the intent of
22 arousing, appealing to or gratifying the lust or passions
23 or sexual desires of a person or of the child. This is
24 what most people think of as child molestation, kissing,
25 fondling, touching. These are the two charges.

1 When you have heard all of the evidence from the
2 jury -- excuse me -- from the witness stand, we would ask
3 that you find Mr. Vail guilty of the crime that he did
4 commit: Criminal sexual conduct with a minor, two counts,
5 and lewd act upon a minor. Thank you.

6 MR. JONES: May it please the court?

7 THE COURT: Yes, sir.

8 MR. JONES: Ladies and gentlemen, I'm Craig
9 Jones, and I do represent the accused, Mark Vail.

10 Mark is a middle school teacher? I don't envy
11 him at all. Underpaid, underappreciated and today under
12 attack.

13 You are going to get to know Mark Vail over the
14 course of this week. You are going to get to know his
15 fiancée. You are going to get to know his mother. You
16 are going to get to know his friends, and you're going to
17 get to know some of his former students.

18 You have heard a lot today about criminal sexual
19 conduct and lewd act. This case isn't about sex, lewd
20 acts or any other type of obscene behavior. This is about
21 a caring coach, a student with an intense crush and a
22 bunch of phone calls.

23 Now, the judge has instructed you that Mark Vail
24 doesn't have to prove anything. He is presumed innocent.
25 And he doesn't have to prove a thing, but he will. He

1 doesn't have to get on the stand and say anything, but he
2 will. He doesn't have to bring any witnesses in here to
3 present his case, but he will. And, again, the burden is
4 on the state, but we are going to present evidence.

5 Now, we have talked about and heard about the
6 phone records. There were numerous phone calls. But you
7 are going to hear Mark Vail get on the stand and explain
8 those phone calls. You heard about him taking her off
9 campus. That's not contradicted. He picked up
10 took her off campus and was with her alone for a
11 period of time. And what is contradicted is what happened
12 during that time.

13 You're going to hear and I think the evidence
14 will show that they talked. That he attempted to clarify
15 the relationship that he was a mentor.

16 Ladies and gentlemen, this is a tough case. And
17 while I said this case isn't about sex or lewd acts or
18 obscene behavior, we are going to have to talk about sex.
19 And it's going to be a bit uncomfortable and it's going to
20 be a bit embarrassing, and we're all just going to blush
21 together and get through it. But I'm going to ask that
22 during those times you pay attention. Pay attention to
23 the state's witnesses. Pay attention to the state's
24 doctor. And I ask that you listen closely.

25 Now, again, this is going to be a long week. I

1 will ask that you don't zone off. Don't let your mind
2 drift. Don't think about the work you're missing, what
3 the kids are doing back at home, what you are going to
4 make for dinner. In these short hours each day, I'm going
5 to ask that you focus on the evidence, on the witnesses
6 and that you pay close attention.

7 And I think that at the end of this, the
8 evidence will show that, again, this is a caring teacher.
9 This is a young lady with an intense crush, and there are
10 a lot of phone calls. There are a lot of phone calls to
11 this young lady and to other people that you are going to
12 see.

13 This is a student (sic) who got involved in a
14 student's life after hours, and the evidence will show
15 that. And if you find at the end and the conclusion of
16 all of the evidence presented and all of the witnesses, if
17 you find that based on common sense, your experience and
18 just was this reasonable and you find this was a caring
19 coach, a student with a crush, and just a bunch of phone
20 calls, we're going to ask that you return a verdict of not
21 guilty for Mark Vail and let him get on with his life.

22 We understand this is a substantial sacrifice
23 for you-all to be here, and we appreciate the seriousness
24 with which you have undertaken this. And we look forward
25 to presenting this case to you over the course of the

1 week.

2 THE COURT: All right. Ladies and gentlemen, at
3 this point, I need to break for lunch. We usually don't
4 have this big of a gap for lunch, but I actually have to
5 qualify the state grand jury, kind of the way y'all were
6 qualified this morning, at 2:00 so I'm going to bring you
7 back at 2:45. I should do my best to be done by that
8 time.

9 Please do not discuss this case in any way
10 whatsoever. If you will go with the bailiff, they will
11 show you where to report back to. You actually will not
12 come back in through this way. You will come back in
13 through a separate door. Also, leave your pads in the
14 jury room with the bailiff. Thank you very much. We will
15 see you at 2:45.

16 (WHEREUPON, the following proceedings were held
17 outside the presence of the jury.)

18 THE COURT: All right. I'm going to authorize
19 you to be released during lunch. If you will get the
20 surety to sign that. It was a cash bond, right?

21 MR. JONES: It was, Your Honor.

22 THE COURT: Bring this back to me after it is
23 signed.

24 MR. JONES: I can get it done right now.

25 THE COURT: Okay. And, again, the state had no

1 objection to continuing him on the cash bond?

2 MRS. HERRING-LASH: Right, Your Honor.

3 THE COURT: Okay. All right. We will see you
4 back then. Thank you. Hold on.

5 (WHEREUPON, the court received a note from a
6 juror.)

7 THE COURT: Do you want to read the note?

8 I fear that the defense attorney may have
9 excused me as a juror had he known that I had taught
10 elementary school for 20 years. I am currently a book
11 seller taking a break. Having worked with young children
12 most of my adult life -- or life, I may well not have the
13 necessary lack of bias towards the defendant that is
14 required. Originally, he just said he didn't think it was
15 going to be a problem, but then he wrote this note.

16 (Counsel review note.)

17 THE COURT: Do you wish for me to bring him in
18 and ask him if he can be fair and impartial, or what is
19 your position on excusing him?

20 MR. JONES: I would prefer you to excuse him if
21 he doesn't feel like --

22 THE COURT: I was actually surprised he added
23 the last sentence that he feels he does not have the
24 necessary lack of bias. He didn't indicate that was going
25 to be the case.

1 MR. JONES: With the fact of him indicating that
2 from the beginning.

3 THE COURT: Do you have any problem excusing
4 him?

5 MRS. HERRING-LASH: Your Honor, could we just
6 have him put that on the record.

7 THE COURT: Yes, bring him in please.

8 MRS. HERRING-LASH: That he said he could not be
9 impartial, and I would not have a problem with that.

10 THE CLERK: What number was he?

11 THE COURT: Juror 22, Brian Bonham, B-O-N-H-A-M.

12 (WHEREUPON, the juror entered the courtroom.)

13 THE COURT: Mr. Bonham, I received your note.
14 You indicated because of your experience with children and
15 teaching school for 20 years you do not think -- you think
16 that you would be bias; is that what you are telling me?

17 THE JUROR: I fear that I would be. And plus in
18 fairness to the defense, I mean, I was down as an
19 occupation line as a book seller, which is what I am now.
20 But I worked with young children for 20 years, and I think
21 I might have been stricken had he known that. I just want
22 to be fair.

23 THE COURT: But do you think because of your
24 experience with children you would not be able to give
25 everyone in this case a fair and impartial trial?

1 THE JUROR: I would try to, but I fear that I
2 wouldn't.

3 THE COURT: All right. I will excuse you, sir.
4 Just leave your pad with the clerk and call back after
5 6:00 p.m. for your instructions.

6 THE JUROR: And I'm sorry I didn't bring this to
7 your attention earlier.

8 THE COURT: All right. It's very important in
9 the next case if you have any concerns, when the judge
10 says do you have any reason to think that you might have
11 some bias, it is very important at that time that you
12 bring it to the court's attention.

13 THE JUROR: Yes, sir, I will.

14 THE COURT: I will ask you, if you will call
15 back after 6:00, please.

16 THE JUROR: Yes, sir.

17 THE COURT: Do you have anything else in the
18 jury room?

19 THE JUROR: No, just my book. (Indicating he
20 has the book in his hand.)

21 THE COURT: All right. Thank you.

22 (WHEREUPON, the juror, Brian Bonham, exited the
23 courtroom.)

24 THE COURT: All right. Well, that means we
25 shall proceed with the alternate. All right.

1 MR. JONES: Thank you.

2 THE COURT: Thank you.

3 (WHEREUPON, a lunch recess transpired.)

4 THE COURT: Are you ready to proceed?

5 MRS. HERRING-LASH: The state and the defense
6 have agreed on State's Exhibit 29 and 30, two additional
7 exhibits to come in without --

8 THE COURT: Twenty-nine and 30; is that correct?

9 MR. JONES: That is correct.

10 THE COURT: All right. State's 29 and 30 are in
11 evidence without objection.

12 (WHEREUPON, State's Exhibits Nos. 29 AND 30 were
13 marked for identification and received into evidence.)

14 THE COURT: Anything else?

15 MR. JONES: Your Honor, Mr. Kahn is a law
16 student that is going to be working with me. He wasn't
17 able to be here this morning. I don't know if you have
18 any objection or the state has any to him assisting me.

19 THE COURT: Huh-um. Is your first witness ready
20 to go?

21 MRS. HERRING-LASH: Pardon me?

22 THE COURT: Is your first witness ready to go?

23 MRS. HERRING-LASH: Yes, Your Honor.

24 THE COURT: You can go ahead and bring them in
25 while the jury is coming in. They can sit right behind

1 you there.

2 Bring the jury in, please.

3 (WHEREUPON, the following proceedings were held
4 in the presence of the jury.)

5 THE COURT: All right. One of the jurors had to
6 be excused, ladies and gentlemen, so the alternate will
7 now serve as a regular juror, just for your information.

8 All right.. Ready to call your witness?

9 MRS. HERRING-LASH: Yes, Your Honor. Before
10 that, the state and the defense have entered into a
11 stipulation that I would like to read into the record at
12 this point and time.

13 THE COURT: Ladies and gentlemen, a stipulation
14 is merely an agreement as to a certain fact. And you
15 should accept that fact as being true, and you should
16 consider it for whatever purposes you deem appropriate for
17 your consideration in the issues in this case.

18 Go ahead.

19 MRS. HERRING-LASH: The attorneys for the state
20 and the defense counsel hereby agree and stipulate that if
21 a record custodian from Suncom were called to testify
22 their testimony would be the following: That records in
23 State's Exhibit Number 1 consists of records prepared and
24 retained in the normal course of their business. Two,
25 that State's Exhibit Number 1 consists of business records

1 prepared by Suncom and contain the following telephone
2 numbers corresponding to subscriber information:
3 843-478-9697, Mark Vail, _____ Charleston,
4 South Carolina 29412. Three, State's Exhibit 1 consists
5 of business records prepared by Suncom and contain the
6 following telephone number corresponding to subscriber
7 information 843-343-7185, _____ in care of John
8 R _____ in Mt. Pleasant, South Carolina,
9 29464.

10 THE COURT: Please call your witness.

11 MRS. HERRING-LASH: The state would call _____
12 _____
13 _____

14 being first duly sworn, testified as follows:

15 THE CLERK: Please state your full name to the
16 court and spell your last.

17 THE WITNESS: _____
18 _____

19 DIRECT EXAMINATION

20 BY MRS. HERRING-LASH:

21 Q _____ how old are you?

22 A I'm 14.

23 Q What is your birth date?

24 A _____

25 Q And if you could --

- DIRECT EX. BY MRS. HERRING-LASH

52

1 MRS. HERRING-LASH: Your Honor, may I approach
2 the witness?

3 THE COURT: Yes.

4 MRS. HERRING-LASH: You may have to get close to
5 the microphone and talk into it.

6 BY MRS. HERRING-LASH:

7 Q What was your birth date again?

8 A _____

9 Q And, _____ where do you live?

10 A In Mt. Pleasant.

11 Q And who all lives in your home with you?

12 A My father John, my stepmom Mamie, my sister
13 Kelsey, my brother Nate and my sister Chrisman.

14 Q What are the ages of your sisters and brothers?

15 A My sister is 15. My brother is 11. And my
16 sister Chrisman is two.

17 Q Is two?

18 A Yes, ma'am.

19 Q And how long has Mamie been your stepmother?

20 A Five years.

21 Q And where do you go to school now, _____ ?

22 A Bishop England High School.

23 Q And what grade are you in?

24 A I'm a freshman, 9th.

25 Q And did you ever go to First Baptist School?

- DIRECT EX. BY MRS. HERRING-LASH

53

1 A Yes, ma'am.

2 Q What years did you go there?

3 A Fifth, sixth, seventh and eighth.

4 Q And did you go there throughout your eighth
5 grade year?

6 A Yes, ma'am.

7 Q And how old were you in your eighth grade year?

8 A Thirteen.

9 Q Did you know Coach Mark Vail?

10 A Yes.

11 Q When did you meet him?

12 A First day of seventh grade.

13 Q And do you see him in the courtroom today?

14 A Yes.

15 Q And where is he seated? What does he have on?

16 A A black suit with a light blue shirt.

17 MRS. HERRING-LASH: Your Honor, let the record
18 reflect the victim has identified the defendant.

19 THE COURT: All right. The victim's comments
20 are noted for the record.

21 BY MRS. HERRING-LASH:

22 Q What did you call him at school?

23 A Coach Vail.

24 Q And when you first met him, what did you think
25 of him?

_____ - DIRECT EX. BY MRS. HERRING-LASH

54

1 A He was just a fun teacher, and he wasn't like
2 all of the other teachers.

3 Q How was he different from other teachers?

4 A He was a lot younger, and he was just a fun
5 person to be around.

6 Q And what kind of time did you spend with him in
7 the seventh grade?

8 A It was just during class when I had pre-algebra
9 with him.

10 Q You had what?

11 A Pre-algebra with him.

12 Q Did you talk with him alone a lot during the
13 seventh grade?

14 A No, ma'am.

15 Q Did you come to have a crush on him?

16 A Yes, ma'am.

17 Q When was that?

18 A I would say in September of seventh grade.

19 Q And did he know about that?

20 A Yes, ma'am.

21 Q How did he know?

22 A Friends would talk about it and just...

23 Q What was his reaction to it?

24 A He was basically the same, but he paid more
25 attention to me.

- DIRECT EX. BY MRS. HERRING-LASH

55

1 Q Like what?

2 A He would talk to me more.

3 Q During school, though?

4 A Yes, ma'am.

5 Q Now, did there come a time that he tried to
6 discourage your crush?

7 A Yes, ma'am.

8 Q Tell me about what happened that day.

9 A I was sitting outside, and he came out and he
10 explained to me that I needed to like guys my own age and
11 that nothing could happen between us.

12 Q Had there been any conversations with other boys
13 that day?

14 A Later on we were on our way to PE, and my friend
15 said something like I have your pen. And he said I will
16 have more than you will ever have.

17 Q Who said that?

18 A Coach Vail.

19 Q And who was he talking about when he said that?

20 A Me.

21 Q Did you-all discuss when you could be together?

22 A When I was 17.

23 Q How did that come up?

24 A It was the same day that he tried to discourage
25 my crush. And I was upset at the gym, and I was crying.

1 And he said that there could never be anything between us.
2 And that I was illegal. But when I was 17 there could be
3 something.

4 Q There could be something?

5 A Yes, ma'am.

6 Q And how old were you at that point and time?

7 A Twelve.

8 Q What was the date that you would be 17?

9 A _____

10 Q Is that a date that y'all talked about?

11 A Yes, ma'am.

12 Q Now, did you see him, at all, away from school
13 during the seventh grade?

14 A Not during the school year. But during the
15 summer, we went to the beach twice with other people.

16 Q Did you know he was going to be there?

17 A Yes, ma'am.

18 Q How did you know?

19 A We had called and talked on the phone, but it
20 was very casual just like I'm going to the beach, that
21 sort of thing.

22 Q And who was there with him?

23 A On the first time, it was my friend Lee and
24 Tommy H _____ and Anne P _____.

25 Q And who went with you?

- DIRECT EX. BY MRS. HERRING-LASH

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- 1 A My friend Lee.
- 2 Q Is that a girl or a guy?
- 3 A It's a girl.
- 4 Q And was he there with the other two students?
- 5 A Yes, ma'am.
- 6 Q And they were Anne P. and Tommy H ?
- 7 A Yes, ma'am.
- 8 Q And how many times during the summer did you see
- 9 him?
- 10 A Twice.
- 11 Q What about the second time, who was there?
- 12 A I was with my friend Lindsay and my friend -- my
- 13 sister's friend Caroline O and my sister Kelsey went.
- 14 Q And what did y'all do at the beach?
- 15 A We hung out. We played volleyball behind a
- 16 restaurant.
- 17 Q And did he -- was he playing volleyball with
- 18 other people also?
- 19 A Yes.
- 20 Q Pardon?
- 21 A Yes.
- 22 Q Now, in eighth grade, did you have him as a
- 23 teacher also?
- 24 A Yes. First period, the whole eighth grade had
- 25 PE with him.

- DIRECT EX. BY MRS. HERRING-LASH

58

1 Q So he was your teacher then?

2 A Yes, ma'am.

3 Q In the seventh grade, did you have a cell phone?

4 A At the end of seventh grade, I did.

5 Q Did you have it in eighth grade?

6 A Yes, ma'am. Not at the beginning because I got
7 in trouble and I got it taken away, but I got it back in
8 late October.

9 Q What did you get in trouble for?

10 A My parents wouldn't let me get a second hole in
11 my ear, so I got my friend Kimberly to pierce it for me.

12 Q And you got your cell phone taken away?

13 A Yes, ma'am.

14 Q But you got it back?

15 A Yes, ma'am, near the end of October.

16 Q When?

17 A Near the end of October.

18 Q And when you got it back, did you give the
19 number to Coach Vail?

20 A No. In seventh grade, a bunch of girls were
21 playing with his cell phone during PE and they put my
22 house number in it. But then later on that year,
23 everyone -- I was playing with my new cell phone. And he
24 called it, but it was my house number. So I got his phone
25 and put my cell phone number in it.

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1 Q So you put your cell phone number in it?

2 A Yes, ma'am.

3 Q And did you have his cell phone number?

4 A Yes, ma'am.

5 Q Did he give it to every student?

6 A Yeah, he gave it to our whole pre-algebra class,
7 and he said that if our parents had any questions just to
8 call him.

9 Q If your parents did?

10 A Yes.

11 Q Did you begin to talk with him on the phone?

12 A Yes, near the end of October.

13 Q About how often would you talk with him on the
14 phone?

15 A Every night or sometimes every other night.

16 Q What would you talk about?

17 A We would talk about school and friends. And
18 then near the end of October, it got more personal.

19 Q What do you mean by more personal?

20 A We would talk about past relationships and my
21 feelings for him.

22 Q Did he talk about his relationship with you?

23 A A little bit.

24 Q What was that?

25 A He had a girlfriend, Amanda Mullins, and he

- DIRECT EX. BY MRS. HERRING-LASH

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1 would just talk about his relationship with her.

2 Q He would what?

3 A He would just talk about his relationship with
4 her.

5 Q What would he say?

6 A That they loved each other and that they
7 couldn't break up. But then at the end of our -- as we
8 got like more into our conversations, it went from I
9 really don't want to be with her.

10 Q Who said that?

11 A Ma'am?

12 Q Who said that?

13 A Coach Vail.

14 Q To you?

15 A Yes.

16 Q How would he say it?

17 A He would be like it's hard being with someone
18 that you don't want to be with, but it's hard if you can't
19 be with the person you want to be with.

20 Q Now, you said you talked about past
21 relationships. Did he tell you about any other
22 relationships?

23 A Huh-um.

24 Q Did you tell him about any other relationships
25 that you had?

- DIRECT EX. BY MRS. HERRING-LASH

61

1 A Yes.

2 Q Had you had any other relationships?

3 A A few ones, but it wasn't -- they weren't
4 serious relationships.

5 Q What do you mean by relationship?

6 A Going out, like just having a boyfriend. And it
7 would never be like going out on dates. It would just
8 always be like, oh, this is my boyfriend, that kind of
9 stuff.

10 Q Like at school?

11 A Yes.

12 Q Were you allowed to date then?

13 A I was allowed to have a boyfriend, but I wasn't
14 allowed to go out by myself with guys.

15 Q Did you have any boyfriends that could drive or
16 anything?

17 A Huh-um.

18 Q Now, in the eighth grade, did you have any other
19 boyfriend at all?

20 A No.

21 Q Now, you said that you began to talk on the
22 phone?

23 A Yes, ma'am.

24 Q I'm going to put up what has been marked State's
25 Exhibit Number 26. Can you see this, _____?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A Yes, ma'am.

2 MRS. HERRING-LASH: Your Honor, may I approach
3 the witness?

4 THE COURT: Yes, ma'am.

5 MRS. HERRING-LASH: This is a pointer.

6 BY MRS. HERRING-LASH:

7 Q Can you read what's at the top of that?

8 A Yes. It says date and time, yes.

9 Q Date?

10 A October 21.

11 Q No, I mean just across the blue.

12 A Oh, yes, ma'am. It says date, time, telephone
13 call, text message from, to, duration.

14 Q So the from is the first and the to is the
15 second person there?

16 A Uh-huh.

17 Q Is that correct?

18 A Yes, ma'am.

19 Q And is this when you-all started talking?

20 A Yes, ma'am.

21 Q What is a text message, _____ ?

22 A It's a message that one person types in on their
23 cell phone and sends it to another person.

24 Q Is that what those are, text messages?

25 A Yes, some of them.

- DIRECT EX. BY MRS. HERRING-LASH

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1 Q What about these?

2 A Those are telephone calls mostly and some text
3 messages.

4 Q And did there come a time around this time that
5 you met Coach Vail away from school?

6 A Yes, ma'am.

7 Q Do you know when that was?

8 A October 28th.

9 Q Do you see October 28th there?

10 A Yes, ma'am.

11 Q Okay. Tell me about October 28th.

12 A We were talking on the phone, and he was coming
13 home from football practice. And he just wanted to come
14 to my house just to see what it looked like. And he came,
15 and I insisted on meeting him outside.

16 Q What?

17 A I insisted on seeing him outside. And, at
18 first, he didn't really want to. But then we met outside,
19 and I met him halfway down my road and we drove to a
20 parking lot.

21 Q Let's go back to the telephone calls. Do you
22 see some telephone calls up there?

23 A Yes, ma'am.

24 Q From him to you?

25 A (Witness nods head.)

- DIRECT EX. BY MRS. HERRING-LASH

64

1 Q What time is the one where he talked about
2 coming to your house; do you think?

3 A On the 7:56.

4 THE COURT REPORTER: I'm sorry. I couldn't hear
5 her response.

6 THE COURT: Repeat your answer for the record.

7 BY MRS. HERRING-LASH:

8 Q You have to say it again for the record.

9 A 7:56.

10 Q And how long did you talk from 7:56?

11 A Fourteen minutes.

12 Q And then you talked again at what time?

13 A 8:11.

14 Q And how long did you talk then?

15 A Thirty minutes.

16 Q Do you know about what time he got to your
17 house?

18 A I want to say -- we were on the phone when he
19 got there, so maybe 8:40.

20 Q So you were still on the phone from 8:11?

21 A Yes.

22 Q And where did you say you met him?

23 A I went down the road, and he drove by my house.

24 And a little down the road I met him at his car, and we

25 drove to -- there was like a club around my house and

- DIRECT EX. BY MRS. HERRING-LASH

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1 there was a parking lot, and we drove to that parking lot.

2 Q And, before that, you said that he wanted to see
3 where you lived, but you insisted on coming out?

4 A Yes, ma'am.

5 Q Can you explain that part of the conversation?

6 A He was just interested in seeing where I lived
7 and seeing where my house was. And I was like I want to
8 come outside, and he was like, no, just stay inside, I
9 just want to see where your house is. And then I begged
10 him, and I came outside.

11 Q How did you beg him?

12 A I was just like I really want to see you.

13 Q What did he say?

14 A At first, he was like, no, just stay inside.
15 But then he just went along.

16 Q Then what?

17 A Then it just went from I'm coming down the
18 stairs, and I'm already outside.

19 Q And let me show you a picture that's going to be
20 on this machine what has been marked and entered into
21 evidence as State's Exhibit Number 3.

22 _____, do you recognize that?

23 A Yes, ma'am.

24 Q And what you probably need to do is when you
25 turn around to look, wait until you turn back around to

- DIRECT EX. BY MRS. HERRING-LASH

66

1 answer so we can hear you.

2 A Okay.

3 Q Where is that?

4 A That's on my road.

5 Q Where was his car when you got in?

6 A Right there (indicating).

7 Q Where is your house from there?

8 A My house is around the corner, just down that
9 road.

10 Q Like in front of that truck, around that way?

11 A Yes. It's in front of it.

12 Q And where did you go when you got in his car?

13 A We went to the I'On parking lot.

14 Q I'm going to show you what has been marked as
15 State's Exhibit Number 4. Can you recognize this?

16 A Yes, ma'am.

17 Q What is that?

18 A That's like the entrance to the I'On club
19 parking lot.

20 Q What is the I'on club?

21 A It's a clubhouse where people usually have
22 receptions or parties, but people don't usually have them
23 a lot out there so...

24 Q People what?

25 A It is rarely used.

- DIRECT EX. BY MRS. HERRING-LASH

67

1 Q So it's not -- it's a club that people have to
2 rent out?

3 A Yes, ma'am.

4 Q Let me show you what has been marked as State's
5 Exhibit Number 5. What is that?

6 A That's the entrance to the parking lot.

7 Q And State's Exhibit Number 6?

8 A That is just the sign.

9 Q Does that name what the Creek Club is?

10 A Yes, ma'am.

11 Q State's Exhibit Number 7, do you recognize what
12 this is?

13 A That's the first place that we drove to when I
14 got in his car.

15 Q Where did you drive to?

16 A Right there (indicating).

17 Q Where is the entrance on that?

18 A Right there (indicating).

19 Q So you drove to where? Can you point with the
20 pointer?

21 A We drove and stopped right there (indicating).

22 Q Okay. What happened when you stopped?

23 A We just started talking and then we decided to
24 move to a more secluded spot.

25 Q State's Exhibit Number 8?

- DIRECT EX. BY MRS. HERRING-LASH

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- 1 A That was where we parked.
- 2 Q Is that where you moved to?
- 3 A Yes, ma'am.
- 4 Q And when you moved there, what happened?
- 5 A We started talking, and then things just got out
6 of hand and we kissed.
- 7 Q What do you mean things got out of hand?
- 8 A I don't think we expected it to happen. It just
9 happened.
- 10 Q How did it come up that you kissed? How did
11 that come about?
- 12 A We just were talking, and then all of a sudden,
13 just leaned towards him and we kissed.
- 14 Q Did you -- did he say anything to you?
- 15 A Huh-um.
- 16 Q Did you fight it or try to say no?
- 17 A No.
- 18 Q Did you want him to kiss you?
- 19 A Yes.
- 20 Q Did he touch you, at all, when he kissed you?
- 21 A Near the end.
- 22 Q Where?
- 23 A Just around my neck.
- 24 Q Just on your neck?
- 25 A Yes, ma'am.

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- DIRECT EX. BY MRS. HERRING-LASH

69

1 Q Can you show me how?
2 A (Indicating).
3 Q That wasn't any kind of violent touch?
4 A No, ma'am.
5 Q Did you have chewing gum at that point and time?
6 A Yes, ma'am.
7 Q What happened to that?
8 A At the beginning, he asked for my gum.
9 Q Did you give it to him?
10 A Yes, ma'am.
11 Q How did you give it to him?
12 A I handed it to him.
13 Q Did he chew it?
14 A Yes, ma'am.
15 Q Now, you were there in the parking lot.
16 were there other people around?
17 A No, ma'am.
18 Q Let me go back to the phone chart. Did y'all
19 see anybody else?
20 A No, ma'am.
21 Q Now, is there another call on that evening from
22 him to you?
23 A Yes, ma'am, at 9:21.
24 Q Do you know what was going on then?
25 A He was leaving. And I think he needed help

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- DIRECT EX. BY MRS. HERRING-LASH

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1 getting out of I'On, and I just told him.

2 Q Directions, you mean?

3 A Yes, ma'am.

4 Q Is there another call that night from you to
5 him?

6 A Yes, ma'am.

7 Q And when was that?

8 A 10:37.

9 Q And how long was that?

10 A Thirty-five minutes.

11 Q What was going on during that call?

12 A I think we were both surprised about what had
13 just happened, and we were just talking about it and just
14 kind of feeling the situation out.

15 Q What did he say about what had just happened?

16 A He was like I just can't believe that happened
17 and it shouldn't have happened and...

18 Q And what did you say?

19 A I was just quiet, I guess, because I wanted it
20 to happen.

21 Q Now, did there come a -- when you got to school
22 the next day, did you see him and talk with him?

23 A Yes, ma'am.

24 Q We are looking at now the 28th still. Is
25 there another call from you to him?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A Yes, at 11:59.

2 Q And how long did y'all talk that time?

3 A One minute.

4 Q And is there another call at 11:11 from you to

5 him?

6 A Yes.

7 Q How long did y'all talk that time?

8 A Forty-three minutes.

9 Q Forty-three minutes?

10 A Yes.

11 Q And on the 29th of October, did you talk to

12 him then?

13 A Yes, at 12:00 a.m.

14 Q And the 30th of October, did you talk to him

15 then?

16 A Yes.

17 Q And was it at night or during the day that you

18 actually spoke to him?

19 A At night.

20 Q And was -- that was him calling you?

21 A Yes, ma'am.

22 Q How long did you-all talk?

23 A Thirty-five minutes.

24 Q We will go on to -- the rest of October the

25 31st, was there another call from you to him?

000075

- DIRECT EX. BY MRS. HERRING-LASH

72

- 1 A On November 1st?
- 2 Q No, October 31st.
- 3 A Yes, ma'am.
- 4 Q What time of night was that?
- 5 A 11:15.
- 6 Q And how long did you-all talk then?
- 7 A Twenty-one minutes.
- 8 Q What were you talking about? That was Halloween
- 9 night?
- 10 A Uh-huh.
- 11 Q What were you talking about?
- 12 A I think we had just had a game that night, and I
- 13 guess we were just talking about the game.
- 14 Q Did you see him again shortly after that away
- 15 from campus?
- 16 A Yes, ma'am.
- 17 Q When was that?
- 18 A November 1st.
- 19 Q November 1st?
- 20 A Yes, ma'am.
- 21 Q Do you remember what day of the week
- 22 November 1st was?
- 23 A I think it was a Saturday.
- 24 MRS. HERRING-LASH: Your Honor, may I approach
- 25 the witness?

- DIRECT EX. BY MRS. HERRING-LASH

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1 THE COURT: Yes, ma'am.

2 BY MRS. HERRING-LASH:

3 Q I'm going to show you what has been marked as
4 State's Exhibit Number 29. Do you recognize this?

5 A Yes, ma'am.

6 Q What is this?

7 A My sister's calendar.

8 Q Your sister's calendar. Can you see it, _____ ?

9 A Yes, ma'am.

10 Q Does it have November 1st on there?

11 A Yes, ma'am.

12 Q And what day is that?

13 A A Saturday.

14 Q You think you next saw him away from school on
15 Saturday?

16 A Yes, ma'am.

17 Q Did you talk to him, at all, that day?

18 A Yes, ma'am.

19 Q When did you talk to him?

20 A The first phone call was at 4:48.

21 Q And what did y'all talk about then?

22 A It was a little while after school, and I don't
23 think we really -- we didn't plan to do anything that
24 night then.

25 Q When did you plan it?

- DIRECT EX. BY MRS. HERRING-LASH

74

1 A He had called me, and he was in a half built
2 house near my street.

3 Q So you didn't plan it until he called you?

4 A Yes, ma'am.

5 Q What time was that call; do you think?

6 A It was at 7:50.

7 Q Are you guessing by just looking at that?

8 A Yes, ma'am.

9 Q But you know that he called you?

10 A Yes, ma'am.

11 Q And when he called you, where was he?

12 A He was inside the house on my street.

13 Q How did you know where he was?

14 A He -- there was only two houses being built on
15 my street at that time, and one of them was right behind
16 my house. And he told me it wasn't the one behind my
17 house. It was the one down the street.

18 Q And did you -- what happened when he called you
19 about that?

20 A I was baby-sitting that night, and I told him
21 that I wanted to come see him. So I paid my sister to do
22 my baby-sitting time for me, and I told her that I had
23 friends down the street and walked down there.

24 Q Where were your parents?

25 A They were out at the movies.

- DIRECT EX. BY MRS. HERRING-LASH

75

1 Q Let me show you what has been previously marked
2 as State's Exhibit Number 13. Do you recognize this?

3 A Yes, ma'am.

4 Q What is that?

5 A That was the house that he met me at.

6 Q Okay. Now, you said half built house. But that
7 house is completed, right?

8 A Yes, ma'am.

9 Q What was the difference in how it looked then?

10 A There wasn't any paint, and there was like the
11 wrapping on the outside of the house.

12 Q Where on that house did you meet him?

13 A Right there (indicating).

14 Q Where was -- was that a porch at the time or
15 what was it?

16 A It was a porch, but I don't remember the
17 railings being there at the time.

18 Q How did you get there?

19 A I think I walked up a ramp up there and met him.

20 Q A ramp?

21 A Yes, ma'am.

22 Q Where was the ramp?

23 A Right there (indicating).

24 Q Was it like a ramp that the builders had there?

25 A Yes, ma'am.

- DIRECT EX. BY MRS. HERRING-LASH

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1 Q And so you met him on that part there?

2 A Yes, ma'am.

3 Q Let me show you State's Exhibit Number 10. Is
4 that the same place?

5 A Yes, ma'am.

6 Q Where were you on that ramp?

7 A Right in there (indicating).

8 Q And where did you go after that?

9 A We walked up there into the front door and then
10 walked into a bathroom upstairs.

11 Q Let me show you what has been marked as State's
12 Exhibit Number 12. What is that?

13 A That is another view of the house, and we walked
14 up into that room.

15 Q So that's the room that you were in?

16 A Yes, ma'am.

17 Q And how did you get up there?

18 A We walked up the stairs, and we met up in there.

19 Q Were the stairs already built?

20 A Yes, ma'am. They didn't have any railings on it
21 though.

22 Q They had no railings?

23 A Yes, ma'am.

24 Q And is that -- can you see the porch part in
25 that picture that you were talking about where you were?

- DIRECT EX. BY MRS. HERRING-LASH

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- 1 A Yes, ma'am.
- 2 Q Where is that?
- 3 A (Indicating).
- 4 Q And what about where y'all entered?
- 5 A We walked around the other side, like around
- 6 there and inside the house.
- 7 Q And you went to that back room?
- 8 A Yes, ma'am.
- 9 Q Who chose where to go in that house?
- 10 A We just met up on the part that I showed you
- 11 before, and we just walked upstairs to like look at the
- 12 house.
- 13 Q Where was he when you got there?
- 14 A He was where I walked up the ramp. I met him
- 15 there, and then we walked together up the stairs.
- 16 Q And what happened when you got in the room?
- 17 A There was a stack -- we just started talking and
- 18 then he sat down on a stack of like wood that they were
- 19 using.
- 20 Q A stack of wood?
- 21 A Yes, ma'am.
- 22 Q And what happened?
- 23 A And then we started kissing.
- 24 Q How was he sitting?
- 25 A He was just sitting on the two-by-fours.

- DIRECT EX. BY MRS. HERRING-LASH

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1 Q And where were you?

2 A I was standing between his legs.

3 Q And what did you do?

4 A We just started kissing.

5 Q Did he -- let me show you the phone records
6 again. I'm still confused about how you knew where to go.
7 Did he call you at all?

8 A Yes, ma'am. We were on the phone, and I had to
9 call him when we -- when he first told me what house it
10 was. I had to get ready still and tell my sister and give
11 her the money. And so I started calling him when I walked
12 down the street. And I kept on walking, and he was up in
13 a window. And when I got there, he told me to stop
14 because I was at the house.

15 Q Did he ask you to bring anything with you?

16 A Yes, Chapstick.

17 Q What?

18 A Chapstick.

19 Q Did he say why?

20 A His lips were chapped.

21 Q Now, you said you were standing between his
22 legs?

23 A Yes, ma'am.

24 Q And what happened?

25 A We just started kissing.

- DIRECT EX. BY MRS. HERRING-LASH

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1 Q How were you kissing?

2 A With tongue.

3 Q With what?

4 A Tongue.

5 Q What did he say about that?

6 A He didn't really say anything about it.

7 Q What did you say?

8 A I didn't really say anything. I just couldn't
9 believe that we were doing it.

10 Q What?

11 A I didn't really expect it.

12 Q What did you expect when you went there?

13 A Just to talk, but kissing was fine with me. It
14 didn't matter to me.

15 Q At that point and time, how did you feel about
16 him, _____?

17 A My feelings were really strong for him, and I
18 started to like him a lot.

19 Q You started to like him a lot?

20 A Yes, ma'am.

21 Q Did you like him -- like compared to other boys,
22 how did you like him?

23 A He was a lot more mature than the other boys,
24 and I just felt like he was someone I could talk to, and
25 it was just easier and just different from all of the

- DIRECT EX. BY MRS. HERRING-LASH

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1 other boys that I dated.

2 Q And did you ever go into abandoned houses with
3 other boys?

4 A No, ma'am.

5 Q Or empty houses?

6 A No, ma'am.

7 Q Now, did anything happen to make you have to
8 leave there?

9 A My sister kept on calling and asking where I was
10 and that my parents were coming home, so I needed to come
11 home.

12 Q And your sister is who?

13 A You mean her number or?

14 Q Well, what is her name? Can you see calls from
15 her?

16 A Yes, her name is Kelsey.

17 Q And those calls from you to Kelsey, what were
18 you doing there?

19 A She was calling me and sometimes I wouldn't
20 answer, and so I would call her back and tell her I will
21 be home in a couple minutes.

22 Q Do you know what time you got home?

23 A I'm going to say around 9:14 because that's my
24 last call to her.

25 Q So you are just going by the calls?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A Yes, ma'am.

2 Q But you know you were calling her?

3 A Yes, ma'am, I called her on my way home, so I'm
4 guessing that's when.

5 Q And what happened when you got home?

6 A She was just wondering where I was, and I just
7 kind of blew her off and then when I was --

8 Q What do you mean blew her off?

9 A Like she was asking questions, and I was like I
10 don't want to talk about it, I was just with friends. And
11 when I was walking upstairs, I got a text message from
12 Coach Vail, and it was saying get her inside. And I
13 didn't know what he was talking about. My sister had
14 walked outside to let our dog out. So I called him
15 wondering what was that about, and he explained. And then
16 he had told me that he was in the house right next to mine
17 being built.

18 Q He was in the house next to you?

19 A Yes.

20 Q And what was he doing there?

21 A We just were talking through the window.

22 Q Now, was the house next to yours a completed
23 house also?

24 A No, ma'am.

25 Q Let me show you what has been marked State's

1 Exhibit Number 16. When you say not completed, how far
2 along was it, as far as being built?

3 A It was a little more completed than the other
4 house, but it still had the wrapping on it also.

5 Q Now, can you see in State's Exhibit Number 16
6 the other house that you are talking about?

7 A Yes, ma'am.

8 Q Where is that?

9 A Right there (indicating).

10 Q And where is your house?

11 A Right there (indicating).

12 Q And you said he was in that house?

13 A Yes, ma'am.

14 Q Let me show you State's Exhibit Number 17. From
15 that picture, can you see where in that house he was?

16 A Yes, ma'am, he was in that room.

17 Q How do you know that?

18 A Because my window is right across from that.

19 And the window -- there is a window like on that side, and
20 it's parallel to my room.

21 Q Let me show you State's Exhibit Number 20. What
22 is this a picture of?

23 A That's the window from my window right there.

24 Q You need to speak up at the end.

25 A This is my room right here and that's the

- DIRECT EX. BY MRS. HERRING-LASH

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1 closest to the other house that he was in.

2 Q That's the window he was in?

3 A Yes, ma'am.

4 Q What was he doing in there?

5 A We were just talking on the phone.

6 Q How long did you talk on the phone?

7 A I want to say ten to 15 minutes. It wasn't
8 long.

9 Q And so that was you think at 10:07?

10 A Yes, ma'am.

11 Q Did -- there's a call at 9:18 for 12 minutes,
12 could that be it?

13 A I think that was the call like me on the way
14 over there trying to find out where he was.

15 Q And when he was in that house next door, did you
16 just sit inside your room and talk to him, or what did you
17 do?

18 A I was sitting on my bed, and I opened my window
19 and took out the screen and I was talking to him.

20 Q You took out your screen?

21 A Yes, ma'am.

22 Q And what did y'all talk about then?

23 A Just what had happened and just stuff that we
24 would talk about.

25 Q About what?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A Just what had happened basically.

2 Q And did he talk to you when he left to go home,
3 or did you talk to him again that night at all?

4 A I want to say yes.

5 Q And what about the next day?

6 A From the phone records, I would say yes.

7 Q From the phone records, but you don't remember
8 exactly?

9 A Yes, ma'am.

10 Q Did there come another time where you-all went
11 away from school together?

12 A Yes, ma'am.

13 Q When was that?

14 A November 4th?

15 Q November 4th?

16 A Yes, ma'am.

17 Q Do you remember that day for sure?

18 A Yes, ma'am.

19 Q How did you remember that day?

20 A It was the first time that I went to his
21 apartment.

22 Q Did y'all plan that the night before?

23 A Yes, ma'am.

24 Q How, in person or on the phone?

25 A On the phone.

- DIRECT EX. BY MRS. HERRING-LASH

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1 Q Can you look at that chart and see if there was
2 a phone call that -- phone call on November 2nd or the
3 3rd.

4 A Yes, ma'am.

5 Q Was there a phone call on the 3rd?

6 A Yes.

7 Q How long was that?

8 A Forty-two minutes.

9 Q Forty-two?

10 A Yes.

11 Q And was that from him to you or you to him?

12 A From him to me.

13 Q And is that when you planned it?

14 A I think so.

15 Q What?

16 A I think so. I'm not positive.

17 Q Now, tell us what happened on November 4th.

18 A I told -- I had seventh period, and I decided I
19 was going to skip that so I could go to his house. And I
20 told my seventh period teacher that I was getting tutored,
21 and I told that to my parents also. So after sixth
22 period, I just went through our locker room and met him on
23 the street.

24 Q Where did you meet him?

25 A On Meeting Street, there is like a little alley

- DIRECT EX. BY MRS. HERRING-LASH

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1 to the right of the road that goes down the street.

2 Q And how did you know he would be there?

3 A We had talked about it, and he knew what alley I
4 was going to be by.

5 Q How did you know what time?

6 A I was skipping seventh period and --

7 Q Did he know that?

8 A Yes, ma'am.

9 Q Was he there?

10 A At the beginning, I -- he was running late, so I
11 called him. And he was in a meeting with someone at the
12 school and that he would be there as soon as he could.

13 Q Do you know who he was in a meeting with?

14 A Mr. Hill.

15 Q Did he tell you what that meeting was about?

16 A Yes.

17 Q What did he say that meeting was about?

18 A Coach Vail had become really good friends with a
19 student there, and the mom of the student was worried that
20 Coach Vail was like a fatherly figure to him.

21 Q Do you know who that student was?

22 A Patrick W .

23 Q And how do you know about that meeting with
24 Mr. Hill about Patrick W ?

25 A Coach Vail told me because that's the reason he

- DIRECT EX. BY MRS. HERRING-LASH

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1 was late.

2 Q So when you met him, what did y'all do?

3 A We drove to his apartment.

4 Q Did you go in his car?

5 A Yes, ma'am.

6 Q What did his car look like?

7 A It was a purplish blue Mazda.

8 Q Is that the first time you had ever been in his
9 car?

10 A No.

11 Q When you got to his apartment, what happened?

12 A He showed me his apartment, and then we went
13 upstairs.

14 Q What did his apartment look like?

15 A Do you want it room by room or?

16 Q Uh-huh.

17 A When you walked in, there was a kitchen on the
18 left. And if you went straight, there was a living room
19 with a TV. And then near the entrance there was stairs
20 against the right wall. You went up the stairs, and
21 upstairs his roommate's room was like straight and his
22 room was to the left.

23 Q Did you go -- you went in his room?

24 A Yes, ma'am.

25 Q What did his room look like inside the room?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A There was a bed and then a closet to the left,
2 and then there was a dresser to the right. And then on
3 the right wall there was a TV and stereo.

4 Q Was there anything else on the wall?

5 A There was hats on the wall.

6 Q What do you mean hats on the wall?

7 A Like they were -- I guess they were nailed up
8 there. He had nails up there that he hung them on.

9 Q Did you remember what any of the hats were?

10 A One was from a tattoo parlor.

11 Q A tattoo parlor?

12 A Uh-huh.

13 Q From him?

14 A Yes.

15 Q Did he have tattoos?

16 A Yes.

17 Q Where were they?

18 A On his upper back and on his left arm.

19 Q What did they say?

20 A On the back it just said Vail in bubble letters.

21 Q In what letters?

22 A In bubble letters.

23 Q What are bubble letters?

24 A Like thick letters. And then on his arm, it
25 just had an M and an B.

- DIRECT EX. BY MRS. HERRING-LASH

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1 Q A what?

2 A It just has an M and an E.

3 Q Did you remember if his bed had a headboard or
4 footboard or anything?

5 A I don't remember if there was a headboard, but I
6 don't think there was a footboard.

7 Q Okay. Let me show you State's Exhibit
8 Number 21. Do you recognize that?

9 A Yes, ma'am.

10 Q And I know you have described it without the
11 picture. But with the picture, can you point it out
12 again?

13 A That's the entrance to his house, and those are
14 his stairs. And then if you go straight, it's his living
15 room. On the left, there's the kitchen.

16 Q Let me show you what has been previously marked
17 as State's Exhibit Number 22. What is that?

18 A That's his living room.

19 Q Was there other furniture in there then?

20 A Yes, ma'am.

21 Q What was there then?

22 A There was a black sofa and then there was a TV.

23 Q I will show you what is marked as State's
24 Exhibit Number 23. Do you recognize this?

25 A Yes, ma'am.

1 Q What is this?

2 A That's his room.

3 Q Can you see in this picture -- what can you see

4 in this picture that you described before?

5 A That was his closet, and I want to say right

6 there is where his hats were on the wall.

7 Q They were on the wall?

8 A Yes, ma'am.

9 Q And do you know what was on the other wall?

10 A There was like a dresser further back here, and

11 then on the other one there was a TV.

12 Q Let me show you what has been marked and entered

13 into evidence as State's Exhibit Number 5. What was in

14 that area?

15 A There was a TV right in there, and his bed was

16 right in here.

17 Q What was by the window?

18 A His bed, to the left of it.

19 Q To the left of it?

20 A Yes, ma'am.

21 Q Was there anything near the window?

22 A All I remember is there was a TV, like a stereo.

23 Q TV and a stereo?

24 A Yes.

25 Q Now, when you got upstairs into his room, what

1 did you-all do?

2 A I was standing up in his room, and then we laid
3 down on the bed.

4 Q How did you lay on the bed?

5 A Just lying down.

6 Q Who lied down?

7 A We both did.

8 Q Did you lay down beside -- explain to us how.

9 A Beside him.

10 Q Was he near the window or away from the window?

11 A He was near the window.

12 Q And where were you?

13 A I was right next to him.

14 Q Near the window or further away from him?

15 A Further away from the window.

16 Q And what happened when you laid down?

17 A I had a jean skirt on, and I had on shorts that
18 said stuff on the back.

19 Q Shorts under your skirt?

20 A Yes. Earlier we had talked about how they had
21 said stuff on the back, and I was just kind of playing
22 around and saying these are my shorts, like the ones that
23 had stuff on the back.

24 Q What?

25 A I was just wearing the shorts, and we had talked

1 about those shorts before.

2 Q What had you said about the shorts before?

3 A That they just had said stuff on the back.

4 Q They said stuff on the back?

5 A Yes, ma'am.

6 Q And then what happened?

7 A Then I took my skirt off.

8 Q Why did you take your skirt off?

9 A So he could read it.

10 Q Was that your idea or his idea?

11 A My idea.

12 Q And did he want to read it?

13 A I guess so.

14 Q What did it say?

15 A It said kiss my, and then it had like a bunny on
16 it.

17 Q A what?

18 A A bunny.

19 Q A bunny?

20 A Yes.

21 Q And what did you have on your top?

22 A I had a navy blue shirt on.

23 Q Then what happened?

24 A And then we just started kissing.

25 Q How were you kissing?

- DIRECT EX. BY MRS. HERRING-LASH

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- 1 A He was on top of me, and we started kissing.
- 2 Q What do you mean on top of you?
- 3 A Just he was like holding himself over me.
- 4 Q Holding himself over you?
- 5 A Yes.
- 6 Q What did he have on?
- 7 A I want to say shorts and a polo shirt.
- 8 Q And then what happened?
- 9 A Then he gave me oral sex.
- 10 Q And then what happened?
- 11 A And then when he was done, he asked what was
- 12 next. And I told him I was ready. And he told me to
- 13 close my eyes and we had sex.
- 14 Q He said close your eyes?
- 15 A Yes.
- 16 Q What happened when you closed your eyes?
- 17 A I'm guessing he put a condom on.
- 18 Q What makes you guess that?
- 19 A Because he went over to his closet.
- 20 Q What about his clothes?
- 21 A I guess he took his clothes off when my eyes
- 22 were closed.
- 23 Q What?
- 24 A When my eyes were closed.
- 25 Q When he came back, did he have his clothes on?

1 A You mean when I opened my eyes?

2 Q Uh-huh.

3 A He had his shirt on but that was all.

4 Q That was all?

5 A Yes.

6 Q Then what happened?

7 A And then we just had sex.

8 Q What do you mean by had sex?

9 A Intercourse.

10 Q How -- what position were you in?

11 A He was on top of me.

12 Q And what did that feel like?

13 A I was ready, but it kind of hurt at the

14 beginning, but then I got used to it.

15 Q What do you mean when you say you were ready?

16 A I thought I loved him...

17 Q And do you still think that you loved him?

18 A Yes.

19 Q And when he asked you what was next, what did

20 you think?

21 A I thought that's what he wanted, and he wasn't

22 pressuring me to do it, like.

23 Q But you thought that's what he wanted?

24 A Yes.

25 Q And you said yes?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A (Witness nods head.)

2 Q After the intercourse, what did you do?

3 A We got dressed.

4 Q Did you put your clothes back on?

5 A Yes, ma'am.

6 Q What about him?

7 A He put his clothes back on.

8 Q Did he put the same clothes on?

9 A Yes, I think so.

10 Q And then what did y'all do?

11 A And then he drove me to the school, and I just
12 got out. And my friend Brittany her mom does after school
13 day care there, so I hung out with my friend Brittany for
14 the rest of the afternoon until my dad came and picked me
15 up.

16 Q Was it planned for your dad to come and pick you
17 up?

18 A Yes, ma'am.

19 Q At this point and time, did you tell
20 anybody, like your friends or anybody?

21 A (Witness shakes head.)

22 Q Why not?

23 A Because I knew if it got out that he would get
24 in trouble, and I didn't want him to get in trouble.

25 Q How did you know he would get in trouble?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A Because he explained to me earlier in seventh
2 grade how much -- like it was illegal, and he could get in
3 a lot of trouble.

4 Q So you didn't want him to get in trouble?

5 A Yes, ma'am.

6 Q Did you see him away from school another time?

7 A Yes, ma'am.

8 Q Do you know when that was?

9 A I don't know the exact date, but we went to his
10 apartment.

11 Q Let's go back to the chart. Did you continue to
12 talk to him after this?

13 A Yes, ma'am.

14 Q Now, you said you don't know the exact date, but
15 what happened? Just tell us what happened.

16 MR. JONES: Objection, Your Honor.

17 THE COURT: Yes, sir.

18 MR. JONES: May we approach?

19 THE COURT: Yes, sir.

20 (WHEREUPON, a bench conference was held on the
21 record in the presence of the jury but out of the hearing
22 of the jury.)

23 MR. JONES: I assume this is the second incident
24 that came up, the new information. We would object to it
25 on the basis we didn't have it beforehand, and I haven't

- DIRECT EX. BY MRS. HERRING-LASH

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1 had an opportunity for discovery on this matter.

2 THE COURT: All right. I will allow it.

3 Objection noted for the record.

4 (WHEREUPON, the bench conference was concluded.)

5 BY MRS. HERRING-LASH:

6 Q Tell us what happened,

7 A I skipped sixth and seventh period.

8 Q What?

9 A I skipped sixth and seventh period, and we drove
10 to his house.

11 Q What did you have sixth period?

12 A Computer class.

13 Q And you already told us what you had seventh,
14 but what was that?

15 A Latin.

16 Q How did you decide to skip sixth and seventh?
17 How did that come up?

18 A Just to give us time, because last time we
19 really didn't have time to talk afterwards.

20 Q To give us what?

21 A We didn't really have time to talk afterwards.

22 Q When are you talking about you didn't have time
23 to talk?

24 A After we had sex.

25 Q You mean the first time?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A Yes, ma'am.

2 Q So where did you meet him this day?

3 A Same place.

4 Q And was he there when you got there or late?

5 A He was there.

6 Q And what happened?

7 A We just got in his car and drove to his
8 apartment.

9 THE COURT: Hold on. Can you pull that mike
10 down a little bit? Thank you.

11 BY MRS. HERRING-LASH:

12 Q What happened when you got to his apartment?

13 A We had sex.

14 Q Where did you go? Let's start there.

15 A Up to his room.

16 Q To the same room as before?

17 A Yes, ma'am.

18 Q And what did you do when you got in the room?

19 A I don't remember like details, but we had sex.

20 Q Were you on the bed or somewhere else?

21 A On the bed.

22 Q And were you laying down or sitting up or what?

23 A I think this time I was on top of him.

24 Q And how was that?

25 A It hurt me more to be on top, so I kind of got

- DIRECT EX. BY MRS. HERRING-LASH

99

1 on the bottom.

2 Q How did -- did you tell him it hurt you more, or
3 what did you do?

4 A I just kind of wedged my way to the bottom.

5 Q And what did he say?

6 A He didn't really say anything.

7 Q Did you tell him what you were feeling?

8 A No.

9 Q Why not?

10 A Because I didn't want him to think that I was --
11 I just didn't want -- I didn't want to, like, make him
12 unhappy.

13 Q What didn't you want him to think?

14 A That I was, like, some young inexperienced girl.

15 Q You didn't want him to think that?

16 A (Witness shakes head.)

17 Q Did he know how old you were?

18 A Yes, ma'am.

19 Q Now, is that all that happened that day?

20 A I think it happened -- we had sex two other
21 times that day.

22 Q Tell us about that.

23 A It was just the same as the first time. But
24 after the second time, we got dressed and then we started
25 kissing again, and we just had sex again.

- DIRECT EX. BY MRS. HERRING-LASH

100

1 Q Were you sitting or standing, or what happened?

2 A I think I was laying down.

3 Q And you had already gotten dressed?

4 A Yes, ma'am.

5 Q What happened when you got undressed?

6 A What happened? We were just near his bed, and
7 we just started kissing and things got out of hand, I
8 guess.

9 Q Was -- what are you talking about when you say
10 sex?

11 A Intercourse.

12 Q Did anything else happen?

13 A Yes.

14 Q What was that?

15 A I gave him oral sex.

16 Q Where was that?

17 A Where on him?

18 Q No, where were you, and where on him?

19 A I was sitting on his bed, and he was standing in
20 front of me.

21 Q How was he standing in front of you?

22 A Close.

23 Q And what happened?

24 A When we were kissing, he just unzipped his
25 pants.

- DIRECT EX. BY MRS. HERRING-LASH

101

- 1 Q What happened when he unzipped his pants?
- 2 A I gave him oral sex.
- 3 Q How did you know to do that?
- 4 A I just thought that is what he wanted.
- 5 Q And what happened after that?
- 6 A Then we had intercourse and then we left.
- 7 Q Did he ask you for oral sex?
- 8 A No.
- 9 Q Did he -- but did he unzip his pants?
- 10 A Yes.
- 11 Q What happened when he unzipped his pants?
- 12 A I just kind of looked at him and knew that's
- 13 what he wanted.
- 14 Q And what do you mean by gave him oral sex?
- 15 A Put my mouth on his privates.
- 16 Q Did you put on your same clothes?
- 17 A No.
- 18 Q You didn't?
- 19 A Huh-um.
- 20 Q What did you put on?
- 21 A I put a tank top and shorts on.
- 22 Q Do you know what you had had on that day when
- 23 you went there?
- 24 A Yes.
- 25 Q What was it?

- DIRECT EX. BY MRS. HERRING-LASH

102

1 A A skirt and a teal colored shirt.

2 Q A teal colored shirt?

3 A Yes.

4 Q I'm going to show you what has been
5 previously marked as State's Exhibit Number 30.

6 MRS. HERRING-LASH: May I approach the witness,
7 Your Honor?

8 THE COURT: Yes.

9 BY MRS. HERRING-LASH:

10 Q Do you recognize that shirt?

11 A Yes, ma'am.

12 Q What is that?

13 A That's the shirt I was wearing that day.

14 Q Okay. Try to talk as close to the microphone as
15 you can.

16 A Okay.

17 Q That is the shirt you were wearing?

18 A Yes, ma'am.

19 Q Where was this picture taken?

20 A At the gym.

21 Q At the school?

22 A Yes.

23 Q What did y'all talk about after this?

24 A After?

25 Q After, like when you were getting ready to leave

- DIRECT EX. BY MRS. HERRING-LASH

103

1 and going in the car, what did you talk about?

2 A Just stuff. It was just like school stuff and
3 just what had happened, I guess.

4 Q How were you feeling?

5 A I was surprised that we were able to do this and
6 like not get caught, I guess.

7 Q Were you happy or sad?

8 A I was happy.

9 Q And what made you happy?

10 A Because I liked him, and I was getting the
11 attention back.

12 THE COURT REPORTER: I'm sorry. I couldn't hear
13 her.

14 THE WITNESS: I liked that I was getting the
15 attention back.

16 BY MRS. HERRING-LASH:

17 Q And what kind of attention were you getting?

18 A His attention, and I just felt like out of all
19 of the girls in the school that he picked me, I guess.

20 Q And that made you happy?

21 A (Witness nods head.)

22 Q Now, was there another time that you saw him
23 away from school?

24 A Yes, ma'am.

25 Q Do you know when that was?

- DIRECT EX. BY MRS. HERRING-LASH

104

- 1 A I don't know the exact date.
- 2 Q Do you know where it was?
- 3 A In the parking lot in the I'On.
- 4 Q In the same parking lot that we've already seen
- 5 pictures of?
- 6 A Yes, ma'am.
- 7 Q How did you get there?
- 8 A I think it was after a game, and I had just told
- 9 my dad that I was meeting friends outside.
- 10 Q You had what?
- 11 A I had told my dad that I was meeting friends
- 12 outside.
- 13 Q What friend did you tell him you were meeting?
- 14 A Melissa.
- 15 Q Who?
- 16 A Melissa.
- 17 Q Who is Melissa?
- 18 A Him.
- 19 Q Is that the name you made up?
- 20 A Yes.
- 21 Q And you said it was after a game. Do you have
- 22 any idea which game it was?
- 23 A It was after a home game. And me and my friend
- 24 Kimberly, our parents were late to pick us up, so we
- 25 stayed in the coach's office with him after the game.

- DIRECT EX. BY MRS. HERRING-LASH

105

1 Q And did you make plans then?

2 A We joked around, because earlier that day at
3 school I think he said that he couldn't come after school.
4 And I had joked around and said -- and my friend Kimberly
5 was in the room so we couldn't say that. So I said like,
6 oh, I want my friend Melissa to come over but she can't,
7 and my friend Kimberly was like what are y'all talking
8 about.

9 Q What did he say?

10 A He was like -- I don't remember the exact words,
11 but it was kind of left with a note that we couldn't do
12 anything that night.

13 Q How did you find out that he was able to come
14 over?

15 A He either text messaged me or called me and let
16 me know.

17 Q And what did he let you know?

18 A That he would -- I would meet him in the parking
19 lot.

20 Q And did you meet him in the parking lot?

21 A Yes.

22 Q And what happened when you got to the parking
23 lot?

24 A It was right after I got home because I was
25 still in my cheerleading uniform, and I just met him in

- DIRECT EX. BY MRS. HERRING-LASH

106

1 the back seat of his car.

2 Q When you got to the parking lot, where was he in
3 the car?

4 A In the back seat, in the middle of the back
5 seat.

6 MRS. HERRING-LASH: May I approach?

7 THE COURT: Yes.

8 BY MRS. HERRING-LASH:

9 Q I'm going to show you what has been previously
10 marked as Defendant's Exhibit Number 4. What is that a
11 picture of, _____

12 A The front seat of his car.

13 Q And is that the car that is bluish purple that
14 you were talking about before?

15 A Yes, ma'am.

16 Q I'm going to show you Defendant's Exhibit
17 Number 6, and what is that?

18 A The back seat of his car.

19 Q Do you remember if his car looked exactly like
20 that that night or not?

21 A I want to say the two front seats were pushed up
22 a little bit, but I can't -- I'm not positive.

23 Q Can you use your pointer to show where he was
24 sitting when you got there?

25 A Right here (indicating.)

- DIRECT EX. BY MRS. HERRING-LASH

107

1 Q And what did you do?

2 A I sat on top of him.

3 Q What do you mean sat on top of him?

4 A I straddled him, facing him.

5 Q You were facing him?

6 A Yes, ma'am.

7 Q And which way was he facing when you look at
8 that picture?

9 A He was facing towards the front seat.

10 Q And you were facing which way?

11 A Towards the back.

12 Q And what happened when you straddled him?

13 A We had intercourse.

14 Q How did you do that sitting down?

15 A I was just on top of him and I guess...

16 Q Did you take your clothes off or leave them on?

17 A I took off my bloomers under my cheerleading
18 skirt.

19 Q What are bloomers?

20 A They are like underwear, like when you're
21 cheerleading so in case your skirt flies up.

22 Q So you took those off?

23 A Yes, ma'am.

24 Q And what about his clothes?

25 A He kept them on.

- DIRECT EX. BY MRS. HERRING-LASH

108

1 Q When you say had sex, what do you mean?

2 A Intercourse.

3 Q What did you talk about?

4 A Afterwards?

5 Q Uh-huh.

6 A It was -- we didn't really have time to talk
7 because he had to go back to a game, and I guess to meet
8 with Amanda because Amanda had been calling.

9 Q Amanda had been what?

10 A Calling while we were together.

11 Q How do you know that?

12 A Because he picked up his phone, but he didn't
13 answer.

14 Q Do you know what her number was?

15 A All I know it ends in -- I want to say 2231, but
16 I'm not positive.

17 Q How would you know that?

18 A Because she was my cheerleading coach.

19 Q Did she give you her number?

20 A Yes, ma'am.

21 Q And you saw -- could you tell that was her
22 calling him?

23 A Yes, ma'am.

24 Q And how could you tell that?

25 A Because it had Amanda's cell blinking.

- DIRECT EX. BY MRS. HERRING-LASH

109

- 1 Q It had her name?
- 2 A Yes.
- 3 Q You said he didn't have time to stay?
- 4 A Yeah.
- 5 Q When I asked you what you talked about, you said
- 6 afterwards. Did you talk about anything during?
- 7 A Huh-um.
- 8 Q What did you do when you got home?
- 9 A I just went upstairs.
- 10 Q Did you talk to him anymore that night?
- 11 A I don't remember it. If it was, it was a short
- 12 conversation.
- 13 Q Did you see him again at school?
- 14 A Yes.
- 15 Q Did you decide to meet him another time?
- 16 A After that, it was during -- we didn't talk
- 17 about meetings at school. But during Thanksgiving break,
- 18 we planned to -- I'd meet him in the parking lot.
- 19 Q When during Thanksgiving break; do you remember?
- 20 A On his birthday.
- 21 Q When is his birthday?
- 22 A November 28th.
- 23 Q November 28th?
- 24 A Yes.
- 25 Q Can you look on this calendar and see what day

- DIRECT EX. BY MRS. HERRING-LASH

110

1 of the week that was? Can you see it? Do I need to bring
2 it to you?

3 A Is it a Friday? I think it is a Friday.

4 Q November 28th?

5 A Yes.

6 Q So was that the Friday after Thanksgiving?

7 A Yes, I think so.

8 Q So did you have school that day?

9 A No, ma'am.

10 Q And you said you decided to meet where?

11 A In the I'On parking lot.

12 Q In the I'On parking lot?

13 A Uh-huh.

14 Q What time of day did you meet him that day?

15 A It was earlier in the morning, because I told my
16 parents I went to go running.

17 Q When you left, where were your parents?

18 A They were -- they were awake, but they were in
19 their bed.

20 Q How did you know he was going to be there?

21 A He told me.

22 Q How did he tell you?

23 A On the phone.

24 Q Can you look behind you at the chart? Do you
25 see where it says November 28?

- DIRECT EX. BY MRS. HERRING-LASH

111

1 A Yes, ma'am.

2 Q What time did he call you that morning?

3 A 8:46.

4 Q What?

5 A 8:46.

6 Q And how long did you talk?

7 A Four minutes.

8 Q And did he call you again?

9 A Yes, by the phone records, but I don't remember.

10 Q What?

11 A By the phone records, but I wouldn't remember.

12 Q If you didn't have those records to look at, you
13 wouldn't remember on your own?

14 A Yes.

15 Q Is that what you're saying?

16 A Yes, ma'am.

17 Q What happened during that meeting?

18 A He was in his mom's car.

19 Q He was in his mom's car?

20 A Yes, ma'am.

21 Q How do you know that?

22 A Because he told me. When I walked up, I was --

23 we were on the phone, and I said I didn't see your car.

24 And he was like, oh, I'm in my mom's car.

25 Q What did her car look like?

- DIRECT EX. BY MRS. HERRING-LASH

112

1 A I don't remember the model, but I remember it
2 either being like a silver or champagne color. I remember
3 a sticker on the window on the back windows.

4 Q On the back, you mean the very back window?

5 A No, like on the rear sides.

6 Q Do you remember what the sticker said, or do you
7 just remember a sticker?

8 A I thought it would have something to do with
9 racing, but that's...

10 Q You're not sure?

11 A Yes, ma'am.

12 Q Now, what happened during -- you said he was in
13 his mom's car?

14 A Yes, ma'am.

15 Q And what happened?

16 A The back seats were folded down, and we had
17 intercourse.

18 Q And how long were you there?

19 A Only like ten, 15 minutes.

20 Q What happened that you left?

21 A My parents were calling me and telling me that
22 they wanted to go pick out a Christmas tree and go out to
23 eat.

24 Q Now, let's go back to you said the back seats
25 were folded down.

- DIRECT EX. BY MRS. HERRING-LASH

113

1 A Uh-huh.

2 Q How do you mean? Explain that.

3 A They were like folded like to the front, so they
4 were leaning up against the two like front seats.

5 Q Leaning up against the two front seats?

6 A Uh-huh.

7 Q You mean like this way or folded flat?

8 A In the front of the car, there would be two
9 seats and they were folded that way (indicating), but they
10 were like flat, but it wasn't totally flat.

11 Q It was what?

12 A It wasn't totally flat.

13 Q Like when you lean your seat back?

14 A No, like they were folded like frontwards.

15 Q And when you said you had intercourse, how did
16 you do that?

17 A I was leaning up against those seats, and he was
18 on top of me.

19 Q You were leaning up against the seats?

20 A Yes.

21 Q What did you have on?

22 A A red sweatshirt and black sweatpants.

23 Q Did you take your clothes off or leave them on?

24 A I took my pants -- my sweatpants off, but I left
25 my sweatshirt on.

- DIRECT EX. BY MRS. HERRING-LASH

114

- 1 Q Did you take them all of the way off?
- 2 A Uh-huh.
- 3 Q What about him?
- 4 A I guess -- I don't remember, but I guess he just
- 5 took his pants off.
- 6 Q You don't remember?
- 7 A No, ma'am.
- 8 Q Now, were there people around?
- 9 A No. There would be cars passing like on the
- 10 road in front, but there was never any...
- 11 Q We saw pictures of that parking lot. Were you
- 12 parked at the same place or a different place?
- 13 A I think at the same place.
- 14 Q And you said you were only there how long?
- 15 A Ten, 15 minutes.
- 16 Q And you left why?
- 17 A Because my parents kept on calling me and
- 18 wanting me to come home and pick out a Christmas tree with
- 19 them.
- 20 Q And did you go?
- 21 A Uh-huh.
- 22 Q Did you talk to him at all later that day?
- 23 A I don't remember if I did.
- 24 Q Now, was there a time that you saw him again
- 25 away from school?

- DIRECT EX. BY MRS. HERRING-LASH

115

1 A Yes.

2 Q And do you know when that was?

3 A December 6th.

4 Q December 6th?

5 A Yes.

6 Q Do you know what day of the week December 6th

7 was?

8 A Saturday.

9 Q And tell us about what happened on

10 December 6th.

11 A He picked me up early in the morning, and we

12 drove to his apartment.

13 Q What do you mean by early in the morning?

14 A Like 8:00, 8:00ish, maybe.

15 Q And how did you know he was coming to pick you

16 up?

17 A He called me and told me.

18 Q Can you look behind you at December 6th?

19 A Uh-huh.

20 Q What was the first phone call that you got from

21 him that day?

22 A 7:42.

23 Q And what was the next one?

24 A 7:51.

25 Q And then when was the next time that there was a

- DIRECT EX. BY MRS. HERRING-LASH

116

1 phone transaction between the two of you?

2 A At 2:55.

3 Q So you're saying he picked you up sometime after
4 that 7:51 call?

5 A Yes, ma'am.

6 Q And what happened?

7 A We drove to his apartment. But he picked me up
8 in his roommate's car because he was right outside my
9 house, and we didn't want my parents to look out and see
10 his car.

11 Q What did his roommate's car look like?

12 A It was silver. It was a Grand Prix, I think.

13 Q You think?

14 A Yes, ma'am.

15 Q And did y'all go straight to his apartment or
16 did you stop?

17 A We stopped at a gas station.

18 Q What gas station?

19 A I think it was a Hess Station. It's the one
20 when you're on the way downtown. It's across from the
21 Hardee's.

22 Q And what did you stop there for?

23 A Milk.

24 Q Milk?

25 A Uh-huh.

- DIRECT EX. BY MRS. HERRING-LASH

117

1 Q And what happened when you got to his apartment?

2 A We sat on the couch and had sex.

3 Q When you just sat on the couch, did you do
4 anything else?

5 A When we got there, he sat down, and I sat on top
6 of him.

7 Q How were you sitting on top of him?

8 A I was straddling him.

9 Q Like you explained before?

10 A Yes.

11 Q How did you know to do that?

12 A To straddle him?

13 Q Uh-huh.

14 A I don't know.

15 Q What did y'all talk about when you did that?

16 A Like during? We didn't really talk during it,
17 but like...

18 Q What?

19 A We didn't talk during it.

20 Q You said you had -- well, what happened?

21 A We had sex. And then after a while, then we
22 went upstairs and had sex in his room.

23 Q When you got up to his room, tell us about that.
24 Where in the room?

25 A On his bed.

- DIRECT EX. BY MRS. HERRING-LASH

118

1 Q How on the bed?

2 A I was laying down, and it would switch from when
3 I was on top, then I would be on the bottom.

4 Q And do you remember what you had on that day?

5 A A red sweatshirt and jeans.

6 Q What about him?

7 A I want to say jeans.

8 Q Say what?

9 A I want to say jeans, but I don't remember.

10 Q You don't remember?

11 A Yeah.

12 Q Do you remember if you took your clothes off or
13 left some of them on?

14 A I took them all off.

15 Q Had you taken them all off ever before?

16 A Huh-um.

17 Q What?

18 A No, ma'am.

19 Q What about him?

20 A I want to say he took them all off, but I'm not
21 sure.

22 Q What were you thinking about your relationship
23 now?

24 A I thought it was more serious. And I had never
25 felt that way about someone before so.

- DIRECT EX. BY MRS. HERRING-LASH

119

1 Q Did you tell him that?
2 A I think. I wasn't really...
3 Q What?
4 A I didn't think it was my place to just spill all
5 my feelings out for him.
6 Q What do you mean by that?
7 A I was younger, and he had a girlfriend. And I
8 didn't know if I was just like there or -- I don't know.
9 Q Did you care if you were just there?
10 A Yes, ma'am.
11 Q What?
12 A Yes, ma'am.
13 Q Explain that.
14 A At that time, like, I thought -- I really
15 thought he cared about me. And it was just a normal
16 relationship and everything was okay and that he was
17 just -- I just thought that he was with Amanda because he
18 couldn't break up with her.
19 Q Did y'all ever talk about that?
20 A It came up a few times, but we didn't talk about
21 it a lot.
22 Q When it came up, what did he say?
23 A He would always be like don't -- he would be
24 like I don't want to be with her, and I thought he meant
25 it.

- DIRECT EX. BY MRS. HERRING-LASH

120

1 Q Now, after -- well, that time, how did you get
2 back home?

3 A He drove me. We had cheerleading practice in
4 the middle -- I guess 12:00 or 1:00, and he drove me to
5 the gym and then I had cheerleading practice.

6 Q How do you remember that it was that day?

7 A Because we had Tropical Storms to teach which
8 were like younger cheerleaders and that was the only day
9 that we were teaching them.

10 Q Is that how you remember that it was
11 December 6th?

12 A Yes, ma'am.

13 MRS. HERRING-LASH: May I approach the witness,
14 Your Honor?

15 THE COURT: Yes.

16 BY MRS. HERRING-LASH:

17 Q I'm going to change this to December. Can you
18 read what is written for December 6th there?

19 A Yes, ma'am.

20 Q What does it say?

21 A Tropical Storms practice.

22 Q Is that how you remember this date?

23 A Yes, ma'am.

24 Q You said this was your sister's calendar. Was
25 she a cheerleader also?

- DIRECT EX. BY MRS. HERRING-LASH

121

1 A Yes, ma'am.

2 Q Now, Tropical Storms is your younger
3 cheerleaders?

4 A Younger cheerleaders.

5 Q So what did you do when you got to the school?

6 A Well, I was at the gym, and we just practiced
7 with them for a while and talked and did cheers.

8 Q Did you have any friends there to talk to?

9 A Yes, ma'am.

10 Q Who was that?

11 A My friend Brittany.

12 Q And did she say anything in particular to you
13 about how you looked?

14 A Yeah. We were in the middle of teaching a
15 cheer, and she jerked me aside and said that I needed to
16 go look at my neck in the mirror.

17 Q What was on your neck?

18 A Hickeys.

19 Q How did you explain that?

20 A I just said I didn't know what they were and
21 that they must have been a rash or something.

22 Q How long did you stay there?

23 A Until about -- less than an hour because I was
24 going -- my friend John and his brother was picking me up
25 to go baby-sit for his mom.

- DIRECT EX. BY MRS. HERRING-LASH

122

1 Q Now, did you know what was on your neck?

2 A Not until Brittany -- well, I knew what it was
3 when Brittany showed me in the mirror.

4 Q But you just told her it was a rash?

5 A Yeah.

6 Q And you said John picked you up?

7 A Yes, ma'am, and his brother.

8 Q And where did they take you?

9 A To John's house.

10 Q And what did you do there?

11 A I baby-sat for his little sister.

12 Q And did John notice your neck also?

13 A Yeah, he just asked what was on them.

14 Q What did you tell him?

15 A I told him that I had seen a friend at Town
16 Center and that he had given them to me.

17 Q Had you seen a friend there?

18 A No.

19 Q Had you been to Town Center?

20 A No.

21 Q Why didn't you tell John?

22 A Because I knew if I told him they were hickeys,
23 he would want to know. And if I told him, him, I knew he
24 would -- I didn't want people to know about our
25 relationship.

- DIRECT EX. BY MRS. HERRING-LASH

123

1 Q Now, this is December 6th. Had there ever
2 been a time before December 6th when you had told
3 someone that you-all had had sex?

4 A Yes.

5 Q And when was that?

6 A Near the end of November.

7 Q Near the end of November?

8 A Uh-huh.

9 Q Do you remember what day it was?

10 A Huh-um.

11 Q Tell me about what happened that day.

12 A I was going through my sister's room, and I
13 found a shirt of mine that I wanted to wear. So I took
14 the shirt back to my room, and I unfolded it and there was
15 a note inside and it was about -- it was between Caroline
16 O and my sister. And Caroline was explaining to my
17 sister about what Coach Vail had said all of these things
18 to her.

19 Q What did you do?

20 A I started crying.

21 Q And then what did you do?

22 A I called my sister and Caroline and asked them
23 what this note was about.

24 Q And what happened then?

25 A I broke down and told them that we had had sex.

- DIRECT EX. BY MRS. HERRING-LASH

124

1 Q And why did you do that?

2 A Because I was upset and I thought he was just
3 playing around with me.

4 Q And what happened when you told them that
5 you-all had had sex?

6 A They got really upset, and I guess then they
7 called him.

8 Q Did you know they were going to call him?

9 A Yes.

10 Q Did you want them to call him?

11 A No.

12 Q Why not, if you were upset with him?

13 A Because he would just know that I told people.

14 Q And why didn't you want him to know that?

15 A I thought he would get really mad at me.

16 Q Did you want him to be mad at you?

17 A No.

18 Q Were you mad at him?

19 A I don't -- I guess I was. I was just more hurt,
20 I guess.

21 Q And so did you talk with them about not talking
22 to him?

23 A Yeah.

24 Q Do you know if they did?

25 A Talk to him? Yes.

- DIRECT EX. BY MRS. HERRING-LASH

125

1 Q How did you know that?

2 A Because they told me, and he told me.

3 Q What did he say?

4 A He was wondering why they had even got the idea
5 that we had had sex.

6 Q And what did you tell them?

7 A I told him that they saw me and him in his car.

8 Q How did he feel about that?

9 A He got upset.

10 Q How upset?

11 A He got really mad and I guess kind of knew that
12 I had kind of slipped, but I didn't tell him that I had
13 ever found the note because then he would know that I was
14 upset.

15 Q Did you talk to Caroline and Kelsey about it
16 that day?

17 A Yes.

18 Q Now, did you ever take back what you had said?

19 A Yes. I told them that I had just made it up
20 because I was really upset.

21 Q Why did you tell them that?

22 A Because I had realized how mad Coach Vail had
23 gotten at me, and I didn't want that relationship to end.
24 And so I told them to just tell him that they had seen me
25 in his car. And later I was just like I made it up

- DIRECT EX. BY MRS. HERRING-LASH

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1 because I was mad. And I went into my sister's room, and
2 I was like I'm really just making that up.

3 Q Were you really just making it up?

4 A No.

5 Q Are you sure you're not just making it up now?

6 A Yes.

7 Q Now, did there come a time that you did tell
8 somebody, your parents something?

9 A Yes.

10 Q How did that happen?

11 A When my parents -- I was in my parent's room
12 asking for a receipt, and they had my phone records lying
13 on their bed with Coach Vail's number highlighted.

14 Q You saw that?

15 A Yes, ma'am. And I started freaking out, and I
16 was like what are these. And they were like we need to
17 talk. And so they sat me down and said is there anything
18 going on between you and Coach Vail. And I was like, no,
19 there is nothing. And they had told me that they had seen
20 us in his car kissing, and then I was like, oh, then, we
21 just kissed that's all.

22 And later they told me -- like a couple days ago
23 that they had just made that up so I would tell them
24 stuff.

25 Q How long, if you can guess, did this

- DIRECT EX. BY MRS. HERRING-LASH

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1 conversation go on with them confronting you with this
2 stuff?

3 A All day.

4 Q What all did they confront you with?

5 A They had just said -- I was like there was
6 nothing going on. And they were like there couldn't be
7 nothing going on with all of these phone calls and stuff.

8 Q Did they also have cards?

9 A Yes. There was -- Mamie was cleaning up my
10 room, and she found cards in there.

11 Q I'm going to show you what has been marked as
12 State's Exhibit Number 27. Is this one of the cards?

13 A Yes, ma'am.

14 Q What does it say?

15 A You're special in a millions ways, so I won't
16 try to list them. And then I'll just say this about your
17 kisses.

18 Q And what does it say on the inside?

19 A It says: Can't resist 'em, even when those
20 kisses are in a half built house.

21 Q What are you talking about when you say in a
22 half built house?

23 A Those half built houses that we were together
24 in.

25 Q Did you buy this for somebody?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A Yes.

2 Q For who?

3 A Coach Vail.

4 Q Did you give it to him?

5 A No.

6 Q Why not?

7 A It was for Christmas, and we didn't really get
8 to spend that much time because my parents kind of -- I
9 guess they caught on, and they were just like we need to
10 know who you're with. And I had talked to him at school,
11 and I was like can I just give them to you at school. And
12 he said that he wanted me to give them to him when we were
13 alone.

14 Q I want to show you what's also marked as State's
15 Exhibit Number 28. Do you recognize this?

16 A Yes.

17 Q What is that?

18 A The other card that I gave him.

19 Q And is this what you wrote in there?

20 A Yes.

21 Q What does that say?

22 A Hey, I had to get you both of these cards
23 because I really liked them both. But, anyways, I can't
24 believe it's already Christmas. Time has flown by so
25 fast. That's kind of good and bad, but I know you're

- DIRECT EX. BY MRS. HERRING-LASH

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1 going to have a great Christmas with your mom and brother.
2 I'm going to miss you. But hopefully when you get back,
3 we can have some fun with some stuff I got you.

4 Q And then what does this page say?

5 A 'Tis the season. Tons of reasons. You're the
6 reason I'm in love. Merry Christmas.

7 Q What's at the bottom?

8 A May 16, 2007.

9 Q And what is that?

10 A The day that we could probably be together.

11 Q You said your parents had started catching on.
12 Had they come down on you as far as where you could go?

13 A Ma'am?

14 Q Had your parents stopped letting you go out?

15 A Yes. They wanted to know who -- they wanted to
16 know why they hadn't met this Melissa.

17 Q That day, you're talking about when they
18 confronted you --

19 A Oh-huh.

20 Q -- they showed you those cards?

21 A No.

22 Q When did they show you those?

23 A I actually had them in my room, and they didn't
24 read the cards. They just knew that I had two cards.

25 Q And Mamie found them?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A Yes.

2 Q When they were confronting you, were y'all
3 yelling or crying or laughing, or what was going on?

4 A They were yelling and I was crying, and I just
5 wasn't telling them anything. And I guess they knew by
6 the phone records that something had been going on.

7 Q So you ended up saying what?

8 A They had said that they had seen us kissing. So
9 I was like, fine, we've kissed, but that's all. My
10 parents asked if we had sex, and I was like no.

11 Q Why did you lie to them?

12 A Because I didn't want him to get in trouble.

13 Q Okay. Now, what happened the next day?

14 A They wouldn't let me go -- my parents had talked
15 to Mr. Mullins and given him the phone records.

16 Q Who is Mr. Mullins?

17 A The principal, my old principal.

18 Q What did they do?

19 A They had given him the phone records, and I'm
20 guessing Mr. Mullins informed Coach Vail that there was --
21 that he had been involved with students, and they wouldn't
22 let me go to school until he was off campus.

23 Q Did you get to school that day?

24 A Yes, ma'am.

25 Q What happened when you got to school?

- DIRECT EX. BY MRS. HERRING-LASH

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- 1 A I walked into my English class, and I started
2 crying in the back of the classroom.
- 3 Q Why were you crying?
- 4 A Because I was upset that he was gone.
- 5 Q That he was gone?
- 6 A Uh-huh.
- 7 Q Did you know why he was gone?
- 8 A Yes.
- 9 Q How did you know?
- 10 A Because my parents had told Mr. Mullins.
- 11 Q Did you talk to anybody at school?
- 12 A Yes.
- 13 Q Who was that?
- 14 A Mrs. Murray.
- 15 Q Who?
- 16 A Mrs. Murray.
- 17 Q And why did you talk to her?
- 18 A Because we were really close, and, throughout
19 the year, she had always been telling me that I needed to
20 get over him and so...
- 21 Q Did you end up telling her about this stuff?
- 22 A Yes.
- 23 Q Did you plan on telling her?
- 24 A No.
- 25 Q Why did you tell her?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A She explained to me that he had been --

2 Q You won't be able to say what she said. But,
3 for yourself, why did you tell her?

4 A She had told me stuff that made me really upset,
5 and I just broke down. And I told her and she swore not
6 to tell anybody that we had had sex.

7 Q Did she tell you stuff about you or about her or
8 about him?

9 A She had told me --

10 Q Don't say what, but what about?

11 A She explained past stories that have -- similar
12 stories that had happened to her and she said -- she
13 explained that keeping secrets as big as those were not
14 going to be healthy for me in the long run.

15 Q So you told her?

16 A Yes.

17 Q What did she do when you told her?

18 A She started crying, and she didn't -- she put
19 her hands in her face for a while.

20 Q What happened after that?

21 A She explained to me that I needed to -- she
22 wasn't going to tell anybody, but she told me that I
23 should tell somebody.

24 Q And did you?

25 A Yes.

- DIRECT EX. BY MRS. HERRING-LASH

133

1 Q Who did you tell?

2 A Mr. Mullins.

3 Q How did you get to Mr. Mullins' office?

4 A She walked me up there and sat with me.

5 Q And did you tell him?

6 A Yes.

7 Q And what did he do once you told him?

8 A He dialed the phone to call my parents, and he

9 gave me the phone. But I started crying, and I couldn't

10 tell them so he told them.

11 Q And what did they do?

12 A They just hung up the phone, and my parents came

13 and got me.

14 Q And where did they take you?

15 A To my house.

16 Q At some point, did they take you to the police?

17 A Yes.

18 Q How did you feel about that?

19 A I was scared.

20 Q Hum?

21 A I was really scared.

22 Q Did you have to talk to a police officer?

23 A Yes.

24 Q And did you tell that police officer everything

25 that you have told us here today?

- DIRECT EX. BY MRS. HERRING-LASH

134

1 A No.

2 Q Why not?

3 A Because after I had -- I only told him stuff
4 that people already knew, and he explained to me like he
5 is only being charged with this because he didn't do all
6 of this other stuff. We had done all of that other stuff,
7 and I didn't want to get him in trouble.

8 Q You didn't want to get Coach Vail in trouble?

9 A Yes.

10 Q Did you tell the police officer about the oral
11 stuff?

12 A No.

13 Q Did you tell him it happened more than one time?

14 A No.

15 Q Did you see a doctor also?

16 A Yes.

17 Q And did you tell her about all of the stuff?

18 A No.

19 Q Why not, _____

20 A I didn't want to get him in trouble.

21 Q Were you afraid of getting in trouble too?

22 A I didn't -- I was already in trouble, and I
23 didn't care. But I just didn't want him to go away.

24 Q Now, did you -- this was -- when you told the
25 principal, do you know if this was December or January?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A When I told the principal, it was in January.

2 Q Did you see or talk to Coach Vail during the
3 time he was gone at Christmas?

4 A He called me I think once on Christmas Eve.

5 Q We will look at the phone records of that time.
6 After December 6th, did some of the -- did the calls
7 kind of slow down?

8 A Yes.

9 Q Do you know when he left to go away?

10 A I don't remember.

11 Q You said he talked to you on Christmas Eve?

12 A Yes.

13 Q That's on the 24th?

14 A Yes, ma'am.

15 Q What about on the 23rd?

16 A There is one phone call from him to me.

17 Q Can you read that phone -- what time that phone
18 call is from him to you?

19 A 11:28 a.m.

20 Q And how long was that phone call?

21 A Seventy-five minutes.

22 Q How long?

23 A Seventy-five minutes.

24 Q And on December the 24th, what time is that
25 phone call?

- DIRECT EX. BY MRS. HERRING-LASH

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- 1 A 11:59.
- 2 Q A.m. or p.m.?
- 3 A P.m.
- 4 Q And how long was that?
- 5 A Sixty-one minutes.
- 6 Q What were y'all talking about during all of
- 7 those times?
- 8 A I guess we hadn't talked in a while and we were
- 9 just talking about -- I don't really remember. He was on
- 10 his way to Virginia.
- 11 Q He was on his way to Virginia?
- 12 A Yes.
- 13 Q Did you talk about his relationship with Amanda
- 14 at all?
- 15 A A little bit.
- 16 Q What did you talk about? What did he say about
- 17 that?
- 18 A That he didn't want to be with her.
- 19 Q Did you find out at school that he had wanted to
- 20 be with her in some way?
- 21 A I didn't find out at school.
- 22 Q When did you find out?
- 23 A After everything blew up.
- 24 Q After everything blew up?
- 25 A Yes, ma'am.

- DIRECT EX. BY MRS. HERRING-LASH

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1 Q How did you find out about he and Amanda after
2 everything blew up?

3 A Mr. Mullins.

4 Q Mr. Mullins?

5 A Yes.

6 Q How did he tell you? Was it in person or on the
7 phone?

8 A On the phone.

9 Q And he told you about they had a relationship?

10 A Yes.

11 Q Did you believe him?

12 A Yes, I didn't want to but...

13 Q Now, before Christmas had you heard rumors that
14 there was an engagement?

15 A Yes.

16 Q And what did you think about that?

17 A I was hurt. And I felt like he was telling me
18 one thing, and he was just doing another thing.

19 Q Is hearing those rumors about the engagement
20 what made you tell somebody?

21 A No.

22 Q Had you planned on telling anybody?

23 A No.

24 Q Even -- or had he gotten married, , would
25 you have told then?

- DIRECT EX. BY MRS. HERRING-LASH

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1 A No.

2 Q And why did you tell?

3 A Mrs. Murray explained and told me stuff that
4 just made me want to break down and cry because I realized
5 I wasn't the only one.

6 Q Why did you tell your parents?

7 A Well, Mrs. Murray advised me to tell, and then I
8 told Mr. Mullins. And Mr. Mullins told me that it had to
9 come out.

10 Q But I mean the night before, why did you tell
11 them?

12 A What night before? Oh, that we had kissed?

13 Q Yeah.

14 A They had told me that they had seen us kissing.
15 And then later, like a week ago, they told me that it was
16 just a lie to make me tell stuff.

17 Q If your parents had not confronted you, what
18 would you have done?

19 A I would not have told them a thing.

20 THE COURT REPORTER: I'm sorry.

21 THE WITNESS: I wouldn't have told them a thing.

22 MRS. HERRING-LASH: Court's indulgence for just
23 a moment.

24 THE COURT: Counsel approach.

25

- DIRECT EX. BY MRS. HERRING-LASH

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1 (WHEREUPON, a bench conference was held in the
2 presence of the jury but out of the hearing of the jury.)
3 BY MRS. HERRING-LASH:
4 Q To go back to the night that he was over at that
5 house -- I'm sorry -- I think you had said that he
6 text messaged you to get her out of here?
7 A Uh-huh.
8 Q And what happened after that?
9 A I called him, and I was like what was that
10 about. And then I went downstairs. And he had told me on
11 the phone that -- he was like I think your sister saw me.
12 I went downstairs to my sister, and I was like did you see
13 anything. And she was like, well, I thought I saw a
14 shadow, but I didn't see anybody. And she was like why.
15 And I was like I was just wondering.
16 Q Now, did he have anything with him when he was
17 up in this house?
18 A Yes.
19 Q What was it?
20 A My Chapstick.
21 Q So you left it with him?
22 A Yes.
23 Q When you were alone with Coach Vail like at his
24 apartment and in the car and even on the phone, what did
25 you call Mr. Vail?

- DIRECT EX. BY MRS. HERRING-LASH

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- 1 A Coach Vail.
2 Q Coach Vail?
3 A Uh-huh.
4 Q Did you ever call him Mark?
5 A I think one time.
6 Q What were you doing when you called him Mark?
7 A Having sex.
8 Q Is that the only time?
9 A Yes, ma'am.
10 Q And what is your cell phone number?
11 A 343-7185.

12 MRS. HERRING-LASH: Those are all of the
13 questions I have for this witness, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, we
15 will stop at this time. Please do not discuss this case
16 in any way whatsoever during the overnight break. If you
17 will please go with the bailiff now, we will see you
18 tomorrow morning. We will start at 9:00 a.m. If you can
19 get here a few minutes before 9:00 so we can start
20 promptly with the trial. Thank you very much.

21 Just give your pads to the bailiff on the way
22 out. If you haven't done so, flip them open and write
23 your name on the first page. Thank you.

24 (WHEREUPON, the following proceedings were held
25 outside the presence of the jury.)

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1 THE COURT: Ma'am, you may step down during the
2 overnight break. Make sure you understand my
3 instructions. You may not discuss your testimony with
4 anyone. Do you understand?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Thank you.

7 MRS. HERRING-LASH: Your Honor, may my
8 investigator walk her back to her family and explain to
9 them also that she can't talk about this and that she has
10 to come back to testify in the morning.

11 THE COURT: All right. Thank you. See you in
12 the morning.

13 (WHEREUPON, court was in recess for the
14 afternoon of Monday, January 10, 2005.)

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Volume II

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

vs.)

MARK VAIL,)

DEFENDANT.)

TRANSCRIPT OF RECORD

2004-GS-10-2733

2004-GS-10-2734

2004-GS-10-8316

COPY

January 10 - 14, 2005
Charleston, South Carolina

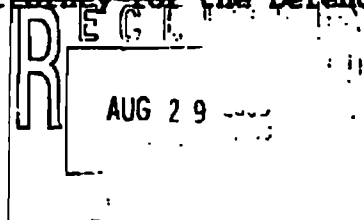
B E F O R E:

THE HONORABLE DANIEL P. PIEPER, JUDGE; and a jury.

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

DEBORAH HERRING-LASH, Assistant Solicitor
SHAW GOODRICH, Assistant Solicitor
Attorneys for the State

V. CRAIG JONES, JUNIOR, Esq.
Attorney for the Defendant



HOLLY HIOTT O'QUINN, RPR
Circuit Court Reporter

1 (WHEREUPON, the following proceedings were held
2 before the court on Tuesday, January 11, 2005, outside the
3 presence of the jury.)

4 THE COURT: Are you ready to proceed?

5 MRS. HERRING-LASH: The state is ready, Your
6 Honor.

7 MR. JONES: The defense is ready.

8 THE COURT: Bring the jury in.

9 MRS. HERRING-LASH: Your Honor, do you want me
10 to get the witness back in here?

11 THE COURT: Yes.

12 (WHEREUPON, the following proceedings were held
13 in the presence of the jury.)

14 THE COURT: Good morning, ladies and gentlemen.
15 We are ready to proceed at this time with the continuation
16 of the testimony.

17 Go ahead and return the witness to the stand.

18 (WHEREUPON, the witness, _____, resumed
19 the witness stand.)

20
21 being previously duly sworn, testified as follows:

22 MR. JONES: May it please the court?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. JONES:

CROSS-EXAMINATION BY MR. JONES

143

1 Q Good morning. Can I call you

2 A Yes, sir.

3 Q Okay. I just need to get down some of
4 the facts and some of the details on this.

5 When you spoke yesterday, you said -- when Mark
6 came to First Baptist, you said he wasn't like other
7 teachers?

8 A Yes, sir.

9 Q Now, he was young. You'd say probably a
10 good-looking guy?

11 A Yes, sir.

12 Q He's pretty fun to be around?

13 A Yes, sir.

14 Q Pretty energetic, a lot of energy. Sitting
15 here, sitting still, that's not his strong suit; is it?

16 A No, sir.

17 Q Would you say he was good for the school?

18 A Yes, sir.

19 Q The school at that time was -- he was kind of
20 some fresh blood in the school?

21 A Yes, sir.

22 Q Easy to talk to?

23 A Yes, sir.

24 Q You're kind of shy?

25 A Yes, sir.

- CROSS-EXAMINATION BY MR. JONES

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1 Q Kind of reserved?

2 A (Witness nods head.)

3 Q Now, Kelsey and Caroline, what is their
4 personality like?

5 A Kelsey is more shy than me. I would say that
6 Caroline is more outgoing and more out there than me and
7 my sister.

8 Q And they talked a good bit with Coach Vail also;
9 didn't they?

10 A Yes, sir.

11 Q And a lot of the students did?

12 A Yes, sir.

13 Q Each of the teachers had different assignments
14 throughout the school during the day?

15 A Uh-huh.

16 Q And his assignment, at least at one point, was
17 the parking lot? Does that sound right, I guess, during
18 lunch?

19 A Yeah.

20 Q At some point, he had, I guess, the hall duty?

21 A Yes, sir.

22 Q And were students always around him?

23 A Yes, sir.

24 Q And people were always trying to talk with him
25 and joke with him?

CROSS-EXAMINATION BY MR. JONES

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1 A Yes, sir.

2 Q Did that make it difficult for you to
3 communicate with him at school?

4 A Yes, sir.

5 Q And it was easier to talk on the phone?

6 A Yes, sir.

7 Q And other students got to talk about personal
8 matters with him all during school?

9 A (Witness nods head.)

10 Q And the only time you could talk was after
11 school, really, at any length?

12 A Yes, sir.

13 Q Did he talk to other students on the phone after
14 school?

15 A Yes, sir.

16 Q Anne P. _____

17 A Yes, sir.

18 Q Kelsey?

19 A Sometimes, yes, sir.

20 Q Caroline?

21 A Yes, sir.

22 Q Talked to guy students after school on the
23 phone?

24 A I would say so, yes, sir.

25 Q Lauren B. ?

1 A I'm not --
2 Q Mary W.
3 A I'm not for sure, but I know they would talk at
4 school.
5 Q Now, when you got his number -- now, you were in
6 his, I guess, a homeroom class with him your eighth grade
7 year?
8 A No, I had PE with him.
9 Q Okay. And did y'all get a syllabus from him
10 kind of outlining the class or anything, or was one put on
11 the board?
12 A I got his number in seventh grade during
13 pre-algebra class.
14 Q Okay. And how was that given out?
15 A Like given out to the students if any of the
16 students, parents had concerns about that class that the
17 parents needed to call him.
18 Q Was it on a sheet of paper that he gave out to
19 take home, or was it put on the board?
20 A It was written on the board.
21 Q Okay. So the whole class was in there.
22 Everybody was able to get it down?
23 A Yes, sir.
24 Q And when he got your number, that was a time
25 when you programmed it into his phone?

1 A Yes, sir. At first a bunch of girls put my home
2 number in during PB.

3 Q Okay. And did he call that number?

4 A One time when I had PB with him later that year,
5 he called it, and I had just got my new cell phone number.
6 And I told him that was my house number, and I changed it
7 to my cell phone.

8 Q Okay. And had they put any of their numbers in
9 it?

10 A Yes, sir.

11 Q Did he ask for any of the numbers?

12 A No, sir.

13 Q To your knowledge?

14 A No, sir.

15 Q Now, you talked about one of these times y'all
16 met. I guess there was two occasions you said y'all met
17 at the beach during the summer between your seventh and
18 eighth grade year?

19 A Yes, sir.

20 Q Now, I think you said that you -- let me see how
21 you put it, That somebody called and he told them he would
22 be there. Do you know who that was?

23 A Somebody called him?

24 Q How did that meeting -- was it a random meeting?
25 Y'all rode up to the beach. He rode up to the beach, and

1 y'all just happened to be there at the same time?

2 A No, I called him and let him know that we were
3 going to the beach.

4 Q And was he with anybody when you called him and
5 let him know at that time?

6 A He wasn't -- no, I don't think he was with
7 anybody.

8 Q But on those occasions, he was with -- on both
9 occasions was he with Anne Porcher and Tommy Hotchkiss?

10 A Just on the first time he was with Ann and Tom.

11 Q Who was he with the second time?

12 A He was by himself, but then a student named
13 Kimber later just showed up randomly, and they hung out
14 with us.

15 Q Now, just to be clear, when did you get your
16 cell phone?

17 A Near the end of seventh grade.

18 Q And that was the number that was shown on all of
19 the screen, the 343 number?

20 A Yes, sir.

21 Q The same number, never changed over?

22 A No, never changed.

23 Q Now, Coach Vail was hired your seventh grade
24 year, correct?

25 A Yes, sir.

- CROSS-EXAMINATION BY MR. JONES

149

- 1 Q Miss Mullins was hired your seventh grade year?
- 2 A Yes, sir.
- 3 Q They came on at the same time?
- 4 A Yes, sir.
- 5 Q Did y'all know at that time they were dating?
- 6 A Yes, sir.
- 7 Q They were kind of the story-book relationship?
- 8 A Yes, sir.
- 9 Q Football coach, cheerleader coach?
- 10 A (Witness nods head.)
- 11 Q Was there ever talk about them getting married?
- 12 A Yes, sir.
- 13 Q And that was pretty wide -- everybody thought
- 14 they were going to get married?
- 15 A Yes, sir.
- 16 Q And everybody speculated about what date they
- 17 were going to get married on?
- 18 A Yes, sir.
- 19 Q And that was really from the first day they got
- 20 there?
- 21 A Yes, sir.
- 22 Q And you liked Miss Mullins?
- 23 A Yes, sir.
- 24 Q And she was actually your cheerleading coach,
- 25 correct?

1 A Yes, sir, in the eighth grade.

2 Q Was she the cheerleading coach for everybody, or
3 was there a JV and a varsity cheerleading squad?

4 A During my eighth grade year, she was the
5 cheerleading coach for both teams.

6 Q Okay. So you would have had her no matter
7 what --

8 A Yes, sir.

9 Q -- at all time. And what days were your
10 practices on?

11 A I want to say Tuesdays and Thursdays, but that
12 would just be a guess.

13 Q Okay. And you knew a good bit about Mark?

14 A Yes.

15 Q Liked Hilfiger clothes?

16 A Yes, sir.

17 Q And he always wore Hilfiger clothes?

18 A Yes, sir.

19 Q And everybody knew that at the school; didn't
20 they?

21 A Yes, sir.

22 Q How about his tattoos, did everybody know about
23 those?

24 A Yes, sir.

25 Q So they had seen them at the beach?

CROSS-EXAMINATION BY MR. JONES

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1 A Yes, sir.

2 Q Seen them -- I imagine, I think he showed
3 everybody once? At one time, all of the guys on the
4 football team knew?

5 A Yes, sir.

6 Q And that was something you knew before this
7 first date that you say, the November 4th date?

8 A Yes, sir.

9 Q That was something you had already known about?

10 A Yes, sir.

11 Q Let's talk about the October 28th date. That
12 was the first time that y'all had really gotten together
13 or been together at one time, correct?

14 A Yes, sir.

15 Q Now, you said that he had called you -- indulge
16 me just one minute. I'm going to put the phone record
17 up. While that is coming up, he called you at the end of
18 the football practice?

19 A Yes, sir.

20 Q Where did they do football practice at?

21 A The James Island fields.

22 Q Do you know where that's at?

23 A It's where -- it is right across from James
24 Island High School.

25 Q And do you know what road -- what road that's

- CROSS-EXAMINATION BY MR. JONES

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1 on?

2 A I think Folly Road.

3 Q Would that be Fort Johnson?

4 A I don't know. Yeah, I think.

5 Q But it's over on James Island?

6 A Yes, sir.

7 (The projector would not focus.)

8 MR. JONES: Well, we won't worry about it.

9 BY MR. JONES:

10 Q And did you know that he lived over on James
11 Island at that time?

12 A Yes, sir.

13 Q Now, you had never been to his apartment at that
14 time?

15 A No, sir.

16 Q And he called and said that he was on his way
17 home from practice and wanted to see where you lived?

18 A Yes, sir.

19 Q Now you live in Mt. Pleasant?

20 A Yes, sir.

21 Q In I'On?

22 A Uh-huh.

23 Q That's off of Mathis Ferry Road?

24 A (Witness nods head.)

25 Q That is not really on the way?

- CROSS-EXAMINATION BY MR. JONES

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1 A Yes, sir.

2 Q Is that yes, sir, it's on the way or?

3 A Not on the way.

4 Q Thanks. That is me speaking unclear. I just
5 wanted to make sure I understood how you were answering.

6 So it really wasn't on the way, so he was
7 specifically coming over to see you?

8 A Yes, sir.

9 Q And did he say why he wanted to see where you
10 lived?

11 A He just said he wanted to see my house and see
12 where I lived.

13 Q And that was about 8:00 --

14 MR. JONES: May I approach the witness?

15 THE COURT: Yes, sir.

16 MR. JONES: It might be easier than trying to
17 figure that thing out.

18 BY MR. JONES:

19 Q Will you just show me which call you think it
20 was that he had made?

21 A I would say the 7:56 was the first one.

22 Q Okay. And do you recall what time you said he
23 got over there, about 8:40 I think you said?

24 A Yes, sir.

25 Q Did -- what was he wearing when he got to your

1 place?

2 A Stuff that he had worn to football practice,
3 purple pants and a white T-shirt.

4 Q So it didn't appear that he had changed clothes
5 or anything?

6 A No, sir.

7 Q Do you know how long it takes to get from -- you
8 have gone -- is that where y'all played football games at
9 over there?

10 A Yes, sir.

11 Q So how long does it usually take to get from
12 your house to the football field?

13 A Um, 25 minutes.

14 Q Okay. And so he called about 7:46 and got over
15 to your place about 8:40?

16 A Yes, sir.

17 Q Do you know why it took him an hour?

18 A No, sir.

19 Q He was by himself?

20 A Yes, sir.

21 Q He was in his car?

22 A Yes, sir.

23 Q Pulled up at the end of the street?

24 A Yes, sir.

25 Q Called you and said I'm at the end of the

- CROSS-EXAMINATION BY MR. JONES

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1 street, I'm just going to ride by to see your house?

2 A Yes, sir.

3 Q I'm not going to stop?

4 A Yes, sir.

5 Q You said I want to see you?

6 A Yes, sir.

7 Q He said, no, I just want to ride by your house?

8 A Yes, sir.

9 Q And you said you begged him, please, to let you

10 come out and see him?

11 A Yes, sir.

12 Q Now, this is at 8:40 at night, somewhere around

13 there?

14 A Yes, sir.

15 Q It's dark?

16 A Yes, sir.

17 Q Where were your parents at that time?

18 A They were upstairs having an argument with my

19 brother over grades.

20 Q Okay. And was there a lot of fussing and

21 yelling going on at that time?

22 A Yes, sir.

23 Q And you just went out the door or how -- you

24 didn't sneak out or anything?

25 A No, sir. I went up and told them that my friend

- CROSS-EXAMINATION BY MR. JONES

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1 Melissa from camp was outside and that I was just going to
2 see her.

3 Q And now Melissa you said was a fictional person,
4 not a true person?

5 A Yes, sir.

6 Q They didn't question that?

7 A No, sir, not at that time.

8 Q Now, at 8:40 it's dark. They weren't worried
9 about something happening to you outside?

10 A No, sir, because I told her that -- told them
11 that she was just outside, and I was just saying hey.

12 Q Okay. They weren't concerned about her walking
13 around the neighborhood?

14 A No, sir.

15 Q Now, would you say it's a safe neighborhood that
16 you live in?

17 A Yes, sir.

18 Q The houses are close?

19 A Yes, sir.

20 Q Very close, in fact?

21 A Yes.

22 Q And are the streets lit?

23 A Yes, there are some. But the ones near my house
24 some people would spray paint them that were facing their
25 house because the light would shine in their houses.

1 Q Okay. Are there people -- did people walk
2 around the neighborhood at night, jog, stuff of that sort?

3 A Yes, sir.

4 Q So it's safe. People are moving through the
5 neighborhood. So even at 8:00, 9:00, 10:00 at night,
6 there is somebody typically moving around?

7 A Yes, sir.

8 Q There is a big lake in the middle of the
9 neighborhood?

10 A Yes, sir.

11 Q So people are jogging around that, running
12 around that, the gym in the neighborhood?

13 A Yes, sir.

14 Q You have seen the Mt. Pleasant Police ride
15 through on occasions?

16 A Yes, sir.

17 Q So it's safe out there?

18 A Yes, sir.

19 Q So he pulled -- does he pick you up in front of
20 the house, or you go on down the street and meet him?

21 A Yes, sir. He was just riding around the -- it's
22 like a roundabout, not really a roundabout, but it loops
23 around. And he had gone past my house, and I told him to
24 stop. And he had stopped down the street, and I told him
25 I was coming out.

CROSS-EXAMINATION BY MR. JONES

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1 Q And he was in his car?

2 A Yes, sir.

3 Q You got into the car?

4 A Yes, sir.

5 Q Y'all went straight to the parking lot?

6 A Yes, sir.

7 (Counsel confer off the record regarding
8 exhibits.)

9 BY MR. JONES:

10 Q Now, if you look at where my pen is
11 right here.

12 A Yes, sir.

13 Q This is the entrance right here. You would be
14 looking from the road. You would be looking directly at
15 the parking lot, correct?

16 A Yes, sir.

17 Q So, originally, y'all were on this side over
18 here?

19 A Yes, sir.

20 Q What is this building right here behind it?

21 A That's someone's house.

22 Q Okay. So, originally, y'all had parked right
23 here?

24 A Yes, sir.

25 Q Now, did y'all pull in? Were you facing out; do

- CROSS-EXAMINATION BY MR. JONES

159

1 you recall?

2 A We were facing out towards that way.

3 Q So you backed in at some point?

4 A Yes, sir.

5 Q And then, at some point, y'all moved across the
6 parking lot?

7 A Yes, sir.

8 Q Is my pen pointing in the direction that y'all
9 would have moved?

10 A Yes, sir.

11 Q And is that because the parking lot runs in an
12 oval? Where y'all were sitting originally, you would be
13 able to see it from the road?

14 A Yes, sir.

15 Q And, if you went over to the right, it would be
16 more difficult to see?

17 A Yes, sir.

18 Q Is that correct?

19 A Uh-huh.

20 Q And how long were y'all there?

21 A I would say 30 minutes.

22 Q And most of that time was spent talking?

23 A Yes, sir.

24 Q And how many times did y'all kiss?

25 A Just once.

- CROSS-EXAMINATION BY MR. JONES

160

1 Q And then from there he -- at that point, y'all
2 got done, y'all had kissed, he drove you to where?

3 A I got out of the car and walked home.

4 Q At the club, or you got out of the car down the
5 street?

6 A I got out of the car in the parking lot.

7 Q In this parking lot?

8 A Yes, sir.

9 Q How far is this from your house?

10 A About a one-minute walk.

11 Q And then he left the neighborhood?

12 A Yes, sir.

13 Q Now, you said he called and had gotten lost on
14 one occasion; is that correct?

15 A Yes, sir.

16 Q Do you remember a conversation with Mark where
17 y'all talked on the phone and, at one point, you had
18 gotten mad at him, and y'all talked about the death of
19 your mother? Do you recall that conversation?

20 A Mad at?

21 Q At Mark. Do you recall a conversation talking
22 about the death of your mother with him?

23 A We could have. I don't remember.

24 Q You don't remember that? You don't remember him
25 talking about that if it was God's will and she had passed

1 away that it's better to be in God's will than to have her
2 not be in God's will?

3 A Yes, sir, we have talked about that before, but
4 I didn't remember whether it was on the phone or in
5 person.

6 Q Okay. So you don't recall that being a phone
7 conversation?

8 A No, sir.

9 Q Do you recall talking -- okay.

10 Do you recall getting mad at him on an occasion
11 about that and then hanging up and him calling you back to
12 say wait, wait, that's not what I mean?

13 A No, sir.

14 Q Okay. All right. Let's go to the -- and when
15 you came back, what time did you get back to your house
16 that night?

17 A I want to say somewhere around 9:00.

18 Q Okay. And you were home when he called you for
19 the directions and everything?

20 A Yes, sir, or either walking back.

21 Q Okay. All right. Y'all talked on October 31.
22 That was Halloween night?

23 A Yes, sir.

24 Q And then on November 1st, that was the next
25 time that you saw him?

- CROSS-EXAMINATION BY MR. JONES

162

- 1 A Yes, sir.
- 2 Q And that was a Saturday?
- 3 A Yes, sir.
- 4 Q All right. And that was -- and on that
- 5 occasion, you got a call from him?
- 6 A Yes, sir.
- 7 Q Is that correct?
- 8 A Uh-huh.
- 9 Q He was in the half built house?
- 10 A Yes, sir.
- 11 Q And what was he doing; do you know?
- 12 A He was just looking around the house.
- 13 Q Okay. Do you know where his car was at that
- 14 time?
- 15 A I'm guessing in the parking lot.
- 16 Q In this parking lot?
- 17 A Yes, sir.
- 18 Q This was at night?
- 19 A Yes, sir.
- 20 Q And it was dark out at this time?
- 21 A Yes, sir.
- 22 Q And you were baby-sitting that night?
- 23 A Yes, sir.
- 24 Q Who were you baby-sitting?
- 25 A My younger sister.

- CROSS-EXAMINATION BY MR. JONES

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1 Q Say that one more time.

2 A My younger sister.

3 Q Okay. And where was Kelsey that night?

4 A She was in my house baby-sitting with me.

5 Q Okay. And your parents, did they pay you to
6 baby-sit?

7 A No, sir, not with my little sister.

8 Q Okay?

9 A _____ would you point out, if you can recall,
10 what time it was that he called you on the November 1st
11 date. I think that starts right there. I want to say at
12 7:50.

13 Q Okay. And he said, hey, I'm in your
14 neighborhood. You said where are you?

15 A Yes, sir.

16 Q He said I'm at this -- at the half built house?

17 A Yes, sir.

18 Q Now, had you ever been to that half built house
19 before?

20 A No, sir.

21 Q Not with friends or anything?

22 A No, sir.

23 Q And did he say what he was doing?

24 A He was just looking around at the house.

25 Q Now, I'On is a nice neighborhood?

- CROSS-EXAMINATION BY MR. JONES

164

1 A Yes, sir.

2 Q He probably wasn't looking to buy a house in
3 there?

4 A No, sir.

5 Q And there are two separate houses, the house --
6 the house with the window that you looked through, that's
7 a separate house?

8 A Yes.

9 Q From the half built house, correct?

10 A Yes, sir.

11 Q Two different things?

12 A Yes, sir.

13 Q How far apart are those houses?

14 A Saturday Road is like a loop, and there's houses
15 in the middle and along the outside.

16 Q Okay.

17 A So you would just -- I would say five houses
18 away maybe.

19 Q Okay. You paid your sister to go and meet with
20 him?

21 A Yes, sir.

22 Q And you paid her to baby-sit. You didn't tell
23 her what you were going to do?

24 A I told her that some friends had stopped by and
25 I was just going to see them.

- CROSS-EXAMINATION BY MR. JONES

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- 1 Q Do you remember how much you paid her?
- 2 A \$25.
- 3 Q \$25?
- 4 A Yes, sir.
- 5 Q And she didn't ask any questions?
- 6 A She just wanted to know who I was with, and I
- 7 told her not to worry about it.
- 8 Q Okay. Went out and -- now, how did you know
- 9 where to go?
- 10 A I was walking down -- he told me he was in a
- 11 half built house. And, at that time, there was only two
- 12 houses being built. And he said it wasn't the one right
- 13 by my house. So when I was on the phone with him and I
- 14 was walking down the street and he was sitting up in the
- 15 window, he told me to stop when I had gotten at the house.
- 16 Q Okay. You went up the ramps?
- 17 A Yes, sir.
- 18 Q Went up the stairs, and you said there were no
- 19 rails on the stairs?
- 20 A No.
- 21 Q And y'all went and sat down?
- 22 A Yes, sir, he did.
- 23 Q Okay. And was there -- there was no furniture?
- 24 A No, sir.
- 25 Q Where did he sit down?

- CROSS-EXAMINATION BY MR. JONES

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1 A On a stack of wood.

2 Q Okay. And then y'all kissed?

3 A Yes, sir.

4 Q How long were y'all in that house; do you think?

5 A Maybe 20 minutes, because my sister kept on
6 calling wondering where I was.

7 Q Now, did Amanda ever call during this time?

8 A No, sir.

9 Q And then you finally had to leave because Kelsey
10 kept calling?

11 A Yes, sir.

12 Q Did you ever talk to Kelsey?

13 A We had just quick conversations like I'll be
14 home, I'm on my way over there. I was telling her I would
15 be home.

16 Q Came back to your house?

17 A Yes, sir.

18 Q And got a call back from him?

19 A Yes, sir.

20 Q And he stated he was in the unfinished house
21 next door?

22 A Yes, sir. Well I got a text message that said
23 get her inside now, and I didn't know what that meant. So
24 I called him and asked him, and he said that my sister had
25 went outside and walked -- let the dog out and that he was

- CROSS-EXAMINATION BY MR. JONES

167

1 in the house and that he thought that she might have saw
2 him.

3 Q Okay. But he said he was in the house, and this
4 is a different house --

5 A Yes.

6 Q -- at this time. And said meet me upstairs
7 across from the window?

8 A No. I think we just figured out that I was
9 upstairs and the windows were close together.

10 Q Okay. Now, there is no power or anything in
11 these houses or this house?

12 A No, sir.

13 Q And y'all just talked for a little while on the
14 phone?

15 A Yes, sir.

16 Q And you didn't see him any more that night?

17 A No, sir.

18 Q Now, y'all had a football game the night before?

19 A Yes, sir.

20 Q And was that the last football game of the
21 season?

22 A Yes, sir.

23 Q All right. November 4 was -- that was the first
24 time y'all had gotten together and had sex?

25 A Yes, sir.

- CROSS-EXAMINATION BY MR. JONES

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1 Q Correct. Now, y'all had planned this the night
2 before?

3 A Yes, sir, a couple days before.

4 Q Okay. And you hadn't planned to have sex?

5 A No, sir.

6 Q Just planned to talk?

7 A Yes, sir.

8 Q And did you know what he wanted to talk about?

9 A No, sir.

10 Q You got -- y'all planned for -- you knew you
11 were going to be able to cut that seventh period class?

12 A Yes, sir.

13 Q You were going to go a little ways off campus?

14 A Yes, sir.

15 Q He was going to come and pick you up?

16 A Yes, sir.

17 Q You got there a little bit early, and he wasn't
18 there?

19 A Yes, sir.

20 Q Did you call him, or did he call you?

21 A I want to say I called him.

22 Q Okay. And that was at 2:35 -- or 2:23. Does
23 that sound right?

24 A Yes, sir.

25 Q And then at 2:38 he called you?

- CROSS-EXAMINATION BY MR. JONES

169

- 1 A Yes, sir.
- 2 Q That's where he said I'm on the way, I'm coming?
- 3 A Yes, sir.
- 4 Q Were there any other -- at the time when he
- 5 picked you up, did he make any other calls at that time or
- 6 did y'all just talk?
- 7 A He didn't make any further calls.
- 8 Q No calls at that time?
- 9 A No, sir.
- 10 Q Y'all just talked?
- 11 A Uh-huh.
- 12 Q What did y'all talk about on the ride over?
- 13 A Just about school and stuff like that.
- 14 Q Now, did y'all -- did you watch any part of a
- 15 movie?
- 16 A No, sir.
- 17 Q Do you remember ever seeing Liar Liar in his car
- 18 at any time?
- 19 A Watch a movie in his car? No, sir.
- 20 Q Do you know if he had a DVD player in the car?
- 21 A Yes, sir.
- 22 Q And where was that at?
- 23 A I think in the front.
- 24 Q So y'all just talked and drove straight to his
- 25 apartment?

- CROSS-EXAMINATION BY MR. JONES

170

1 A Yes, sir.

2 Q No stops anywhere?

3 A Huh-um.

4 Q How long did it take?

5 A To get to his apartment? Fifteen minutes.

6 Q So you got to his apartment. Now, do you know

7 if he has a roommate?

8 A Yes, sir.

9 Q Do you know his roommate?

10 A I don't know his name.

11 Q Would you know him if you saw him?

12 A No, sir.

13 Q Okay. And he doesn't work at the school?

14 A No, sir.

15 Q You got to the apartment. Was anybody home?

16 A No, sir.

17 Q Did you know he had a roommate at that time?

18 A Yes, sir, uh-huh.

19 Q But nobody was home at that time?

20 A No, sir.

21 Q Went inside?

22 A Yes, sir.

23 Q What was the first thing you did when you went

24 in?

25 A He just kind of showed me around downstairs .

1 really quick and then we went upstairs.

2 Q And that's when you went into the kitchen,
3 walked in the living room?

4 A (Witness nods head.)

5 Q And when you come in his apartment, you come in
6 through the kitchen or the living room?

7 A When you first walk in, if you go straight
8 forward, is his living room and on the left is his
9 kitchen.

10 Q Okay. Are there any rooms downstairs other than
11 those two, the living room and the kitchen?

12 A The bathroom maybe.

13 Q Okay. You then went upstairs?

14 A Yes, sir.

15 Q Did you see his roommate's room?

16 A I didn't go inside, but we just glanced at it.

17 Q Okay. And upstairs how many rooms were there?

18 A His roommate's room, a little laundry room, a
19 bathroom and then his room.

20 Q Okay. And y'all then went into his room?

21 A Yes, sir.

22 Q And, at that time, what did y'all do when you
23 first went into his room?

24 A We laid down on his bed.

25 Q Both of you laid down?

- CROSS-EXAMINATION BY MR. JONES

172

1 A Yes, sir.

2 Q And you just laid on the bed?

3 A Yes, sir.

4 Q Looking at the ceiling?

5 A Yeah.

6 Q Talking?

7 A Yeah, we were talking.

8 Q Relaxed?

9 A Yes, sir.

10 Q Were y'all talking about sex or anything at that
11 time?

12 A No, sir.

13 Q Talk about anything specific or just catching
14 up?

15 A Yes, sir.

16 Q At some point, he got up. You were still laying
17 on the bed?

18 A Yes, sir.

19 Q When did y'all start talking about the writing
20 that was on your pants?

21 A When we were laying down within like ten
22 minutes.

23 Q Okay. He didn't ask to see it? He didn't ask
24 to see the writing?

25 A Oh, no, sir.

- CROSS-EXAMINATION BY MR. JONES

173

1 Q You then slipped your skirt off?

2 A Yes, sir.

3 Q Where was he at, at this time?

4 A Laying on the bed.

5 Q Okay. So he had sat back down on the bed at

6 this time?

7 A Yes, sir.

8 Q Had you stood up?

9 A No, sir.

10 Q So you were -- the writing is on the back or the

11 front?

12 A On the back.

13 Q Okay. But you did get up, took your skirt off,

14 or did you just take it off while you were on the bed?

15 A Took it off when I was on the bed.

16 Q Okay. And then you just rolled over --

17 A Yes, sir.

18 Q -- so he could read it. Did he comment on it?

19 A I don't remember.

20 Q You don't recall. Then, at some point, he got

21 up and y'all had oral sex?

22 A Yes, sir.

23 Q And he gave -- gave you oral sex at that time?

24 A Yes, sir.

25 Q Then he asked if you were ready?

- CROSS-EXAMINATION BY MR. JONES

174

1 A Yes, sir.

2 Q You said yes?

3 A Yes, sir.

4 Q And, at that time, y'all had intercourse?

5 A Yes, sir.

6 Q I won't ask you this again. But by intercourse,

7 you mean vaginal sex; is that correct?

8 A Yes, sir.

9 Q At some point, you said he went and put on a

10 condom?

11 A Yes, sir.

12 Q And you had your eyes closed at this time?

13 A Yes, sir.

14 Q And how do you know he put on a condom?

15 A Well, right before I closed my eyes, he walked

16 over to his closet. I'm guessing that's when he put it

17 on.

18 Q And you said at first it hurt?

19 A Yes, sir.

20 Q But it got a little bit easier?

21 A Yes, sir.

22 Q But it took a little while?

23 A Yes, sir.

24 Q When y'all got done, what did you do then?

25 A We both got dressed, and we drove back to the

- CROSS-EXAMINATION BY MR. JONES

175

1 school.

2 Q Did y'all go in the bathroom and clean up?

3 A He did.

4 Q Okay. You just cleaned up in the room right
5 there?

6 A Yes, sir.

7 Q And did you use a towel, or he had a towel there
8 or something like that for you to clean up?

9 A No, sir.

10 Q Do you know what he did with the condom?

11 A No, sir. I'm guessing he took it off when he
12 went into the bathroom.

13 Q And then y'all went back to school?

14 A Yes, sir.

15 Q And when you went back to school that day, you
16 went and met up with your friend Brittany?

17 A Yes, sir.

18 Q And you didn't have cheerleading that day?

19 A No, sir.

20 Q But, initially, you told the police that you had
21 gone back to cheerleading; is that correct?

22 A No, sir.

23 Q That is not what you told doctor -- Detective
24 Crews?

25 A I don't remember if that's -- I think I told him

1 I went back to the school.

2 Q Okay. And you never did tell anybody about that
3 incident that day?

4 A No, sir.

5 Q All right. The next time was -- again, there
6 was another occasion. You don't remember the date of
7 this -- of the next occasion. You are pretty sure it was
8 after the 4th though?

9 A Yes, sir.

10 Q And this was -- there were two times that you
11 said you didn't recall the dates on?

12 A Yes, sir.

13 Q But, chronologically, this would be the next
14 time after the 4th, this incident we were talking about
15 where you skipped sixth and seventh period?

16 A Yes, sir.

17 Q So you are sure of the order that they came in?

18 A Yes, sir.

19 Q Okay. And you had skipped sixth and seventh
20 period that time?

21 A Yes, sir.

22 Q So there would be more time?

23 A Yes, sir.

24 Q You went back to his apartment --

25 A Yes, sir.

- CROSS-EXAMINATION BY MR. JONES

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1 Q -- on that occasion?

2 A Uh-huh.

3 Q Did y'all -- how did y'all meet up this time,
4 the same thing?

5 A The same place.

6 Q Picked you up in the car?

7 A Yes, sir.

8 Q At that time, did he call anybody or did y'all
9 just talk again on the ride back?

10 A We just talked again.

11 Q So he pretty much focused on you during that
12 time, that ride?

13 A Yes, sir.

14 Q Wasn't taking care of business, talking to
15 Amanda or any of this stuff?

16 A Huh-um.

17 Q Nobody was home when y'all got to the apartment
18 that day, again?

19 A No, sir.

20 Q Went inside. Did y'all talk? Went inside, sat
21 down. Y'all were downstairs -- I want to make sure that I
22 wrote that right.

23 Did y'all go up to his room first?

24 A Yes, sir.

25 Q Okay. So y'all just went straight on upstairs.

1 Did y'all get anything to eat or anything like that on the
2 way?

3 A No, sir.

4 Q Okay. Y'all just went straight upstairs?

5 A Yes, sir.

6 Q Sat back down on the bed again?

7 A Yes, sir.

8 Q And, at this time, y'all had -- at this time on
9 this occasion, y'all had intercourse first?

10 A Yes, sir.

11 Q On this occasion, y'all had intercourse twice;
12 is that correct?

13 A Yes, sir.

14 Q And did y'all have oral sex once?

15 A Yes, after the second time.

16 Q After the second time, okay. So you had
17 intercourse twice?

18 A Uh-huh.

19 Q And then you had oral sex after that?

20 A Yes, sir.

21 Q Cleaned up and, at that time, y'all went back to
22 school?

23 A No. After the oral sex, we had intercourse one
24 more time.

25 Q Okay. So three times had intercourse on that

1 date?

2 A Yes, sir.

3 Q Okay. And once on the 4th?

4 A Yes, sir.

5 Q And Brittany -- and on this occasion, it hurt a

6 little more?

7 A Yes, sir.

8 Q A little more uncomfortable?

9 A (Witness nods head.)

10 Q Out of those three times, did all three times

11 hurt, or was it just the one time that he was on top

12 (sic)?

13 A It hurt all three times, but it hurt more when I

14 was on top.

15 Q And you said on that date you changed clothes?

16 A Yes, sir.

17 Q So did you have a bag with you?

18 A Yes, sir.

19 Q And that is when you put on the teal top?

20 A I had on the teal top when I got there.

21 Q When you went there?

22 A Yes, sir.

23 Q What do you mean by changed clothes? What do

24 you mean?

25 A Like after the second time, I changed into a

- CROSS-EXAMINATION BY MR. JONES

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1 tank top and shorts.

2 Q Okay. I'm sorry. So when you got there, you
3 had on the teal top and what kind of pants?

4 A I just had a skirt on.

5 Q Okay. And you changed into was it just the tank
6 top and then the same skirt or did you change your top?

7 A It was a white tank top, and I want to say red
8 shorts.

9 Q And did he change also?

10 A I want to say he did, but I can't remember for
11 sure.

12 Q Did you remember what he had on when he got
13 there? When you left the school, what he was wearing that
14 day?

15 A A polo shirt and shorts.

16 Q The photo that we saw earlier, was that photo
17 taken this same day?

18 A Yes, sir.

19 Q Where was that taken at?

20 A At the gym at school.

21 Q And were there a number of people around when
22 that was taken?

23 A Yes, sir.

24 Q And was that before or after?

25 A Before.

1 Q Now, on this incident, you didn't tell the
2 police about this incident?

3 A No, sir.

4 Q When did you tell anybody about this incident?

5 A Maybe a couple months later after everything
6 blew up.

7 Q So a couple of months after you talked to the
8 police?

9 A Yes, sir.

10 Q Who did you tell?

11 A My parents.

12 Q Okay.

13 A Because they said they had knew it was more than
14 once.

15 Q Okay. Now, you said you were happy to get his
16 attention?

17 A Yes, sir.

18 Q And that of all of the girls in the school you
19 were happy because he had picked you?

20 A Yes, sir.

21 Q Now, how did Amanda fit into this? Because
22 really he had kind of picked her?

23 A Yes, sir.

24 Q A good while before?

25 A Yes, sir.

1 Q Now, the third time, this third occasion, that
2 date, you don't recall that date?

3 A No, sir.

4 Q Okay. But it was after a game?

5 A Yes, sir.

6 Q And that was a basketball game?

7 A Yes, sir.

8 Q After a football game?

9 A No, basketball game.

10 Q Oh, okay. I'm sorry. I misunderstood you. So
11 it was after a basketball game?

12 A Yes, sir.

13 Q And you're pretty sure about that that it was
14 after a game?

15 A Yes, sir.

16 Q Do you think it was a weekday or a weekend?

17 A I want to say a Friday, but I'm not positive.

18 Q Okay. And you were already home on that day?

19 A Yes, sir.

20 Q And you got a call from him that -- let me see,
21 That would be -- do you remember about what time?

22 A I got the call when I was on my way home. I
23 want to say 7:00, 8:00ish.

24 Q That evening?

25 A Yes, sir.

- CROSS-EXAMINATION BY MR. JONES

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1 Q And you got a call, and he said he wanted to see
2 you?

3 A Yes, sir.

4 Q And he said I will meet you in the parking lot
5 in I'On?

6 A Yes, sir.

7 Q And do you recall approximately what time you
8 would have met with him?

9 A A little after 8:00.

10 Q And I'm not quite clear, were you with Kimberly
11 at that time?

12 A At the school at the gym before.

13 Q So you were with Kimberly at the gym?

14 A Yes, sir.

15 Q And it is her dad who brought you home? Is that
16 what you were saying, you were waiting on her dad?

17 A No both of our parents were late. Her parents
18 were late and so were mine.

19 Q So you were with Kimberly and both waiting
20 outside for your parents?

21 A We were waiting inside the coach's office.

22 Q Okay. And where was Coach Vail at that time?

23 A In the coach's office with us.

24 Q So he was in there. Kimberly was in there. Who
25 else was in there?

- CROSS-EXAMINATION BY MR. JONES

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- 1 A That was all, that's all.
- 2 Q That was it?
- 3 A Uh-huh.
- 4 Q And is there -- where is this coach's office?
- 5 Is there a coach's office at the school and at the gym or
- 6 is this --
- 7 A Just at the gym.
- 8 Q So this is the gym that is downtown, correct?
- 9 A Yes, sir.
- 10 Q Your dad came and picked you up, went home.
- 11 Coach Vail called?
- 12 A Yes, sir.
- 13 Q Y'all met in the parking lot?
- 14 A (Witness nods head.)
- 15 Q And he was in his car?
- 16 A Yes, sir.
- 17 Q And at that time, he was already in the parking
- 18 lot when you got there?
- 19 A Yes, sir.
- 20 Q He was already in the back seat?
- 21 A Yes, sir.
- 22 Q Now, was the car running? Was it off; do you
- 23 recall?
- 24 A It was off.
- 25 Q Okay. He was siting in the middle?

- CROSS-EXAMINATION BY MR. JONES

185

- 1 A Yes, sir.
- 2 Q And at that time, you straddled across him?
- 3 A Yes, sir.
- 4 Q And y'all had intercourse that time?
- 5 A Yes, sir.
- 6 Q And I'm not sure if you said you were wear --
- 7 you were wearing your cheerleading outfit on that
- 8 occasion?
- 9 A Yes, sir.
- 10 Q So you had cheered that night?
- 11 A Yes, sir.
- 12 Q And you just slipped off your bloomers?
- 13 A Yes, sir.
- 14 Q He slipped his pants down?
- 15 A Yeah, I can't remember.
- 16 Q I think you have already seen these pictures.
- 17 Let me show you the whole car. I will show you what's
- 18 been marked Defense Exhibit 5. And I don't think you've
- 19 seen this one yet, but is that his car?
- 20 A Yes, sir.
- 21 Q It's not a big car?
- 22 A No, sir.
- 23 Q And this is what is Defense Exhibit 6. This is
- 24 the back seat of his car, correct?
- 25 A Yes, sir.

- CROSS-EXAMINATION BY MR. JONES

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- 1 Q So he was seated in the middle right here?
- 2 A Yes, sir.
- 3 Q And then you just slipped across him?
- 4 A Yes, sir.
- 5 Q You shut the door behind you when you got in?
- 6 A Yes, sir.
- 7 Q Okay. So the door was shut. You slipped over
- 8 him. No music or anything was going in the car?
- 9 A No, sir.
- 10 Q Okay. And then y'all had intercourse at that
- 11 time?
- 12 A Yes, sir.
- 13 Q You slipped off, cleaned up. Did he drop you
- 14 off back at the house? Did you walk home?
- 15 A I walked home.
- 16 Q Okay. And you said that Amanda was calling at
- 17 that time?
- 18 A Yes, sir.
- 19 Q And you knew that because you saw his phone?
- 20 A Yes, sir.
- 21 Q And where was his phone at during that time?
- 22 A I want to say on the front seat. The little
- 23 area between there, it was sitting on there.
- 24 Q Okay. And was she calling while y'all were
- 25 having intercourse?

- CROSS-EXAMINATION BY MR. JONES

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1 A Either after, I think after.

2 Q And did he ever answer?

3 A No, sir.

4 Q And when did you tell about this incident?

5 A I think a couple of months later.

6 Q Okay. You didn't tell the police on the -- I
7 think you met with them on November the 12th. So it
8 wasn't on the date that you met with Detective Crews?

9 A Yes, sir.

10 Q That is when you told?

11 A No, I didn't tell Detective Crews.

12 Q Okay. Did you also tell your parents about this
13 one? Is that who you told?

14 A Well, I talked to my sister about it, and I
15 think she told them and my parents came to me and said
16 that they had known that there were more times than I had
17 told them.

18 Q So on the occasion that you told your parents,
19 you told them all at once about --

20 A No, sir.

21 Q So you told them about this time one time and
22 this time one time?

23 A Yes, sir. Because they kept on finding out
24 information, and they would come to me and demand to know
25 what had happened.

1 Q All right. And November 28th, was the next
2 time?

3 A Yes, sir.

4 Q And do you remember -- you remember specifically
5 that was the date?

6 A Yes, sir.

7 Q It was after his birthday?

8 A On his birthday.

9 Q On his birthday?

10 A Uh-huh.

11 Q And after Thanksgiving?

12 A Yes, sir.

13 Q Okay. There is no -- let's see. That was a
14 Friday. There's no school?

15 A Yes, sir.

16 Q And that one occurred in the I'On parking lot?

17 A Yes, sir.

18 Q And that one was that morning, correct?

19 A Yes, sir.

20 Q And do you recall he called you that morning?

21 A Yes, sir.

22 Q Said I want to see you?

23 A Yes, sir.

24 Q Meet me in the parking lot?

25 A Yes, sir.

- CROSS-EXAMINATION BY MR. JONES

189

1 Q Was he already waiting in the parking lot when
2 you got there?

3 A Yes, sir.

4 Q And you said this was early morning?

5 A Yes, sir, around 8:00.

6 Q Okay. It's about 8:00. Now, is that 8:00 when
7 he called or 8:00 when he got there; do you think?

8 A I think 8:00 when he called.

9 Q Okay.

10 MR. JONES: Your Honor, may I approach?

11 BY MR. JONES:

12 Q November 28, tell me which one of these times
13 reflect when y'all first met -- I guess when he called
14 you?

15 A At 8:46.

16 Q 8:46. That's when he called?

17 A Yes, sir.

18 Q And what time do you think he got over there?

19 A I think when he called it was to let me know
20 that he was there.

21 Q Okay. At 8:46 he called and said I'm in I'On's
22 parking lot?

23 A Yes, sir.

24 Q You went over. And what time -- what time --
25 took you, what, a minute to get over there?

- CROSS-EXAMINATION BY MR. JONES

190

1 A Yeah.

2 Q So were you already ready to go when he called?

3 A Yes, sir.

4 Q So as soon as he called, you were able to go
5 ahead and walk that way?

6 A Yes, sir.

7 Q And you got over there somewhere between 8:46,
8 8:50?

9 A Yes, sir.

10 Q And how long were y'all together?

11 A Not long, maybe ten, 15 minutes.

12 Q Okay. So between -- somewhere between 9:00 and
13 9:10, y'all were done?

14 A Yes, sir.

15 Q And what did y'all do then?

16 A My parents had been calling me and wanted me to
17 go buy a Christmas tree with them so they made me come
18 home.

19 Q So somewhere between 9:00 and 9:10 he went ahead
20 and left?

21 A Yes, sir.

22 Q And he was -- what vehicle was he in?

23 A His mom's car.

24 Q Now, from what you had said, basically what he
25 had done was -- and for the purposes of this car,

1 basically if you will look at that diagram and tell me if
2 I'm accurate, this seat in the Durango would have folded
3 forward; is that correct?

4 A Yes, sir.

5 Q Forming like a little wall between the front of
6 the seats and the back of the vehicle?

7 A Yes, sir.

8 Q The back seats would have been folded down flat,
9 correct?

10 A Yes, sir.

11 Q You said yes, sir?

12 A Yes, sir.

13 Q So it would have created a flat space in the
14 back, back there, kind of like a station wagon?

15 A Yes, sir. But they weren't like -- are you
16 talking about in his mom's car?

17 Q Yes, yes.

18 A They weren't totally flat. There was like -- I
19 guess they were just pushed up against the two front
20 seats.

21 Q They were up at a little bit of an angle?

22 A Yes, sir.

23 Q Because it wouldn't go all of the way down?

24 A Yes, sir.

25 Q But the bottom seats would fold up creating a

CROSS-EXAMINATION BY MR. JONES

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1 little wall, and the back of the back seats would fold
2 down?

3 A Yes, sir.

4 Q As flat as they would go?

5 A Yes, sir.

6 Q At somewhat of an angle?

7 A Yes, sir.

8 Q And then, at that time, you were leaned over the
9 front of that little wall?

10 A I was leaning up against the angle facing the
11 rear of the car.

12 Q Okay. And this was pretty rushed?

13 A Yes, sir.

14 Q At this occasion. On all of the other
15 occasions, had he been fairly gentle?

16 A Yes, sir.

17 Q Slow, took his time?

18 A Yes, sir.

19 Q Tried not to hurt you?

20 A Yes, sir.

21 Q On this occasion, it wasn't rough, but it was a
22 lot quicker?

23 A Yes, sir.

24 Q Y'all were rushed this time?

25 A Yes, sir.

- CROSS-EXAMINATION BY MR. JONES

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1 Q Same thing with the previous date where y'all
2 were in his car, was that very quick, rushed?

3 A It wasn't rushed, but it didn't seem that we
4 were together that long.

5 Q Okay. But this time you would say it was more
6 rushed?

7 A Yes, sir.

8 Q And then, at that time, he had left and you
9 didn't see him again that day?

10 A No, sir.

11 Q And on that occasion, y'all had sex once?

12 A Yes, sir.

13 Q And what were you wearing that day?

14 A Black sweatpants and a red sweatshirt.

15 Q And a red sweatshirt?

16 A Yes, sir.

17 Q Do you recall what he was wearing?

18 A No, sir.

19 Q Again, this was in the back of the I'On parking
20 lot?

21 A Yes, sir.

22 Q The Creek Club parking lot?

23 A Yes, sir.

24 Q Back off to that right side?

25 A Yes, sir.

1 Q And this was on a Friday morning and all of this
2 is around 9:00 a.m.?

3 A Yes, sir.

4 Q And you said there were cars passing?

5 A Yes, sir.

6 Q People moving about?

7 A Yes, sir.

8 Q All right. Not too much longer. December 6th
9 was the last time?

10 A Yes, sir.

11 Q And you're sure November 4th was the very first
12 time y'all ever had intercourse?

13 A Yes, sir.

14 Q And December 6, you're pretty sure, was the last
15 time that y'all had intercourse?

16 A Yes, sir.

17 Q And on this occasion, how did y'all -- how
18 did -- how did y'all plan this? How did this work out?

19 A Just on the phone.

20 Q And when did y'all talk about it? When was the
21 first time y'all talked about it?

22 A Maybe a couple nights before. It wasn't
23 definite. But the night before, I guess, is when we
24 really went over the details.

25 Q That would have been that Friday night?

- CROSS-EXAMINATION BY MR. JONES

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- 1 A Yes, sir.
- 2 Q Okay. Did you call him? Did he call you?
- 3 A I don't remember.
- 4 Q Okay. Did y'all talk or texted?
- 5 A Yes, sir.
- 6 Q Or talk in person?
- 7 A We didn't talk in person.
- 8 Q Okay. So you talked on the phone?
- 9 A Yes, sir.
- 10 Q Then the next morning, y'all didn't talk that
- 11 next morning?
- 12 A Early in the morning, we did, because he was
- 13 letting me know when he was leaving his house and when he
- 14 got there.
- 15 Q So he called when he left his house?
- 16 A Yes, sir.
- 17 Q And he called when he got there?
- 18 A Yes, sir.
- 19 Q To let you know he was there?
- 20 A Yes, sir.
- 21 Q And that's usually how it worked? He would call
- 22 when he was leaving, call and tell you he was there?
- 23 A Yes, sir.
- 24 MR. JONES: Your Honor, may I approach?
- 25 THE COURT: Yes, sir.

1 BY MR. JONES:

2 Q Would you just tell me when those calls were on
3 the -- December 6th, I think it starts.

4 A 7:42 and 7:51.

5 Q Okay. So 7:42 he's calling to tell you he was
6 on the way, he was leaving?

7 A Yes, sir.

8 Q 7:41 (sic) I'm there?

9 A Yes, sir.

10 Q He was in which car?

11 A His roommate's car.

12 Q Okay. Picked you up. Where did he pick you up
13 at?

14 A Right outside of my house.

15 Q You walked right out and got right in the car
16 right there?

17 A Yes.

18 Q Where were your parents at that day?

19 A They were asleep.

20 Q How about Kelsey?

21 A She was asleep too.

22 Q So everybody was asleep at that time?

23 A Yes, sir.

24 Q Got into the car. At that time, y'all drove and
25 you said you stopped somewhere?

- CROSS-EXAMINATION BY MR. JONES

197

1 A Yes, sir.

2 Q Where did y'all stop at?

3 A A gas station.

4 Q And you got what?

5 A Milk.

6 Q Did each of y'all get one, or just you get one?

7 A No, I stayed in the car and he got it.

8 Q Okay. Then went to his house?

9 A Yes, sir.

10 Q Was anybody there?

11 A No, sir.

12 Q That time y'all sat down on the couch this time

13 downstairs?

14 A Yes, sir.

15 Q And you straddled him at that time, and y'all

16 had intercourse at that time?

17 A Yes, sir.

18 Q Y'all then went upstairs. And do you recall

19 what you were wearing that day?

20 A Jeans and a red sweatshirt.

21 Q And y'all went upstairs to his bedroom?

22 A Yes, sir.

23 Q And at that time, did y'all have oral sex that

24 time?

25 A No, sir.

- CROSS-EXAMINATION BY MR. JONES

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1 Q Y'all had intercourse one more time?

2 A Yes, sir.

3 Q So just twice on this occasion?

4 A Three times.

5 Q So y'all had it a third time on this occasion?

6 A Yes, sir.

7 Q Two times upstairs and one time downstairs.

8 A Yes, sir.

9 Q Do you recall, at any time, when he picked you
10 up from the ride from your house to his apartment, were
11 y'all just talking, focused on you, he wasn't calling
12 other people?

13 A Yes, sir.

14 Q Yes?

15 A He wasn't calling anyone.

16 Q He wasn't calling anyone. Again, y'all were
17 just talking? It was just you and him conversing?

18 A Yes, sir.

19 Q When y'all got done -- how far apart were these
20 acts? How long did y'all -- how long would it take for
21 three times for the sex? Was it fairly quick? Was it --
22 did y'all have it a little while, talked?

23 A Around fifteen minutes.

24 Q For all three times?

25 A It changed -- it varied between them.

1 Q Okay. And then you just kind of hung around
2 there until almost noon?

3 A Yeah, we watched a movie.

4 Q Y'all did what?

5 A We watched a movie.

6 Q Okay. What movie did y'all watch?

7 A I think The Good Girl.

8 Q And then he took you to the gym?

9 A Yes, sir.

10 Q There was cheerleading practice?

11 A Yes, sir.

12 Q Miss Mullins is who was the cheerleading coach?

13 A Yes, sir.

14 Q She was running the practice?

15 A Yes, sir.

16 Q What time did y'all get to the gym?

17 A It was -- practice started at 2:00, and I was
18 there for a while, so maybe 1:40, 1:45.

19 Q Okay. Now, I think yesterday you said he drove
20 to the gym around between 12:00 and 1:00?

21 A No, sir, we were still at his house then.

22 Q Okay. You were still at the house at that time?

23 A Yes, sir.

24 Q So you think you got to the gym at about 1:40?

25 A Yes, sir.

- CROSS-EXAMINATION BY MR. JONES

200

1 Q And was anybody else there when you got there?

2 A No, sir.

3 Q Okay. Miss Mullins wasn't there yet?

4 A No, sir.

5 Q Now, did he drop you off and then just leave you
6 there by yourself at the gym, or did he wait around?

7 A He dropped me off at a back street behind the
8 gym, and I walked to the front of the gym and waited.

9 Q Then, at that time, that's when you went home
10 with Brittany after the practice, I guess?

11 A No. Brittany pulled me aside -- it was during
12 practice when Brittany pulled me aside.

13 Q And that's the time she noticed the passion
14 marks, or what we call hickeys, correct?

15 A Yes.

16 Q And where were those?

17 A On my neck.

18 Q And which side?

19 A All over my neck.

20 Q Now, you had never had the hickeys before from
21 any other occasions?

22 A No, sir.

23 Q Let's talk about the November 22nd, which was --
24 wasn't that the day that everything kind of blew up with
25 Caroline and Kelsey?

- CROSS-EXAMINATION BY MR. JONES

201

1 A Yes.

2 Q And that was the day you discovered the note
3 from Caroline to Kelsey?

4 A We think that was the date.

5 Q Okay. And you were upset at Caroline?

6 A Yes, sir.

7 Q And the note only said that she has developed a
8 crush, right?

9 A No, sir. It was between Caroline and my sister.
10 And Caroline was explaining that Coach Vail had said that
11 she was beautiful and if the circumstances were different
12 and she was older that he would definitely be with her.

13 Q Okay. And that made you angry?

14 A Yes, sir.

15 Q There were a number of girls that had crushes on
16 him at school; weren't there?

17 A Yes, sir.

18 Q At that time, you went in and told them Coach
19 Vail and I -- you can't have him, we've already been
20 together?

21 A I called her on the phone and my sister was with
22 Caroline at the time and was like what's this note about.
23 And Caroline was just telling me that that happened a long
24 time ago and not to worry about it, and they were just
25 playing around.

- CROSS-EXAMINATION BY MR. JONES

202

1 Q Okay. And that's when you said I've already
2 been with him?

3 A I just told them, if they swore not to tell
4 anybody, that we had had sex.

5 Q Okay. And the way that y'all think it's
6 November 22 is based on all of the phone calls back and
7 forth?

8 A Yes, sir.

9 Q And then you ended up calling back and saying
10 nothing ever happened?

11 A Yes, sir.

12 Q And that was the first occasion you told anybody
13 when you found -- that was the first occasion that you
14 told anybody that y'all had had sex?

15 A Yes, sir.

16 Q Was in response to Caroline's note?

17 A Yes, sir.

18 Q do you know who Otis Campbell (sic) is?

19 A Yes, sir.

20 Q Who is Otis Campbell?

21 A Just that he was Coach Vail's friend.

22 Q Okay. And do you recall seeing him ever at a
23 basketball game?

24 A Yes, sir.

25 Q And do you recall -- and that would have been

1 what? Do you recall if that was a weeknight, Friday
2 night, any of that? Do you recall what night?

3 A It was during the day and it was in January or
4 late December.

5 Q Okay. And do you recall seeing him at school
6 one day?

7 A Yes, sir.

8 Q And why do you recall that?

9 A Because Otis was walking his dog near downtown,
10 and it was during lunch so everyone was outside, and Coach
11 Vail just introduced him to everybody.

12 Q Okay. So everybody came and pet the dog?

13 A Yes, sir.

14 Q Let's talk about when all of this kind of blew
15 up. You came in and found your phone records on a
16 clipboard in your parent's room?

17 A Yes, sir.

18 Q And at that time, they asked you has anything
19 been going on between you and Coach Vail?

20 A Yes, sir.

21 Q You stated nothing is going on?

22 A Yes, sir.

23 Q At that time, your dad called Mr. Mullins, the
24 principal?

25 A Yes, sir.

- CROSS-EXAMINATION BY MR. JONES

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1 Q You didn't go to school that day; is that
2 correct?

3 A I went to school the day -- it was after school
4 when I went and found them.

5 Q Okay. So was it the next day that you didn't go
6 to -- they held you out of school that next day?

7 A They just held me until he was off campus.

8 Q Okay. Do you remember when you found out --
9 well, you found out that he had gotten engaged to Miss
10 Mullins at what time?

11 A A couple of days after everything blew up.

12 Q Okay. And how did you find that out?

13 A Mr. Mullins called my house to speak to my dad,
14 and he made a point of explaining to me what had happened
15 between he and Amanda over Christmas break.

16 Q And really the first adult that you told about
17 this incident was Mrs. Murray?

18 A Yes, sir.

19 Q And at that time, she said I'm not going to tell
20 anybody?

21 A Yes, sir.

22 Q But she said I recommend that you tell somebody?

23 A Yes, sir.

24 Q And you really didn't give her any details --

25 A No, sir.

1 Q -- about it. You stated you didn't -- now, you
2 didn't tell the police about all of the incidents because
3 you didn't want him to get into any trouble; is that
4 correct?

5 A Yes, sir.

6 Q But you told them about the incident on the 4th?

7 A Yes, sir.

8 Q And the incident on the 6th?

9 A Yes, sir.

10 Q And when your parents -- let's see. When you
11 told your parents, who else did you talk about this when
12 you first talked to them?

13 A My sister and my friend Kimberly.

14 Q Okay. Is that Kimberly Haskins (phonetical)?

15 A Yes, sir.

16 Q Okay. And did you ever talk with Mr. McCann
17 about any of the stuff?

18 A Mr. who?

19 Q Do you know Mr. McCann?

20 A No, sir.

21 Q Okay. You just talked with your parents?

22 A Yes, sir.

23 Q And they said we are going to have you talk with
24 a police officer?

25 A Yes, sir.

1 Q At some point, y'all set up an appointment and
2 talked with the police officer and that was a couple days
3 later?

4 A Yes, sir.

5 Q And then you went to the doctor the next day or
6 the same day you talked with the police officer?

7 A I want to say the next day, I think. I'm not
8 positive.

9 Q Okay. And then you talked to the police officer
10 a couple more times after that?

11 A No, sir. I only talked to him once.

12 Q The time before you went to the doctor?

13 A Yes, sir.

14 Q Okay. And that was Detective Crews?

15 A Yes, sir.

16 Q Did you talk to -- so you just talked to
17 Detective Crews on that date, really, and that has been it
18 until you brought all of this today?

19 A Yes, sir.

20 Q When did you...

21 And you were truthful with Detective Crews about
22 the two incidents that you did tell him?

23 A Yes, sir.

24 Q And you were truthful with Dr. Gibbs about the
25 information -- you only spoke with her for a brief time?

1 A Yes, sir.

2 Q Most of time she spent talking with your
3 parents?

4 A Yes, sir.

5 Q You were truthful with her, at least about the
6 times that you had told her, which is also the 4th and the
7 6th?

8 A Yes, sir.

9 Q You stated when your parents found out about
10 this they were mad?

11 A Yes, sir.

12 Q Did you get in trouble over it?

13 A Yes, sir.

14 Q What happened?

15 A I got my phone taken away for four months, and I
16 wasn't allowed to go out with my friends for a month.

17 Q You talked about he didn't -- you said Mark on
18 numerous occasions said he really didn't want to be with
19 Amanda?

20 A Yes, sir.

21 Q Would you have liked for him to have broken up
22 with Amanda?

23 A Yes, sir.

24 Q Do you think if he had broken up with Amanda
25 that maybe then y'all could have been together?

- CROSS-EXAMINATION BY MR. JONES

208

1 A Like what do you mean when you say been
2 together?

3 Q Well, do you think -- do you think if Amanda
4 wouldn't have been there he would have been able to focus
5 more on you?

6 A Yes, sir.

7 Q Do you think the relationship could have
8 developed further?

9 A Yes, sir.

10 MR. JONES: Beg the court's indulgence for just
11 one second.

12 (Counsel confers with defendant.)

13 BY MR. JONES:

14 Q Other than the November 4th date incident and
15 the December 6th incident, you just talked with the
16 prosecutor really a week ago about the new incidents; is
17 that correct?

18 A Yes, sir.

19 MR. JONES: No further questions at this time,
20 Your Honor.

21 THE COURT: Any follow up?

22 MRS. HERRING-LASH: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MRS. HERRING-LASH:

25 Q just a few questions. In the beginning,

1 you were talking about Mr. Vail talking with other
2 students?

3 A Yes, ma'am.

4 Q Do you know for sure how many other students he
5 talked to and for how long?

6 A A lot of students, and he would always be
7 talking to other students.

8 Q On the phone?

9 A Only a few would be on the phone.

10 Q What?

11 A Only a few on the phone.

12 Q Only a few on the phone?

13 A Uh-huh.

14 Q But a lot of them in person?

15 A Yes, ma'am.

16 Q And you would see that why?

17 A Why would I see that? Because he would just be
18 talking to them in the halls and stuff.

19 Q So at school?

20 A Yes.

21 Q Do you know -- well, you said that everybody
22 felt like that Mr. Vail and Amanda Mullins would get
23 married?

24 A Yes, ma'am.

25 Q Did you wonder about why he was talking to you

- REDIRECT EX. BY MRS. HERRING-LASH

210

1 so much?

2 A Yes, ma'am.

3 Q What did you think?

4 A I just thought he was -- those were just rumors.

5 And everyone had been talking about it from seventh to

6 eighth grade, so I didn't know if it was true or not.

7 Q Did you wonder why he was with you if that was
8 true?

9 A Yes.

10 Q Did you talk with him about that?

11 A No.

12 Q What were you thinking?

13 A I didn't feel like it was my place to say
14 anything.

15 Q Why not?

16 A Because I was the other girl.

17 Q You said you knew he liked Hilfiger things?

18 A Yes, ma'am.

19 Q Did you ever buy him Hilfiger presents?

20 A Yes, ma'am.

21 Q What did you buy him?

22 A A shirt.

23 Q What did you buy the shirt for?

24 A His birthday.

25 Q Was that on the November 28th birthday we have

- REDIRECT EX. BY MRS. HERRING-LASH

211

1 been talking about?

2 A Yes, ma'am.

3 Q Did you also give him a card?

4 A Yes, ma'am.

5 Q Let me show you what is marked as Defendant's

6 Exhibit Number 8. Is this the card that you gave him?

7 A Yes, ma'am.

8 Q And this was on November 28th?

9 A Yes, ma'am.

10 Q When on November 28th did you give it to him?

11 A I don't think I gave it to him on his birthday.

12 I think I gave it to him afterwards.

13 Q Right afterwards?

14 A Yes, ma'am.

15 Q Do you know when?

16 A No. But it was during school, and I put his
17 present and his card in the backseat of his car.

18 Q What?

19 A It was during school and I had it at school, so
20 I put it in the backseat of his car.

21 Q With his present?

22 A Yes, ma'am.

23 Q But it was for his birthday?

24 A Yes, ma'am.

25 Q Can you read what it says on here?

- REDIRECT EX. BY MRS. HERRING-LASH

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1 A Yes, ma'am.

2 Q What does it say? Start with this part.

3 A You may be my teacher, but that will never
4 change the way I feel about you. I love you more than you
5 will ever know.

6 Q What does the it's been one month mean?

7 A It was October 28th the first time that we
8 were together.

9 Q The October 28th you have been telling us
10 about here?

11 A Yes, ma'am.

12 Q And this was on November 28th you gave him
13 this card?

14 A Yes, ma'am.

15 Q On October the 28th -- let's go back to that
16 day -- you said it took him awhile to get there?

17 A Yes, ma'am.

18 Q Were you talking to him throughout the whole
19 time?

20 A No, ma'am.

21 Q Do you remember how long you talked to him, or
22 would it refresh your memory to look at the phone records?

23 A I just know that he was saying that he was on
24 his way to Mt. Pleasant, and I didn't believe him. And he
25 was on the Cooper River Bridge, and I thought he was at

1 home, and he honked his horn to show that he was in his
2 car.

3 Q If you looked at the phone records, would it
4 refresh your memory as to how long you talked?

5 A Yes, ma'am.

6 Q October 28th, do you see that?

7 A Yes, ma'am.

8 Q And what time are we talking about that he was
9 on his way?

10 A 7:56.

11 Q And how long did you talk to him at 7:56?

12 A Fourteen minutes.

13 Q And then when did you talk to him again?

14 A At 8:11.

15 Q And how long then?

16 A Thirty minutes.

17 Q And when did he get there?

18 A 8:40.

19 Q Right after you talked to him?

20 A Yes, I was still on the phone with him when I
21 walked outside.

22 Q Okay. So you were talking to him while he was
23 driving there?

24 A Yes, ma'am.

25 Q On that night, you said you told your parents

- REDIRECT EX. BY MRS. HERRING-LASH

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1 you were going out to see Melissa?

2 A Yes, ma'am.

3 Q And nobody questioned you about it?

4 A No, ma'am.

5 Q At some point, did they question you about who
6 Melissa was?

7 A Yes, ma'am.

8 Q Tell us about that.

9 A We had planned for me to go out and see Coach
10 Vail. And so they stopped me and said they we -- they
11 needed to meet Melissa before I went out and saw her
12 again, because I had been seeing her. And they were just
13 kind of wondering who she was.

14 Q What do you mean when you say we had planned?

15 A Me and Coach Vail had wanted to hang out one
16 night. And as I was going out, they were like who are you
17 seeing. And I was like I'm seeing Melissa. And they were
18 like, well, we need to meet her.

19 Q So that is when they questioned you?

20 A Yes, ma'am.

21 Q Did you get to go that night?

22 A No, ma'am.

23 Q We were talking about the community that you
24 live in.

25 A Yes, ma'am.

- REDIRECT EX. BY MRS. HERRING-LASH

215

1 Q And Mr. Jones asked you about there's a lake
2 there?
3 A Yes, ma'am.
4 Q Did you live near that lake?
5 A No, ma'am.
6 Q What part of the I'On do you live in?
7 A The very back.
8 Q Where is the lake?
9 A Near the front.
10 Q And he was asking you about the gym. Do you
11 live near the gym?
12 A No, ma'am.
13 Q Where is the gym?
14 A At the very front.
15 Q And you live where?
16 A In the very back.
17 Q You said you gave Kelsey some money?
18 A Yes, ma'am.
19 Q Did she give you any of that money back?
20 A Yes, ma'am.
21 Q What did she give you back?
22 A The \$20.
23 Q The \$20?
24 A Yes, ma'am.
25 Q Now, let's go back to November 4th. Mr. Jones

- REDIRECT EX. BY MRS. HERRING-LASH

216

1 was asking you about taking your skirt off?

2 A Yes, ma'am.

3 Q And you said that Mr. Vail did not ask you to
4 take your skirt off?

5 A Yes, ma'am.

6 Q Did he ask you not to take your skirt off?

7 A No, ma'am.

8 Q Did he ask you to leave your skirt on, that it
9 wasn't right for you to take it off?

10 A No, ma'am.

11 Q What did he do while you were taking your skirt
12 off?

13 A Lying on the bed.

14 Q Did he say anything to you about it?

15 A No, ma'am.

16 Q On December 6th, that is the morning -- that
17 Saturday morning you said he picked you up?

18 A Yes, ma'am.

19 Q Where did your parents think you were?

20 A Baby-sitting at my friend John's house.

21 Q They thought you went there that morning?

22 A Yes, ma'am.

23 Q Did you actually go to baby-sit that day?

24 A Later on after cheerleading practice.

25 Q But you told them you were going that morning?

- REDIRECT EX. BY MRS. HERRING-LASH

217

1 A Yes, ma'am.

2 Q Now, on the 22nd, that's the day of the phone
3 calls with Caroline and Kelsey?

4 A Yes, ma'am.

5 Q Were you mad at Caroline?

6 A No. I was just upset because I just felt like
7 he was saying all of the same stuff to me that he was
8 saying to other girls too.

9 Q Did you want them to talk to him about it?

10 A No, ma'am.

11 Q Did you tell them on the phone that it had not
12 happened that day?

13 A Yes, ma'am.

14 Q And was that before or after you talked to
15 Mr. Vail?

16 A After.

17 Q What did -- did you talk with him about this
18 situation?

19 A Yes, ma'am.

20 Q What did he say to you about it?

21 A He was upset and he kind of realized -- he
22 didn't tell me, but I think he kind of knew that I had
23 told them.

24 Q Was he happy about that?

25 A No.

- REDIRECT EX. BY MRS. HERRING-LASH

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- 1 Q What was he?
- 2 A Upset.
- 3 Q How did that make you feel?
- 4 A Upset. I felt like I had betrayed him.
- 5 Q You had what?
- 6 A Betrayed him.
- 7 Q So what did you do about that betrayal?
- 8 A I told Kelsey and Caroline to tell him that I
- 9 didn't say anything, and I told Kelsey and Caroline that I
- 10 was just making it up because I was 'upset.
- 11 Q Now, you talked about Mr. Mullins telling you
- 12 about the engagement.
- 13 A Yes, ma'am.
- 14 Q First of all, let's explain is Mr. Mullins
- 15 related to Amanda Mullins?
- 16 A No, ma'am.
- 17 Q Who is Mr. Mullins?
- 18 A The principal at First Baptist.
- 19 Q You said he told you after this blew up. What
- 20 did you mean by blew up?
- 21 A After my parents had called him and after my
- 22 parents approached me and asked me what had happened.
- 23 Q Was it after you had told Mrs. Murray?
- 24 A Yes, ma'am.
- 25 Q Yes?

- REDIRECT EX. BY MRS. HERRING-LASH

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1 A Yes, ma'am.

2 Q So he told you about the engagement after you
3 had told Mrs. Murray about you and Mr. Vail having sex?

4 A Yes, ma'am.

5 Q When you talked to the police, you did not tell
6 them everything; is that right?

7 A Yes, ma'am.

8 Q So when you say you were truthful, what do you
9 mean by being truthful?

10 A I was only telling them about what happened
11 about the situations that they knew about.

12 Q That who knew about?

13 A My parents and my sister.

14 Q Why didn't you want to tell the police about
15 more?

16 A Because he would get in more trouble.

17 Q Do you think if his relationship with Amanda
18 would have ended could you and Coach Vail have had a
19 public relationship?

20 A No, ma'am.

21 Q How could your relationship have changed?

22 A Because he could have been with me more.

23 Q Like what do you mean by more?

24 A Just spent more time with me, I guess.

25 Q Would you have been able to go out in public

- REDIRECT EX. BY MRS. HERRING-LASH

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1 places?

2 A No, ma'am.

3 Q Is it easier for you to talk about this now than
4 it was back in January?

5 A Yes, ma'am.

6 Q Have you been going to counseling during this
7 last year?

8 A Yes, ma'am.

9 MRS. HERRING-LASH: Court's indulgence for a
10 moment. I have no further questions.

11 THE COURT: Anything else?

12 MR. JONES: Just a couple, Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. JONES:

15 Q you stated that on October 28th, he
16 honked the horn when he got to the house?

17 A When he was on the Cooper River Bridge.

18 Q When he was on the Cooper River Bridge?

19 A Yes, sir.

20 Q Okay. Do you know why he honked the horn?

21 A Because I didn't believe him that he was coming
22 over to my house.

23 Q Okay. And the card that Mrs. Lash showed you,
24 that card you gave him at school?

25 A Yes, sir.

1 Q Didn't give him that card on the 28th?

2 A No, sir.

3 Q Didn't give him the shirt on the 28th?

4 A No, sir.

5 Q He actually told you don't get me any gifts?

6 A Yes, sir.

7 Q And that's actually written in the card?

8 A Yes, sir.

9 Q And on December 6 your parents thought you were
10 baby-sitting for -- who was that?

11 A John C _____.

12 Q C _____. And you found out about the engagement
13 after you had talked with Mrs. Murray, correct?

14 A Yes, sir.

15 MR. JONES: No further questions, Your Honor.

16 THE COURT: You may step down, ma'am. Thank
17 you.

18 It is probably a good time to take our morning
19 break. Ladies and gentlemen, I'll send you to the jury
20 room. Do not discuss this case in any way. Thank you
21 very much.

22 (WHEREUPON, the following proceedings were held
23 outside the presence of the jury.)

24 THE COURT: Thank you.

25 (WHEREUPON, a recess transpired.)

1 THE COURT: Are you ready?

2 MRS. HERRING-LASH: Yes, Your Honor.

3 THE COURT: Bring the jury in, please.

4 (WHEREUPON, the following proceedings were held
5 in the presence of the jury.)

6 THE COURT: Thank you. Please be seated. We
7 are ready to proceed.

8 MRS. GOODRICH: May it please the court. The
9 state calls Kelsey R

10 KELSEY R

11 being first duly sworn, testified as follows:

12 THE CLERK: Please state your full name to the
13 court and spell your last.

14 THE WITNESS: Kelsey Gray R R-

15 DIRECT EXAMINATION

16 BY MRS. GOODRICH:

17 Q Kelsey, what is your date of birth?

18 A My birthday is February 16, 1989.

19 Q And that makes you how old?

20 A Fifteen years old.

21 Q And where do you live?

22 A I live in I'On, which is in Mt. Pleasant.

23 Q And who lives there with you?

24 A My father, my stepmother, my sister, my brother
25 and my other sister.

K. R. _____ - DIRECT EX. BY MRS. GOODRICH

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- 1 Q What are your sisters' and brother's names?
- 2 A _____ Nate and Chrisman.
- 3 Q Do you know their ages?
- 4 A _____ is 14 years old. Nate is 11 years old,
- 5 and Chrisman is two years old.
- 6 Q Now, you said that you were 15 and _____ is 14?
- 7 A Yes.
- 8 Q Does that make you pretty close?
- 9 A It does.
- 10 Q Did you hang out with her a lot at school?
- 11 A We would say hello to each other and see how our
- 12 day was going, but we didn't really hang out with each
- 13 other.
- 14 Q Were you in the same grade or different grades?
- 15 A Different grades.
- 16 Q What school do you go to now?
- 17 A I go to Bishop England High School.
- 18 Q And what grade are you in there?
- 19 A I'm in the tenth grade.
- 20 Q Where did you go last year?
- 21 A I went to First Baptist Church School in
- 22 Charleston.
- 23 Q How long did you attend First Baptist?
- 24 A I attended there four years.
- 25 Q So that would have been fifth through ninth?

K. R - DIRECT EX. BY MRS. GOODRICH

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- 1 A Six through ninth, yes.
- 2 Q Do you know Mr. Vail?
- 3 A I do.
- 4 Q How do you know him?
- 5 A He was a teacher and a coach at First Baptist.
- 6 Q How long did you know him?
- 7 A I knew him two years.
- 8 Q And was that the entire time that he was at the
- 9 school?
- 10 A Yes.
- 11 Q Did you have any classes with him? Did he teach
- 12 you any subjects?
- 13 A He was my study hall teacher for a couple days a
- 14 week.
- 15 Q Can you tell the jury what is study hall?
- 16 A Study hall is a period where you are able to do
- 17 your homework and study for tests.
- 18 Q So he didn't actually lecture or anything like
- 19 that to you guys?
- 20 A No. He also had a SAT class going on, so he
- 21 would teach the SAT people what they needed to know and
- 22 then supervise us.
- 23 Q And you said a couple days a week. Do you
- 24 remember when?
- 25 A I'm not sure.

K. R - DIRECT EX. BY MRS. GOODRICH

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1 Q Do you know if your sister _____ had a crush on
2 Mr. Vail?

3 A She did.

4 Q How did you know about that crush?

5 A She would always, you know, throw little
6 comments out about him. She would always be near him in
7 between classes and during lunch, and it was just very
8 obvious.

9 Q So you saw them spend a lot of time together in
10 school?

11 A Yes.

12 Q Did you ever talk to _____ about her crush with
13 Mr. Vail?

14 A I kind of, you know, was like, you know, you
15 have a crush on him. But we didn't really talk about it.

16 Q Were you able to see Mr. Vail's reaction to that
17 crush?

18 A I was able to see a little bit of it. I was
19 able to see that he didn't want to hurt her feelings. And
20 so he was kind of, you know, there just kind of, I guess,
21 be there, but...

22 Q Did he spend a lot of time with her at school?

23 A He did.

24 Q Do you know if they talked on the phone?

25 A I do.

K. R. - DIRECT EX. BY MRS. GOODRICH

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1 Q And do you know how often they talked on the
2 phone?

3 A They talked on the phone pretty often.

4 Q Were you around when they would talk on the
5 phone, or how did you know they talked on the phone a lot?

6 A Well, I would hear talking in her room,
7 and, you know, she would be like, oh, I talked to Coach
8 Vail today about such and such.

9 Q So she had her own cell. Did you have your own
10 cell phone?

11 A I did.

12 Q What was your cell phone number?

13 A 345-8936.

14 Q And do you still have that cell phone?

15 A I do.

16 Q At any time did you notice a change in 's
17 behavior at home?

18 A I did. She isolated herself from the family.
19 You know, she would go upstairs to her room pretty much as
20 soon as she got home and wouldn't come out until dinner,
21 and then maybe watch an hour of TV at the most and then go
22 straight back up to her room.

23 Q Do you know when that change came about?

24 A It started her eighth grade year.

25 Q And what was she like before then?

K. R. - DIRECT EX. BY MRS. GOODRICH

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1 A She was very social. You know, she would be
2 interacting with the family, you know, saying let's go to
3 the mall, let's go out to eat, always trying to get the
4 family to do stuff. But we eventually started to see that
5 she was trying to avoid all of the family outgoings, I
6 guess.

7 Q Do you know if Mr. Vail ever gave her anything?

8 A He gave her a stuffed animal.

9 Q Do you know anything about that stuffed animal?

10 A It's a dog, and he gave it to her for her
11 birthday her seventh grade year, I think.

12 Q And was there anything significant about that
13 dog?

14 A She told me that his father had given it to him
15 and he passed it on to her.

16 Q Does she still have that?

17 A She does.

18 Q What does she do with it?

19 A She sleeps with it at night.

20 Q Do you know if they had any songs?

21 A They did.

22 Q How do you know about those?

23 A _____ did an English project, and they were
24 focused on those two songs. And every time they would
25 come on the radio, you know, she would ask to turn it up,

K. R - DIRECT EX. BY MRS. GOODRICH

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1 and she had several CD's burned with that song on there.

2 Q What were the songs?

3 A Strawberry Wine and I Hope You Dance.

4 Q Now, going I guess your ninth grade year,

5 _____ s eighth grade year, was there ever a time that you

6 found out that _____ skipped class?

7 A I did.

8 Q What class was that?

9 A That would be Latin.

10 Q And what period was Latin, did she have Latin?

11 A That was seventh period, which was last period.

12 Q How did you find out about that?

13 A Well, Caroline and I were in study hall, and we
14 needed our history assignment, who was also her Latin
15 teacher.

16 Q Your history teacher was her Latin teacher?

17 A Yes. And so Caroline and I asked to be excused
18 to go get that assignment from him, and _____'s class
19 happened to be during last period when we needed it. So
20 we went up there to ask him for it, and I was like, you
21 know, where's _____. And he was like, oh, she's getting
22 tutored or has a doctor's appointment. He honestly didn't
23 know?

24 Q Had you known previously that she was planning
25 on skipping?

1 A I didn't.

2 Q Did you see her after that?

3 A I saw her after she came home or after -- when
4 my parents picked her up from the gym.

5 Q What did you do that afternoon?

6 A I rode the bus home, and I went and did my
7 homework when I got home.

8 Q Did you ever talk to her on the phone or
9 anything like that during the day?

10 A I did. The bus was about to leave and, you
11 know, wasn't on the bus. So I called her and asked
12 her where she was, and she told me she was walking around
13 downtown with friends.

14 Q I want to now kind of take you to November 22.

15 A Okay.

16 Q Do you remember that day?

17 A I do.

18 Q And that was a Saturday, right?

19 A Yes.

20 Q Where were you on that day?

21 A I was at my friend Caroline's house.

22 Q Okay. We talked a little bit about Caroline.

23 Who is Caroline?

24 A Caroline is my best friend.

25 Q And when were you over at her house? Did you go

K. - DIRECT EX. BY MRS. GOODRICH

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1 there that morning or the night before?

2 A I had spent the night at her house that Friday
3 night.

4 Q And that morning, did anything unusual happen?

5 A Yes. As we were sitting down to eat breakfast,
6 my sister called me in hysterics.

7 Q And was that unusual for your sister to call
8 you?

9 A It was. She would text message me and say, you
10 know, hey, what's up, are you having fun. But for her to
11 call me and be like that, it was very unusual.

12 Q Okay. To be like what?

13 A To be all upset and just furious, honestly.

14 Q And were you able to talk to her at that time?

15 A I told her, you know, we were just sitting down
16 for breakfast, and I would have to call her back when we
17 were done.

18 Q And did you talk to her later?

19 A I did.

20 Q Did you talk to her the next time she called or
21 did you call her?

22 A I honestly can't remember. There were several
23 calls saying, you know, hold on, we're not done with
24 breakfast. And she would call and leave voice messages,
25 and I would call and do the same. But eventually we ended

K. R - DIRECT EX. BY MRS. GOODRICH

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1 up getting in touch with each other.

2 Q Would it refresh your memory if we showed you
3 the phone records?

4 A It probably would.

5 Q I will take us right to November 22.

6 A Okay.

7 Q Do you see your name on this chart?

8 A I do.

9 Q So when did the phone calls from _____ start to
10 you on that morning?

11 A It started at 11:31 a.m.

12 Q So that two-minute phone call at 11:31 is her
13 upset and you saying I will talk to you later?

14 A Yes.

15 Q And then the phone calls at 11:52 and 12:11,
16 those are only one minute long. Do you know if you talked
17 to her or if those were maybe messages left?

18 A I'm pretty sure I just got frustrated with her
19 calling, so I said to myself, you know, I'm not going to
20 pick up until I can actually talk to her.

21 Q Okay. When was that?

22 A That was maybe during breakfast.

23 Q Okay. And when were you able to actually talk
24 to her?

25 A I don't know. Like, as soon as we finished

K. R. - DIRECT EX. BY MRS. GOODRICH

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1 breakfast, Caroline and I went back up to her room, and we
2 started talking with her.

3 Q You started talking to _____ ?

4 A To _____ yes.

5 Q There is a three minute phone call at 12:21.
6 Would that have been long enough that you could talk to
7 Shelby?

8 A Yes, it could have.

9 Q Once you started speaking with _____ what
10 happened?

11 A Well, you know, I asked what's going on, and she
12 had found a note in this little box that I have, and she
13 wanted to ask me about it.

14 Q Okay. You talked about that?

15 A We did.

16 Q And what happened after you talked about that
17 note?

18 A Can you repeat that?

19 Q What happened after you talked about that note?

20 A You know, we just explained to her, you know,
21 you just need to chill out, it's nothing big. And she
22 admitted to us that she and Coach Vail had been having
23 sex.

24 Q And what was your reaction at that point?

25 A I started bawling, like I was in hysterics.

③

K. R. - DIRECT EX. BY MRS. GOODRICH

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1 Q And what did you do with the phone at that
2 point?

3 A I gave it to my friend Caroline, because I just
4 couldn't speak to her.

5 Q Did you talk to your sister after that?

6 A I did. It was very short, because I honestly
7 didn't know what to say to her after I had heard that.

8 Q What did you and Caroline decide you were going
9 to do?

10 A Well, Caroline and I, you know, we both cried.
11 And, you know, we talked about it, and we talked to Coach
12 Vail about it.

13 Q You decided that you were going to talk to Coach
14 Vail?

15 A Yes.

16 Q Did you tell _____ that that's what you were
17 going to do?

18 A I don't think so. I think we told her, you
19 know, well, we might call him and just mention it and see
20 what the deal is. But I don't think we directly told her
21 we are calling him right now and asking him.

22 Q Did _____ ask you to call him?

23 A She didn't. She told me not to and not to
24 mention anything about this.

25 Q And did you ultimately call Mr. Vail?

K. R - DIRECT EX. BY MRS. GOODRICH.

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1 A I'm not sure if he ended up calling us, or we
2 ended up calling him. I think we called him from
3 Caroline's phone.

4 Q And do you remember talking to him about it?

5 A We didn't talk about it. I, you know, asked him
6 did you and _____ have sex. And he gave me an
7 explanation.

8 Q What was his explanation?

9 A His explanation was that he had just taken her
10 to the pier on Folly Beach and sat her down and told her
11 how there could not be a relationship between them.

12 Q And that is what Mr. Vail told you?

13 A Yes.

14 Q Did you say anything else to him?

15 A I asked, you know, like well -- I asked minor
16 details like, you know, how did y'all -- I honestly cannot
17 remember. But I remember us, you know, kind of working
18 out the details.

19 Q When you were talking to _____ did she seem
20 mad at anybody?

21 A At first she was mad at Caroline and I because
22 she had found that note. And, honestly, I guess it was
23 just we were right there and so she got mad at us about
24 it. And she ended up, you know, coming to us with all of
25 her problems with it, like...

K. R - DIRECT EX. BY MRS. GOODRICH

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1 Q So was she mad at Caroline after?

2 A She wasn't. She got over it.

3 Q Did you talk to about this later that
4 day?

5 A We had cheerleading practice later on that day,
6 and she tried to mention a couple of things about it to me
7 at our practice. But I told her, you know, not right now,
8 not here, we will talk about it later. And that night we
9 honestly didn't talk about it, but we did the next morning
10 or afternoon.

11 Q Tell the jury what happened the next day.

12 A The next day we were at home. And my sister
13 came to me, and I was informed that she had been,
14 you know, making that up, it wasn't true. And she told me
15 that they had not been having sex.

16 Q And what was your reaction to that?

17 A I honestly accepted it because I wanted to get
18 out of that situation. I didn't want to believe it. I
19 was in denial so I was willing to take anything thrown at
20 me so I could just believe it and forget about it.

21 Q How did she seem on that day when she told you?

22 A She seemed a little bit kind of antsy, you know,
23 just kind of really mellow.

24 Q Kelsey, was there ever a time that you -- and it
25 probably happened a lot, but you and your sister baby-sat

K. R - DIRECT EX. BY MRS. GOODRICH

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1 your little sister?

2 A Yes.

3 Q Did it happen a lot?

4 A Yes. It started getting more frequent every
5 couple months.

6 Q Was there ever a time that she asked you to
7 baby-sit without her?

8 A She did. You know, I mainly baby-sat and she
9 would help me when I needed her, so I was usually in
10 charge.

11 Q Because you were the older girl?

12 A Yes.

13 Q Can you tell us about when she asked to not
14 baby-sit?

15 A Well, my parents had gone out for the night, and
16 she had mentioned to me that her friend was down the
17 street and she would like to go visit her. And I told
18 her, you know, that's not going to work because I don't
19 know when Mamie and dad are going to be home, and I don't
20 know what y'all are going to do. And she offered me \$25
21 to go hang out with her friend. And, I mean, hey, it was
22 money so I was willing to take it. And I was like sure,
23 go hang out with your friend.

24 And so later that evening, you know, I had
25 called her because it was getting late, and I told her to

K. R - DIRECT EX. BY MRS. GOODRICH

237

1 come on home, and she eventually came home. And I gave
2 her back her \$20.

3 Q Do you know who the friends were that she was
4 going to meet? Did she tell you?

5 A She told me it was her friend Melissa.

6 Q Had you ever met Melissa?

7 A I had never met her before.

8 MRS. GOODRICH: Court's indulgence one moment.

9 BY MRS. GOODRICH:

10 Q Do you remember about what time _____ went out?

11 A It was maybe around 8:00, 7:30, 8:00.

12 Q And based upon the phone records, would it
13 refresh your memory to know when you were maybe calling
14 her to come back?

15 A It would. I was using the house phone, which is
16 I'm guessing not available. And I was calling her, you
17 know, telling her come on home. And I had to call her
18 several times because, you know, she wasn't coming home.

19 Q So that would have been like the 9:02 call and
20 9:06 call where it says incoming?

21 A Yes.

22 Q And did she call you, up at the top?

23 A She did. She was explaining to me, you know,
24 I'm right down the street, I'll be right there, you know,
25 don't worry, it's all right.

K. R - DIRECT EX. BY MRS. GOODRICH

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1 Q She ultimately came home, correct?

2 A She did.

3 Q And did you keep your \$25?

4 A Well, I kept \$5, and I gave her back her \$20.

5 Q Why did you do that?

6 A I don't know. I felt bad for keeping that much
7 money, but I don't know.

8 Q Once she was at home, were your parents home
9 yet?

10 A They weren't.

11 Q And did you see anything else unusual that
12 night?

13 A Well, I was letting my dog Amber out to go to
14 the bathroom, and they were building a house right across
15 from the porch where I let her out. And I had seen a
16 shadow or something moving inside of the house.

17 Q But you didn't see who it was or anything like
18 that?

19 A I didn't.

20 Q Do you know what happened to _____'s screen in
21 her bedroom window?

22 A I honestly had no idea what had happened. I
23 thought, you know, she just had her window up and it fell
24 down.

25 Q And do you know if the rest of your family

1 noticed the same changes that you noticed in _____/?

2 A They did.

3 Q What did your parents do as a result?

4 A My parents tried to get us involved in more
5 family activities and, you know, tried to tell _____ you
6 know, you can't be in your room. And they even told her
7 that she couldn't lock her door anymore.

8 Q Did there ever come a time when you and _____
9 were in your parent's room and your dad kind of told you
10 to leave?

11 A He did.

12 Q Can you tell the jury about that?

13 A Well, we had just gotten home from school, and I
14 was asking my dad if I could do something over the
15 weekend. And _____ was just kind of sitting there
16 listening in, and _____ had found a clipboard on my
17 parent's bed and started looking through it. And my dad
18 noticed that so he asked me to please leave.

19 Q And what was your reaction to that?

20 A I thought it was a little weird, you know. I
21 was like, well, why do I have to leave, you know, I was
22 here first.

23 Q So did you ultimately leave?

24 A I did.

25 Q Where did you go?

K. R - DIRECT EX. BY MRS. GOODRICH

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1 A I went into my room.

2 Q And after you went into your room, could you
3 hear anything going on?

4 A Well, for a while, I couldn't hear anything.
5 But then I started to hear talking, and it continued to
6 get louder and louder. And it eventually got up to
7 screaming and yelling and crying.

8 Q Did you talk to your parents about it
9 afterwards?

10 A They came to me and spoke to me about it.

11 Q What did they tell you?

12 A They had told me that _____ and Coach Vail had
13 been having a relationship.

14 Q Have you talked with Mr. Vail since he left
15 school?

16 A I have.

17 Q Tell me about the conversations. How many
18 conversations have you had with him since he left school?

19 A Well, the day he left school, Caroline and I had
20 been text messaging with him and calling him from the
21 bathroom just talking about how upset we were. And a
22 couple days later, I called him and it was pretty much
23 just like a goodbye. And I had written him a letter, and
24 I just read that letter to him.

25 Q Did he say anything to you?

(4)

K. R - DIRECT EX. BY MRS. GOODRICH

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1 A He had told me, you know, it's going to be okay,
2 you know, I'm sorry that all of this happened, that it
3 wasn't true and he told me to please tell I hope
4 you dance, to keep on dancing.

5 Q Have you talked with about this since?

6 A I have. I have spoken to her, you know, I was
7 like -- I went and told her what he said and I was -- I
8 asked her if, you know, that was one of their songs and
9 the meaning behind it. And she wasn't real open about it.
10 She was just kind of keeping it to herself.

11 Q Did you and use to take walks, at all,
12 around the neighborhood together?

13 A Well, after everything all came out and
14 unfolded, she asked me several times to take walks with
15 her.

16 Q And did you go on those walks?

17 A I did.

18 Q Did anything happen on any of those walks?

19 A She talked to me, you know, about how she felt
20 and she took me to the parking lot and showed me a condom
21 box.

22 Q Kelsey, how has this affected your family?

23 A It has honestly really torn our family apart.
24 You know, it's hard to do family things together just
25 because, you know, we're all thinking about it. But we

K. R - DIRECT EX. BY MRS. GOODRICH

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1 all won't admit to it, and we're all thinking different
2 things. And it's just hard to kind of talk about it
3 because we want to avoid it, but then we want to talk
4 about it.

5 Q So it's had an affect on you?

6 A On me?

7 Q Uh-huh.

8 A I don't know. It's just very hard to hang out
9 with my sister and family right now. It's just -- because
10 it seems like it's always coming up. And, honestly, I
11 have been wanting to just push it aside and completely
12 forget about it.

13 MRS. GOODRICH: Court's indulgence, Your Honor.

14 THE COURT: Yes, ma'am.

15 BY MRS. GOODRICH:

16 Q When we were talking about the night you were
17 baby-sitting and you said you saw a shadow --

18 A Yes.

19 Q -- where did you see that shadow?

20 A It was somewhere in the house. I can't remember
21 if --

22 Q Your house or?

23 A I saw it from my house, and it was in my
24 neighbor's house, which was halfway built.

25 Q So nobody was actually living in that house at

K. R. ____ - DIRECT EX. BY MRS. GOODRICH

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1 the time?

2 A No.

3 Q Before Coach Vail, Mr. Vail, left school did you
4 talk to him on the phone?

5 A Before he left school?

6 Q Uh-huh. I mean during your seventh and
7 eighth -- or eighth and ninth grade years?

8 A It had been very short conversations. I had
9 called to wish him like a happy Thanksgiving and happy
10 birthday. And after the November 22nd incident, you know,
11 we had talked to each other and said let's just forget
12 about this, let's start fresh. But that was pretty much
13 it.

14 Q So they weren't long conversations?

15 A No, they weren't.

16 Q Did you talk to him often?

17 A It was very rare that we talked.

18 Q At one point, the day that you found out that
19 _____ had skipped class, you said you went from study
20 hall to _____'s Latin teacher?

21 A Yes.

22 Q Who was her study hall teacher at that point?

23 A It was Mrs. Bridges or Mrs. Needham. They use
24 to switch.

25 Q And when you spoke with Mr. Vail after he left

K. R - DIRECT EX. BY MRS. GOODRICH

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1 school, did he ask you any questions?

2 A I can't remember.

3 Q And has ever told you details of what
4 happened?

5 A When we took those walks, you know, she talked
6 about many details. But I think after that, you know, it
7 would be very rare that she talked to me about it.

8 Q Did she tell you when and where they had had
9 intercourse?

10 A She had told me at his apartment, in his car in
11 the parking lot and in some half built houses.

12 MRS. GOODRICH: I have no further questions.
13 Please answer any questions that Mr. Jones has.

14 MR. JONES: Your Honor, do you want me to begin
15 or wait?

16 THE COURT: You can start. Go ahead.

17 CROSS-EXAMINATION

18 BY MR. JONES:

19 Q I'm attorney Craig Jones. I'm going to ask you
20 a few questions real quick.

21 A Okay.

22 Q You were there when Coach Vail and Miss Mullins
23 came to First Baptist?

24 A Yes, I was.

25 Q And they were hired at the same time?

K. R - CROSS-EX. BY MR. JONES

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1 A They were.

2 Q You were a student at that time?

3 A Uh-huh.

4 Q And they were dating at the time?

5 A They were.

6 Q And everybody knew they were dating?

7 A Yes, they did.

8 Q They were kind of the story-book couple?

9 A They were.

10 Q Football coach, cheerleading coach, did people
11 talk about them getting married?

12 A There were a few rumors flying around. You
13 know, you'd hear something about there's a ring involved,
14 I've seen it, I've talked about it. You know, there's a
15 date set. I know it's going to happen soon, but those
16 were, you know, rumors that were just everywhere.

17 Q And that pretty much started when they got there
18 because they were already dating?

19 A Yes.

20 Q Okay. So all through seventh grade, eighth
21 grade, there were always rumors?

22 A Yes.

23 Q And you talked about -- a number of
24 students had crushes on Coach Vail; didn't they?

25 A They did.

K. R - CROSS-EX. BY MR. JONES

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1 Q And would you say 's was a little more
2 intense than most?

3 A I can't say that for sure because, you know, I
4 never talked to any of the other students who had crushes
5 on him.

6 Q Okay.

7 A But, you know, I was able to kind of separate
8 hers from some of the other kids.

9 Q But it was very obvious?

10 A It was.

11 Q And Coach Vail, did he try to discourage the
12 crush?

13 A Excuse me?

14 Q Do you know if Coach Vail tried to discourage
15 that crush?

16 A I had heard, you know, he had -- that he had
17 been speaking to her. But, you know, in between classes
18 and during lunch, you know, he would be giving her hugs,
19 have his arm around her occasionally.

20 Q Okay. Did they get to spend much time together
21 during school, like during school?

22 A They spent a pretty good amount.

23 Q They got to talk a good bit during school?

24 A Yes.

25 Q And he would be in the hallway with other

1 students and stuff like that, but he still made time for
2 her?

3 A You know, if he was in the high school building,
4 he would mostly be talking to the older students. But if
5 he was in the parking lot or around the elementary and
6 middle school building, then he would mostly be seen with
7 her.

8 Q And you said he didn't want -- you didn't think
9 he wanted to hurt her?

10 A I didn't even think he wanted to be with her,
11 so...

12 Q Now, you said you began to notice a change in
13 in her eighth grade year?

14 A Yes.

15 Q And she became more isolated and stayed in her
16 room?

17 A Yes.

18 Q And less time with the family?

19 A Yes.

20 Q Did you notice her personality? Did she become
21 more withdrawn?

22 A I wouldn't say more withdrawn. You know, she
23 became more interested in how she looked in her
24 appearance. And, you know, her personality became a
25 little more confident.

K. R - CROSS-EX. BY MR. JONES

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1 Q So in one respect, you would say it's a negative
2 change in that she withdrew from her family?

3 A Yes.

4 Q But in another respect, it would be a positive
5 change because she felt like she was a little more
6 confident?

7 A Yes.

8 Q Now, you talked about the songs Strawberry Wine
9 and I Hope You Dance?

10 A Yes.

11 Q Now, did Coach Vail ever give those songs to
12 her?

13 A I'm not sure if he said, you know, these are our
14 songs or she assumed, so...

15 Q But he never gave her a CD or bought the Deana
16 Carter, or whatever her name is that did Strawberry Wine,
17 and gave her her CD, to your knowledge?

18 A I'm not sure. I don't know.

19 Q Okay. Now, do you know what class Coach Vail
20 taught at seventh period?

21 A I don't know what classes he taught. I knew
22 classes he taught were PE, SAT, study hall and algebra.

23 Q And do you know if he had a seventh period
24 class?

25 A I'm not sure. Besides our study hall, I'm not

K. - CROSS-EX. BY MR. JONES

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1 sure.

2 Q That was a seventh period?

3 A Yes, it was.

4 Q And was that during -- that would have been your
5 ninth grade year?

6 A Yes.

7 Q Okay. And so during the time of your ninth
8 grade year, which would have been October, November,
9 December of 2003, he would have had a study -- he would
10 have taught a seventh period study hall, correct?

11 A Yes.

12 Q Do you know if he had a sixth period class?

13 A I don't.

14 Q And that's fine. Real quick, the school is
15 located downtown?

16 A Yes, on Meeting Street.

17 Q Okay. And that's really right in the middle of
18 downtown?

19 A Yes.

20 Q Did y'all often after school walk downtown?

21 A We would. You know, we would walk to our
22 practices, maybe grab a quick bite to eat.

23 Q Okay. So it was pretty normal for the students,
24 because you were right there?

25 A Yes.

K. R - CROSS-EX. BY MR. JONES

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1 Q Now, on November 22nd, you said that morning
2 y'all were having, I guess, a late breakfast?

3 A Yes. We had woken up late.

4 Q Okay. And called, and she was pretty
5 furious?

6 A She was.

7 Q And you said, look, I can't talk right now, I
8 will get back with you a little bit later on?

9 A Yes.

10 Q And that was unusual for her --

11 A It was.

12 Q -- to get like that?

13 A It was.

14 Q And when she -- and she told you that they had
15 gone -- well, let me ask you this. Did she say that they
16 had been to the pier?

17 A Originally she had said she was just walking
18 downtown with friends.

19 Q Okay.

20 A But --

21 Q And that was when y'all were at school?

22 A Yes. But later on in that conversation, she had
23 told me that they had been having sex. And, later on, I
24 had talked to Coach Vail, and he had told me that they
25 went down to the pier and talked. And then came

1 back to me and said that that was true.

2 Q Did she say what they talked about when they
3 went to the pier?

4 A She had just mentioned that they had been
5 talking about how they could not have a relationship, that
6 they had set a date to maybe get together once she was
7 legal age.

8 Q Which would have been May 16th of -- or May 6th,
9 2007?

10 A 16, 2007.

11 Q Which is indicated on the card?

12 A Yes.

13 Q And a number of places?

14 A Yes.

15 Q And after she talked with you and she told you
16 that, you believed her?

17 A I did.

18 Q And y'all really didn't talk again that night
19 about this?

20 A We didn't. We wanted to avoid it.

21 Q Okay. But y'all were both home together that
22 night?

23 A We were. She stayed in her room, would go down
24 and watch TV. I would be in my room.

25 Q And then y'all had cheerleading practice the

K. R - CROSS-EX. BY MR. JONES

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1 next day?

2 A We had cheerleading that Saturday.

3 Q Okay. And it really didn't -- y'all really
4 didn't talk about it then?

5 A We didn't. You know, she attempted to, but I
6 told her not right now.

7 Q Okay. And that was with Miss Mullins, the
8 cheerleading practice?

9 A Yeah, she was there so...

10 Q Okay. Right, right. She was heading up the
11 practice?

12 A Yes.

13 Q And on the night in reference to the house
14 outside, do you -- it was dark and you just noticed a
15 shadow?

16 A I did. I noticed something moving.

17 Q Okay. Something, not -- you can't say it was a
18 person or --

19 A I couldn't. It might have been a racoon or
20 anything.

21 Q And do you recall about what time that was?

22 A It was later that night. I'm not sure of the
23 exact time.

24 Q Okay. Do you know if it was after 10:00, before
25 10:00; do you know any of that?

K. R - CROSS-EX. BY MR. JONES

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1 A It was maybe a little while after had
2 gotten home.

3 Q Okay. Now, how far apart are y'all in age?

4 A We are 15 months.

5 Q Okay. Y'all are a grade apart?

6 A Yes.

7 Q So y'all have a lot of common friends?

8 A Not necessarily, no. I would know who her
9 friends were. You know, we talked to each other and same
10 with my friends, but we never all hung out together.

11 Q Okay. Now, y'all live in I'On?

12 A We do.

13 Q It's a nice neighborhood?

14 A It is.

15 Q Safe neighborhood?

16 A Yes, it is very safe.

17 Q You can walk out at night and know you are going
18 to be safe --

19 A Yes.

20 Q -- pretty much. People walking, running,
21 jogging?

22 A Yes, there are people walking their dogs. And
23 around late at night, they will have a cop going through
24 looking around the neighborhood to see if there is any
25 trouble going on.

K. R - CROSS-EX. BY MR. JONES

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1 Q And when the weather is nice, people may be out
2 running, jogging, walking until 8:00, 9:00 at night?

3 A Yes.

4 Q And that's not uncommon to see people out?

5 A It's not. You know, there aren't nearly as
6 many. You know, you'll see maybe two or three or five but
7 not a lot.

8 Q Gotcha. Okay. Now, do you know most of your --
9 the houses are very close in there?

10 A Yes, they are.

11 Q And do you know most of your neighbors?

12 A We know maybe two or three, but we're not, you
13 know, really good friends with the houses, you know, like
14 across the street.

15 Q Did you have friends that live in that
16 neighborhood?

17 A I do.

18 Q And it's not uncommon for y'all to get together
19 and walk around and hang out?

20 A Yes. We normally wouldn't like just walk around
21 the neighborhood, you know. We would be in their house or
22 in their backyard, you know.

23 Q Okay.

24 A We don't just kind of roam around.

25 Q Okay. And there's really -- how many entrances

K. R. - CROSS-EX. BY MR. JONES

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1 are there to I'On?

2 A There are three or four.

3 Q Okay. The main one?

4 A Yes.

5 Q And that's how y'all normally came in, through
6 the main entrance with the traffic circle?

7 A Yes.

8 Q Okay. And then you just go straight back to
9 your house?

10 A Yes.

11 Q Okay. Now, your parents -- at some point, you
12 said your parents began to try to get her more involved in
13 some activities?

14 A Not just her. They tried to get the whole
15 family involved.

16 Q Okay. And Mamie is your stepmom?

17 A Yes.

18 Q And so y'all are kind of bringing two families
19 together, correct?

20 A Yes. She hadn't had any previous children or
21 previous marriages so...

22 Q Okay. So she comes in and really, I guess,
23 there are three -- there were three -- she kind of comes
24 into three children, correct?

25 A Yes.

K. R - CROSS-EX. BY MR. JONES

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1 Q Okay. But basically your parents took some
2 things to -- they wouldn't let her lock the door?

3 A Yes. You know, she ended up spending a lot of
4 time in her room, so they would limit the time she had in
5 her room. And we always had trouble, you know, getting
6 her attention so we told her that she couldn't lock her
7 door anymore.

8 Q Now, the afternoon that you came home from
9 school and they had found the phone records --

10 A Yes.

11 Q -- at that time, they had found out about Mark
12 and -- or at least one of Mark and 's
13 relationships. I know they didn't know about everything.

14 A They had suspected a lot of things and, you
15 know, they had proof. But they didn't know for sure. So,
16 you know, they brought in, and they talked to her
17 about it.

18 Q Okay. And is that when she revealed to them
19 that they had had a relationship?

20 A Yes.

21 Q And your parents were pretty angry over that?

22 A They were pretty angry. You know, they were I
23 think, more upset than angry.

24 Q But there was a lot of yelling, you said?

25 A I mean there was -- don't get me wrong. There

K. R - CROSS-EX. BY MR. JONES

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1 was a lot of anger, but I think it was more upset.

2 Q Okay. And do you know what -- they took away
3 's phone?

4 A They did. They took away her privileges for
5 quite a while.

6 Q And put her on restriction or anything like
7 that?

8 A Yes, they did.

9 Q Any other punishment or anything?

10 A That's all I can recall.

11 Q And when you spoke with -- after all of this
12 came out, you talked with Coach Vail, and he told you that
13 it didn't happen?

14 A He did.

15 Q Did you believe him at that time?

16 A I did honestly. I was in such denial. You
17 know, it was very shocking and very hard to believe. So,
18 honestly, I hadn't sat down and thought about it, you
19 know, just I was willing to believe anything that was
20 pretty much told to me.

21 Q But at one point -- so on two occasions, you
22 believed Coach Vail: The first time when _____ had told
23 you that they had had sex and then he said we didn't do
24 it, and then when you talked to _____ when she had -- and
25 the whole time Coach Vail during that incident said

1 nothing happened?

2 A Yes. I, you know, always still thought, you
3 know, there was something going on. I mean, I accepted
4 that. I just was in total denial that there was a sexual
5 relationship involved.

6 Q Okay. And then after all of this had come out
7 and you talked with him on the phone at that time, you
8 said you still believed him at that time?

9 A Yes. I mean, I had many questions for him.
10 And, you know, there were many answers given back to me.
11 You know, some were very questionable and others, you
12 know, they were easy to believe.

13 Q Okay. But he did tell you that on November 4,
14 he was with _____ and that they had gone to talk?

15 A Yes.

16 Q And so he didn't try to hide that he had taken
17 her off to talk?

18 A That's right.

19 Q You said, at one point, y'all had taken a walk,
20 and she showed you a condom box?

21 A She did.

22 Q What did y'all do with that box, anything?

23 A Well, honestly, I was just in shock so I just
24 stood there for a minute. And she picked it up and wanted
25 to take it back home. And I told her, _____ no, you

K. R. - CROSS-EX. BY MR. JONES

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1 know, you can't do that, you just can't do that, that's
2 not right. And so she ended up sticking it in a tree.

3 Q Okay. And do you know if the police or your
4 parents or anybody ever get that box?

5 A They didn't. I don't think they did.

6 Q Okay. And it was already there when y'all got
7 there?

8 A Yes, it was.

9 Q And you said since all of this has happened, it
10 has been hard to hang out with the family?

11 A It has. You know, it's just really hard.

12 Q It is tense?

13 A It's not necessarily tense, you know. Just
14 because this has been the subject of our lives for quite a
15 while, we're focused on that. And it's just hard to find
16 other things to talk about.

17 Q Did you know -- you knew about Coach Vail's
18 tattoos?

19 A I did.

20 Q Pretty much everybody knew about Coach Vail's
21 tattoos?

22 A Yes. We went on an eighth grade trip and the
23 hotel we were staying at had an indoor pool. So, you
24 know, all of the eighth graders went swimming, and we saw
25 his tattoos.

K. R - CROSS-EX. BY MR. JONES

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1 Q Did you ever have an opportunity to meet Coach
2 Vail's friend, Otis? And I think I referred to him as
3 Otis Campbell earlier, but it's Coffey is actually his
4 name.

5 A He had come to the gym with Coach Vail one day
6 and, you know, we had been there for a cheerleading
7 practice or something. And so, you know, he introduced
8 us.

9 Q And do you remember seeing him at a Friday night
10 game one time come in?

11 A I don't remember.

12 Q Okay. And do you remember seeing him at school
13 on a Monday with the dog?

14 A I remember a dog. I don't remember if it was at
15 school though.

16 Q Okay. You don't recall exactly which day it was
17 that ----- skipped school that day?

18 A I have a couple of ideas, but I can't recall the
19 exact date.

20 MR. JONES: Court's indulgence for just a
21 moment.

22 (Counsel confers with the defendant.)

23 BY MR. JONES:

24 Q Kelsey, Coach Vail has a pretty unique car?

25 A Yes.

K. R - CROSS-EX. BY MR. JONES

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- 1 Q It's a compact car?
- 2 A Yes.
- 3 Q It's a blue car?
- 4 A Yes.
- 5 Q Got an unusual inside, got a PlayStation in it?
- 6 A Yes.
- 7 Q A DVD player in it?
- 8 A Yes.
- 9 Q Have you ever seen the -- it's got a great
- 10 stereo system in it?
- 11 A Yes.
- 12 Q Have you ever seen -- had the trunk ever been
- 13 open and you ever seen the speakers in the trunk before?
- 14 A I've kind of seen the back. There was a blanket
- 15 over the speakers though.
- 16 Q Okay. He's got lights on the car?
- 17 A I'm not sure.
- 18 Q Okay.
- 19 A I just remember it being a real, you know,
- 20 all-out car.
- 21 Q Okay. Small car?
- 22 A Yes.
- 23 Q Have you ever ridden in the car?
- 24 A I haven't.
- 25 Q At any time, have you ever seen Coach Vail in

K. R - CROSS-EX. BY MR. JONES

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1 your neighborhood?

2 A I haven't.

3 Q At any time, have you ever seen _____ leave
4 school?

5 A I never saw him and her leave school together.

6 MR. JONES: No further questions, Your Honor.

7 THE COURT: Anything else?

8 MRS. GOODRICH: Your Honor, I do have several
9 redirect questions. I notice that it's 12:00.

10 THE COURT: I have to stop. We will finish
11 after lunch. If you will please, ladies and gentlemen,
12 report back at 1:30 and we will proceed with the trial.
13 Do not discuss this case in any way. Thank you very much.

14 (WHEREUPON, the following proceedings were held
15 outside the presence of the jury.)

16 THE COURT: Ma'am, you may step down. Again,
17 like yesterday as you have heard -- you may have heard
18 yesterday -- well, you weren't in here, so you didn't hear
19 that. You may not discuss your testimony with anyone
20 during this break.

21 THE WITNESS: All right.

22 THE COURT: Thank you. See you back then.

23 (WHEREUPON, a lunch recess transpired.)

24 THE COURT: Bring them in. Go ahead and bring
25 her up.

1 (The witness, Kelsey R resumed the witness
2 stand.)

3 THE COURT: All right. You have some follow-up?

4 MRS. GOODRICH: Yes, Your Honor, may it please
5 the court?

6 THE COURT: Go ahead.

7 REDIRECT EXAMINATION

8 BY MRS. GOODRICH:

9 Q Kelsey, I just have a few more questions for
10 you, okay?

11 A Okay.

12 Q You were talking with Mr. Jones about the rumors
13 about Miss Mullins and Mr. Vail being engaged?

14 A Yes.

15 Q Did you ever see a ring on Miss Mullins' finger?

16 A I did not.

17 Q And the night that you were baby-sitting and
18 _____ went out to supposedly meet with her friends and
19 came back, you said that you saw a shadow in the house
20 next door?

21 A Yes.

22 Q Did you say anything to _____ about that?

23 A I went up to her room and I was like, you know,
24 _____ I saw something upstairs. She was like don't
25 worry about it, it could be a worker, it doesn't matter.

K. R - REDIRECT EX. BY MRS. GOODRICH

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1 Q Did you know what _____ was doing when she was
2 in her room all the time?

3 A I didn't. I thought she was just sleeping and
4 doing homework.

5 Q Now, I got a little confused when we were
6 talking about study hall teachers.

7 A Yes.

8 Q Because, at one point, you said your study hall
9 teacher was Mr. Vail?

10 A Yes.

11 Q What grade was that?

12 A It was all grades.

13 Q It was all grades, okay.

14 A Yes.

15 Q And then when we were talking about the day that
16 _____ skipped seventh period --

17 A Yes.

18 Q -- you had study hall, but it wasn't with Coach
19 Vail?

20 A Well, he would have maybe two or three days a
21 week where he would do his SAT class and our study hall
22 and that SAT class was combined.

23 Q Okay. But on the day that you went to _____'s
24 seventh period --

25 A Yes.

K. R - REDIRECT EX. BY MRS. GOODRICH

265

- 1 Q -- who was your study hall teacher?
- 2 A It was not Coach Vail.
- 3 Q Okay. At one point when Mr. Jones was asking
- 4 you questions, you said that you thought that Mr. Vail
- 5 didn't want to be with _____. Can you explain what you
- 6 meant by that?
- 7 A It was almost kind of given, you know, you never
- 8 really thought a teacher would want to be with a student
- 9 and...
- 10 Q Go ahead.
- 11 A I don't know, it was just obvious that it
- 12 couldn't happen so I don't know why somebody would want
- 13 what they couldn't have.
- 14 Q But you also said that you saw them spend a lot
- 15 of time together?
- 16 A Yes.
- 17 Q Did it ever appear to you that he was trying to
- 18 get away from her?
- 19 A It did not.
- 20 Q And to your knowledge, did _____ ever take back
- 21 what she told your parents happened to get out of trouble
- 22 or get off restriction?
- 23 A To take what back?
- 24 Q What she told your parents the night they
- 25 confronted her? I mean, has she ever said this didn't

K. R - REDIRECT EX. BY MRS. GOODRICH

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1 happen after she told them?

2 A Yes. She has tried to come up with different
3 explanations to fill it in and she's taken a lot of it
4 back.

5 Q You said, at one point, that you believed what
6 Mr. Vail told you and that was right after you talked to
7 him?

8 A Yes.

9 Q And was that before or after you had gone on the
10 walks with ?

11 A It was before, mostly.

12 Q And you have gotten more details from
13 since then?

14 A Yes. Like, as time progressed, I became more
15 and more reassured that, you know, he had done stuff, that
16 he was lying to me.

17 Q And you said that you never saw them leave
18 school together, but Mr. Vail told you that they had gone
19 off campus together, right?

20 A Yes.

21 Q And where did he say they went?

22 A They went to the pier on Folly Beach.

23 Q And when told you on that Sunday what she
24 had said Saturday, November 22nd didn't happen, is that
25 the same story that she gave you that they had gone to the

K. R. - REDIRECT EX. BY MRS. GOODRICH

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1 pier?

2 A Yes. She had told me originally that they had
3 sex. But they had been talking, and they had both
4 eventually started saying, you know, we just went to the
5 pier on Folly Beach.

6 MRS. GOODRICH: I have no other questions.

7 Thank you.

8 THE COURT: Anything else?

9 MR. JONES: Nothing further.

10 THE COURT: You may step down, ma'am. Thank
11 you. Call your witness.

12 MRS. HERRING-LASH: The state would call
13 Sergeant Billy Crews.

14 WILLIAM CREWS,
15 being first duly sworn, testified as follows:

16 THE CLERK: Please state your full name to the
17 court and spell your last.

18 THE WITNESS: Sergeant William Crews, C-R-B-W-S.
19 Charleston County Sheriff's Office.

20 DIRECT EXAMINATION

21 BY MRS. HERRING-LASH:

22 Q Sergeant Crews, you work at the Charleston
23 County Sheriff's Office?

24 A That's correct.

25 Q What are your duties now?

W. CREWS - DIRECT EX. BY MRS. HERRING-LASH

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1 A I'm a patrol sergeant in the patrol division.

2 Q Back in January of 2004, what were your duties?

3 A I was assigned to the detective division. I was
4 in charge of criminal investigations as far as juvenile
5 crimes and sexual assaults.

6 Q And were you assigned the case of State versus
7 Mark Vail?

8 A That is correct, I was.

9 Q How did you come about having that case?

10 A I was contacted -- well, our office was
11 contacted by Frank McCann, I believe it was, who is a
12 friend of the family, the R family, regarding the
13 sexual assault that had occurred to their child.

14 Q Do you know who Frank McCann is?

15 A He's an attorney.

16 Q And after getting information about the sexual
17 assault, what did you do?

18 A I had an appointment to meet with Mr. McCann as
19 well as the father of the victim in this case to be
20 briefed on what information they knew that had occurred.

21 Q Did they have questions also?

22 A They did.

23 Q About what?

24 A What they should do or what needed to be done.

25 This was something that they were in total -- they were

W. CREWS - DIRECT RX. BY MRS. HERRING-LASH

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1 upset about it and didn't know what to do. They were just
2 looking for what they needed to do. They didn't
3 understand what was going on.

4 Q Did they have questions about the process and
5 what their daughter would have to go through?

6 A That's correct.

7 Q Do you know when this was?

8 A The date that I met with them, I may have it in
9 my notes.

10 Q Okay.

11 A It would be January the 9th. I believe that to
12 be a Friday afternoon.

13 Q And what did you do after meeting with them?

14 A After I met with them, I told them that I would
15 need to interview their daughter in the case, as well as
16 she would need to be set up for a sexual assault
17 examination.

18 Q And when did you interview her?

19 A I interviewed her on the 12th of January.

20 Q That would have been the next Monday then?

21 A That would have been three days later, correct,
22 Monday.

23 Q And where did you interview her?

24 A I interviewed her at my office, which is located
25 at 3505 Pinehaven Drive, the sheriff's office.

W. CREWS - DIRECT EX. BY MRS. HERRING-LASH

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1 Q And during that interview, did you discover what
2 jurisdiction this occurred in?

3 A Yes, ma'am.

4 Q What was that?

5 A It occurred on James Island in the County of
6 Charleston.

7 Q Now, how did you go about taking her statement?

8 A I -- she sat in a room with me on a one-on-one
9 interview, just the two of us. And I basically had her
10 explain to me how she knew Mr. Vail and how their
11 relationship progressed.

12 Q And did you write it down, or did she write it
13 down?

14 A I wrote it in my handwriting.

15 Q What was her demeanor like during this
16 interview?

17 A She was a little timid, nervous about meeting
18 with me, nervous about talking about the entire scenario,
19 the incident. I explained to her the process about what
20 would take place.

21 Q What did you explain to her?

22 A I explained to her, you know, if, in fact, I
23 learned that she had been involved in a relationship with
24 Mr. Vail and sexual acts had occurred that he would be
25 charged based upon what information I learned.

W. CREWS - DIRECT EX. BY MRS. HERRING-LASH

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1 Q Did you make it clear to her that each assault
2 would be a different charge?

3 A I explained to her that there were different
4 types of sexual assaults and that each particular act in
5 and of itself could be a charge, specific.

6 Q An additional charge?

7 A Correct.

8 Q And she understood that when you talked with
9 her?

10 A I'm pretty sure that she understood what I was
11 talking about.

12 Q And did she describe a sexual assault to you?

13 A She did.

14 Q Did she tell you when and where it happened?

15 A She gave me a time frame. She wasn't able to
16 give me a date specific. I think I listed that in my
17 affidavit.

18 Q What was that time frame?

19 A Let me refer to her statement. She gave me
20 early November of 2003 was the first time.

21 Q What was the time frame?

22 A Early November 2003, and I believe the other
23 incident she referred to was late November.

24 Q And did she tell you where?

25 A She stated it happened at his apartment on James

W. CREWS - DIRECT EX. BY MRS. HERRING-LASH

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1 Island.

2 Q Did you -- what did you do after that?

3 A Based on her statement, I obtained affidavits --
4 an affidavit for an arrest warrant for Mr. Vail.

5 Q Did you get any records?

6 A Yes. I had gotten some phone records from her
7 cellular phone, I believe it was, that her father had
8 provided through a cell phone bill that he paid.

9 Q Did you discover that he had found that phone
10 bill?

11 A That's correct.

12 Q Did you talk with the principal also?

13 A I did speak with Tommy Mullins, I believe it is,
14 the principal.

15 Q What else did you do in regard to this case?

16 A Other than trying to locate Mr. Vail and
17 speaking with his previous counsel who agreed to bring him
18 and meet with me, he was charged the day he came to meet
19 me. We had a bond hearing. He was placed in jail, and I
20 referred the case to the solicitor's office.

21 Q And was he just charged with one count?

22 A Yes, ma'am, I charged him with one count,
23 criminal sexual conduct.

24 Q And that's because _____ told you about one
25 time?

W. CREWS - DIRECT EX. BY MRS. HERRING-LASH

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1 A That's correct. She actually told me -- in her
2 statement, she actually told me there were two occasions
3 during that time frame, but she couldn't give me a
4 specific date. But she only described to me sexual
5 intercourse. She wasn't very clear on any other type of
6 acts.

7 Q Did she seem forthcoming and that she was -- I
8 guess desirous of prosecuting Mr. Vail?

9 A She seemed hesitant to me about it, not wanting
10 Mr. Vail to be in trouble.

11 Q Did she make that clear to you when she was
12 talking to you?

13 A Yes. I don't think -- well, in my opinion, I
14 don't think that she really wanted to be there.

15 MRS. HERRING-LASH: Court's indulgence for one
16 moment.

17 Those are all of the questions I have, Your
18 Honor.

19 CROSS-EXAMINATION

20 BY MR. JONES:

21 Q Sergeant Crews now. I'm so used to saying
22 detective. Briefly, you were contacted originally by the
23 family attorney, not the family?

24 A Correct.

25 Q When was the first time that you actually spoke

B. CREWS - CROSS-EX. BY MR. JONES

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1 with a family member, if you recall?

2 A I honestly can't recall if he was at the meeting
3 with the attorney on that Friday.

4 Q Was that -- did that attorney come to your
5 office?

6 A No, I met with him at his office.

7 Q Okay.

8 A And I actually -- I honestly can't remember if
9 Mr. R was there with his wife.

10 Q So the first -- when is the first time you are
11 sure you talked with a family member?

12 A For certain that I can tell you here today was
13 that Monday when I met face to face with Mr. R .

14 Q That would have been the 12th?

15 A That's correct.

16 Q And that was at your office?

17 A That's correct.

18 Q And who else was present at that meeting?

19 A Mr. R came. He brought his daughter
20 and there was a lady with him, who I don't know her name.

21 Q Was Attorney McCann present?

22 A No, sir.

23 Q And how long did y'all meet that day?

24 A I spoke with Mr. R briefly, an estimation of
25 ten minutes prior to taking back with me to

B. CREWS - CROSS-EX. BY MR. JONES

275

1 interview her in a one-on-one setting.

2 Q Okay. So you did interview her in a one-on-one
3 setting without anybody else there?

4 A That's correct.

5 Q And the basis for the jurisdiction of Charleston
6 County Sheriff's Office was based on Mr. Vail's apartment
7 was in Charleston County, correct?

8 A That's correct.

9 Q And had these -- had you known the acts occurred
10 in Mt. Pleasant, Mt. Pleasant would have had jurisdiction,
11 at least over some of the acts, possibly?

12 A I'm sorry?

13 Q I'm sorry. If you had known acts also had
14 occurred in Mt. Pleasant, would Mt. Pleasant then also
15 have had jurisdiction?

16 A Yes, they would have also had jurisdiction.

17 Q And you stated she was timid, nervous, reserved?

18 A In my opinion, yes.

19 Q And you explained to her that if you deemed the
20 acts had occurred, you would then have to go through the
21 process of formally charging him and arresting him and all
22 that?

23 A That's correct.

24 Q Was that before or after you had gotten the
25 facts from her at that time, if you recall?

B. CREWS - CROSS-EX. BY MR. JONES

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1 A I believe that was during the process of our
2 entire interview. I don't know if it was at the beginning
3 or at the end. It was during the course of the interview.
4 It may have been during -- at any point and time during
5 the interview.

6 Q Okay. But you're pretty sure it wasn't right --
7 it wasn't the first thing out of your mouth?

8 A I don't necessarily know that it was. I usually
9 explain to anybody that I'm interviewing the whole process
10 by what is going to take place, and I may have done it at
11 the beginning. I just don't know that I did or did not do
12 it at the very beginning.

13 Q And you spoke with Mr. Vail at some point prior
14 to the arrest?

15 A Yes, over the phone.

16 Q And was he cooperative? I know -- I think he
17 was out of town?

18 A He was out of town. And, again, in my opinion,
19 he was being somewhat evasive. Then I was put in touch
20 with or contacted by an attorney from Hilton Head who was
21 his first legal representation.

22 Q And he did make arrangements to come and turn
23 himself in?

24 A That's correct.

25 Q And originally you had just charged him with one

B. CREWS - CROSS-EX. BY MR. JONES

277

1 count?

2 A That's correct.

3 Q And that was based on -- was that based on there
4 were two incidents that were disclosed to you. Is that
5 based on one of them having more details or?

6 A It was based on the fact that she could not be
7 date specific about either incident, so I used a time
8 frame and went with the one charge.

9 Q Has there been -- since that, you spoke to her
10 on the 12th. Since that date, has there really been any
11 follow-up investigation to date on your part, on behalf of
12 the sheriff's office?

13 A Once I arrested Mr. Vail, I forwarded the
14 package to the solicitor's office, and I have done no
15 further investigation.

16 Q So no forensics or anything like that was taken
17 from Mr. Vail's car or anything of that sort. At that
18 time, you didn't have any reason to?

19 A No, sir.

20 Q And your basis for the arrest was the basis of
21 her statement and her -- disclosing these
22 acts, the phone calls?

23 A That's correct.

24 Q And pretty much that was the basis of the charge
25 at that time?

B. CREWS - CROSS-EX. BY MR. JONES

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1 A That's correct.

2 MR. JONES: I have nothing further. Thank you.

3 THE WITNESS: Thank you.

4 MRS. HERRING-LASH: Just a few follow-up.

5 REDIRECT EXAMINATION

6 BY MRS. HERRING-LASH:

7 Q Detective Crews, the county sheriff's department
8 also has jurisdiction in Mt. Pleasant; is that right?

9 A That's correct.

10 Q Did you -- when you were interviewing
11 did you use a calendar with the important dates to her on
12 it to help her give you any details?

13 A I don't recall using a calendar. I have in the
14 past used calendars. I don't know, I can't...

15 Q Do you know if you had the calendar that has her
16 cheerleading practices and those things on it when you
17 interviewed her?

18 A I don't recall that information.

19 Q And you said that when you got this information
20 Mr. Vail was no longer living in Charleston?

21 A When I got the information, I'm not sure where
22 Mr. Vail was living. When I attempted to contact
23 Mr. Vail, the first time, which would have been the day
24 after the interview which would have been the 13th, I
25 could not locate him at the apartment address that I had.

W. CREWS - REDIRECT EX. BY MRS. HERRING-LASH

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1 for him.

2 Q Did you find anybody there?

3 A I didn't find anyone there at the time.

4 Q Did you do a search warrant of that apartment
5 since he was no longer living there?

6 A I did not do a search warrant of that apartment,
7 no, ma'am.

8 Q And where was he living or staying when you got
9 the case?

10 A I'm not sure where he was staying. I contacted
11 him by telephone, and I'm not sure where the number was.
12 It was an out-of-town number.

13 Q So it was not a Charleston County number?

14 A That's correct. It was an area code out of
15 town.

16 MRS. HERRING-LASH: Those are all of the
17 questions I have.

18 THE COURT: Anything else?

19 MR. JONES: Nothing further, Your Honor.

20 THE COURT: You may step down.

21 MRS. HERRING-LASH: May this witness be excused?

22 THE COURT: Any objection?

23 MR. JONES: No objection, Your Honor.

24 THE COURT: You may be excused, sir.

25 MRS. GOODRICH: Your Honor, the state would call

1 Caroline O

2 CAROLINE O

3 being first duly sworn, testified as follows:

4 THE CLERK: Please state your full name to the
5 court and spell your last.

6 THE WITNESS: Hi, my name is Caroline Willis
7 Doych (phonetical) O' O-

8 DIRECT EXAMINATION

9 BY MRS. GOODRICH:

10 Q Caroline, what is your birthday?

11 A My birthday is November 24, 1968.

12 Q And that makes you how old?

13 A Sixteen.

14 Q And what school do you currently attend?

15 A I currently attend James Island Charter High

16 School.

17 Q How long have you been there?

18 A Since August.

19 Q So this is your first year there?

20 A Yes, ma'am.

21 Q Where did you go last year?

22 A First Baptist Church School.

23 Q How long did you go there?

24 A I attended there for eight years, since second
25 grade.

C. O - DIRECT EX. BY MRS. GOODRICH

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- 1 Q Do you know ?
- 2 A Yes, ma'am.
- 3 Q How do you know her?
- 4 A She is my best friend's little sister.
- 5 Q How long have you known her?
- 6 A I've known the R since they started in First
- 7 Baptist since she was in fifth grade.
- 8 Q And do you know Mr. Vail?
- 9 A I do.
- 10 Q How long have you known him?
- 11 A I knew him ever since he started at First
- 12 Baptist my eighth grade year -- seventh grade year.
- 13 Q And how --
- 14 A Eighth.
- 15 Q Eighth grade?
- 16 A Eighth grade.
- 17 Q How did you know him? Was he a teacher of
- 18 yours, or did you just know him in school?
- 19 A He was the other eighth grade homeroom teacher,
- 20 and he attended our eighth grade trip with us. And he
- 21 also taught some classes, not of mine. But he was just
- 22 well known.
- 23 Q Were you friends with him?
- 24 A He and I started a friendship on the eighth
- 25 grade trip when we took a trip up to Pennsylvania as our

C. O - DIRECT EX. BY MRS. GOODRICH

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1 graduation trip, and we kind of started a friendship
2 there.

3 Q Did you, as part of that friendship, talk to him
4 on the phone?

5 A As our relationship progressed, we started
6 talking on the phone, but that wasn't until later.

7 Q Do you know kind of when?

8 A I would say we started talking on the phone the
9 summer after the eighth grade trip, so the summer before I
10 went into ninth grade.

11 Q And how did you get his cell phone number?

12 A I don't recall how we exchanged numbers, but I
13 think it was an exchange between the two of us.

14 Q So did you have a cell phone?

15 A I did.

16 Q What was your cell phone number?

17 A I switched companies actually, so I got a new
18 number. But the first number was 209-1395, and then in
19 November I switched to 224-2189.

20 Q And do you remember when you switched over?

21 A It was November of last year.

22 Q When you-all would talk on the phone, do you
23 remember how often you would talk?

24 A A couple times a week depending on what was
25 going on at school, tennis matches or football games.

C. O - DIRECT EX. BY MRS. GOODRICH

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1 Q What did you talk about?

2 A A lot of times we would talk about my tennis
3 career. I play varsity, and we would talk about First
4 Baptist and its ups and downs and occasionally about his
5 relationship with Miss Mullins.

6 Q And what did he tell you about his relationship
7 with Miss Mullins?

8 A He informed me that they had been dating awhile
9 and that he wasn't necessarily in love with her, that he
10 loved her as a person. But he wasn't really thinking of
11 marriage in the near future.

12 Q Had you heard rumors about marriage between the
13 two of them?

14 A My eighth grade year I heard some talk about a
15 ring, but, after that, I didn't hear much.

16 Q And did you ever see a ring?

17 A No, ma'am.

18 Q Did he ever talk about _____ with you?

19 A Occasionally, but not in much detail. Just
20 that, you know, she was obsessed with him a little bit.

21 Q Did you know about _____'s feelings for him?

22 A I did.

23 Q And what were they?

24 A _____ felt extremely -- feels extremely strong
25 really about Mr. Vail. It almost became an obsession over

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1 time.

2 Q How did you know?

3 A She was pretty open about her feelings about
4 him. It was pretty well known. She talked about how much
5 she liked him and wanted to be around him.

6 Q Did you see them together at school?

7 A At school in between classes they would talk and
8 meet up, short conversations. A few times I saw them
9 outside of school, but that was only when we went to the
10 beach, and Kelsey and I joined them.

11 Q Well, let's talk about that. So you saw them
12 out of school?

13 A Yes.

14 Q How many times?

15 A I believe just once when I was with them at the
16 beach.

17 Q Can you tell me when did that happen?

18 A That would be the summer -- let me think --
19 before my ninth grade year, I believe.

20 Q And did you know that you were -- that he was
21 going to be at the beach?

22 A I did not know that he was going to be at the
23 beach. had told Kelsey and I that someone was
24 meeting us there, but we did not know who until we saw him
25 at the volleyball courts.

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1 Q Did you guys -- what did you guys do at the
2 beach?

3 A We played some volleyball and went down to the
4 beach, but the water was cold so we didn't really swim
5 much. At one point, Kelsey and I took a walk and went and
6 got drinks at a nearby restaurant. And then we came back
7 and Shelby and Coach Vail had been talking.

8 Q And that was the only time that you saw him and
9 off campus?

10 A Yes.

11 Q Did there come a time when you found out that
12 had skipped one of her classes in her eighth grade
13 year?

14 A Yes, there was a time actually. Kelsey and I
15 went to go talk to our history teacher who is also
16 's Latin teacher about a homework assignment we had.
17 And we went up there and just didn't see so we
18 asked where she was. And Mr. Brown told us that she had
19 gone off campus for tutoring and left early.

20 Q Did you see her at all later that day?

21 A Later that day, I saw her at the gym at the
22 basketball game.

23 Q And did you notice anything unusual about her at
24 that point?

25 A The one thing that I did notice was that she had

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1 changed clothes into a pair of athletic shorts and a tank
2 top. She was no longer in school clothes.

3 Q Now, Caroline, I want to talk to you a little
4 bit about November 22nd.

5 A Yes, ma'am.

6 Q Do you remember that day?

7 A I do remember that day. Kelsey had spent the
8 night at my house the night before.

9 Q And what day of the week is November 22nd?

10 A It's a Saturday.

11 Q So Kelsey had been there on Friday night and
12 Saturday?

13 A Yes, ma'am.

14 Q What happened that morning?

15 A That morning Kelsey and I slept in. We got up
16 late, and her phone rang and it was _____ was in
17 hysterics and we weren't sure why. Kelsey said I'm going
18 to have to call you back when we're done with breakfast.
19 And while we were eating breakfast, _____ repeatedly
20 called my phone as well as Kelsey's trying to get in touch
21 with us.

22 Later on after we ate, she talked to Kelsey and
23 Kelsey was informed that she and Mr. Vail had been having
24 sex.

25 Q Okay. Do you know why she was originally upset

⑤

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1 when she called?

2 A She was upset because she had found a note in
3 Kelsey's room that involved talking about a conversation
4 that Mr. Vail and I had had.

5 Q And do you remember what that note said?

6 A The note talked about an incident when we were
7 talking about an ex-boyfriend of mine and how Mr. Vail
8 said, well, if I had been your age and if I would have
9 been him, I wouldn't have let you go -- something to that
10 effect.

11 Q Were you able to talk to _____ at all, during
12 those conversations when she was calling Kelsey?

13 A Only after she talked to Kelsey. As soon as she
14 informed Kelsey that they had been having sex, Kelsey
15 started crying and screaming and got extremely emotional.
16 Kelsey then hung up on _____ and then _____ called me
17 on my cell phone. I asked her what she had said to Kelsey
18 to upset her so badly, and then _____ informed me that
19 they had been having sex as well.

20 Q I want to kind of talk a little bit specifically
21 about those phone calls. Would it refresh your memory or
22 help you remember this if we showed you a chart of them?

23 A Yes, ma'am.

24 Q We will go to November 22nd. Do you see where
25 the phone calls from _____ started with you-all?

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1 A Yes, I do, 11:31 a.m.

2 Q And that was a phone call to Kelsey?

3 A Right.

4 Q Right underneath that 11:32, there is a phone
5 call to you. Do you know what that might have been?

6 A I believe that was before we ate breakfast, us
7 saying, we're going to have to call you back when
8 we're done and talk about whatever is upsetting you.

9 Q And then going down to, I guess, 12:21, there is
10 a three-minute phone call to Kelsey, and, immediately
11 after, there is a five-minute phone call to you. Do you
12 remember what those might have been about?

13 A Yes. I believe the three-minute call was when
14 first informed Kelsey about the two of them having
15 sex, and then the five-minute call is when she then called
16 me after she had talked to Kelsey. (S)

17 Q When you talked to , what was her
18 demeanor?

19 A became upset as well and wasn't sure why
20 Kelsey was so upset either. She was just really
21 emotional, and she wasn't sure about herself because she
22 knew she was not supposed to breath a word of any of that
23 to us.

24 Q Did she seem mad at you?

25 A She did not seem angry at me. She was, I think,

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1 more hurt by the fact that Mr. Vail was carrying on
2 relationships with other students when she had just lost
3 her virginity to him.

4 Q What was your reaction to _____ telling you
5 that?

6 A I became upset, but I held myself together for
7 Kelsey's sake. I progressed to tell _____ that it was
8 extremely inappropriate, that this had to stop and that I
9 may even confront Mr. Vail about the subject.

10 Q Did _____ know that you were going to do that?

11 A I believe I informed her that I was going to
12 talk to him, but I promised her that I wouldn't tell him
13 that she said that they had sex.

14 Q We are going to go over that one more time.
15 When -- do you remember if you told _____ you were going
16 to confront Mr. Vail?

17 A Yes, I told her that I would.

18 Q And what did you say about your confrontation
19 with him?

20 A I told her that I would not tell him that she
21 had told Kelsey and I that they had been having sex.

22 Q And did you actually confront Mr. Vail?

23 A I did.

24 Q And when was that?

25 A It says at 1:17 that he called me, but I believe

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1 before that I might have called him. And we were also
2 using Kelsey's cell phone, so...

3 Q So you think that you called him actually before
4 the 1:17?

5 A I believe so.

6 Q Do you remember what, if anything, he said to
7 you?

8 A We began talking about the situation, and the
9 story was that Kelsey and I had seen them together in the
10 car.

11 Q Who came up with that story?

12 A came up with that story so we would tell
13 him that instead of saying she told us they had sex. That
14 was our cover.

15 Q So you just said to him Kelsey and I saw you in
16 a car with ?

17 A Correct.

18 Q What was his reaction?

19 A His reaction was, you know, what did she tell
20 you. And I said nothing, I just saw y'all in the car
21 together. And I proceeded to ask him what they did that
22 day. He also followed to tell me that they went to the
23 beach.

24 Q Okay. Did he ever say that they went to his
25 apartment?

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1 A He did not mention the apartment at all.

2 Q Did he admit that they -- he admitted that they
3 were together?

4 A Yes, he did.

5 Q But they had just gone to the beach?

6 A Correct.

7 Q Obviously you talked to him more than once that
8 day?

9 A Yes, ma'am, multiple times for pretty long
10 amounts of time.

11 Q What did you guys talk about in all of these
12 different conversations?

13 A He actually asked me if _____ had told us that
14 they had had sex, and I said no. Since I promised
15 that I was not going to tell him that, I didn't. And also
16 he proceeded to tell me that they went to the beach
17 together and sat and talked for a few hours about how they
18 couldn't be together.

19 Q So he was the first one to bring up anything
20 about sex --

21 A I believe so.

22 Q -- in your conversation with him?

23 A Yes.

24 Q Did Kelsey stay with you during all of these
25 conversations?

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1 A She and _____ both had cheerleading practice
2 that day. I believe it started at 2:00. So my mom and I
3 took Kelsey to practice and dropped her off, and I came
4 home. And throughout that time they were at cheerleading
5 practice, I continued to talk to Mr. Vail.

6 Q Okay. So you, at some point early that morning
7 or early that afternoon, had called him while you were
8 with Kelsey?

9 A Yes.

10 Q And then, according to the charts, at 1:17 he
11 called you?

12 A Correct.

13 Q How long was that conversation?

14 A It says that it was 25 minutes, and I believe
15 that was before we took Kelsey to practice. My house is
16 only about ten minutes away from the gym so we talked that
17 long conversation before Kelsey was gone.

18 Q And Kelsey would have been in on that
19 conversation?

20 A Yes. I think she actually talked to him for a
21 few minutes individually on my phone.

22 Q And then when do you remember talking to him
23 next?

24 A When my mom and I returned home after taking
25 Kelsey to practice and I talked to him throughout the rest

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1 of the afternoon, probably a little bit after 2:00.

2 Q Do you see the telephone call from Mr. Vail to
3 you for one minute at 2:00?

4 A Yes, I do.

5 Q Now, in looking at this chart -- you have seen
6 this chart before, right?

7 A Yes, I have.

8 Q It doesn't have the phone calls that you made to
9 him?

10 A Correct.

11 Q It just has his phone calls to you, right?

12 A Yes, ma'am.

13 Q And then you talked to him later that day?

14 A Yes, ma'am.

15 Q How did you guys leave it after talking to him
16 that many times that day?

17 A I believe on Saturday we left it as I believe
18 that they had just gone to the beach. He did a pretty
19 good job of convincing me that they had just sat and
20 talked and that nothing physical happened that day. I had
21 a deep -- I had a thought inside, though, I often
22 wondered, you know. I wasn't quite sure what to believe
23 at that point.

24 Q In the conversations that you had with him on
25 that Saturday, did he say anything about how this was

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1 going to affect him?

2 A He mentioned something about how it really upset
3 him, and Monday he was just going to walk into
4 Mr. Mullins' office and resign and leave it at that
5 because once this was out to a couple people, it was going
6 to be out and, you know, he would slowly lose his
7 representation.

8 Q And what was your reaction to that?

9 A My reaction was that, no, you cannot leave, you
10 can't do this over a situation like this, it's not worth
11 leaving over, we'll get it all worked out.

12 Q So you left it believing him on that Saturday?

13 A Yes.

14 Q Did you ever talk to _____ about it after that?

15 A _____ and I didn't talk very often. She might
16 have called me once or twice just, hey, this is what's
17 going on. At one point, she told me that he was mad at
18 her for telling us and somehow he found out that she had
19 told us that they had sex. But, other than that, we
20 didn't talk.

21 Q And what was -- what was her demeanor like when
22 you were talking to her that morning?

23 A She was upset. I don't think it was something
24 she wanted to tell because her feelings were so strong
25 about him she didn't want to get him in any trouble. She

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1 was just so hurt by the fact that he was carrying on other
2 relations that I think he just -- she just let it out.

3 Q Did she ever ask you, at any point, to call
4 Mr. Vail?

5 A No, she did not.

6 Q Did you see him at school that next week?

7 A I did Monday. It was my birthday.

8 Q And did he give you anything?

9 A He gave me a birthday card.

10 Q Did it reference anything about this?

11 A I don't believe it referenced anything about
12 this. We had just put that weekend in the past, and we
13 decided that it was over and it was something we were
14 going to forget about.

15 Q Did you notice how he treated at school?

16 A I did. There were lots of hugs in between
17 classes and talking. But, other than that, there was
18 nothing more physical.

19 Q And was there ever a time that you heard that
20 Mr. Vail and Miss Mullins were engaged?

21 A There was never a time when I heard that they
22 were engaged, at all. He talked to me in January after
23 his arrest and told me that they weren't engaged actually.

24 Q Do you know why Mr. Vail left the school?

25 A Well, I heard that he just left for personal

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1 reasons. But then I talked to him later the day that he
2 resigned, and he said that he resigned for drug reasons.
3 and that he was headed to rehab to get better.

4 Q And did you have any conversations with him
5 after that?

6 A After that he called me late January. I was at
7 a Porter-Gaud game, and he called to talk to me about
8 maybe testifying.

9 Q That was in late January?

10 A Yes.

11 Q And tell me about that conversation.

12 A Well, I was actually with the R when he
13 called on our way to a basketball game. And he called,
14 and I had to pretend like it wasn't him, actually, for a
15 while. We talked for almost an hour and a half, I
16 believe, and we talked about why he left. I asked him why
17 he told the judge that he and Amanda were engaged, since
18 he told me that they were not.

19 Q What did he say about that?

20 A He didn't really have much to say back. He said
21 that they were not engaged and that was all that was said.

22 Q And did -- what else did you guys talk about?

23 A We talked about -- I asked him how he had time
24 to go to rehab and jail and get all of that stuff done
25 within a few days, and he said that he was in rehab for a

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1 couple days before he came back to Charleston to present
2 himself to the judge.

3 Q So when you talked to him in late January, did
4 you know the real reason why he had left the school?

5 A I did.

6 Q How did you find that out?

7 A I found out through the R right before his
8 arrest, a couple days.

9 Q Did he say anything else during that
10 conversation?

11 A We talked about how he missed First Baptist and
12 how he wished he could have been there with us. And he
13 asked me about testifying and if he could contact me
14 later, and we agreed that it wouldn't be a good idea if he
15 called me but that his attorneys would be in contact with
16 my family.

17 Q So you asked him not to call you anymore?

18 A We agreed not to be in contact.

19 Q And have you talked to him since?

20 A No, ma'am.

21 Q Did Mr. Vail ever tell you about a date May
22 16th, 2007?

23 A Mr. Vail did not, but did. He later
24 referenced it, but he wasn't the one that told me about
25 that.

C. O. _____ - DIRECT EX. BY MRS. GOODRICH

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1 Q So _____ told you about that date?

2 A Yes, she did.

3 Q What did she tell you about that date?

4 A She told me that that was the date that she
5 would be legal for them to be together, and they were
6 planning on going away together. I heard talk of Greece
7 maybe.

8 Q And when you said that Mr. Vail referenced it,
9 what did he say?

10 A When we were talking sometimes, he would talk
11 about how that was the date that they could be together.
12 Actually, when he told me that day that all they did was
13 go to the beach he said, you know, why would we have had
14 sex if we were waiting for May 17th.

15 Q You and Kelsey have remained friends, right?

16 A Yes, we have.

17 Q So you still continue to see _____ ?

18 A Oh, yes.

19 Q And you were still enrolled for the rest of the
20 year at First Baptist after Mr. Vail left?

21 A Correct.

22 Q Did you see _____ at school after that?

23 A I did. She continued the year as well and so
24 did Kelsey. I saw her every day.

25 Q Do you know how it went for her for the rest of

1 the year?

2 A It was really hard on _____ actually, and she
3 got some ridicule, and there was a lot of talk, rumors.
4 Everybody wanted to know.

5 Q Have you noticed any change in _____ yourself?

6 A _____ has her ups and downs, I think. She got
7 extremely upset after he left. She was just really sad I
8 think more than anything and hurt. And she went through
9 so much ridicule for standing up for herself and telling
10 the truth that it was really hard on her. And I think
11 it's been part of why she's been depressed lately.

12 MRS. GOODRICH: Court's indulgence, Your Honor.

13 THE COURT: Yes, ma'am.

14 BY MRS. GOODRICH:

15 Q Caroline, you said that Mr. Vail asked you to
16 testify?

17 A Yes.

18 Q Did he give you any indication of what he wanted
19 you to testify about?

20 A He wanted me to talk about November and the
21 incident where _____ said that they had had sex and then
22 later took that back to Kelsey. But we later decided that
23 since she never came to me and took it back that Kelsey
24 was the one he should have been talking to about
25 testifying.

C. O. ——— - DIRECT EX. BY MRS. GOODRICH

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1 Q And did Mr. Vail have any sayings that he used
2 to say?

3 A One saying that he would say ever now and then
4 was deny til you die. It was just kind of like one of his
5 little phrases.

6 MRS. GOODRICH: I have no further questions.
7 Thank you. Please answer any questions that Mr. Jones
8 has.

9 CROSS-EXAMINATION

10 BY MR. JONES:

11 Q Caroline, I'm attorney Craig Jones. I'm going
12 to ask you a few questions.

13 Now, you attended First Baptist. How long had
14 you been attending First Baptist?

15 A I attended for eight years.

16 Q Okay. So you were there when Coach Vail came?

17 A Yes.

18 Q And you were there when Miss Mullins came?

19 A Yes.

20 Q And when they came, it was widely known they
21 were dating?

22 A Correct.

23 Q Now, I know you said that you only heard a few
24 rumors. But isn't it true it was widely speculated they
25 were going to get married?

C. O - CROSS-EX. BY MR. JONES

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1 A It was, but it wasn't talked about. Sometimes
2 there was talk of a ring, but that was my eighth grade
3 year. After that, there was not much talk about marriage.
4 for the two of them actually.

5 Q So there wasn't talk from the first day they got
6 there about them getting married, being the perfect
7 couple?

8 A I said there was in the beginning, and then
9 slowly it drifted off and there wasn't much talk.

10 Q And you are close to the R. ____?

11 A Yes, sir.

12 Q Kelsey is your best friend?

13 A Yes.

14 Q And _____ is like a little sister?

15 A Yes.

16 Q Now, you remember specifically all of the
17 incidents with November 22nd? You remember specifically
18 that is the date all of this occurred?

19 A Yes, sir.

20 Q And no doubt about that being the date?

21 A 100 percent.

22 Q Now, how did you -- you said you got his number
23 by y'all exchanging numbers?

24 A Yes, sir.

25 Q But he widely gave it out to the students,

C. O - CROSS-EX. BY MR. JONES

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1 correct?

2 A Yeah. It was a well known thing that a lot of
3 students talked on the phone to him.

4 Q And, in fact, it was written on the board for
5 his class each time?

6 A I didn't have his class, so, no, I don't recall
7 it being written on the board.

8 Q Okay. And you said y'all talked a couple times
9 a week, at least initially. Once y'all started to
10 converse, y'all talked about tennis and First Baptist's
11 ups and downs?

12 A Uh-huh.

13 Q His relationship with Miss Mullins?

14 A Correct.

15 Q And, now, you said that -- you used the
16 term she was obsessed with him?

17 A She did not use that term.

18 Q No, I'm saying you used it.

19 A Yes, I did use it.

20 Q That would be your perception --

21 A Yes.

22 Q -- of the relationship? And during school, did
23 they talk a bunch during school?

24 A They did between every class. Sometimes even
25 during lunch period. Oftentimes, they would be talking in

C. O - CROSS-EX. BY MR. JONES

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1 the cafeteria. I know they had PE together first period,
2 and they spent a lot of time together then.

3 Q After school?

4 A The only time I know of after school was that
5 summer at the beach when we were together. I heard of
6 times when they were together, but I never saw them with
7 my own eyes.

8 Q Okay. So when y'all went to the beach that day,
9 you said that _____ said that -- now, let me get this
10 straight.

11 A Okay.

12 Q Did _____ say she had called Coach Vail that
13 time at the beach?

14 A She did not say. All I knew is that we were
15 meeting a mystery person there, and it happened to be him.

16 Q And who was he with?

17 A I didn't see him with anyone else. I know there
18 were some other guys at the volleyball court that he was
19 playing with, but I don't know if he came with them or
20 not. I don't think he did. I think he came alone.

21 Q Did you know them, the other guys that were
22 there?

23 A No, sir.

24 Q So he was by himself at the beach on that
25 occasion?

C. O. _____ - CROSS-EX. BY MR. JONES

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1 A Yes.

2 Q And do you recall -- on the date that _____ had
3 cut the seventh period, do you recall that the teacher had
4 said she had left to go get tutoring?

5 A Yes, sir.

6 Q And you're sure of that --

7 A Yes.

8 Q -- that's what the teacher said. And was it --
9 I guess in the two years that you have been at First
10 Baptist with _____ has she never changed clothes
11 between -- sometime during school and after school?

12 A Not on an occasion when she was going to
13 tutoring and then just showed up at the gym. It was very
14 soon after school that I saw her at the gym.

15 Q Okay, but she has. But on other occasions then,
16 she has changed clothes?

17 A Only for cheerleading practice when she needs to
18 put on shorts and a T-shirt, not on a regular occasion
19 would she change into shorts and a tank top.

20 Q Now, you said on November 22nd in reference to
21 the note that _____ called in hysterics, now, was she
22 angry?

23 A I don't think she was angry. I think more than
24 anything she was hurt, like I said, by the fact that
25 Mr. Vail was carrying on relationships with other

C. O - CROSS-EX. BY MR. JONES

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1 students. She thought that he had something special with
2 her, and they did.

3 Q Really she was furious at you?

4 A No, I really don't think she was furious at me.
5 She mentioned nothing about being angry at me.

6 Q Now, you said that -- you said that in the note
7 Coach Vail said if I was your age and if I was your
8 boyfriend I wouldn't have let you go?

9 A Something to that effect.

10 Q That was the gist of it?

11 A Yes.

12 Q Nothing I want to be your boyfriend or anything
13 of that sort?

14 A Not an I want to, but if the opportunity was
15 there --

16 Q Sure. If he was your age --

17 A -- I would take it.

18 Q Okay. And you said when you -- when this
19 information came through from _____ and you were with
20 Kelsey, you said that you held yourself together for
21 _____?

22 A For Kelsey more so.

23 Q Okay.

24 A Kelsey was extremely upset by the fact that her
25 little sister had been taken advantage of and had sex with

1 a teacher. That really upset her, and so I held my
2 composure and was there for her.

3 Q Okay. But he did say to you that he took her to
4 the beach to talk?

5 A Yes, he admitted to me they were together that
6 day for a few hours.

7 Q So they were -- but he didn't say anything about
8 going to the apartment?

9 A No, sir.

10 Q You said how he treated her after all of this
11 came out, there were lots of hugs, talking, nothing more
12 physical that you observed?

13 A On campus, no.

14 Q Okay. Did you observe anything more than that
15 off campus?

16 A No.

17 Q Now the May 16th, 2007, the date that
18 would at least hypothetically be legal, that date was
19 widely known. I mean, most people knew?

20 A I wouldn't say most people, maybe her close
21 friends and Kelsey and I. But she didn't go around
22 advertising this. It wasn't something she wanted her
23 parents to know or anyone else.

24 Q But probably Kimberly H. would have
25 probably known?

C. O - CROSS-EX. BY MR. JONES

307

1 A Oh, yeah.

2 Q Alena Alpherous (phonetical), her daughter would
3 know?

4 A Alena Alpherous, she might have known something
5 about the date, but I don't recall her ever saying
6 anything to me about it.

7 Q You don't know if ever put that on her
8 wall, Mrs. Alpherous' wall, where people could write stuff
9 on there?

10 A I have no idea what you're talking about.

11 Q Okay. Now, did Coach Vail ever give other
12 students hugs during school?

13 A Yes, oftentimes I would get a hug in the
14 morning.

15 Q And he would talk to a bunch of students during
16 school?

17 A Yes. But just because he hugged a bunch of
18 students doesn't make it appropriate either.

19 Q Doesn't mean it's inappropriate either, though;
20 does it?

21 A Not necessarily.

22 Q And, Caroline, initially when Coach Vail -- when
23 recanted that first time on November 22nd and said
24 we didn't have sex, we went to the beach, initially, at
25 that time, you believed Coach Vail?

C. O - CROSS-EX. BY MR. JONES

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1 A Correct. But just to clear it up, never
2 came directly to me and said it never happen.

3 Q Okay.

4 A She never told me that.

5 Q Okay. But she did tell that to Kelsey who was
6 with you at that time?

7 A No, I was not with Kelsey actually when
8 recanted.

9 Q So Kelsey called you?

10 A Correct.

11 Q And told you?

12 A Yes.

13 Q But you believed, at that time, that she was not
14 telling the truth and that he had not done anything at
15 that time?

16 A That's what I wanted to believe. I didn't want
17 to believe that a teacher that I trusted had had sex with
18 my best friend's little sister. It wasn't something that
19 I wanted to take as true.

20 Q I understand. And nobody wants to believe it.
21 What I'm asking is on that time did you believe it, at
22 that time? Before any other facts came out, did you
23 believe it at that time?

24 A Yes.

25 MR. JONES: Thank you. No further questions.

1 THE COURT: Anything else?

2 MRS. GOODRICH: I have no other questions.

3 Thank you, Your Honor.

4 THE COURT: You may step down.

5 MRS. HERRING-LASH: The state would call
6 Virginia Murray.

7 VIRGINIA MURRAY,
8 being first duly sworn, testified as follows:

9 THE CLERK: Please state your full name to the
10 court and spell your last.

11 THE WITNESS: Virginia Murray, M-U-R-R-A-Y.

12 DIRECT EXAMINATION

13 BY MRS. HERRING-LASH:

14 Q Mrs. Murray, where do you work?

15 A Cario Middle School.

16 Q What do you do there?

17 A I teach eighth grade math and algebra.

18 Q And where did you work last year?

19 A First Baptist Church School.

20 Q Did you teach there also?

21 A I did.

22 Q What did you teach there?

23 A I taught English and writing lab.

24 Q How long had you taught at First Baptist?

25 A It was my first year last year.

V. MURRAY - DIRECT EX. BY MRS. HERRING-LASH

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1 Q Was that your first year to teach?

2 A No, no.

3 Q Where had you taught before that?

4 A James Island Middle School and Springfield

5 Elementary.

6 Q And did you teach : .?

7 A I did.

8 Q What did you teach her?

9 A I taught her English and writing lab.

10 Q Do you remember what periods those classes were,
11 or did they vary?

12 A No, they were the same. I believe they were
13 after lunch. I don't remember. It was either fourth and
14 fifth or -- I have taught so many different schedules I'm
15 not sure.

16 Q And did you work with Mr. Mark Vail?

17 A I did.

18 Q In what capacity did you work with him?

19 A He was a PE teacher for middle school and eighth
20 grade. We were both -- he was an eighth grade homeroom
21 teacher, and I had homeroom next door to him.

22 Q Did there come a day when he had to leave the
23 school?

24 A Yes.

25 Q Do you know when that was?

V. MURRAY - DIRECT EX. BY MRS. HERRING-LASH

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1 A Early in January. I don't remember the exact
2 date.

3 Q Would that have been January of 2004?

4 A Yes.

5 Q So it was early in the morning?

6 A Yes.

7 Q Was : _____ in your class that day?

8 A She was in the class later that day, yes.

9 Q In your English class?

10 A Yes.

11 Q And what was her -- do you know if she came to
12 class on time or if she came in late?

13 A She was in class on time. She came to school
14 late that day.

15 Q She came to school late, but, to your class, she
16 was on time?

17 A She was on time to my class.

18 Q What happened when she came into your classroom?

19 A It was a lot of discussion at the beginning of
20 class of what was going on that day and --

21 Q About what?

22 A About the fact that Coach Vail had left, and
23 there was a lot of conversation, just with the kids. So I
24 got them settled, and then _____ started to cry in the
25 back of the room.

V. MURRAY - DIRECT EX. BY MRS. HERRING-LASH

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1 Q How was she crying?

2 A Pretty steadily. She was crying in the back of
3 the room to the point where I needed to -- we needed to
4 leave the room or have her leave the room.

5 Q Did you accompany her out of the room?

6 A Initially, she went with another little girl,
7 and I had another teacher cover my class because she was
8 standing outside and I went with her, yes.

9 Q So when you went with her, where did y'all go?

10 A We initially were in the hallway, and then we
11 walked outside and sat on the sidewalk.

12 Q Was there any particular reason that you walked
13 outside?

14 A Well, because you can hear through that doorway
15 into the classroom and because she was extremely upset.

16 Q How would you describe her demeanor at that
17 time?

18 A I think the word -- she was hysterical that day.

19 Q Now, you took her outside, I guess, to calm her
20 down?

21 A Yes.

22 Q Were you able to calm her down?

23 A Yes, we were able to get to the point where she
24 wasn't crying so much, yes.

25 Q About how long did that take, if you have an

V. MURRAY - DIRECT EX. BY MRS. HERRING-LASH

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1 estimate?

2 A The whole time that we were outside may have
3 been -- I know that classes changed and that same teacher
4 covered my next class. So it must have been 20, 25
5 minutes that we were outside.

6 Q Were you able to discern why she was so upset?

7 A Yes, she did share -- yes, I was.

8 Q Why was she so upset?

9 A She was upset because Coach Vail wasn't there
10 anymore.

11 Q Wasn't there in school anymore?

12 A Right.

13 Q Did you continue to talk with her about that?

14 A I did. At the time, I said we don't know why
15 he's not here. I'm sure that he will be back, these sorts
16 of things.

17 Q How did it go from there? Did that calm her
18 down, or did she stay upset?

19 A She continued to be upset. She told me that it
20 was because of her that he wasn't there anymore.

21 Q Did she explain to you what that meant?

22 A I didn't ask, but she did go on to say that
23 there were telephone records that her dad had brought to
24 the attention of the principal.

25 Q And that's why he wasn't there anymore?

V. MURRAY - DIRECT EX. BY MRS. HERRING-LASH

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1 A And that's why he wasn't there anymore.

2 Q Did your conversation continue after that?

3 A It did, because she was still crying. And, you
4 know, I said I'm sure that it will be fine and it
5 continued, yes.

6 Q Did there come a time when you confided in her
7 some things that had happened to you?

8 A There did come a time. That didn't initially
9 happen then, no.

10 Q What happened before that?

11 A She went on to say that it was more than -- she
12 was very upset that he had left, and it was because of her
13 and everybody would hate her because of it. And I said
14 I'm sure that it's fine. And then she went on to say that
15 she had given her virginity to him and that's why she was
16 really upset.

17 Q What did you do when she said that?

18 A I hugged her. And I told her that that was a
19 very big deal and a very big thing to say and that she
20 needed to be very sure that what she was saying was true
21 before she went on.

22 Q What happened then?

23 A She cried, and I hugged her. And I said we have
24 to tell your parents -- I asked her first if she had told
25 her parents, and she said no.

(8)

V. MURRAY - DIRECT EX. BY MRS. HERRING-LASH

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1 Q Did she want to tell her parents?

2 A No, she didn't want to say anything.

3 Q Did she want you to tell anybody?

4 A No.

5 Q Did she ask you not to?

6 A Uh-huh.

7 Q What happened after that?

8 A I said that I can't do that and that this was --
9 if this is true, then we have to tell your parents. Your
10 parents have to know.

11 Q Were you able to convince her?

12 A I was able to convince her. I was, yes.

13 Q Is that when you confided in her about
14 something?

15 A No. I actually confided in her later on
16 after -- I may have done it twice -- after she had called
17 her parents and she was feeling very upset about sharing
18 it and then I did, yes.

19 Q Did you give her details or did you --

20 A No.

21 Q So you didn't tell her any details, at all,
22 about it?

23 A No, no.

24 Q Did she seem to be helped by talking with you?

25 A She seemed to be calmed down somewhat. She was

V. MURRAY - DIRECT EX. BY MRS. HERRING-LASH

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1 very scared, very nervous, not sure that she was doing the
2 right thing from the things that she was saying. That's
3 what she kept saying.

4 Q Did you accompany her to Mr. Mullins' office?

5 A I did.

6 Q And Mr. Mullins was who?

7 A The headmaster of the school.

8 Q And why did you accompany her to his office?

9 A Because as a teacher, the information that she
10 had given me was more than I was prepared to or able to
11 handle and I needed to take it to my principal.

12 Q So that would have been a policy that you --

13 A Absolutely.

14 Q -- that you should have and did follow?

15 A Right.

16 Q And when you got to Mr. Mullins' office, did she
17 talk with him or did you talk with him, or what happened?

18 A I spoke with -- I told Mr. Mullins that
19 wanted to share something with him and that she had
20 already shared it with me, and it was important enough
21 that he needed to know and we then needed to talk with her
22 parents.

23 Q When you say wanted to share with him, did she
24 really want to or?

25 A No, I'm sorry. It was something that I wanted

V. MURRAY - DIRECT EX. BY MRS. HERRING-LASH

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1 to share with him because that was the policy and needed
2 for him to know. I'm sorry.

3 Q Did you stay with her while she talked with him?

4 A I did.

5 Q Do you know what he did as a result of his
6 conversation with her?

7 A He dialed her father's cell phone, I believe, at
8 that point..

9 Q Were you in the room when that happened?

10 A I was. She asked me to stay.

11 Q Did she get on the phone with her father?

12 A Initially, he called and said that he had _____
13 in his office and that I was there and that she had
14 something that she needed to tell him.

15 Q And did you -- did she tell him, or did you hear
16 that?

17 A I believe that she told him.

18 Q Were you there during that time?

19 A I was, yes.

20 Q Were you there when -- well, did her parents
21 come to school?

22 A They did.

23 Q Did you meet with them or?

24 A Yes, I did met with them.

25 Q Did you meet with them that day?

V. MURRAY - DIRECT EX. BY MRS. HERRING-LASH

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1 A I know that I met with them later on in
2 Mr. Hill's office. I didn't meet with them in
3 Mr. Mullins' office.

4 Q Who is Mr. Hill?

5 A Mr. Hill is the high school principal.

6 Q So you met with them -- was it regarding this
7 subject that we are talking about?

8 A It was later on, yes.

9 Q Now, did continue to come to your class?

10 A In the days following, yes, she did.

11 Q Did she come to you even when she didn't have
12 your class?

13 A Yes, she would come to me during her study hall
14 and sometimes during lunch.

15 Q And what was her reason for coming to you?

16 A I think for support and also because the
17 students were -- study hall tends to be a little bit
18 unstructured and children sometimes can be very cruel.

19 Q Were they cruel to ?

20 A Yes, they were.

21 Q Did she come to you for comfort?

22 A I believe so.

23 Q Did she even call you?

24 A Yes.

25 Q When you weren't at school?

1 A Yes.

2 Q How was that for you?

3 A I love my students, so I was concerned for her
4 and I was happy to speak with her. And her parents always
5 knew when I was on the phone with her.

6 Q Did there come a time when they put her in
7 therapy and she stopped calling you as much?

8 A Yes, yes.

9 MRS. HERRING-LASH: Court's indulgence for one
10 moment.

11 That is all of the questions I have,
12 Mrs. Murray. Thank you.

13 CROSS-EXAMINATION

14 BY MR. JONES:

15 Q Mrs. Murray, I'm Attorney Craig Jones. I'm
16 going to ask a few questions real quick.

17 A Okay.

18 Q The focus of _____'s being upset was more --
19 would you say that was more on Coach Vail's leaving or on
20 a specific act, in your opinion, at that time? How did
21 you perceive it?

22 A On that day was on the fact that he wasn't
23 there.

24 Q And she kept stating that he had to leave
25 because -- or she stated he had to leave because this was

1 because of her?

2 A Yes.

3 Q She didn't give you any real details?

4 A No.

5 Q At that time, she had not told -- or to your
6 knowledge, at that time, it didn't appear that she had
7 told her parents about the incidents themselves?

8 A Correct.

9 Q It appeared that the phone records were the
10 reason for the leaving --

11 A Yes.

12 Q -- I guess would be a better way to put it?

13 A Yes.

14 Q Now, did you -- you would be a mandatory
15 reporter under the law, correct?

16 A Absolutely.

17 Q And that means that if an allegation comes up
18 with a student you would have to report it to the proper
19 authorities?

20 A Yes.

21 Q And y'all are, I assume, briefed on that in some
22 way or trained on that in some way?

23 A We are. I taught in public school nine years
24 and that's where I was briefed on that and that's common
25 sense.

V. MURRAY - CROSS-EX. BY MR. JONES

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1 Q So, at no time, did you tell her you wouldn't
2 tell anybody?

3 A No.

4 Q And she was stating she was not sure if she was
5 doing the right thing? Was that --

6 A That was the --

7 Q That was your perception?

8 A That was my perception. She was nervous.

9 Q Let me talk about _____'s crush was widely
10 known or -- let me ask you this. Did you know about
11 _____'s crush?

12 A Yes, I was aware of that.

13 Q All in all, it was pretty widely known
14 throughout the school that she had a crush on Coach Vail?

15 A Yes.

16 Q And really there were a number of girls that
17 also had crushes?

18 A Yes.

19 Q And you knew about -- did you know that Coach
20 Vail was dating Amanda Mullins?

21 A Yes.

22 Q And were there ever any rumors -- you were just
23 there I guess the eighth -- that would be _____'s eighth
24 grade year?

25 A Yes.

1 Q You were not there for seventh grade, the year
2 before?

3 A No, I was not.

4 Q Were there rumors about they were going to get
5 married? Were there rumors that Miss Mullins and Coach
6 Vail were going to be married?

7 A Yes.

8 Q And that was kind of bounced around off and on?

9 A Yes.

10 Q Pretty regularly?

11 A Uh-huh.

12 Q Was there any occasion that you knew of where
13 people may have thought that they were engaged?

14 A I believe yes, there was, yes.

15 Q And when was that?

16 A I think over the Christmas -- before Christmas,
17 right before the Christmas break and then coming back
18 after Christmas there were a lot of conversations about
19 that, that it had happened over Christmas.

20 Q But it had not, to your knowledge?

21 A To my knowledge, I wouldn't know.

22 Q And at any time, did _____ ever know? Did you
23 ever have an occasion to know whether _____ had thought
24 they were engaged at some point?

25 A Yes.

1 Q And when was that? And I know you may not know
2 the exact date.

3 A No, I don't know the exact date.

4 Q Was it before everything had come out before she
5 had come to you?

6 A I think before Christmas we had basketball games
7 that run into the Christmas break. But sometime around
8 that time she had said, you know, I think they're getting
9 engaged or they are engaged. I don't remember exactly
10 what.

11 Q And do you know if that caused her any -- how
12 did that affect her?

13 A I think that -- I'm not really sure how to word
14 it. I think that it was a -- it didn't make her happy.

15 Q Sure.

16 A But, you know, she had a crush on him, so.

17 Q Did you have an occasion to see -- I don't know
18 if you've ever met Otis Coffey, but Mark Vail's friend,
19 Otis Coffey. Did you have an occasion to see him at a
20 basketball game on a Friday night?

21 A I did see him at a basketball game, yes.

22 Q And that was just on one occasion?

23 A I also met him at school.

24 Q Okay. And was it that same time period?

25 A I believe it was the same time period. I can't

V. MURRAY - CROSS-EX. BY MR. JONES

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1 remember the time period, but it did stick out in my mind.

2 Q Was that a school day?

3 A It was a school day, yes. It may have been the
4 day before the game or the day of the game. I'm not sure.

5 Q Okay. Had his dog with him? Do you recall
6 that?

7 A I don't remember the dog.

8 Q The kids were around?

9 A No, because I saw him inside the building.

10 Q Okay.

11 MR. JONES: I don't think I have any more
12 questions.

13 REDIRECT EXAMINATION

14 BY MRS. HERRING-LASH:

15 Q Mrs. Murray, just a few questions. Mr. Jones
16 asked you if you got any details from _____. Did you
17 push her for details or try to get details out of her?

18 A No.

19 Q Because you took her to the principal?

20 A Right.

21 Q Knowing that you had to tell someone, did
22 want you to tell anyone?

23 A No, I don't think that she really wanted me to
24 tell anybody.

25 Q And the rumor that -- when _____ heard or you

V. MURRAY - REDIRECT EX. BY MRS. HERRING-LASH

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1 discussed with her about the engagement --

2 A Uh-huh.

3 Q -- that was before Christmas?

4 A I believe so, yes.

5 Q When she told you about losing her virginity,

6 that was -- do you know what month that was in?

7 A When she told me or when it supposedly happened?

8 Q When she told you?

9 A She told me that in January.

10 Q The same day that you reported it to the
11 principal?

12 A Yes.

13 Q And when Mr. Coffey, Otis Coffey --

14 A Uh-huh.

15 Q You said you saw him at a game, but you don't
16 know the time frame?

17 A No.

18 MRS. HERRING-LASH: That's all the questions I
19 have.

20 Nothing further, Your Honor.

21 THE COURT: You may step down.

22 It has been about an hour and a half. Ladies
23 and gentlemen, do you wish to have your afternoon break at
24 this time? If so, raise your hand or we can go a little
25 bit further.

1 Go a little bit further. Go ahead with the next
2 witness.

3 MRS. HERRING-LASH: Dr. Elizabeth Baker Gibbs.

4 Your Honor, may Mrs. Murray be excused?

5 THE COURT: Any objection?

6 MR. JONES: No objection, Your Honor.

7 THE COURT: You may be excused.

8 DR. ELIZABETH GIBBS,
9 being first duly sworn, testified as follows:

10 THE CLERK: Please state your full name to the
11 court and spell your last.

12 THE WITNESS: Elizabeth Lynn Harvey Baker Gibbs,
13 G-I-B-B-S.

14 DIRECT EXAMINATION

15 BY MRS. HERRING-LASH:

16 Q Dr. Gibbs, where do you work?

17 A I work at Carolina Forensic Health Services as
18 the medical director of Carolina Medical Assessment
19 Center.

20 Q And what do you-all do there?

21 A We provide forensic medical exams for people who
22 have either been victimized or people who are worried they
23 might have been or child physical abuse, child sexual
24 abuse, adult sexual assault and domestic violence.

25 Q What is your educational background and your

E. GIBBS - DIRECT EX. BY MRS. HERRING-LASH

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1 training?

2 A I received a BS degree in biology from the
3 University of South Carolina in 1982. I then went to the
4 University of South Carolina School of Medicine where I
5 received an M.D. degree in 1986. I went to Greenville
6 Memorial Hospital after that and did a rotating or a
7 general-type internship year. I finished that in 1987,
8 returned to Columbia and completed a pediatric residency
9 in December of 1989.

10 Q Have you had any specialized training in the
11 area of sexual assault examinations?

12 A Yes, I have.

13 Q What is that?

14 A First in 1989, I went to -- out to California to
15 Harbor UCLA and the University of San Diego to learn how
16 to do the forensic medical exams for children and that was
17 when I was a pediatric resident and came back and began
18 doing them. And since then, I have attended multiple
19 conferences, you know, local and national and
20 international.

21 Q Do you have any idea of how many sexual assault
22 exams you have done on children?

23 A I don't have it exactly separated between adults
24 and kids, but the vast majority of what we see are
25 children. But I have done roughly between, now, right at

B. GIBBS - DIRECT EX. BY MRS. HERRING-LASH

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1 around 8,000 or 8,500 forensic exams.

2 Q And have you been qualified to testify as an
3 expert in the area of pediatrics and child sexual assault
4 examinations before?

5 A Yes, I have.

6 Q How many times?

7 A I quit keeping track of that in 1994 when I
8 reached 50.

9 MRS. HERRING-LASH: Your Honor, at this time,
10 the state would offer Dr. Gibbs as an expert in the area
11 of pediatric and sexual assault examinations.

12 MR. JONES: No objection, Your Honor.

13 THE COURT: The court finds her to be so
14 qualified in that area without objection.

15 BY MRS. HERRING-LASH:

16 Q Dr. Baker, in your clinic did you see a patient
17 named _____

18 A Yes, I did.

19 Q When did you see her?

20 A I saw her on January 12th of 2004, about a
21 year ago.

22 Q And what was the -- who was the referral from?

23 A I believe that the referral came from Detective
24 Crews. Yes.

25 Q From the Charleston County Sheriff's Department?

E. GIBBS - DIRECT EX. BY MRS. HERRING-LASH

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1 A Yes.

2 Q And you say you saw her on the 12th?

3 A Yes.

4 Q Do you know if you saw her after or before she
5 had talked with Detective Crews?

6 A Um.

7 Q You may not know that.

8 A I don't know.

9 Q What was the presenting problem?

10 A The presenting complaint was that her family was
11 worried, particularly I talked with her father first, was
12 worried that she had had sex or sexual relations with an
13 adult.

14 Q And did you perform an exam on her?

15 A Yes, I did.

16 Q Now, did you -- there are two types of exams, if
17 you would explain to the jury, chronic and acute and what
18 the difference is.

19 A Okay. Our state law enforcement division or
20 SLED puts out two different types of protocols for us to
21 use in performing these exams. One of them is an evidence
22 collection kit, which is a little box. And in the box it
23 is for if there's been an assault, a sexual assault or
24 somebody is worried there's been a sexual assault within
25 72 hours of the time that I see them, then we get hair

E. GIBBS - DIRECT EX. BY MRS. HERRING-LASH

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1 samples and fluid samples looking for, you know, evidence
2 of acute assault and particularly looking for semen.

3 If it's been more than 72 hours, then the
4 chances of finding those things are so remote that instead
5 we do what's called a Chronic Child Maltreatment Protocol
6 which is really more of a good physical exam with detailed
7 attention and with special equipment to the anal, the
8 genital area, the skin, the oral area, along with a good
9 history. And so what I actually performed on her was the
10 Chronic Child Maltreatment exam.

11 Q And that would have been because the last
12 occurrence had been more than 72 hours?

13 A Yes.

14 Q And you mentioned something about this, but
15 there is a remote possibility of finding any kind of trace
16 evidence after that 72 hours?

17 A There is a remote possibility, but you are
18 talking about right after the 72 hours. From my
19 understanding, this was weeks had passed from the last
20 incident that they were concerned about, so there would be
21 no chance of finding that, not on her body anyway.

22 Q And that's what you -- what I guess the general
23 population would term looking for like DNA evidence?

24 A Correct.

25 Q So you did not do that because of the time

E. GIBBS - DIRECT EX. BY MRS. HERRING-LASH

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1 frame?

2 A No.

3 Q Now, who did you speak with first when you
4 started this exam?

5 A The first person that I spoke to was _____ s
6 father.

7 Q And did you get some history from him?

8 A Yes, I did.

9 Q And after speaking with him, what did you do?

10 A Then I spoke with her father and stepmother
11 together to get a medical history, a little bit of medical
12 background on her.

13 Q Was there any significant medical background
14 that she had?

15 A No.

16 Q After getting -- and by medical background, do
17 you mean prior surgeries, broken bones?

18 A Correct.

19 Q Those kinds of things?

20 A Right. Now, she did have a broken thumb where
21 she had fallen off a stool like in 1994. But for what we
22 were looking for, that was not significant.

23 Q Nothing that was significant to her rape
24 protocol examination?

25 A Correct.

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1 Q Now, did you then talk with _____ at some
2 point?

3 A Yes, I did.

4 Q And did you get a history from her before
5 performing your exam?

6 A Yes, I did.

7 Q Was there -- what was the pertinent medical
8 history that you got?

9 A I spoke with _____ by myself and then one of
10 our nurses who was training observed at that time. And
11 the first thing I did was explain my role and what I do.
12 And right off at the beginning, the question I usually
13 start off with is I tell them that my job is I'm a
14 pediatrician but I'm kind of a special pediatrician. I
15 see kids that have had problems with somebody touching
16 them on their private parts or people that are worried
17 they might have, and my job is to make sure that their
18 body is okay.

19 And then I usually start off with does that
20 explain why you are here. And she said that -- right off
21 the bat that she wanted to be clear she was not forced,
22 that from the beginning this was something that she wanted
23 to do. She said it was a gift that she was giving him,
24 but that she had had sex including the penis in the vagina
25 that the first time she thought was early in November.

E. GIBBS - DIRECT EX. BY MRS. HERRING-LASH

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1 The last time she thought was in November, the end of
2 November but she wasn't sure. She said that she described
3 two times to me. One time she said that he put his penis
4 in her vagina. He used a condom that he had with her, and
5 she said it hurt sort of, not bad, just sort of. There
6 was no burning to pee afterwards and that she didn't see
7 any blood and that there was no anal contact. Then the
8 second time she told me that it didn't hurt at all and
9 that there had been a condom.

10 Q Those are all things that were pertinent to what
11 you were looking for?

12 A Yes.

13 Q Now, after getting her medical history, did you
14 do a physical examination?

15 A Yes.

16 Q What were the results of your physical
17 examination?

18 A Her general exam -- eyes, ears, nose, throat,
19 heart and lungs, all of that -- that was normal. Her
20 pubertal status which means like where she was going from
21 prepubertal, no pubic hair, no breast development and her
22 vaginal area being childlike to adultlike, there's five
23 different levels. One is prepubertal. Five is adultlike.
24 She was Tanner stage 4, which is right under adult. She
25 had a lot of estrogen in her body, and so her vaginal area

B. GIBBS - DIRECT EX. BY MRS. HERRING-LASH

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1 and her breasts were already very young estrogenized, and
2 she did have pubic hair in that pattern.

3 And then her genital exam and anal exam were
4 also normal, but that's easier to explain if I draw it.

5 Q Okay.

6 A Well, if not, that's okay.

7 Q Okay. If you can just explain it.

8 A Okay. The female genitalia has several
9 different parts to it. The outer lips are the labia
10 majora, the larger outer fatty lips, and they were normal.
11 The labia minora, the smaller little inner lips that kind
12 of come down to a V down at the bottom. Then there's the
13 clitoris. The urethra where the urine empties out from
14 the bladder and then there's the opening to the vagina.
15 And the opening to the vagina is actually set down inside
16 of all of those outer structures, so it's protected by all
17 those outer structures. And at the entrance to the
18 vagina --

19 Q Dr. Gibbs, I think you can draw it on this
20 board, if you would like to do that.

21 A Oh, can I? Okay.

22 (The witness exits the witness stand).

23 BY MRS. HERRING-LASH:

24 Q You can explain to the jury by way of drawing.

25 MR. JONES: Your Honor, may I move over?

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1 THE COURT: Yes, sir.

2 THE WITNESS: I'm going to draw the structures I
3 was trying to explain. This is the labia majora, which
4 are the larger outer fatty lips, and I'm going to label
5 those LMAJ. Then you have the smaller inner lips that
6 once you get as pubertally advanced as she was, it
7 actually comes down to the bottom and joins. That's the
8 labia minora which I will label LMIN. You've got the
9 clitoris, which I will label C. The urethra, which is
10 where the urine empties out from the bladder, I will label
11 that U. And then you've got the opening to the vagina.
12 The opening to the vagina is actually back behind the
13 structure because it's deep down inside the structure.

14 The outside where these structures meet where
15 the lips meet is called the posterior fourchette. And
16 then there's a little valley that connects the opening to
17 the vagina, which comes down the side to the outside is
18 called the fossa navicularis. There is a little piece of
19 skin that goes around the entrance to the vagina called
20 the hymen, which I will label H. These structures that
21 are --

22 BY MRS. HERRING-LASH:

23 Q Let me stop you there and ask you a question.
24 When you say around, is it a sheathe that goes over it or
25 is there an opening to the vaginal area?

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1 A Oh, no, there's an opening. It just goes around
2 the edges, so it doesn't cover all of the way. It just
3 goes around the edges. And so that's what I'm drawing
4 kind of back behind here. The structures that become the
5 inside are covered with a special kind of skin called
6 mucosa, which is if you take your tongue and you rub it
7 against your cheek on the inside, it's that kind of skin
8 and it's called mucosa and that's what all these are lined
9 with and that's what the opening to the vagina has going
10 around the edges of it.

11 And then, of course, she has the anus here. And
12 all of these structures were normal in her.

13 Q Now, you had said a few moments ago that she was
14 estrogenized?

15 A Yes.

16 Q Can that have any impact on her examination?

17 A Oh, yes. The opening to the vagina, if a child
18 that is pre-pubertal that doesn't have estrogen, it's real
19 thin. It's sort of a reddish color and not a light pink.
20 And the reason it's red is because the cell's estrogen
21 causes the cells to thicken and you get multiple layers of
22 cells. And as you get those layers of cells, then you
23 can't see the blood vessels as well, so that's why it goes
24 from red to pink.

25 And also as you become estrogenized, the inside

1 of the vagina starts secreting a natural lubricant that
2 doesn't happen for young children that are pre-pubertal,
3 it only happens once you're pubertal. And the opening to
4 the vagina or that mucosa becomes very elastic. And it's
5 actually more elastic than what's on the inside of your
6 mouth and that's one of the reasons why we look so closely
7 at Tanner staging.

8 Q Before you do the exam?

9 A Yes. Well, while we're doing the exam.

10 Q You may return to the stand.

11 (The witness resumed the witness stand.)

12 Q Now, you said that in _____'s exam this was --
13 her exam was normal as far as her -- well, what does that
14 mean?

15 A What does a normal exam mean?

16 Q Uh-huh.

17 A It means just that. It was in the bell shape
18 curve of probability, and it was normal.

19 Q Does that mean like no trauma to her vaginal
20 area?

21 A Oh, no, in relations to trauma, what that means
22 is that there's -- you know, there's several explanations
23 for a normal exam. One is there has been no trauma, which
24 is always the nicest. The other is that there has been
25 trauma. But her body, because of the factors we were

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1 talking about, the thickness and the elastic and all of
2 that, actually stretched and allowed the trauma to occur
3 without causing significant tearing. Another explanation
4 would be that tearing occurred but actually healed back
5 and can be normal. So that's really the explanations for
6 what a normal exam could be.

7 Q What is the healing process as far as the
8 vaginal area, like time period?

9 A The vagina heals real quickly. It's very
10 vascular, which means it's got a good blood supply so it
11 heals really quickly.

12 For our purposes, whenever we do exams and
13 there's minor-like tearing or minor lacerations or
14 abrasions, they are gone usually within three days. It is
15 rare they last more than three days. And even for
16 significant tearing where it actually tears through the
17 multiple layers, like in the hymen or the fossa
18 navicularis, those heal within three weeks. Now, they can
19 heal either together where you can't see whether it's been
20 a tear or it can heal apart where it leaves like a scar
21 where you can see.

22 Q And when you say, for your purposes, have you
23 actually done original exams and seen trauma and then at
24 the follow-up there would be no evidence of the trauma?

25 A Oh, oh, yeah, I mean hundreds if not thousands

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1 of times.

2 Q And you marked on your form here where -- at the
3 bottom are there any discrepancies in the history with the
4 exam, and you marked no?

5 A Correct.

6 Q Can you explain to the jury how she can have a
7 normal exam, but her history be that she has had sexual
8 intercourse. How can those two not be discrepancies?

9 A Like I was saying, the vagina, especially once
10 it gets to be adultlike and she is very close to that in
11 her vaginal area, then I mean it stretches to allow large
12 objects to go in. And it then becomes ready for
13 childbirth. So it's an old wives' tale that, you know,
14 the first time every person has -- every female has sex
15 that they tear and bleed and all that. That really only
16 happens in, you know, a small percentage of cases.

17 Now, most of the time, there is going to be
18 something there after there has been intercourse, but that
19 would heal pretty quickly. And sometimes there's nothing
20 even after the first intercourse. So I mean that's why
21 there's no discrepancy in the history.

22 Q Has there actually been visual documentation and
23 research that can corroborate that there could be sexual
24 intercourse and no trauma afterwards?

25 A Oh, yes. I mean I've got several at the -- you

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1 know, at my office where the adolescent in particular has
2 said that, yes, this happened and the person has pled
3 guilty to it and yet the exam is normal. Plus, in the
4 literature, especially with pornography, there's been
5 many, many cases where they've examined adolescents after
6 they know that -- they have watched them unfortunately
7 have intercourse and pornography and their exams have been
8 normal. And so that happens pretty commonly.

9 Q Can you say to a reasonable degree of medical
10 certainty that her exam was consistent with the history
11 that she gave you?

12 A I mean, I can say that her exam is normal. And
13 one explanation for that normal would be that she either
14 healed after trauma, or she -- that her body tolerated the
15 trauma without significant tearing. But then also it
16 could be that there had been no trauma. But it doesn't --
17 there's no discrepancies in the normal exam and the
18 history that she gave.

19 Q So the exam does not rule that out?

20 A No, not at all.

21 MRS. HERRING-LASH: Court's indulgence just a
22 moment.

23 BY MRS. HERRING-LASH:

24 Q Basically the exam does not mean she didn't have
25 sex?

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1 A Oh, correct.

2 MRS. HERRING-LASH: That's all the questions I
3 have.

4 CROSS-EXAMINATION

5 BY MR. JONES:

6 Q Good afternoon, Doctor.

7 A Good afternoon.

8 Q Doctor, we met I guess a week or so ago, and you
9 helped me get some terminology, correct?

10 A Right.

11 Q Interrupted would be the term you used in
12 reference to the hymen, I guess the trauma to the hymen;
13 is that correct, interrupted?

14 A Well, several things can cause interruptions.
15 And interruption just means that instead of going all the
16 way around, then it has a place where it doesn't go all
17 the way around. One of those things that can cause an
18 interruption is trauma.

19 Q And, oftentimes, there are many normal things in
20 this nature. There are a number of young ladies who have
21 never had sex that do have trauma to the hymen that is
22 caused by things other than sex. I mean, would there
23 be...

24 A I'm not sure I understand what you're asking.
25 Are you asking me like are there other traumatic

1 interruptions to the vagina that normally occur?

2 Q Correct, other than sex?

3 A Penetration of a blunt object forcefully into
4 the vagina is the most common cause of traumatic
5 interruptions.

6 Q Okay.

7 A Now, there can be interruptions in the top --
8 really more than the top half, like the top two-thirds
9 that can naturally occur.

10 Q In this case, there is no evidence of that at
11 all of the top two-thirds, meaning natural occurring
12 interruption or anything of that sort, at all?

13 A No.

14 Q And I think that, as I wrote down what you're
15 saying, basically what you're saying is I can't tell?

16 A From the exam, it could be that she had trauma
17 there or not. I can't tell.

18 Q Now, I know that when we had talked on that time
19 and I asked you and you said on a lot of occasions you
20 don't have any trauma of this.

21 A Right.

22 Q And you said, quite often, that was -- or not
23 quite often, but you said that can be based on different
24 things: Positions, things of that sort?

25 A Correct.

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1 Q Could there be any change to your opinion if --
2 this opinion was based on your knowledge of two occasions
3 of vaginal sex at that time, correct?

4 A Well, there's two opinions that I have. One
5 opinion I have is about the significance of the physical
6 exam or the significance of a normal exam that is not
7 related to her history. The second opinion I have is
8 whether her history -- whether there are discrepancies
9 between her history and the physical exam. So my first
10 opinion, it doesn't matter whether or not, you know, what
11 her history was. My second opinion does.

12 Q So would that opinion change if the instances of
13 sex were eight occasions as opposed to two?

14 A No.

15 Q And what if the instances were hypothetically if
16 the individual had sex in a car straddling an individual,
17 very rushed the first time or say out of eight times, six
18 or seven times having sex, could that -- would that
19 change, at all? Would that be factored into the history?

20 A The factors that go into whether somebody with a
21 normal exam can have had penetration without findings is
22 not really related to that. I mean some are kind of.
23 But, you know, the first is the pubertal status, you know,
24 whether it's elastic and thick and whether there's a
25 natural discharge. The second is whether they are

1 physically aroused. If they are physically aroused, the
2 vagina actually opens itself at the end, and then there is
3 lubrication that comes down as part of the sexual
4 response.

5 Whether there is significant prepping, which may
6 be kind of what you're talking about like, you know, if
7 the person is significantly prepped so that they can have
8 that excited response. Position certainly matters because
9 you want the penis, if it's going to go in, to be able to
10 go directly through rather than putting trauma on one part
11 of the hymen or another. Certainly the size of the
12 vaginal opening, the size of the penis that is going in.
13 I mean, there's lots of different things that go into
14 that.

15 Now, in that particular -- I can't particularly
16 analyze that particular situation to know.

17 Q Sure. But that could be a factor?

18 A I mean, if there were less lubrication or if
19 there was less prepping, then that could be a factor.

20 Q So just to make sure I'm clear, physical arousal
21 would provide for more lubrication to provide for less
22 opportunity for trauma?

23 A Correct.

24 Q And lack of the physical arousal would be at
25 least more likely that there were trauma?

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1 A Right. That's one of the factors, correct.

2 Q And position would be another factor?

3 A Right. Because you do want the lubrication to
4 be at a place where it can be at the entrance which is
5 going to be the area of most friction. I mean, the worst
6 actually position for trauma or inducing trauma is
7 actually when the person, when the female is towards her
8 stomach and then the penis comes from behind because the
9 trauma actually hits at the top where the lubrication is
10 dripping down towards the bottom. So those are the kind
11 of factors that come into play.

12 Q So if an individual were on their knees leaning
13 forward, that would be a less -- that would be a position
14 that would be more likely to cause trauma?

15 A Right. Like if they were on their knees or
16 elbows, yes.

17 Q And it was your understanding when you met that
18 you were dealing with two instances?

19 A That's correct. That is what her father told
20 me, yes.

21 Q Have you done any follow-ups since this report
22 with her, at all?

23 A No.

24 Q Has anybody submitted any follow-ups for you to
25 review with any updated information?

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1 A No.

2 Q So, in essence, again, basically based on the
3 factors that you were given at that time, which are two
4 occasions, you cannot say one way or the other that trauma
5 occurred or didn't occur? It's normal?

6 A That's correct.

7 MR. JONES: Nothing further. Thank you.

8 THE COURT: Anything else?

9 MRS. HERRING-LASH: Just a few follow-up
10 questions, Your Honor.

11 REDIRECT EXAMINATION

12 BY MRS. HERRING-LASH:

13 Q I think you said that it wouldn't change your
14 opinion if you were told there had been eight occasions?

15 A Correct.

16 Q And I guess not to beat a dead horse, but if
17 there had been trauma at some point and you saw her a
18 month later, that trauma could have healed and there would
19 be no evidence of it?

20 A Correct.

21 MRS. HERRING-LASH: That's all of the questions
22 I have.

23 MR. JONES: Nothing further, Your Honor.

24 THE COURT: You may step down, ma'am. Thank
25 you.

1 MRS. HERRING-LASH: Your Honor, may Dr. Gibbs be
2 excused?

3 MR. JONES: No objection, Your Honor.

4 THE COURT: You may be excused.

5 All right, ladies and gentlemen, I will send you
6 on your afternoon break. Do not discuss this case in any
7 way. Thank you very much.

8 (WHEREUPON, the following proceedings were held
9 outside the presence of the jury.)

10 (WHEREUPON, a recess transpired.)

11 THE COURT: Are you ready to proceed?

12 MRS. HERRING-LASH: Yes, Your Honor.

13 MR. JONES: Yes.

14 THE COURT: Bring the jury in, please.

15 (WHEREUPON, the following proceedings were held
16 in the presence of the jury.)

17 THE COURT: All right. We're ready to proceed,
18 ladies and gentlemen.

19 MRS. HERRING-LASH: The state would call
20 Dr. John R

21 JOHN CHRISMAN R

22 being first duly sworn, testified as follows:

23 THE CLERK: Please state your full name to the
24 court and spell your last.

25 THE WITNESS: John Chrisman R R

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1 DIRECT EXAMINATION

2 BY MRS. HERRING-LASH:

3 Q Dr. R what is your occupation?

4 A I'm a radiologist.

5 Q And where do you live?

6 A I live in I'On subdivision in Mount Pleasant.

7 Q And where did your kids go to school last year?

8 A Not the year we're in, you're saying?

9 Q No.

10 A But before, they went to First Baptist downtown.

11 Q How long -- or how many children do you have?

12 A I have four children.

13 Q And how many go to school?

14 A Three of the four.

15 Q And what about the fourth?

16 A Fourth is a two-year-old.

17 Q Two years old?

18 A Yeah, not in school.

19 Q Where do your children go to school this year?

20 A This year they're at Bishop England.

21 Q And how many years did they go to First Baptist?

22 A Boy, let's see. Kelsey started when she was in
23 sixth grade and went through ninth, so I think it is
24 approximately three years.

25 Q And is three years also?

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1 A Correct.

2 Q And your son?

3 A The same, yeah.

4 Q During the time that your children went there,
5 did you meet Mr. Vail?

6 A I saw him on a few separate occasions. I only
7 shook his hand and met him one time.

8 Q What was that occasion?

9 A That was a basketball game. It was just
10 about -- it was I think the end of last year. Yeah, I
11 forget the exact date.

12 Q But it was at a basketball game?

13 A Correct.

14 Q How did you get introduced to him; do you
15 remember?

16 A We actually went up to the snack bar and he was
17 standing there at another entrance, and somebody
18 introduced us.

19 Q And that is when you shook his hand?

20 A Correct, I shook his and spoke a few words. And
21 I had seen him at several of the football games and around
22 the school and such, so I knew who he was.

23 Q Did you know that he was one of _____'s
24 teachers?

25 A Yes, I did.

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1 Q How had been as far as in her school work
2 and her school activities the year before 2003?

3 A Very good. has always been an excellent
4 student. She was an A and B student. It kind of came
5 very natural to her. She made good grades, no problems in
6 school whatsoever.

7 Q Did she have extracurricular activities?

8 A She was a cheerleader when she was at First
9 Baptist, yes.

10 Q Was she a cheerleader seventh and eighth or?

11 A I think only the second year that she was there.
12 She tried out the first year, yes, at the end of the year.

13 Q Did her behavior change at some point?

14 A Yes, it did.

15 Q When was that?

16 A In the fall of 2003, it's hard to say exactly
17 when, but we just noticed she would withdraw a little bit
18 more. She spent more time in her room. There were
19 certain family activities that she just didn't really
20 quite take part in. There was just a little distance
21 there. You know, she was 13 so it was hard to know, you
22 know. In my mind, for a long time, I thought well this is
23 the 13, you know, that everybody talks about. But, yes,
24 that is true.

25 Q And not wanting or not participating in family

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1 activities and staying in her room, was that a change for
2 _____?

3 A Yes, definitely. _____ was always a real
4 active part of the family, no doubt.

5 Q Did you begin to have some concerns?

6 A Yes. In the late fall, I think the first time
7 that I became concerned was right after Thanksgiving,
8 2003.

9 Q What happened?

10 A Well, it was the day after Thanksgiving, and I
11 remember because I was on-call that Saturday. And we
12 wanted to get our Christmas tree on that particular day.
13 We woke up early. We decided we would take the family out
14 and go get some breakfast. First, we were going to go to
15 I'Hop.

16 And we went downstairs and there was a note that
17 Kelsey -- or _____ had gone for a walk or a run in the
18 neighborhood. So that, in and of itself, wasn't that
19 unusual, so we called her. She had her cell phone with
20 her, and she said she didn't want to go eat breakfast with
21 us that she was out walking in the neighborhood and she
22 would just rather pass on it.

23 And I remember when we hung up the phone, it
24 struck us as a little odd, but it wasn't that big of a
25 deal.

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1 As we laid there and kind of got ready, we
2 decided it would be a good day to also get the Christmas
3 tree and that was kind of a big deal. We knew everybody
4 would get excited about that. And so we called her back
5 and said, well, come on and go because we're going to get
6 the Christmas tree. And she said, no, I think I will just
7 kind of stay out in the neighborhood, I'm on a walk and
8 she just wanted to pass on it. And I remember when we
9 hung up the phone that was distinctly -- I mean, that left
10 us kind of looking at each other, because that was
11 unusual.

12 Q You say that was the day after Thanksgiving. Do
13 you know what day it was?

14 A I believe that was the 28th.

15 Q And if it was after Thanksgiving, this would
16 have been Friday the 28th of November?

17 A Correct.

18 Q What did you do about that?

19 A Well, we called her back and said -- well, I
20 don't even think we called her back. I think while she
21 was still on the phone I said, no, the family is going to
22 get the Christmas tree, you know, you're coming, so come
23 on home right now.

24 Q Now, had there been any times where she also
25 went off with a friend named Melissa?

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1 A Yeah. In December, I don't remember the exact
2 dates, but there was a friend -- and we knew the name
3 because there was a young girl that she had met at a camp
4 whose name was Melissa that we knew about her. And,
5 apparently, one of her parents supposedly had moved into
6 the neighborhood.

7 Q Is this something you knew or something
8 told you?

9 A Well, it was something told us, yeah. I
10 did not know. And I think there were a couple of
11 occasions where she would go on a walk and she would say
12 I'm going to go meet Melissa. And, I mean, it seemed
13 pretty unremarkable. I mean, a 13-year-old wanting to go
14 meet her friend in the neighborhood.

15 However, it just so happened that same weekend,
16 Sunday, I was home. It was late afternoon. It was
17 starting to get kind of dusk out, and she said she was
18 going to go get Melissa or go meet Melissa at the gazebo.
19 And I remember I think my antennas were still a little up
20 over Friday, the whole Christmas tree event.

21 So I said you are going to go meet Melissa, it's
22 starting to get dark out. It just seemed odd. And I
23 said, well, why don't you just have Melissa come over to
24 the house, I'd like to see her, I'd like to meet her. And
25 there was some back and forth, and I think she went and

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1 made a phone call. And she came back and she said, well,
2 Melissa's dad won't let her come here, but we're just
3 going to meet at the gazebo for a few minute. And I said,
4 no. I said, well, how about we'll just drive you down to
5 Melissa's house.

6 And I felt like I was kind of cornering her in a
7 little bit. And when we finally got to this point where
8 there was no where else really to turn, all of a sudden
9 Melissa couldn't come out anymore. So it kind of ended
10 the thing, and she went up to her room that night. And I
11 remember that was -- I was starting to really get a little
12 concerned there. We still didn't have a whole lot to go
13 on, but yes.

14 Q Did, at some point, you get more to go on?

15 A Yes. I don't think there was a whole lot in the
16 early part of December that came directly to my attention.
17 But on December 21st, I believe it was, my wife was
18 cleaning up in her room and found the cell phone records
19 in her trash can finely shredded, and I mean finely
20 shredded.

21 Q Did you have a shredder that she had used?

22 A No, it was done by hand. So I don't think I was
23 actually at home at the time. My wife called me, and she
24 said I found these phone records in her trash can shredded
25 up. And, you know, obviously, that got both of us very

1 concerned. So I said, well, put them in a plastic bag and
2 just set them back in the closet, and we'll look at them
3 later tonight.

4 So that night when I came home, we pulled the
5 phone records out. And we tried to piece them up, but
6 they were really -- it was almost unintelligible. I think
7 there were several pages, maybe as many as eight or ten,
8 so we couldn't get a whole lot out of it. There were a
9 lot of half numbers. So we decided that we were going to
10 call the phone company and request a second copy.

11 Q And did you do that?

12 A Which we did. It took a little time, but we had
13 it sent, and so that was forthcoming. We didn't exactly
14 know when it was going to arrive at that point, but we
15 were kind of waiting on that.

16 Q Now, that was near Christmas.

17 A Yes.

18 Q Did you-all go away?

19 A We did. We were going to see my parents in
20 Kentucky, and I was going to drive up with the older kids
21 and my wife and the baby were going to fly up because she
22 had just -- that length of a drive I think would have been
23 pretty disruptive. So me and the older kids took off I
24 believe it was on the 26th, the day after Christmas, we
25 drove up to Kentucky. And I received a phone call from my

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1 wife along the way, and she said that...

2 Excuse me.

3 She said that she had found some presents that I
4 believe were hidden in her closet. They were hidden
5 somewhere in the room, and she asked me what to do. And I
6 think I waited until the next stop because I was in the
7 car with the kids, and I called her back. I said, well,
8 you know, open them up. I can't remember whether she had
9 already opened them or not, but she did end up opening
10 them. She opened up the cards. But then later I got to
11 my father's house in Kentucky. We called. She told me
12 about the cards, that it appeared to be gifts for a man,
13 or a male. There were some messages written in there
14 that, again, were involving a male. And we were not aware
15 that ----- had had a boyfriend at that time.

16 Q Can I interrupt you for one moment?

17 A Please.

18 MRS. HERRING-LASH: Your Honor, may I approach
19 the witness?

20 BY MRS. HERRING-LASH:

21 Q I'm going to show you what has been marked as
22 State's Exhibit Numbers 27 and 28. Do you recognize
23 those?

24 A Yes.

25 Q Are those the cards that you are referring to?

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1 A Yes, they do appear to be.

2 Q Do you remember what the presents were that she
3 found?

4 A Yes.

5 Q What were they?

6 A I believe one was cologne.

7 Excuse me.

8 The other was a Victoria's Secret gift card.

9 Q And you said the cards, which we have seen,
10 referred to a male?

11 A Yes.

12 Q And you were not aware of any boyfriend?

13 A No.

14 Q Did you approach _____ at all, with any of
15 that information at that time?

16 A Well, at that time, we felt like now we had some
17 pretty solid evidence, but we just didn't have a name. We
18 didn't know who. We didn't know any real details, and we
19 didn't want to jump the gun on it. So we decided that we
20 were going to wait for the phone records to come back and
21 try to piece it all together.

22 Q Okay. And do you have any idea about when they
23 came back?

24 A It was early January. I think it was right
25 around the first of the year.

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1 Q What did you do when they came back?

2 A Well, we got them out, and we took a highlighter
3 and highlighted all of the numbers. And it became pretty
4 clear to us that there was one number in particular that
5 stuck out pretty extreme.

6 Q What did you do after you found that number?

7 A Well, we actually gave the number to my
8 sister-in-law and had her call the number, and we were
9 just going to try to gather a little information.

10 Q Did she call the number?

11 A She did.

12 Q Were you able to find out who it belonged to
13 from that?

14 A There was a voice on the recorder, and he
15 identified himself as Mark.

16 Q And what did you think from that?

17 A Well, we started putting Marks together. And,
18 you know, much to my horror, there was really only one
19 Mark that came to mind and that would be Mark Vail.

20 Q What did you do then?

21 A Well, I called -- we still didn't feel like we
22 had everything we needed to really prove, but we were in
23 panic mode now. I actually called the Mt. Pleasant Police
24 Department. I got a detective on the phone. I don't
25 recall his name, and I said I think my child is being seen

1 by an older man, what are my options. And his comment was
2 you either have to have one of them confess, have her
3 confess, or you need to catch them in the act.

4 Q Did you try to catch them?

5 A I did.

6 Q What did you do to try to catch her?

7 A Well, me and my brother-in-law we -- I basically
8 put a -- I got some binoculars. I got two-way radios. He
9 had one in his car. I had one in my car. I went to work.
10 And as soon as -- you know, if there was any unusual
11 activity on her part, any walks or anything, I was going
12 to go to one end of the -- I was just going to leave work.
13 I have a little flexibility usually and I can get out in a
14 case like that. I was going to go to one end of the
15 subdivision, and he was going to go to the other. And we
16 were going to try to catch them in the act or catch them
17 meeting.

18 Q And this was early January by this time?

19 A Yes, this was early January.

20 Q Were you ever able -- did she ever ask to go out
21 for another walk?

22 A No, no, nothing really happened. You know,
23 there were no meetings or anything that we could see.

24 Q What did you do? Did you then decide to
25 confront her?

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1 A We did.

2 Q How did you plan to go about that?

3 A Well, the plan was that I was going to sit down
4 and with her and with my wife that night, and we were just
5 going to confront her. I think my wife was out picking up
6 my son or -- I believe it was my son, and I was home and
7 the older girls Kelsey and were there. And they
8 came in my room and were chatting with me. We were
9 talking. And without realizing it, I had left the
10 highlighted phone records over on my bed. And I was
11 talking to Kelsey at the other end of the room. And when
12 I looked over, I saw standing over them looking
13 down white as a ghost.

14 Q What happened then?

15 A Well, I told Kelsey to excuse us and I walked
16 -- I walked her over. There were a couple chairs
17 in the bedroom, and I sat her down and I basically
18 confronted her with what we knew.

19 Q Did you tell her everything you knew, or did you
20 add something?

21 A I did. Although I felt like we had a lot of
22 very positive evidence, I wanted to make sure that she
23 told me the truth. And I did -- as I told about the phone
24 records, I laid out what we knew. You know, we had put
25 the Melissa deal together, you know, a lot of this

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1 together. And I also told her that somebody, a mother at
2 the school had called us and had seen them together
3 driving in a car.

4 Q At first did she talk to you about what had
5 happened?

6 A She was very defensive at first, for the first
7 couple of minutes. And then, at one point, she did blurt
8 out, daddy, I did drugs and I asked him to help counsel
9 me. And it came out as a very blurted sentence.

10 Q Uh-huh.

11 A You know, it had a very untrue read to it. It
12 sounded very rehearsed. There were no details. It was I
13 did drugs and I went to him to help counsel me.

14 Q What happened after that?

15 A Well, it was very unbelievable. About this
16 time, my wife walked in as well, and she came and joined
17 me. And I mean I sat down knee to knee with her.

18 Q With _____?

19 A Yeah, with _____. And I think my wife was to
20 the side. And I just started telling _____ that this was
21 about truth, that, you know, all of this deception had to
22 end and that we knew there was something going on and that
23 we knew it was Mark Vail and that we needed the truth.
24 And she was very, very sheepish at first. I mean, she did
25 not want to admit to it, but she did.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kenneth G. Goode, Circuit Court Judge

Case No. 06-CP-10-1652

MARK E. VAIL, #307052

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

APPENDIX
Volume 2 of 3

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1 Q Did she get upset?

2 A Very, very upset. It was -- yes, there was a
3 lot of crying and tears on both sides.

4 Q What did she admit to?

5 A She admitted on that occasion that it was just
6 kissing, and I think that he had put his hand on her leg.

7 Q What did you do after that?

8 A Well, I must admit, as a father, it was almost a
9 relief to me that that was what she was admitting to. I
10 questioned her more, you know, was there more, was there
11 more. And she almost couldn't look at me. She had her
12 face kind of in a pillow, and she was obviously very
13 tearful. And as painful as it is, even now, to say her
14 main concern was not what her father was going to do to
15 her, but what was going to happen to Mark Vail. She
16 didn't want him to get in trouble. She was concerned what
17 this -- what would happen to him.

18 Q How did she communicate that to you?

19 A Well, she tried to shoulder the blame on herself
20 for a long time.

21 Q By what?

22 A Well, it was me, I'm the one who liked him and
23 just taking the blame on herself saying it was me, I'm the
24 one at fault, I'm the one who did something wrong, please
25 don't let anything happen to him.

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1 Q That is what she was asking you?

2 A Yeah.

3 Q What was your reaction?

4 A Well, there was obviously a flood of emotion. I
5 was horribly hurt. I was horribly concerned for her. I
6 was angry beyond belief, you know, at this man, at this
7 coach, this teacher.

8 Q When she told you about the drugs, let's go back
9 to that, why did you not believe that?

10 A Well, none of my kids have ever been involved in
11 drugs. I've never had any trouble with any of them. I
12 would be very surprised if they've ever even smoked a
13 cigarette. I don't think I'm being just nieve about that.
14 I mean, they're -- you know, they're just kind of good,
15 stay-around-the-house kids. They don't hang around with
16 anybody questionable.

17 Q But yet now this was going on?

18 A Yes.

19 Q And you did not know that. Was there anything
20 about what she said about drugs that made it unbelievable?

21 A All I can tell you is it just -- there was no
22 mention of what kind of drugs or what she was doing or --
23 it just rang -- it rang flat.

24 Q Did you question her in depth about that, at
25 all?

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1 A Yeah, quite a bit.

2 Q Did she have any explanation?

3 A About what, the drugs thing?

4 Q Right.

5 A Well, eventually it came out that that was going
6 to be their agreed upon story.

7 Q That they had agreed on with -- the two of them?

8 A Yep.

9 Q She -- how did you get her to admit that?

10 A Well, a lot of the admissions that came out, it
11 didn't just all come out in one big package for us. You
12 know, a lot of the details, especially, you know, the more
13 intense sexual details, she had a hard time telling me
14 face to face. I mean, I think she was horribly...

15 Q Has she eventually given you some more details?

16 A She has. She has.

17 Q Has she given you any about where and when these
18 things happened?

19 A (The witness nods head.)

20 Q Where does she say?

21 A I know that, at one time, it occurred in his
22 apartment.

23 Q Do you know any other place?

24 A And that there was at least one time in his car
25 while it was in our neighborhood.

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1 Q Was she able to give you any details about when
2 these things had happened?

3 A I know -- I will be honest, a lot of those --
4 the hard details about the sexual intercourse and oral
5 sex, I think they were probably as hard for her to tell me
6 as they were for me to listen.

7 Q And hard for you to think about, I'm sure. Now,
8 after getting the information you got that night, what did
9 you do?

10 A Well, we decided we would call Mr. Mullins for
11 starts, the principal at the school, and give him that
12 information.

13 Q Did you call him at home that night?

14 A I called him at home and he was at church, so it
15 was a Wednesday night. And I left a message with his son
16 that I needed to talk to him tonight and would he please
17 call us as soon as he got home.

18 Q And did he?

19 A He did. He called us when he got home, and I
20 told him the information we had. And, I mean, he was
21 horrified. He wanted to be as helpful as he could. He
22 didn't really know what to say. He tried to be as
23 comforting. He expressed anger towards Mr. Vail. And we
24 made the decision that we would meet in person the next
25 morning, that I was going to come to the school and sit

1 down. I told him about the phone records. He asked if I
2 would bring those. He said he wanted to immediately
3 remove Mr. Vail from the campus and would I please bring
4 the information I had and meet with him.

5 Q And did you do that?

6 A I did. Kelsey, the eldest, and Nate, the
7 youngest -- I'm trying to remember. They went to school
8 by their normal route. We waited until the kids were in
9 the class room. Then I went and met with Mr. Vail (sic)
10 and took the phone records and sat down in his office.

11 Q With Mr. Vail?

12 A I'm sorry. No, Mr. Vail was not there.

13 Q With Mr. Mullins?

14 A With Mr. Mullins, yes.

15 Q And did you then leave after meeting with
16 Mr. Mullins?

17 A I did.

18 Q Did _____ go on to school later that day?

19 A He -- she did. He wanted time to make -- we had
20 agreed that _____ really desperately wanted to go back to
21 school. She was a bit of a wreck. She was --

22 Q Why did she want to go back to school if she was
23 such a wreck; do you know?

24 A It seemed kind of unbelievable at the time, but
25 I think -- I think she wanted to get a chance to see him,

1 to be perfectly honest. I think that she wanted to be
2 there. We were very hesitant about that, but I spoke with
3 Mr. Mullins. He assured me that he would remove Mr. Vail
4 from campus immediately and that they would welcome
5 and try to support her in any way they could and kind of
6 get her through this.

7 Q So she went on to school later that day?

8 A She did go to school later that day.

9 Q Did you get a call later that day regarding
10 this?

11 A I did.

12 Q Who was the call from?

13 A Well, my wife and I were actually in the car in
14 the parking lot heading down to pick all of the children
15 up, and Mr. Mullins called me on the cell phone and...

16 Q Did he give you more information?

17 A He did. He was -- I think Mrs. Murray and
18 were in his office, and it was, at that point, that
19 he had told us there had been intercourse.

20 Q What did you do?

21 A We sat there in the driveway and cried.

22 Q After that, what did you do?

23 A We -- excuse me...

24 Q Take your time.

25 A We went down to the school to pick them up and

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1 meet again with Mr. Mullins.

2 Q You met with Mr. Mullins?

3 A Yeah.

4 Q Did you talk with _____ at that point in time?

5 A I hugged her.

6 Q Did she say anything to you?

7 A She didn't say much.

8 Q Was she upset?

9 A Yeah. I think, at that point, everybody was
10 pretty much beside themselves.

11 Q What did you do later?

12 A Well, you know, now -- well, when I left, I
13 called my attorney.

14 Q Who is that?

15 A Frank McCann. And I wanted to get advice from
16 him on where to proceed. I mean, you know, it was a
17 whirlwind. And we knew we had -- you know, not just --
18 now, I had my little girl -- it was just -- we knew it
19 was, you know, we were dealing with a severe criminal
20 offense.

21 Q Did you go to the police?

22 A We did. We did.

23 Q And did you have concerns for _____ after that?

24 A Very much.

25 Q Did you try to make arrangements to watch her?

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1 A She was really a wreck at that time. It was
2 very tough. She was emotionally unwound. And the hardest
3 thing, I will mention again, she was concerned about him
4 and what was going to happen to him. It was
5 heartbreaking.

6 Q Did she express those concerns to you-all?

7 A She did.

8 Q Did she ever try to run away?

9 A Well, we felt like we had to -- she was so
10 emotionally distraught, we felt like we had to kind of
11 watch her constantly.

12 Q For what purpose?

13 A I mean, I was worried about her. I didn't know
14 what she was going to do. I didn't know whether she would
15 run away or whether they would meet up, whether she would
16 hurt herself. I don't know. We were very upset and very
17 concerned.

18 You know, we basically, one of us, tried to stay
19 with her almost all of the time unless she was in her
20 room, and then one of us was downstairs all of the time so
21 she would have to come through us. We changed the alarm
22 code on the house to a number she didn't know. I mean, we
23 wanted to be alerted. We were scared to go to bed.

24 Q So that she couldn't open the door to go out?

25 A Right, so that she couldn't leave.

1 Q Did she leave one day?

2 A She did.

3 Q What happened?

4 A Well, my wife had to go out and I went upstairs
5 to take a shower. I left -- my son was down on the couch,
6 and I guess he was ten at the time, and I assumed he would
7 let me know if she left. Obviously, I don't think he
8 fully understood the magnitude of what was going on. And,
9 actually, I don't even think I made it to the shower. I
10 went upstairs for a couple of minutes, and I came back
11 down and I didn't see her. And I went to my son, and I
12 said where is And he said she went for a bike
13 ride. This was probably 9:00 at night. It was early
14 January, and it was a cold spell. It was freezing
15 outside. And I don't even think my feet touched the
16 ground. I screamed at him. I ran up and I got my keys
17 and my cell phone, and I went and got in my car. I called
18 my brother-in-law because he lives up near the front.

19 Q In the front of I'On?

20 A Of I'On. And I told him just to get to the
21 entrance because there is only really one main front way
22 out. There are some sideways, and I was going to go to
23 the side and try to cover the side way, and I sent him to
24 the front. I raced up. I went by the side way. I didn't
25 see her. I raced up towards the front, and it was really

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1 a -- I think a miracle that I saw her. Because out of the
2 corner of my eye, I saw her go down a side road. She was
3 on a bicycle and...

4 So I turned the car, and I went down the road
5 that she went down, which later turned to the right. And
6 as soon as I made a right-hand turn, I didn't see her any
7 more. And I remember thinking that I had lost her. There
8 are some little shops in the front of I'On, so I started
9 just weaving back behind them? And, again, I just
10 happened to see -- she was up -- she had seen me turn
11 around and come. She knew I was after her.

12 And so I saw her and she had sat down in the
13 grass up behind one of the shops and had the bike lying
14 down, and she was just kind of crouching in a shadow. So
15 I -- that was tough. I got out and I walked up, and she
16 didn't try to run. She just sat there, and she was crying
17 and I was crying. And I said come on let me just get your
18 bike and take you back home.

19 Q What did she say?

20 A Well, there was kind of a real poignant moment
21 where she said, daddy, he took everything, she (sic) took
22 everything I have.

23 Q Did she say she took everything or he took
24 everything?

25 A He did, he took everything.

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1 Q What did you do after that?

2 A Well, I took her back home, and I sat her down
3 and, you know, we all cried again. I mean, I was just
4 desperately trying to patch things up. And I told her
5 that if she was going to run away -- I mean, she was
6 getting ready to pull on to Mathis Ferry on a bicycle with
7 no coat at 9:00 at night in the middle of January. And I
8 explained to her how dangerous that was, what could have
9 happened. I don't know whether she was going to meet him.
10 And I said that if she did that again that we would have
11 to take steps to make sure that she couldn't do it. I
12 kind of let her know that I will do whatever it takes. If
13 it means putting you somewhere where you can't run away, I
14 will. But I told her she can't do that, and there was no
15 answer there.

16 Q Did you take her to counseling?

17 A We did. We got her very early into counseling
18 within a matter of days. We asked around, and we actually
19 got some advice when she had her forensic exam. I don't
20 know whether it was Dr. Baker or somebody that worked
21 there, but clearly we had a couple people point us in the
22 direction of Mrs. Lindy Clifton.

23 Q Lindy Clifton is where you went?

24 A Correct, Lindy Clifton who has been counseling
25 her really ever since.

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1 Q Now, at some point, did you and _____ speak
2 with Mr. Mullins on the phone about the situation again?

3 A Well, I was obviously in very close contact with
4 Mr. Mullins after that, and I think he called the next --
5 it was within a night or two. And we talked and he told
6 me that Mr. Vail had just over the holidays asked his
7 girlfriend's parents to take her hand in marriage.

8 Q What did you do about that?

9 A You know, it was just another horrible emotion
10 in just misery. _____ was -- actually came in the room
11 during that conversation and I decided to -- and I think
12 Mr. Mullins actually asked to be the one to tell _____
13 because I, in some ways, I think _____ saw me, at that
14 time, as kind of the enemy almost. I had been the one
15 that had kind of broken the house of guards. And so she
16 got on the phone with him and he told her that information
17 Mr. Mullins had told me and he told _____.

18 Q What was her reaction that you could observe?

19 A You know, it's very hard to be there as a parent
20 and to love your child and be trying to protect them and
21 trying to, you know, patch them up. And she was crushed,
22 crushed, by the fact that he was going to be asking this
23 other woman to marry him. And I can't tell you how hard
24 as a parent it is to try to love them and protect them but
25 know that I had to kind of nurture her through this time.

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1 Q This was after she had already been to the
2 police?

3 A Yes, that was within -- yes, that was after.
4 That was a couple of days -- I don't know the exact date,
5 but the 9th or the 10th, somewhere in there we were --
6 yeah, we were down the road.

7 Q Did continue to go to First Baptist for
8 the rest of that year?

9 A Well, it was a very tough decision about what to
10 do with and school at that point. Our gut reaction
11 was to yank her out, yank out our kids out and flee the
12 whole situation. However, Mrs. Lindy in some of the
13 counseling with approached us and said that we
14 ought to keep her in some form of stability with her
15 friends and her personal, you know, group to -- you know,
16 the thing had been hidden even from, you know, essentially
17 everybody, and so nobody at the school really knew. They
18 knew that Mr. Vail had left the school. But the rumors
19 were that he had left for this reason or that. There was
20 no mention of 's name was not involved, at
21 that point. It was not known.

22 Q Did it ever become involved?

23 A I'm sorry?

24 Q Did her name ever become known at the school?

25 A Yeah, it was -- you know, slowly it leaked out.

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1 It was -- you couldn't keep it away. You know it started
2 hitting on the TV, and people started asking questions.
3 And I don't think that anybody ever knew that they knew it
4 was but, you know, missed a lot of days in
5 there. had been visibly distraught in her classes.
6 And I think there was a lot of suspicion that it was
7 who had been involved.

8 Q So is that one of the reasons you put her in
9 Bishop England this year?

10 A Yeah. Our whole thought was to pull her out,
11 uproot her in the middle of all of this and put her in
12 another school, it seemed rather traumatic. It's probably
13 hard for people to understand, but we were just trying to
14 patch together our lives at this point. So the decision
15 was always at the end of the school year they were all
16 gone. We just tried to limp our way through it and hope
17 that it didn't really blow up in our face.

18 Q Now, just to change the tenor for a moment, I
19 want to get a little bit of a description of the
20 neighborhood from you.

21 A Okay.

22 Q How far is your home from Mathis Ferry?

23 A Well, we are right at about a mile. We are back
24 on the end of a cul-de-sac in the back part of I'On. It
25 is right at a mile.

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1 Q Do you have a lot of through traffic at the end
2 of I'On where you live?

3 A Actually, back on our cul-de-sac area, it's
4 pretty quiet. Certainly, by I'On standards, it's very
5 quiet.

6 Q Do you live near where I know there is a lake
7 and the gym and all of that?

8 A There is a Creek Club in the back that we live
9 near. It's like a little house, a community house that
10 they will occasionally use for parties.

11 Q That is different from the gym?

12 A Yeah, we are on the exact opposite end. The gym
13 and pool and the tennis courts and all of the, you know,
14 the activities and the storage room are in the front. We
15 live probably in one of the quieter sections.

16 Q The Creek Club, is there a parking lot to that?

17 A Yes, it sits back on a creek. There is a
18 parking lot that is actually not next to it. It's next --
19 you know, it is down near our house. It's probably a
20 couple hundred yards away.

21 Q What is the lighting like in that parking lot at
22 night?

23 A Well, actually in the parking lot itself, there
24 is no lighting. Out on the street, along the sidewalk,
25 there are two lamp posts which kind of flank either end.

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1 And some of those are actually -- I don't know whether the
2 neighbors do it or whether the community does it, but
3 several of the sides are painted so that lights don't
4 shine towards people's houses so. And in the Creek Club
5 itself, at night, I bet you can see maybe a fourth of it.
6 The rest is hidden behind shrubs and in the darkness.

7 Q I'm going to show you a picture of the Creek
8 Club in one second. You can stay where you are.

9 A Okay.

10 Q Is that what you are talking about, the lights
11 right there?

12 A Correct. That is one of the two light posts.

13 Q Where is the other one?

14 A It's to the right, maybe another 50 or 60 yards.

15 Q And those are the ones that are painted?

16 A Yeah. It's hard to appreciate there, but almost
17 all of the light posts of the four sides back in our area,
18 at least two of the four are painted.

19 Q So that they don't shine in people's --

20 A Correct, so they don't shine towards people's
21 houses, and they don't actually cast as much light as you
22 might suspect by seeing them.

23 Q This is probably a further view?

24 A That's correct. And as you can see, several
25 portions there is a hedge row that runs in front of that

J. R - DIRECT EX. BY MRS. HERRING LASH

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1 car that we see to the right. There is also a back corner
2 that is, you know, partially lit.

3 Q I think you can point with this.

4 A Yes, that will be fine.

5 Q Just explain to the jury the set-up.

6 A Okay. First of all, there is a hedge row. It
7 is partially broken in places that run along the front
8 part of the parking lot, except for where the entrances
9 are. And there's actually, you can't see it, but there's
10 a partial row of hedges within the parking lot, as I
11 recall. Then there are several recesses which cut back in
12 behind the bushes and the trees. And the lamp post is
13 more out towards the front and is not even really
14 technically in the parking lot.

15 Q I think this may be -- can you recognize where
16 this picture is from, just that view?

17 A I think that back towards this side was the
18 recess I was pointing to that is partially hidden. Here
19 is the hedge row that actually is in the middle of the
20 parking lot, I believe. And our house is in that
21 direction.

22 Q What would be on around past that hedge row that
23 way?

24 A There's more hedges and then the parking lot
25 opens up to another little section there that, again, is

J. R. - DIRECT EX. BY MRS. HERRING LASH

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1 partial surrounded as well.

2 Q What is the lighting like in that part, or do
3 you know?

4 A Yeah, I do know at night you can see these front
5 areas in here and along the hedge row. But like in these
6 corners from there back, you can't see. This whole back
7 area up there is totally hidden. All of the basic back
8 half really is almost total darkness. You can't even see
9 if there are cars there with the hedge row.

10 Q Is the traffic, foot traffic or vehicle traffic
11 real heavy back through there?

12 A No. There is --

13 Q Do you want the picture back up there?

14 A No, that's fine. You don't see people generally
15 at night. I mean, you may have somebody come walking down
16 the road there. People don't really cut through the
17 parking lot because there is no real advantage
18 directionally to do that. It kind of sits back in the
19 corner, and it's not out in a main part of where the
20 traffic goes. It's to the side.

21 Q If you drive down the street, can you see into
22 the parking lot from your car?

23 A You can see only the very front part of it.
24 Certainly the back two-thirds is total darkness back in
25 there.

J. R - DIRECT EX. BY MRS. HERRING LASH

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1 Q And same as if you walk down the street?

2 A Yeah, definitely. You could walk down that
3 street at night, and there could be several cars back
4 there that you would have to kind of almost step into the
5 parking lot around the hedges to really see.

6 Q Now, it's a club, but is it a club that is
7 always in use, or how does the use of that club work?

8 A It's an event club. It will have like a wedding
9 there or somebody might have a party. It's not used every
10 night. In fact, I would say that, you know, maybe a
11 couple weekend nights out of the month it's used for an
12 event. There is nothing really that goes on there during
13 the day hardly ever. You know, there aren't facilities
14 there that people will go and utilize.

15 Q So unless somebody is renting it, it is vacant?

16 A Correct.

17 MRS. HERRING-LASH: Court's indulgence for one
18 moment.

19 THE COURT: Yes, ma'am.

20 MRS. HERRING-LASH: That's all of the questions
21 I have. Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: Do you have any questions?

24 MR. JONES: Just a few.

25 CROSS-EXAMINATION

J. R - CROSS-EX. BY MR. JONES

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1 BY MR. JONES:

2 Q Dr. R I hate to do it, but I have to ask a
3 few questions in this matter.

4 On the night that you found out these issues --
5 about I think it was at least initially that he had put
6 his hand on her leg, that issue --

7 A Correct.

8 Q -- what was your response that night, or how did
9 you respond?

10 A I was obviously very emotionally upset. I mean,
11 we knew that something significant was going on. We knew
12 there was some sort of a relationship. I think the
13 evidence to that was clear. The emotions were broad. I
14 was mad. I was horrified. I was hurt. There was a flood
15 of emotions.

16 Q Doctor, I understand the evidence that you
17 stated here that's the phone records at this time and --

18 A Phone records, gifts, an admission by her,
19 cards, dates where she was not accounted for.

20 Q And the gifts, were there any cards or labels or
21 anything attached or anything that would point to a person
22 on the gifts themselves?

23 A To a person?

24 Q Right.

25 A You mean a specific person?

J. R - CROSS-EX. BY MR. JONES

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1 Q Correct.

2 A No.

3 Q Did the cards point to any specific person
4 addressed by name?

5 A They were not addressed by name.

6 Q Now, at that time, I think you said that the
7 details you had gotten at that time was that something had
8 occurred at his apartment. That was on the same night,
9 something occurred at his apartment, and at least
10 something had occurred in the car in the neighborhood? Is
11 that accurate?

12 A You have to understand that a lot of these
13 details came forth, again, not all in one nice package.

14 Q Okay. So those came from a different -- those
15 may have come from a different time?

16 A They may have. Although I think that there
17 were -- I know there were specific details of them being
18 together and her mentioning that, yes.

19 Q Now, the time when you had called Mt. Pleasant,
20 that was prior to January 8th?

21 A Correct.

22 Q And that was with regard to the phone records at
23 that time?

24 A That was right. We had the phone records, we
25 had the gifts, we had the cards, and we knew it was a man

J. R. - CROSS-EX. BY MR. JONES

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1 named Mark, and we felt pretty certain who that man was.

2 Q At this time on January 8th -- now, at this
3 time, you had not called the police back, at this time, or
4 called Mr. Mullins; is that right?

5 A Called who?

6 Q On January -- let's see. Prior to January 8,
7 you had not contacted Mr. McCann or the police again?

8 A Correct.

9 Q Then on January 8, who gave you the details
10 involving intercourse? Was _____ able to tell you that,
11 or did that come from Mr. Mullins, at that time, the phone
12 call?

13 A The initial phone call came through Mr. Mullins.
14 He was there with Mrs. Murray and with _____ in the room.

15 Q And at that time, did he have any real details
16 or just state that, at that time, he understood that there
17 was intercourse, obviously something beyond what you had
18 initially gotten from her?

19 A As soon as he had mentioned that there was
20 intercourse, obviously my world became a blur.

21 Q And then later on the details evolved?

22 A Correct.

23 Q And at that time, you called Frank McCann who
24 then made contact with the police?

25 A Correct.

J. R - CROSS-RX. BY MR. JONES

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1 Q Now, were you ever -- you didn't talk to the
2 police at all on the 9th. It was on the 12th was the
3 first time that you made contact with them personally? I
4 think the 9th is a Friday.

5 A That is -- I believe that is true. What
6 happened was we sat up an appointment. An appointment was
7 made to sit down with Detective Crews.

8 Q Okay. Did Detective Crews give y'all -- well, I
9 guess did Detective Crews by way of Mr. McCann give any
10 directions or anything, any advice or anything on how to
11 deal with this over the course of the weekend that you
12 recall?

13 A No, I don't recall.

14 Q Do you recall the date or the time frame -- I
15 know it was -- I guess it was after the 12th when
16 Mr. Mullins -- when y'all found out that Mark had gotten
17 engaged at that time?

18 A Do I remember that date? I know it wasn't the
19 7th. I know it wasn't the morning or the afternoon of the
20 8th.

21 Q This is January, correct?

22 A Correct. But I spoke with Mr. Mullins during
23 that, probably, week three or four times a day.

24 Q So some time over that week?

25 A At some time within a short period of time

J. R - CROSS-EX. BY MR. JONES

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1 during that week that information was revealed to us, yes.

2 Q At some time around I guess about -- after I
3 think you said around December, started to become
4 more, would you say, distant?

5 A It wasn't in December. It was probably in the
6 later part of the fall.

7 Q Okay.

8 A Yeah, October, November.

9 Q Okay. And would you say communication became
10 strained? Would that be accurate?

11 A I don't know that I would say the communication
12 became strained as much as she spent a lot of time alone.
13 She spent a lot of time in her room talking on her cell
14 phone.

15 Q And was your relationship with Kelsey, it was
16 still as it had been at this time? Was there any
17 noticeable change with your relationship with Kelsey?

18 A At which time?

19 Q October, November, December time period?

20 A No, no noticeable difference.

21 Q As a doctor, I know you are busy and on-call and
22 all, but would you characterize that you are pretty active
23 in their lives? Would you say you're pretty busy, takes
24 away time? How would you characterize that?

25 A I would say I'm very active in their lives.

J. R - CROSS-EX. BY MR. JONES

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1 Q Had, at any time during this period, you heard
2 anything about having a crush on Coach Vail at any
3 time?

4 A Yes. We knew that there were several girls in
5 the school that really had a quote, crush, on Mark Vail,
6 if you were. He was a very -- I had seen him at the
7 football games. He was very animated. He was, you know,
8 down on their level.

9 I know at one game he got out with the
10 cheerleaders and was kind of dancing with them and, you
11 know, acting like one of the cheerleaders. And it was --
12 I mean, I knew that she had a crush on this guy, yes. But
13 it seemed like, you know, I had no reason to think it was
14 anything more than a young student who liked particularly
15 one teacher that a lot of the kids in the school liked to
16 be around.

17 Q And you never had any cause or reason to discuss
18 this with -- or Kelsey and Caroline at any time
19 about this to the degree of the crush?

20 A No.

21 Q Never any? And the reason I ask is one of the
22 ways that Caroline described it was an obsession,
23 excessive.

24 A Well, she definitely had a crush on him. You
25 know, it's not like his name was written all over her

J. R. - CROSS-EX. BY MR. JONES

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1 walls or she -- you know, I don't know how -- I would not
2 have probably defined it as an obsession, but she
3 definitely looked up to this teacher. I mean, he
4 obviously gave her attention. He was able to approach her
5 on a level that she related with.

6 Q And did you ever see the date of her 17th
7 birthday on anything or anything like that and question
8 her on that?

9 A We did. That was one of the -- if I'm not
10 mistaken, one of the cards that was found with the gift
11 and that had a horrifying effect on us.

12 Q But really nothing ever before that that had
13 ever given you any --

14 A No.

15 Q You never saw it before?

16 A No, absolutely not.

17 Q Okay. Thank you. Did you ever discuss in
18 reference -- and I'm sure by this time you know there was
19 a November 22 incident to where -- between Caroline and
20 Kelsey and ; _____ involving Coach Vail, at which time,
21 _____ had initially made an allegation and then recanted
22 that back. At any time, did y'all ever -- did you know
23 anything about that up until this?

24 A I knew absolutely nothing about that until after
25 all of this broke.

J. R - CROSS-EX. BY MR. JONES

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1 Q You met with Detective Crews on it looks like
2 about January the 12th?

3 A That sounds about right.

4 Q And since that time, have you met back with the
5 detectives or anything, at any time, over this to give
6 them any further details?

7 A No. I have spoken with my attorney about it. I
8 have spoken with -- I believe early on, we spoke with
9 Mr. Mullins about it but it was -- it kind of came in
10 drips. I think some of it also may have come to light
11 through Mrs. Clifton. I think that she was able to kind
12 of, you know, get some of that information as well. It
13 was hard for me as the father to have that conversation
14 with my daughter.

15 Q Sure. Do you know when you provided this
16 information for the solicitor's office in preparation for
17 this, some of the new...

18 A We had spoken with the solicitor's office on
19 numerous times. And whenever we gained any additional
20 information whatsoever that seemed pertinent, we gave that
21 immediately to them.

22 MR. JONES: Beg the court's indulgence for just
23 a second.

24 (Mr. Jones confers with the defendant off the
25 record.)

J. R · CROSS-EX. BY MR. JONES

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1 MR. JONES: Your Honor, I don't have any further
2 questions.

3 MRS. HERRING-LASH: Just a couple, Your Honor.

4 REDIRECT EXAMINATION

5 BY MRS. HERRING-LASH:

6 Q Dr. R regarding the conversation about the
7 engagement, are you sure that that was after the
8 conversation about the sexual intercourse?

9 A Absolutely.

10 Q And at the time that you knew about the crush,
11 did you have any reason not to trust this teacher to react
12 to that crush like any other teacher should?

13 A None.

14 MRS. HERRING-LASH: Those are all of the
15 questions I have.

16 MR. JONES: I have no other questions.

17 THE COURT: You may step down, sir.

18 THE COURT: All right. Ladies and gentlemen, we
19 have been going straight since 9:00. We will go ahead and
20 stop at this point. If you will please report back at
21 9:15 tomorrow morning, we will proceed with the trial. Do
22 not discuss this case in any way. Thank you very much.

23 (WHEREUPON, the following proceedings were held
24 outside the presence of the jury.)

25 THE COURT: All right. See you tomorrow.

1 (WHEREUPON, the court was in recess for the
2 afternoon of Tuesday, January 11, 2005.)

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Volume III

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

VS.)

MARK VAIL,)

DEPENDANT.)

TRANSCRIPT OF RECORD

2004-GS-10-2733

2004-GS-10-2734

2004-GS-10-8316

COPY

January 10 - 14, 2005
Charleston, South Carolina

B E F O R E:

THE HONORABLE DANIEL P. PIEPER, JUDGE; and a jury.

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

DEBORAH HERRING-LASH, Assistant Solicitor
SHAW GOODRICH, Assistant Solicitor
Attorneys for the StateV. CRAIG JONES, JUNIOR, Esq.
Attorney for the Defendant

AUG 29

HOLLY HIOTT O'QUINN, RPR
Circuit Court Reporter

1 (WHEREUPON, the following proceedings were held
2 before the court on Wednesday, January 12, 2005, outside
3 the presence of the jury panel.)

4 THE COURT: Are you ready?

5 MRS. HERRING-LASH: Yes, Your Honor.

6 MR. JONES: Yes, Your Honor.

7 THE COURT: Bring the jury in.

8 (WHEREUPON, the following proceedings were held
9 in the presence of the jury.)

10 THE COURT: Good morning, ladies and gentlemen.
11 We are ready to proceed. Call your witness, please.

12 MRS. HERRING-LASH: The state calls Mamie R

13 MAMIE R

14 being first duly sworn, testified as follows:

15 THE CLERK: Please state your full name to the
16 court and spell your last.

17 THE WITNESS: Mamie Weaver R R-

18 DIRECT EXAMINATION

19 BY MRS. HERRING-LASH:

20 Q Mrs. R where do you live?

21 A I live in Mt. Pleasant at 1.

22 Q And who do you live with?

23 A I live with my husband John and my children
24 Kelsey, Nate and Chrisman.

25 Q How long have you been married to Dr. R

M. R - DIRECT EX. BY MRS. HERRING-LASH

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1 A Just over four years.

2 Q And during the year of 2002, how was _____'s
3 school year?

4 A That was the seventh grade for _____ and I
5 remember it being a good year. She tried out for
6 cheerleading, made the cheerleading squad -- well, she has
7 always had good grades. Kimberly was the best friend.
8 Their relationship started. You know, nothing out of the
9 ordinary. It was a good year.

10 Q Did you hear anything about Coach Mark Vail that
11 year?

12 A I did.

13 Q What did you hear that year?

14 A He was new to the school that year, and I just
15 remember --

16 Q Did you meet him?

17 A I didn't meet him in the seventh grade. I just
18 remember my family talking about him. He was new, fun,
19 just -- they just really liked him.

20 Q Now, in 2003, how did the school year begin for
21 Kelsey -- excuse me -- _____

22 A You know, the school year began a little off
23 because in September, right at the beginning of September,
24 _____ was put on restriction for a month. And the reason
25 for that was because she had put a second hole in her ear

M. R. - DIRECT EX. BY MRS. HERRING-LASH

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1 and that was a house rule. And so when we realized there
2 was a second hole, restriction was for a full month and
3 there were no privileges. So that particular month, she
4 really was with us all of the time because she had no
5 opportunity to be with anyone else. So that was a little
6 off course.

7 Q When her restriction was over, did she get her
8 cell phone?

9 A Yes.

10 Q And sometime after that, did you notice a change
11 in _____ ?

12 A Well, October her privileges were given back to
13 her. She was able to do football games. There was a
14 homecoming dance that month. She was able to do
15 everything that she would have been able to do anyway. So
16 October wasn't off, and it really wasn't until November
17 that I noticed anything.

18 Q What did you notice?

19 A It was at the end of November and there were two
20 occasions where a red flag came up. And I remember the
21 first one being on November 28th because it was the day
22 after Thanksgiving. Everybody was home. My husband was
23 off that day. The children were not in school that day.
24 And John and I woke up that morning planning the day, and
25 we wanted to take everybody to breakfast. And _____ left

M. R . DIRECT EX. BY MRS. HERRING-LASH

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1 a note saying that she had gone on a walk and that she
2 would be back later. So we just called her on the phone
3 and said, hey, we're going to breakfast, come go with us
4 and she did not want to. That wasn't a problem. We just
5 said okay.

6 Then, after that, we decided to go get our
7 Christmas tree. So we called her back and said we're
8 going to go get our Christmas tree, we know you want to do
9 that. That's just our tradition to do that together.
10 Everybody has a part in which tree we got. So we knew she
11 wanted to do it. But when she said no, that's when we
12 just stopped and I kind of made a mental note of that day
13 and that conversation. And we actually called her back
14 and insisted that she come.

15 Q Did you -- did she also go out with a friend
16 named Melissa?

17 A She did. That was the second thing that
18 happened in November.

19 Q Tell us about that.

20 A It was in the same weekend. It was on a Sunday
21 at the end of November she wanted to go see her friend
22 Melissa. She had gone to see Melissa before, and the
23 story was it was a friend from camp whose father was
24 coming into the neighborhood to see his girlfriend and
25 Melissa was going to come with him. And in the past,

M. R . DIRECT EX. BY MRS. HERRING-LASH

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1 there were two other times where I said that's fine, just
2 be home in an hour. But this particular time, her dad
3 insisted that Melissa come to our house so that we could
4 meet Melissa, and she did not want that to happen. There
5 was always a reason why Melissa couldn't get to us. It
6 was very vague as to why she couldn't come, but she
7 couldn't come, and those plans eventually just fell apart
8 and we never saw her.

9 Q Did you find anything else that gave you
10 concern?

11 A Well, I did. That was -- are you talking about
12 items, like did I find something?

13 Q Uh-huh.

14 A In December, it was the day after Christmas and
15 John and the older three children left for Kentucky, and
16 they went by car. I was leaving later that afternoon and
17 leaving with the two-year-old -- well, she was one at the
18 time -- and we were flying.

19 So I went through the house turning off lights,
20 you know, changing the thermostat, locking windows and
21 doors, just kind of closing the house down. And in
22 room there was a bag with two gifts and two
23 cards, and I opened them. I mean there was -- there were
24 so many things that were causing me to be uneasy with
25 's whereabouts and what she was doing and who she

1 was with, so I opened them. There was not a name on the
2 card.

3 Q Before we talk about that, let me take you back.
4 Had you already found something else in her room before
5 that that you found a little bit troubling?

6 A I did find -- I'm sorry, I do have to backtrack,
7 which would have been back in November -- a shirt for a
8 man. And the reason I knew it was for a man was the size
9 of it, the brand of it.

10 Q What brand was it?

11 A Tommy Hilfiger shirt, you know, a medium or a
12 large. It was for a grown man. There was a card with it
13 that said -- actually, I don't remember everything it
14 said. I just know it had teacher somewhere on it. So I
15 just put it back. It wasn't wrapped. It wasn't really
16 hidden. It was just beside her bed. It wasn't wrapped.
17 So I asked _____ if this shirt was for Coach Vail
18 specifically, and she told me that it was so.

19 Q Because the card said something about teacher?

20 A About a teacher. I just correlated the two. I
21 couldn't -- Coach Vail was the only male teacher I knew of
22 for her.

23 Q Let me show you the card. It's in evidence.

24 MRS. HERRING-LASH: May I approach the witness,
25 Your Honor?

M. R . DIRECT EX. BY MRS. HERRING-LASH

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1 THE COURT: Uh-huh.

2 BY MRS. HERRING-LASH:

3 Q I'm going to show you what is marked as
4 Defendant's Exhibit Number 8. If you will just look at
5 that card and see if that is it.

6 A That's it.

7 Q Okay. So you're talking about the heading that
8 says what? It's behind you, Mrs. R

9 A For a terrific teacher. I don't remember
10 opening the card or reading -- I don't remember her -- if
11 I read something she wrote, I just remember seeing the
12 teacher. And so I thought back to her schedule what male
13 teacher she had that would wear a Tommy Hilfiger shirt and
14 that is how I came up with his name.

15 Q And she admitted to you that was for him?

16 A That was for him, and we had a conversation
17 about giving it to him. And, you know, as strange as that
18 sounds at this point, at that time, you know, we had gifts
19 for -- little gifts for teachers but that particular
20 thing, you know, I thought for a second, gee, why are we
21 doing this, but I did not really hound her on it.

22 Q Did you find something in her trash can also?

23 A I did. This was also in December. Sunday night
24 is a routine that we empty the trash in the house. It
25 goes out Monday morning. Emptying trash cans and there

M. R. DIRECT EX. BY MRS. HERRING-LASH

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1 was a torn up phone bill in her bathroom trash can into a
2 thousand pieces. And I just collected it, just because it
3 was torn up. I collected it, said something to my husband
4 about it, and we just decided maybe we'd try to piecemeal
5 it together and find out what was being thrown out. But
6 that was too hard. There was no way, there were too many
7 pages.

8 Q Did you end up ordering a copy of that?

9 A I did. I actually got online to see if I could
10 just get it online with our account number, and they
11 wouldn't allow that. But they did send me that same bill,
12 just another copy. So that came to us after Christmas.

13 Q Now, I will go back. You were talking before
14 about what you found in the bag. You said some cards and
15 some presents?

16 A Yes.

17 MRS. HERRING-LASH: Your Honor, may I approach
18 the witness?

19 THE COURT: Yes, ma'am.

20 BY MRS. HERRING-LASH:

21 Q Let me show you what is marked as State's
22 Exhibits 27 and 28. Do you recognize these?

23 A I do.

24 Q What are they?

25 A These are the cards I found in _____'s room in

1 a bag with two other gifts.

2 Q Did you read those cards inside?

3 A I did.

4 Q Behind you, I think you can see, was there
5 anything in this card that caused you concern?

6 A The half built house really just led me to our
7 neighborhood. We live in a neighborhood that is being
8 developed every day. We have houses being built on either
9 side of us. We have houses being built down the street.
10 There are houses being built.

11 Q In I'On a lot?

12 A Everywhere you turn in our neighborhood, I'On.
13 So half built house said to me she's meeting someone, not
14 knowing who, in one of the houses in our neighborhood.

15 Q Did you know if any of the children her age
16 lived in your neighborhood close enough for her to walk to
17 see?

18 A You know, my son Nate is the only one who really
19 socializes in our neighborhood. The two older girls do
20 not. They have specific friends that they do things with.
21 They do not ride their bike or, you know, they don't go
22 visit anybody in our neighborhood. I really can't even
23 think of somebody that they would go see even today. So I
24 felt like, you know, it couldn't have been a -- this is
25 what I thought was going on. If somebody was meeting her

M. R. - DIRECT EX. BY MRS. HERRING-LASH

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1 in our neighborhood, they had to be old enough to drive
2 because there were really no friends in the neighborhood
3 that she would go walk to see.

4 Q Is that one reason it was kind of strange when
5 she wanted to walk to see Melissa?

6 A Exactly, exactly.

7 Q Did you question anybody about that?

8 A I asked. 's sister Kelsey just very
9 nonchalantly. I said, you know, does have a
10 boyfriend at school, is she interested in anybody, is she
11 seeing anybody, do you know of anybody? And I found out
12 that, you know, there are lots of boys who would like to
13 go out with there are lots of boys that are
14 interested in but they know that she just has a
15 crush on Coach Vail, and they just really don't even
16 approach her about it.

17 So, in my mind, I was left with the fact that
18 there wasn't anybody that even her sister knew about that
19 I could pinpoint.

20 Q And let me show you the other card. Did you
21 read this other card also?

22 A I did.

23 Q It does make a reference here to someone going
24 away to see their mom and brother. Did you know anyone
25 that your family knew that would be going away or

1 traveling to see their mom or brother?

2 A I actually quizzed Kelsey on that as well. I
3 had Coach Vail in my mind. I did not use his name when I
4 asked her. And I just said, you know, does -- where is
5 Coach Vail's family from? Does he have any brothers or
6 sisters? I mean, do you know anything? I was trying to
7 figure out who would be going out of town and putting it
8 with the person she might be meeting in a half built
9 house.

10 Q Did you also notice the date?

11 A The date stood out more than really anything
12 else in that card. Because in 2007, _____ will be 17.

13 Q Now, you said you also found gifts?

14 A I did.

15 Q What were they?

16 A The first one was a Victoria Secret box with a
17 \$20 gift card inside that I had really purchased for her
18 to give to her best friend. That was the first one. The
19 second one was a bottle of men's cologne, and the name of
20 it was Obsession, I believe.

21 Q And did you notice anything in his cards about
22 the gifts?

23 A Yes. The part that says maybe we can have some
24 fun with the things that I have gotten for you.

25 Q Now, after -- you said this was when your family

M. R DIRECT EX. BY MRS. HERRING-LASH

402

1 had already gone?

2 A Yes.

3 Q When you-all got back from Christmas, what did
4 you do then? Did anything in particular happen, or did
5 you wait for the phone records?

6 A I think we just waited for the phone records.

7 Q What happened when you got the phone records?

8 A The phone records came to us detailed, and we
9 were in a trial period with our phone company for about
10 three months. And they were sending us detailed calls of
11 every phone we had for three months at no charge to see if
12 we would like to have that every month. And, if so, then
13 they would charge us. But these three months it was just
14 sent automatically. So it wasn't normal for me to have
15 every single incoming or outgoing call.

16 I check the mail. I read the mail. I pay the
17 bills. I throw the mail away. I have total control of
18 that aspect. And that is why when I saw part of _____
19 bill in the trash can, I was a little surprised because I
20 didn't realize we had all of these details. I mean, that
21 was just new to me because it was, like I said, the trial
22 part.

23 Q So that was something you weren't used to
24 seeing?

25 A I was not used to seeing.

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403

1 Q So you didn't miss it?

2 A Right. So then when I went to pay the bill, you
3 know, I realized that Kelsey's was detailed and everybody
4 else's was detailed and that must have been 's
5 detailed portion. So when I received a new copy, I just
6 went through 's part and, you know, excluded numbers
7 I knew: Mine, my husband's, her friend Kimberly,
8 Kelsey's, I just excluded those. And I was really looking
9 for a number that I didn't recognize. And there was -- I
10 mean, there were a couple numbers I didn't recognize. The
11 first one I looked at, I realized it was Caroline's phone
12 number. I did not know hers from memory. But the other
13 one that stood out kept appearing, and so much that I
14 highlighted this one particular number. And I can't tell
15 you exactly, but, you know, there were -- there were more
16 than 30, 40 calls to this number.

17 So what I wanted to do was I just wanted to call
18 and see who answered. But I thought if the caller ID was
19 there, then they might see our name and they might not
20 answer, so I had my sister do it. I called and I said I
21 just need you to dial this number and just tell me what
22 you hear, okay. And she did, she called me right back.
23 She said it was an answering machine, and it's a man's
24 voice and his name is Mark.

25 Q After that, did you plan to confront ?

M. R. - DIRECT EX. BY MRS. HERRING-LASH

404

1 A We did.

2 Q And did you and Mr. R confront her?

3 A We did.

4 Q How did that go?

5 A We had the phone bills. We had this one
6 particular number highlighted. We knew it was back -- it
7 went to Mark, assuming Mark Vail.

8 Q Why did you assume him?

9 A Well, spoke of him so often in this sense
10 of having a crush on him. Kelsey told me that nobody will
11 approach you know, to be their girlfriend because
12 she only likes Coach Vail. Her visits to see Melissa
13 didn't make sense, not wanting to get the Christmas tree
14 didn't make sense. And then the answering machine that
15 said Mark, we only knew of one Mark. It wasn't like they
16 had several friends named Mark.

17 Q I interrupted you. Go ahead.

18 A That's okay.

19 Q So how did the confrontation go?

20 A Okay. So we had these phone records on our bed
21 with the intention of just talking to her one night. I
22 left to take my son to a tutoring class. And as I was
23 coming home, my husband called me and said has come
24 across these bills, they were just laying out, and she and
25 I are up in the bedroom, and we're talking. So when you

M. R . DIRECT EX. BY MRS. HERRING-LASH

405

1 get here, just come on upstairs.

2 So when I came in, it was just _____ and her
3 dad and he explained to me that --

4 Q You won't be able -- don't go into anything he
5 said.

6 A Okay.

7 Q Just what happened when you got there that you
8 saw?

9 A When I got there, I understood that _____'s
10 explanation for being with Mr. Vail was because she had
11 tried drugs once before and really was going to him for
12 some type of counsel or advice and that's how it started.

13 Q And how did it go from there? Did the
14 confrontation -- how long did it take?

15 A I would say a couple hours. I don't know for
16 sure, but it was long.

17 Q Was there crying involved?

18 A You know, actually, no, there wasn't crying.

19 _____ after she admitted, I guess, that she had tried
20 drugs and we were trying to get kind of the details of
21 that, where were you when you tried them, who were you
22 with. It wasn't a solid story. There was no definite
23 answer to where or when or what it was or --

24 Q Did she even give you the details of what kind
25 of drugs it was?

M. R. - DIRECT EX. BY MRS. HERRING-LASH

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1 A No, she couldn't answer that. So my husband
2 said to . look, we have got these phone
3 records. We have got -- he actually used a story that we
4 had thought of before and that was -- well, I need to back
5 up a little bit. Is that okay?

6 Q Uh-huh.

7 A When we were suspicious of an older man and
8 _____ meeting somebody older, my husband called the
9 police department at Mt. Pleasant. He said to him --

10 Q You won't be able to talk about what he said.

11 A Okay. The police advised us if we were
12 suspicious of something we would have to either catch them
13 together or our daughter would have to confess to it. So
14 because we could not -- we never saw them together, per
15 se, we just asked _____ and we told her, look, we know of
16 someone who has seen you with him. And, at that point,
17 she said, yes, I have been with him.

18 Q So when she heard someone had seen them, she
19 admitted it?

20 A She admitted it.

21 Q Now, the next day you were with _____?

22 A Yes, for a while.

23 Q And did you get a call later in the day?

24 A Yes.

25 Q And what happened after when you got that call?

M. R DIRECT EX. BY MRS. HERRING-LASH

407

1 This is after she was at school?

2 A John and I decided to go to First Baptist to
3 pick all three of the children up, not to have them ride
4 the school bus home. We got in the driveway at 2:30, got
5 in our car in our driveway at 2:30. We wanted to be at
6 the school right when the classes let out. John's cell
7 phone rang, and it was Tommy Mullins, the headmaster at
8 First Baptist.

9 Q As a result of that phone call, what did you-all
10 do?

11 A As a result of the phone call, well, we were
12 informed that --

13 Q Don't say what you were informed. Just say what
14 you --

15 A We cried. We sat in the driveway and we cried.
16 And we just...

17 Q Do you need a minute?
18 Did you go to First Baptist?

19 A We did.

20 Q And did you pick _____ up?

21 A We actually met _____ and Mrs. Murray in
22 Mr. Hill's office.

23 Q So Mrs. Murray was there with her at the time?

24 A Yes. And we just talked.

25 Q Is that when you found out about what -- that

M. R. DIRECT EX. BY MRS. HERRING-LASH

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1 more had gone on than you knew?

2 A (The witness nods head.)

3 Q What did you-all do after that?

4 A You know, John and I had to regain our
5 composure. We could not approach the school. We couldn't
6 approach _____. We couldn't act as if we had just
7 received this information. So we gained our composure and
8 walked in Mr. Hill's office and sat down with _____ until
9 the students could clear out, and we could walk back to
10 our car and walk back home -- drive back home.

11 Q As a result of that, did you contact law
12 enforcement, or did Dr. R_____ contact law enforcement?

13 A I have to think for a second. I know that we
14 spoke to our attorney, but I honestly can't say if our
15 attorney called law enforcement or if John called law
16 enforcement.

17 Q Did you go to meet with law enforcement?

18 A We did; I did.

19 Q And before that, had you made a list of your
20 concerns with dates of things that you thought were
21 suspicious?

22 A I did. Before we confronted _____ I made
23 about a two and a half page of dates that stood out to me
24 and what happened on those dates and why I thought those
25 dates were important, so I had pretty much a time line.

M. R. DIRECT EX. BY MRS. HERRING-LASH

409

1 Q Of what you --

2 A Of what I thought had taken place, what I
3 remembered.

4 Q Now, did you actually get to also _____ speak with the
5 doctor, I guess Dr. Baker-Gibbs who examined ?

6 A I did.

7 Q And during that conversation, was it important
8 for her to know the last date that something may have
9 happened?

10 A Yes. She asked -- I don't remember her specific
11 question, but she needed a day that we thought sexual
12 intercourse may have taken place. I gave --

13 Q Had you figured out a date?

14 A I gave her a date based on my thoughts and that
15 date was December 6th and it is because a specific event
16 that was huge took place.

17 Q What was that?

18 A _____ was baby-sitting for a family that she
19 has baby-sat for in the past. It's a family that I'm
20 familiar with. I know where they live. And she wanted to
21 baby-sit for them and that the mother would pick her up
22 that morning and the mother would take her to practice and
23 that was fine. I didn't have any problems with that. I
24 knew how to find her if I needed her, so, yes, you may.

25 Q Was that cheerleading practice?

M. R - DIRECT EX. BY MRS. HERRING-LASH

410

1 A That was cheerleading practice to be at the gym
2 downtown Charleston. So her older sister also had the
3 same practice, and Kelsey rode with someone else to
4 practice so I never even was downtown before practice
5 started. I was -- the agreement was I was to be there to
6 pick them up after practice. I believe it was 3:00 in the
7 afternoon. I arrived there at 3:00 in the afternoon.
8 Kelsey got in the car. She said to me _____ has gone to
9 baby-sit. And I said who did she get in the car with, and
10 she said she rode with the people she was baby-sitting
11 for. That's who she was with. I called her cell phone to
12 talk through that because I was not under the assumption
13 she was going to baby-sit after practice. But she did not
14 answer her phone.

15 Q Because you thought she had baby-sat before?

16 A I thought she had already been baby-sitting.
17 She didn't answer her phone, and so I just left it alone
18 until she got home. And when she got home, I went over
19 the day with her. You left this morning and you went to
20 baby-sit, and she said yes. And then you were taken to
21 practice? Yes. And so then you went to practice and then
22 you were picked up by the lady you were baby-sitting for,
23 and you were brought back to baby-sit? Yes. And then
24 after you baby-sat then you were brought home, like this
25 lady did all of this? And she said, yes, she said that

M. R - DIRECT EX. BY MRS. HERRING-LASH

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1 she would do whatever it took so that I could help her out
2 so she could Christmas shop. And that is bizarre.
3 Because if you're going to have someone come and baby-sit
4 so that you can get things done, that is a lot of
5 transportation from the Isle of Palms to downtown
6 Charleston to have a baby-sitter.

7 Q Now, without saying anything that the
8 baby-sitter said, did you try to confirm this with the
9 baby-sitter?

10 A I did.

11 Q And did _____'s story of the day turn out to be
12 true?

13 A The lady that she baby-sat for only confirmed
14 baby-sitting in the afternoon that day.

15 Q So somebody in that family picked _____ up?

16 A After practice, yes.

17 Q And that's why you gave the doctor the date of
18 December 6?

19 A Yes.

20 Q How has _____ been since all of this?

21 A You know, _____ has a very -- has a way about
22 her where she -- people are drawn to her. That girl can
23 make friends so easily. And we always laugh at home about
24 that one girl has more friends than the rest of her family
25 put together. And it's been a very lonely year.

1 Q Have you been taking her to counseling during
2 this year?

3 A Yes. We started counseling...

4 John and I were very desperate. We needed
5 somebody who knew what they were doing. We did not know
6 what to do. You know, _____ was very concerned about
7 Mr. Vail and what was going to happen to him. She was
8 very concerned if she would ever see him again. She was
9 totally just focused on the thought of what was going to
10 happen to him. It was her doing. And, as an adult, you
11 can't explain to a 13-year-old that that is absurd. So we
12 sought out help, somebody who knew something. And we
13 immediately took her to see Lindy Clifton, and we were
14 going two and three times a week. And two or three times
15 a week with each appointment being an hour to an hour and
16 a half, and 30 minutes there and 30 minutes home. I mean,
17 we were dedicated to the cause, and we are still going to
18 Lindy Clifton.

19 THE COURT: Approach the bench, please.

20 (WHEREUPON, a bench conference was held in the
21 presence of the jury but out of the hearing of the jury.)

22 MRS. HERRING-LASH: Court's indulgence for one
23 moment.

24 That is all of the questions I have for you.
25 Please answer any Mr. Jones has for you. Thank you.

M. R . CROSS-EX. BY MR. JONES

413

1 CROSS-EXAMINATION

2 BY MR. JONES:

3 Q Good morning. Craig Jones, and I have got to
4 ask you a few questions.

5 A Good morning.

6 Q I will ask you briefly about the gifts that were
7 found. Were they wrapped in -- were they already wrapped
8 for Christmas?

9 A Yes.

10 Q So you unwrapped them?

11 A Yes.

12 Q And inside there was a bottle of cologne of
13 Obsession?

14 A Yes.

15 Q And a gift certificate?

16 A (The witness nods head.)

17 Q And the cards were in an envelope?

18 A Yes.

19 Q And were they sealed already?

20 A Yes.

21 Q Were there any names or anything?

22 A It said number one and then number two.

23 Q No particular name specifying a person to any of
24 the items?

25 A No, but that was what caused me to open those up

1 so quickly. There was a reason that a name was not on
2 those cards, in my mind.

3 Q And were they in the closet?

4 A No, bedroom floor.

5 Q Really when she gave the -- or y'all got the
6 shirt for Coach Vail, y'all really didn't inquire any
7 further into why she did that, as far as I know you said
8 you thought it was kind of strange?

9 A Well, it was a birthday present, and I knew it
10 was a birthday present.

11 Q And y'all didn't really inquire any further into
12 why she would get a birthday present for this particular
13 teacher of that level?

14 A Well, yes, I did inquire. But 13, seventh
15 grade, I mean we buy teachers gifts. I mean, we buy
16 teacher gifts for different occasions. So it wasn't so
17 much that it was an occasion that she wanted to give a
18 gift to a teacher. It was why would -- why Coach Vail,
19 why his birthday, why this shirt? You know, it was more
20 just why. But I don't believe that _____ could really
21 answer that honestly. I mean, I don't think she was in a
22 comfortable position to say what it really was. I mean,
23 all three of my children liked that man so much.

24 Q When you talked to Kelby (sic), you inquired of
25 Kelby (sic) whether _____ had a boyfriend -- or Kelsey

1 rather, I said Kelby, Kelsey. And Kelsey stated that lots
2 of guys wanted to go out with _____ and that
3 didn't want to go out with them because of this crush on
4 Coach Vail. You didn't really flush out that crush at
5 that time with either Kelsey or _____; did you?

6 A I didn't really -- repeat the question.

7 Q When you found out about -- I'm not sure how
8 long you have known about the crush with Coach Vail, but
9 you really didn't get into the crush with _____ at that
10 time. I think when you talked with Kelsey, you said,
11 Kelsey, does she have a crush -- you know, does she have a
12 boyfriend and Kelsey said --

13 A No, I did not. I did not. You know, _____ was
14 very open about the crush. I mean it wasn't -- I mean,
15 who he was and things he would do that they thought were
16 funny and things he would say that they thought were
17 funny, I mean that was something we talked about. So it
18 wasn't this secret. And if I had asked her at that point
19 do you have a crush on him, she would have probably
20 thought where have you been.

21 Q Would the \$20 Victoria Secret card, would that
22 have been strange to be for her best friend?

23 A Absolutely not.

24 Q So that one could have been for --

25 A That's why I bought it, yeah.

M. R. CROSS-EX. BY MR. JONES

416

1 Q Part of the way you named Mark was when your
2 sister called that number and the machine said this is
3 Mark?

4 A Yes.

5 Q Now, I know when y'all confronted _____ on this
6 she stated the reason she was talking to Mark Vail was
7 because she had tried drugs. And, at that time, y'all
8 tried to flesh that out, and you didn't get a lot of
9 details?

10 A Right.

11 Q And that led y'all to believe that probably
12 wasn't a credible answer?

13 A Right.

14 Q At that time?

15 A Right. And it did not take her very long to
16 tell us that that was not true and that, indeed, she was
17 seeing Mr. Vail.

18 Q On December 6 when you had followed up on
19 _____'s baby-sitting and made a determination that she
20 had -- I assume, at least in your mind, that she had not
21 baby-sat that morning --

22 A Right.

23 Q -- with this individual, did you follow-up on
24 that with her?

25 A With _____?

M. R - CROSS-EX. BY MR. JONES

417

1 Q With

2 A Well, I followed up with the lady she was
3 baby-sitting for to confirm my thoughts, but it wasn't
4 until, you know, the confrontation and we realized our
5 suspicion was true that I let know, you know, that
6 morning you were not baby-sitting, correct? And she said
7 correct. And that morning was the morning you were with
8 Mr. Vail? And she said yes.

9 Q So on that particular day, you really didn't
10 have any follow-up at that time? It was later on at the
11 confrontation?

12 A Right.

13 Q And would you say that you know most of your
14 children's close friends?

15 A Absolutely.

16 Q And it appears the possible fictitious
17 individual, Melissa, she was in the picture roughly for a
18 couple months?

19 A I would say Melissa came to an end on
20 November 30th.

21 Q Okay.

22 A She never was mentioned again.

23 Q So November and December would be the time
24 period of Melissa?

25 A No. Melissa came to an end. She did not exist

M. R. CROSS-EX. BY MR. JONES

418

1 anymore after the 30th of November.

2 Q Oh.

3 A So I think I would say a little bit of October.

4 Q Okay.

5 A And November Melissa was talked about.

6 MR. JONES: Court's indulgence for just a
7 moment.

8 No further questions.

9 MRS. HERRING-LASH: Just a couple follow-up,
10 Your Honor.

11 THE COURT: Yes, ma'am.

12 REDIRECT EXAMINATION

13 BY MRS. HERRING-LASH:

14 Q Talking about the gifts, you found two cards.
15 And you said the gifts were marked one and two?

16 A Yes.

17 Q Were the cards with the gifts, or how were they?

18 A They were with the gifts. There was a bag. I
19 want to say an American Eagle bag, just a very rectangular
20 bag. The gifts were in the bottom of it, and the two
21 cards were on the side.

22 Q Was there any -- was her best friend's name on
23 the card, the Victoria Secret card?

24 A No.

25 Q Was there any name on that card?

M. R. REDIRECT EX. BY MRS. HERRING-LASH

419

1 A No.

2 Q Any name on the gifts?

3 A No.

4 MRS. HERRING-LASH: Those are all of the
5 questions I have.

6 RECROSS-EXAMINATION

7 BY MR. JONES:

8 Q Were the cards attached to the gifts? Were they
9 taped on or were they separate in the bag?

10 A Well, the bag was a small bag and the gifts fit
11 perfectly down in them. If it had -- if the gifts were a
12 little bit bigger, she would have had to have a different
13 bag. They fit perfect. So the cards were -- I mean, they
14 just kind of slid in there like a piece of paper. They
15 were meant for one another. It wasn't one was for, you
16 know, a friend and one was for another friend. That was
17 together to give as a gift.

18 Q But they weren't -- they were just spatially
19 next to it. They weren't attached by virtue of a piece of
20 tape or?

21 A Right.

22 MR. JONES: No further questions.

23 THE COURT: You may step down, ma'am.

24 MRS. HERRING-LASH: Are you ready for the next
25 witness?

1 THE COURT: I'm sorry, yes.

2 MRS. HERRING-LASH: The state would call

3 Mr. Tommy Mullins.

4 THOMAS MULLINS,

5 being first duly sworn, testified as follows:

6 THE CLERK: Sir, please state your full name to
7 the court and spell your last.

8 THE WITNESS: Thomas E. Mullins, M-U-L-L-I-N-S.

9 DIRECT EXAMINATION

10 BY MRS. HERRING-LASH:

11 Q Mr. Mullins, where do you work?

12 A First Baptist Church School.

13 Q What are your duties there?

14 A I'm the headmaster. I guess I'm in charge of
15 most everything and supervising teachers and watching over
16 the whole -- management of the school.

17 Q How long have you been headmaster?

18 A Three years. This is my third year.

19 Q And did you have an employee that worked for you
20 named Mark Vail?

21 A Yes, ma'am.

22 Q Did you also have a student named Kelsey R _____

23 A Yes, ma'am.

24 Q Did you as headmaster pretty much know your
25 students?

T. MULLINS - DIRECT EX. BY MRS. HERRING-LASH

421

1 A I know most of them by face and a lot of them by
2 name, yes, ma'am.

3 Q Did you know _____ 's family also?

4 A Yes, ma'am.

5 Q Do you know a lot of your student's families?
6 Do you get to know them?

7 A Quite a few. It's a pretty close-knit family
8 setting, and we know each other by name and face.

9 Q Did there come an occasion back in January of
10 2004 when you were called at home by Dr. R?

11 A Yes, ma'am.

12 Q And without going into details, what was that
13 regarding?

14 A It was regarding a relationship between his
15 daughter and Mr. Vail.

16 Q And what did you do as a result of that phone
17 call?

18 A I met with the teacher, Mr. Vail, the next
19 morning to discuss the phone conversation.

20 Q Do you remember what date that was?

21 A It was a Thursday, I think January 8th.

22 Q And you met with him that morning?

23 A Yes, ma'am.

24 Q Do you know about what time you met with him?

25 A Approximately 8:30-ish, and I'm not certain

T. MULLINS - DIRECT EX. BY MRS. HERRING-LASH

422

1 about the exact hour.

2 Q And did you explain to him why you were meeting
3 with him?

4 A Yes, ma'am.

5 Q And what was his response to your explanation?

6 A I recall him saying something like this is not
7 right, I was trying to give help or assistance or
8 counseling with a student.

9 Q Now, did you at that point and time have
10 information about the phone calls?

11 A I think Mr. R mentioned the phone calls over
12 the phone, and I think later that day Mr. R came in and
13 we looked at the cell phone -- he had a copy of the cell
14 phone list.

15 Q Did you mention there had been calls to
16 Mr. Vail?

17 A Did I mention that?

18 Q Uh-huh. To Mr. Vail, did you talk about the
19 phone calls?

20 A Yes, ma'am, Mr. Vail and I talked about the
21 phone calls.

22 Q What was his response to that?

23 A Those phone calls dealt with him trying to give
24 assistance or counsel a student at our school.

25 Q Did he complain to you about the amount of phone

T. MULLINS - DIRECT EX. BY MRS. HERRING-LASH

423

1 calls that had made to him?

2 A No, ma'am.

3 Q Had he ever come and complained or talked to you
4 about a student needing counseling or assistance?

5 A Never came to me in a complaint.

6 Q Had he come to you about any other student that
7 had some trouble and needed a guidance counselor or some
8 kind of assistance?

9 A Not to my recollection, but I know that he was
10 involved with counseling and working with children at our
11 school.

12 Q Had he or all of the teachers been given
13 information on what is appropriate or inappropriate
14 contact with students?

15 A Yes.

16 Q And what is that?

17 A In detail?

18 Q Not -- summarize.

19 A We meet in August. And I normally during an
20 interview process, especially with young males -- I have a
21 background in coaching myself. And we had met and talked
22 more than once about inappropriate and appropriate
23 behavior with students.

24 Q And does that go into some kind of contact off
25 campus?

T. MULLINS - DIRECT EX. BY MRS. HERRING-LASH

424

1 A Yes, and it goes into any kind of contact and
2 open doors if you're going to have a conference with a
3 student and appropriate ways to do those kinds of things.

4 Q What about phone calls?

5 A We may or may not have talked about phone calls
6 in August or in our individual meetings, but we talked
7 about conversation. We didn't get specific about a phone
8 call going back and forth.

9 Q What did you talk about conversations?

10 A Well, it shouldn't be any one-on-one or any
11 individual teacher setting one-on-one in a counseling
12 session behind closed doors. It should be open doors.
13 And if there is something of a serious nature, it ought to
14 be taken to a guidance counselor or taken to our female
15 principal or one of our male principals.

16 Q So you do have a guidance counselor that he
17 could refer a child to if they had a lot of problems and
18 needed to discuss it?

19 A We have two individuals -- actually three, one
20 is a special needs type teacher. One is a college
21 counselor, and then Mr. Hill serves as a guidance
22 counselor and a principal at the high school.

23 Q And the teachers are told this?

24 A Absolutely.

25 Q Now, on this same day later that day, did you

T. MULLINS - DIRECT EX. BY MRS. HERRING-LASH

425

- 1 meet with _____
- 2 A Yes, ma'am.
- 3 Q And how did she come to your office?
- 4 A She came to my office with -- another teacher
- 5 brought her to my office.
- 6 Q Who was that teacher?
- 7 A Virginia Murray, Mrs. Murray.
- 8 Q And when she came, did you speak with _____ or
- 9 Mrs. Murray?
- 10 A Well, Mrs. Murray -- that's back a few months,
- 11 but Mrs. Murray brought her to me and said we need to talk
- 12 to you. She said _____, needs to talk to you, and she
- 13 wants to tell you something.
- 14 Q And did _____ tell you?
- 15 A Yes, ma'am.
- 16 Q What did you do after _____ talked to you?
- 17 A I said to her we need to let a parent know -- I
- 18 asked her if her parents knew, and she said no. And I
- 19 told her that we needed to make sure that we informed one
- 20 of the parents or both, and I asked her which one did she
- 21 prefer that we talked to.
- 22 Q And what did you do then?
- 23 A We called her father.
- 24 Q And what happened after you talked to her
- 25 father?

T. MULLINS - DIRECT EX. BY MRS. HERRING-LASH

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1 A After the conversation, he came to school to
2 pick up his daughter.

3 Q Did you meet with him when he came?

4 A I did, yes.

5 Q Now, after that, did continue to go to
6 school at your school?

7 A Yes, ma'am. She missed a couple of days
8 around -- and I couldn't be real specific. But she missed
9 a day or two or three, and I'm not sure about the number.
10 But she continued to come to school that year.

11 Q Did you continue to talk with her father by way
12 of phone and in person about this situation?

13 A Yes.

14 Q Did you ever have to talk with on the
15 phone?

16 A I did.

17 Q Was she at home when you did that?

18 A Yes. Well, I'm assuming she was home. I think
19 she was home. The phone call came to my house.

20 Q But it was on the phone?

21 A Right.

22 Q And did you talk with her father first?

23 A Yes.

24 Q And what did you talk with her about?

25 A Well, I talked about an inappropriate

T. MULLINS - DIRECT EX. BY MRS. HERRING-LASH

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1 relationship between her and young Mr. Vail. And how I
2 tried to encourage her to give her -- I tried to give her
3 encouragement to say and understand it was not the right
4 kind of thing to be involved in.

5 Q Did you talk to her about Amanda and Mr. Vail?

6 A I did. I told her that I knew that Mark and
7 Amanda had planned on either being engaged or getting
8 married and that was the basic extent of the conversation.
9 I tried to convince -- tried to help her understand why
10 she shouldn't be involved in any kind of relationship with
11 Mr. Vail.

12 Q What was her response to that information?

13 A She was upset. She, I think, got angry at one
14 point in the conversation. And I don't know if she was
15 angry with me or what she was angry about. But I think
16 she -- I think she grabbed it, got a hold of the
17 conversation and had a little bit of peace at the end of
18 the conversation.

19 Q And do you know if this conversation was after
20 you had had the confrontation with her and Mrs. Murray at
21 some point later?

22 A I think that was later. I think that was after
23 she had -- I'm not sure. I'm not sure if it was the same
24 night that her dad called me at home or a night or two
25 later. I'm not certain about the date.

T. MULLINS - DIRECT EX. BY MRS. HERRING-LASH

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1 Q Did you talk to her at home often on the phone
2 before this all came out?

3 A No, ma'am.

4 Q Had you ever talked to her on the phone at night
5 before all of this came to your attention?

6 A No, ma'am.

7 Q At no time during the school year?

8 A Well, I probably talked to her but not on the
9 phone. I have talked to her at school.

10 Q That is what I meant at home at night until
11 after you knew about this?

12 A No.

13 MRS. HERRING-LASH: Court's indulgence for one
14 moment.

15 THE COURT: Yes, ma'am.

16 MRS. HERRING-LASH: That is all of the questions
17 I have. Thank you.

18 CROSS-EXAMINATION

19 BY MR. JONES:

20 Q Mr. Mullins, Craig Jones. Describe Mark as a
21 teacher. How would you characterize him?

22 A High energy, passionate, cared about the kids.

23 Q In your opinion, he loved teaching?

24 A In my opinion, he loved being around the young
25 people and being around kids. And he loved coaching, and

T. MULLINS - CROSS-EX. BY MR. JONES

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1 coaching is teaching. We had him teach out of area in one
2 classroom. But, yes, I think he loved what he did.

3 Q And to your knowledge, he enjoyed being at First
4 Baptist?

5 A Yes, sir.

6 Q Did Mark ever come and talk to you about _____
7 about the relationship, and not in a complaint but just in
8 a sense of advice? Do you remember if he ever came and
9 talked to you?

10 A No, I don't remember him coming to ask for
11 advice -- well, I gave him advice.

12 Q Okay.

13 A And we talked about it. So he might have come
14 to me and asked me a question, but not specifically do I
15 recall about _____

16 Q So maybe in reference to a crush or a student,
17 how do I appropriately handle this?

18 A Right, we had that conversation, and I initiated
19 that conversation.

20 Q Okay. And Mark had -- there were a number of
21 students that Mark, in a sense, you talk about counseled
22 with?

23 A Right.

24 Q And that wasn't -- that wasn't something you
25 discouraged?

T. MULLINS - CROSS-EX. BY MR. JONES

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1 A I didn't -- no, I didn't discourage him from
2 talking to students and counseling to students: My
3 discouragement was in the setting that it would take place
4 in.

5 Q Correct. And that was one-on-one without
6 another witness there of some sort?

7 A Yes, sir, in most cases.

8 Q Mark and Amanda were hired basically at the same
9 time?

10 A I would have to check the personnel records, but
11 pretty much. I think Mark was hired first, and then we
12 hired Amanda as a cheerleading sponsor.

13 Q And you knew about their relationship from the
14 beginning?

15 A I don't know if I knew -- I knew it early on,
16 yes, sir.

17 Q You don't remember or recall discussing whether
18 or not they would get married during the interview for
19 Mark?

20 A I don't recall that. I know that we did talk
21 about marriage. We talked about life. I talked to Mark
22 about many, many things repeatedly as it relates to life,
23 relationships and marriage.

24 Q Sure, sure. And would you say it was pretty
25 widely known within the school that Mark and Amanda were

1 dating?

2 A I'm certain that people knew they were dating,
3 yes.

4 Q And would you say there were a number of
5 students that had crushes on Coach Vail and any number of
6 the coaches actually probably?

7 A I don't know about a massive number of people,
8 but that's a natural thing in schools where young people
9 have a crush. I can recall I had a crush on my English
10 teacher at one point in my life. But, yeah, that's a
11 natural thing that happens.

12 Q Did you know about _____'s crush on Coach Vail?

13 A Not before the phone call.

14 Q Okay. You talked about _____ got angry at one
15 point in the conversation when you had relayed that it
16 looked like that Mark and Amanda were getting engaged.
17 What do you mean by -- how do you know that?

18 A That's an emotional thing and that's a judgment
19 call on my part. I don't know that I have the expertise
20 to say she was angry. You could tell from the tone in her
21 voice. There was a different -- there was a mood swing of
22 some sort, and I perceived it to be anger.

23 MR. JONES: Beg the court's indulgence for one
24 second.

25 THE COURT: Yes, sir.

1 BY MR. JONES:

2 Q Mr. Mullins, I want to ask you, you were Coach
3 Vail's, I guess, assistant basketball coach?

4 A I was.

5 Q And do you recall whether y'all had practice on
6 November 28th, being the day after Thanksgiving?

7 A I don't know. A specific date, I couldn't
8 answer that and be honest. But we practiced often, and we
9 tried to practice as much as we could during the holiday
10 time.

11 Q Okay. And that was a Friday, and do you recall
12 if any parents would have been mad with y'all having
13 practice the day after Thanksgiving?

14 A Would they have been mad?

15 Q If any of them specifically spoke with you about
16 that?

17 A I don't -- you are asking me if a parent would
18 be mad if we practiced on the 28th? I'm not sure I
19 understand the question.

20 MR. JONES: Court's indulgence.

21 (Mr. Jones confers off the record with the
22 defendant.)

23 BY MR. JONES:

24 Q Mr. Mullins, Principal Mullins, would you have a
25 copy of last year's practice schedule still on record?

T. MULLINS - CROSS-EX. BY MR. JONES

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1 A I don't have one.

2 Q Would there be one at school rather though?

3 A There might be, but I doubt it. We may save a
4 basketball game schedule, I don't know. And I being the
5 assistant coach, I wouldn't have had a practice schedule.
6 I know they are printed during the season. I don't know
7 if I could ever put my hands on one, from a year ago.

8 Q Okay.

9 A But they are printed and handed out, most of the
10 time.

11 Q Okay. Do you have -- would you remember an
12 occasion when you called Coach Vail at the gym to ask
13 where he was, and he had driven a different vehicle and
14 said I'm already inside?

15 A I don't recall that.

16 Q No problem. Did you ever remember meeting his
17 friend Otis Coffey? He would be an African-American
18 individual.

19 A I met him probably 20, 30 minutes ago outside.
20 I could have. I meet a lot of people, but I can't recall
21 meeting him before. But I have met a lot of people.

22 Q Do you ever recall him coming to the school one
23 day to a basketball game?

24 A No, no, sir.

25 MR. JONES: I don't think I have any further

T. MULLINS - CROSS-EX. BY MR. JONES

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1 questions, Your Honor.

2 THE COURT: All right.

3 REDIRECT EXAMINATION

4 BY MRS. HERRING-LASH:

5 Q Mr. Mullins, you were asked about the advice
6 that you gave Mr. Vail, and you said that you sought him
7 out?

8 A Yes. We -- yes.

9 Q And what you said -- was that advice about --
10 did that have anything to do with _____

11 A It could have had something to do with _____
12 but it could have had something to do with any other
13 student in the school because of the numbers of students,
14 teachers.

15 Q What prompted you to seek him out?

16 A Once there was a rumor or a statement that there
17 was some inappropriate behavior with him and another
18 student.

19 Q And so you sought him out about that?

20 A Yes, ma'am.

21 Q Was that _____

22 A No, ma'am.

23 Q Now, what other -- you testified a few moments
24 ago that one of the areas you discouraged was one-on-one,
25 but you said that was one of the areas. What are the

T. MULLINS - REDIRECT EX. BY MRS. HERRING-LASH

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1 other areas that you discouraged?

2 A Anything off campus, anything unannounced, phone
3 calls back and forth between a teacher and a student. If
4 it was a male and a female, to have a female present. And
5 if it was not appropriate to have a female present, use a
6 guidance counselor, understanding that those conferences
7 will happen before you can stop them, the conversation
8 will begin. But once it begins and you understand where
9 it may be heading, then you get another adult or you
10 inform a parent if that's the appropriate -- different
11 scenarios cause different actions.

12 Q Now, you spoke about crushes. How are teachers
13 taught to handle crushes?

14 A To avoid them. I mean, and if it is happening,
15 if you do see it, let somebody know, and I would say that
16 to every teacher on the school grounds. You need to let
17 another adult know and preferably an administrative type
18 person or a guidance counselor.

19 Q Did Mr. Vail ever come to you about a crush or a
20 student or a crush that a student had on him?

21 A He may have, and I can -- he may have. The
22 question may have been, if I can answer this honestly here
23 and say, that it might have been how do I handle this and
24 that's when I was answering the other question and said
25 that, you know, there is a multitude of ways of handling

T. MULLINS - REDIRECT EX. BY MRS. HERRING-LASH

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1 it, but you have got to be the adult and be responsible
2 enough to break it off and other things were said.

3 Q What other things?

4 A Concerning Mr. Vail?

5 Q Right.

6 A I told him that those crushes sometimes will
7 happen, but you have got to -- you can't be answering the
8 phone, you can't be talking to people all this time and
9 you can't -- it's just not the way to handle it, and you
10 need to let an adult know, let a counselor know.

11 Q Was this before the meeting you had with him
12 where he resigned?

13 A Yes, ma'am.

14 Q Was it specifically about _____

15 A It was about anybody.

16 MRS. HERRING-LASH: Those are all of the
17 questions I have.

18 THE WITNESS: Okay.

19 THE COURT: All right.

20 MR. JONES: Your Honor, follow-up question?

21 THE COURT: Yes.

22 RE-CROSS-EXAMINATION

23 BY MR. JONES:

24 Q Talking about the inappropriate behavior rumor
25 with another student, that was flushed out?

T. MULLINS - RECROSS-EX. BY MR. JONES

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1 A Yes.

2 Q And was there any inappropriate behavior found?

3 Did the student indicate any appropriate behavior?

4 A I talked to the teacher, I talked to the
5 student, and I talked to the parent. And every party that
6 I talked to said it was professional behavior in nature.
7 From my perspective as an administrator, it was
8 inappropriate to have that -- for it to go that far.

9 Q And was that behavior phone calls?

10 A Well, to begin with, I said it was a rumor.

11 Q Okay.

12 A And that behavior was just too much, in my
13 opinion as an administrator -- Mark Vail and myself, I
14 think, had a great relationship. I tried to mentor Mark.
15 And when I counseled with Mark, I told Mark this. Those
16 kind of things will lead to other things that can get you
17 in a bad situation and that is why I said you need to
18 break -- and the letter, I gave him a letter as a result
19 of that conference. And in the letter, I told him if this
20 continues or happens again it could be grounds for
21 dismissal.

22 Q Okay. And was that student Miss C? _____

23 A Yes, sir.

24 MRS. HERRING-LASH: Your Honor, one follow-up?

25 FURTHER REDIRECT EXAMINATION

1 BY MRS. HERRING-LASH:

2 Q Was that about phone calls?

3 A No, ma'am.

4 MRS. HERRING-LASH: That's all the questions I
5 have.

6 THE COURT: You may step down, sir.

7 MRS. HERRING-LASH: May Mr. Mullins be excused?

8 THE COURT: Any objection?

9 MR. JONES: No, sir.

10 THE COURT: You may be excused, sir.

11 We'll go ahead and take our morning break,
12 ladies and gentlemen. Do not discuss this case in any
13 way. Thank you very much.

14 (WHEREUPON, the following proceedings were held
15 outside the presence of the jury.)

16 THE COURT: All right. Thank you.

17 (WHEREUPON, a recess transpired.)

18 THE COURT: Are you ready to proceed?

19 MRS. HERRING-LASH: The state is ready, Your
20 Honor.

21 THE COURT: All right. Bring the jury in. We
22 will run until lunchtime.

23 (WHEREUPON, the following proceedings were held
24 in the presence of the jury.)

25 MRS. HERRING-LASH: The state would call

1 Mr. John Hill.

2 JOHN HILL,

3 being first duly sworn, testified as follows:

4 THE CLERK: Please state your full name to the
5 court and spell your last.

6 THE WITNESS: John David Hill, H-I-L-L.

7 DIRECT EXAMINATION

8 BY MRS. HERRING-LASH:

9 Q Mr. Hill, where are you employed?

10 A I'm employed at First Baptist Church School.

11 Q What is your position there?

12 A I am the assistant principal at the high school.

13 Q Mr. Hill, I just have a few questions for you.

14 You have a copy of the First Baptist schedule
15 for the teachers, is that correct, for the year of 2003,
16 2004?

17 A Yes, ma'am.

18 Q And can you tell me if Mark Vail taught a
19 seventh period class?

20 A According to the schedule, no.

21 Q What about a sixth period class?

22 A Sixth period he taught a -- sixth period is a PE
23 class for the fifth graders, and it's in trimesters. So
24 he taught first trimester and third trimester, according
25 to the schedule.

J. HILL - DIRECT EX. BY MR. HERRING-LASH

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1 Q And not second trimester?

2 A Yes, ma'am. That's correct.

3 Q What is second trimester? What time period?

4 A Thirty-six weeks, so it's 12 weeks. It would be
5 around Thanksgiving time through about February.

6 Q So November -- so the end of November through
7 February?

8 A Yes, ma'am.

9 Q So all of December, he was not in -- did not
10 have a sixth period class?

11 A According to the schedule, that's correct.

12 Q And some of November?

13 A Yes, ma'am.

14 Q Now, what time does sixth period begin?

15 A That varies. Monday through Wednesday is one
16 schedule. Thursday is a schedule, and Friday is a
17 schedule. Sixth period -- the periods can be anywhere
18 from 50 to -- 40 to 50 minutes long: 40 minutes on
19 Thursday, 50 minutes on Friday -- or Friday and then
20 50 minutes on Monday, Tuesday and Wednesday. So roughly
21 school is out at 3:10, so you're looking at about the
22 period would end 2:20, so it would be about -- it would be
23 about 1:30.

24 Q When it would start?

25 A Sixth period would start, yes, ma'am.

J. HILL - DIRECT EX. BY MR. HERRING-LASH

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1 Q And then seventh period would start about when?

2 A At about 2:20.

3 Q And then school gets out at 3:00?

4 A 3:10 on Monday, Tuesday, Wednesday and Thursday.

5 Friday it gets out at 2:35.

6 Q Now, do you also have _____ s class
7 schedule for the fall of that year?

8 A Yes, ma'am.

9 Q And her sixth period class, what did she have?

10 A According to this schedule, she had a sixth
11 period computer class.

12 Q Are you able to get an attendance from the
13 computer class?

14 A No, ma'am. Attendance records are a separate
15 booklet from the academic records, and we are only keeping
16 the academic records at the end of the year.

17 Q And that would be the same for seventh period?

18 A Yes, ma'am.

19 Q Now, did you -- do you have a student named
20 Patrick W

21 A Yes, I do.

22 Q Did you have a conversation with Mr. Vail
23 regarding Patrick W on an occasion?

24 A Yes.

25 Q Do you remember when that was?

J. HILL - DIRECT EX. BY MR. HERRING-LASH

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1 A No, ma'am.

2 Q But you do remember having to meet with Mr. Vail
3 about Patrick W.

4 A Yes.

5 MRS. HERRING-LASH: Court's indulgence for one
6 moment. That is all of the questions I have, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. JONES:

9 Q Couple quick questions real quickly. So up
10 until Thanksgiving, Mr. Vail, Coach Vail, would have had a
11 second trimester class?

12 A He would have had a first trimester class in
13 sixth period.

14 Q And that would have run up until Thanksgiving?

15 A Approximately.

16 Q Okay. And then after that he would not have had
17 one?

18 A According to the schedule, yes, sir.

19 Q And what time did you say the seventh period
20 class would have started approximately?

21 A Approximately on a normal day 1:30 so that would
22 be about 20 after -- 20 after 2:00.

23 Q Twenty after 2:00. So 1:30 and then it would
24 start the sixth and then roughly 20 after 2:00 would be
25 the seventh period?

J. HILL - CROSS-EX. BY MR. HILL

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1 A Roughly, yes.

2 MR. JONES: No further questions.

3 MRS. HERRING-LASH: Just One.

4 REDIRECT EXAMINATION

5 BY MRS. HERRING-LASH:

6 Q When you say roughly Thanksgiving, do you know
7 when exactly the trimester was over?

8 A Not off the top of my head. Historically, if I
9 remember correctly because we've changed our schedule to a
10 semester system now, and historically, if I remember
11 correctly, it finished right before Thanksgiving.

12 Q Right before, like the week before?

13 A Yes, ma'am.

14 MRS. HERRING-LASH: That is all the questions I
15 have.

16 THE COURT: You may step down, sir.

17 MRS. HERRING-LASH: Your Honor, may Mr. Hill be
18 excused?

19 MR. JONES: No objection.

20 THE COURT: You may be excused.

21 MRS. HERRING-LASH: The state would call Adam
22 Larrick.

23 ADAM LARRICK,
24 being first duly sworn, testified as follows:

25 THE CLERK: Please state your full name to the

1 court and spell your last.

2 THE WITNESS: Adam Larrick, L-A-R-R-I-C-K.

3 DIRECT EXAMINATION

4 BY MRS. HERRING-LASH:

5 Q Mr. Larrick, where do you work?

6 A I work at Snee Farm Country Club in
7 Mt. Pleasant.

8 Q How long have you worked there?

9 A About three and a half years.

10 Q Where do you live now?

11 A I live in James Island now, Stephanie Drive.

12 Q Where did you live before?

13 A In James Island in the apartments, The Islands.

14 Q Who was your roommate?

15 A Mark Vail.

16 Q How long have you known Mr. Vail?

17 A Oh, since probably '97. We went to college
18 together.

19 Q That would have been college?

20 A At Charleston Southern.

21 Q Now, you lived with him in an apartment. What
22 was the address?

23 A _____

24 Q Would you describe that apartment?

25 A It was a two bedroom, townhouse-type, two

A. LARRICK - DIRECT EX. BY MRS. HERRING-LASH

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1 stories. You would walk in, kitchen to the left, go a
2 little bit further, and you would have the dining room,
3 living room, which was a combined area. And then we each
4 had a bedroom upstairs with an attached bathroom.

5 Q I'm going to show you these pictures. First of
6 all, I'm going to show you what has been marked and
7 entered as State's Exhibit Number 22.

8 A Okay.

9 Q It will be behind you and the light will be in
10 your eyes.

11 Do you recognize this?

12 A Yeah, that looks like our -- a similar apartment
13 at least.

14 Q Do you remember somebody coming to take pictures
15 of your apartment when you were getting ready to move out?

16 A Yes, ma'am.

17 Q Where in that apartment would your furniture
18 have been and what furniture did you have?

19 A Mark had couches, a wrap-around couch that would
20 have been against the far back wall.

21 Q What kind of material was it?

22 A Leather.

23 Q What color?

24 A I believe it was blue. I think it was blue.

25 Q Was it dark?

A. LARRICK - DIRECT EX. BY MRS. HERRING-LASH

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1 A I think it was -- I'm not sure. It was a blue
2 color, I believe. There was a big screen TV that would
3 have been just past that doorknob to the right.

4 Q And now upstairs?

5 A Uh-huh.

6 Q You said your room and Mr. Vail's room?

7 A Yes, ma'am.

8 Q This was?

9 A That would have been Mark's room.

10 Q And how was his room decorated?

11 A His bed would have been against this far wall
12 here.

13 Q Well, on this -- look here, was there anything
14 that he had on his wall that you would have seen on this
15 picture?

16 A There were hats that were above the closet.

17 Q What kind of hats?

18 A Just normal baseball-type hats.

19 Q Baseball hats?

20 A Yeah, I think he had a couple First Baptist hats
21 maybe.

22 Q How were they hanging?

23 A We both had just nails in the wall with hats
24 hanging on them.

25 Q Now, I will show you State's -- that was State's

A. LARRICK - DIRECT EX. BY MRS. HERRING-LASH

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1 Exhibit Number 23. I will show you State's Exhibit
2 Number 25. What would you have seen?

3 A Mark's bed would have been on the far wall kind
4 of below the window. The TV would have been at the foot
5 of the bed and then a couple of different sort of dressers
6 along that wall and a stereo.

7 Q So the dresser would have been --

8 A There was a -- I think he had a corner dresser
9 over here. The TV was along the foot of his bed, and I
10 think he changed the stereo a couple of times. It might
11 have been with the TV or in that corner there.

12 Q And did he have a footboard or a headboard?

13 A No, ma'am.

14 Q Now, did Mr. Vail have a girlfriend during the
15 time that you lived with him?

16 A Yeah. He met her back in college when we were
17 living together, and they were together the whole time.

18 Q Did she spend nights at your house?

19 A Yes, ma'am.

20 Q How often?

21 A It varied. On a given week, probably three to
22 four nights a week, I guess.

23 Q And did Mr. Vail ever borrow your car?

24 A Yeah, it wasn't uncommon for him to drive my
25 car.

A. LARRICK - DIRECT EX. BY MRS. HERRING-LASH

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1 Q Did he ever borrow it on a weekend?

2 A Yeah. He picked it up from work one time from
3 Snee Farm and brought it back a few hours later.

4 Q Do you know when that was?

5 A I don't remember, but it was a weekend day. I
6 do remember that. But, other than that, it wasn't a big
7 deal to me really so it didn't stick in my mind.

8 Q Did he borrow your car often?

9 A Yeah, we would use each other's cars. Like I
10 said, it wasn't that big of deal when it happened.

11 Q Now, did his mother stay with you-all?

12 A Yeah. When she would come in town, she would
13 stay with us.

14 Q How often was that?

15 A Not very often. I don't know, a couple times a
16 year, a couple three times a year, maybe.

17 Q And do you know what color car she drove?

18 A She had a few different cars. I remember one
19 Mark used to drive a Mitsubishi Galant. I think it was
20 silver. And when he got his new car, I think she drove
21 that for a while, but she had different cars.

22 Q Did you ever see her drive a silver car when she
23 came to visit with you?

24 A I think she drove that car one of the times.

25 Q Now, when did you -- do you know one of Mark's

A. LARRICK - DIRECT EX. BY MRS. HERRING-LASH

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1 friends named Otis?

2 A Yes, ma'am.

3 Q And did Otis come and stay with you-all also?

4 A Yeah, just a couple times.

5 Q A couple times in the -- how many years did you
6 live with him?

7 A We lived together two years in college and then
8 about two years in The Islands, a year and a half maybe.

9 Q And during those two years or four years, a
10 couple times?

11 A Um, yeah, I don't necessarily remember him
12 coming to visit us when we were in college, but I do
13 remember him coming to The Islands probably two or three
14 times.

15 Q When did you stop being Mr. Vail's roommate?

16 A Shortly after everything started to happen. I
17 think it was -- I don't remember the exact date, maybe
18 February -- January, February, something like that.

19 Q Did he tell you why he had left his job?

20 A Yeah, he told me that he was checking into a
21 drug rehab.

22 MRS. HERRING-LASH: Court's indulgence for one
23 moment.

24 BY MRS. HERRING-LASH:

25 Q What type of car did you drive? You said he

A. LARRICK - DIRECT EX. BY MRS. HERRING-LASH

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1 borrowed it, but what type of car was it?

2 A 2003 silver Grand Am GT.

3 Q A Grand Am?

4 A Grand Am, yes, ma'am.

5 MRS. HERRING-LASH: Those are all the questions
6 I have.

7 CROSS-EXAMINATION

8 BY MR. JONES:

9 Q I've got just a couple questions real quickly.

10 A Sure.

11 Q You knew Amanda?

12 A Amanda, yes, sir.

13 Q And did Mark ever stay over at her place on some
14 occasions?

15 A Yeah, not as often but sometimes.

16 Q And you had a girlfriend at the time?

17 A Yes.

18 Q Did she ever stay over at your place?

19 A Yeah, most of the time.

20 Q Most of the time?

21 A Uh-huh.

22 Q And she had a key to the place?

23 A That's correct.

24 Q Your work schedule, how was your work schedule
25 normally?

A. LARRICK - CROSS-EX. BY MR. JONES

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1 A Normally we are off on Mondays, because we're
2 closed on Mondays. And then five of the other six days,
3 normally -- or not normally, sometimes we have tournaments
4 on the weekends so I would be at work most of -- both days
5 on the weekend.

6 Q So your schedule is pretty erratic?

7 A Pretty flexible, yeah.

8 Q Right. So you work mornings sometimes,
9 afternoons sometimes?

10 A That is correct, yeah.

11 Q And did you post your schedule ever on the
12 refrigerator so Mark would know when you were working this
13 time or that time?

14 A No, I didn't post it anywhere. No, sir.

15 Q And where did your girlfriend work?

16 A She was in school and she worked part of the
17 time we were in -- we lived there she worked at George's.

18 Q Okay. So she would be in the apartment on and
19 off --

20 A Sure.

21 Q -- periodically through that time period?

22 A Uh-huh.

23 Q And there would be no way to know when she was
24 there?

25 A No.

A. LARRICK - CROSS-EX. BY MR. JONES

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1 Q And you drive a Grand Am GT?

2 A Uh-huh.

3 Q And y'all had a blue couch in there in the
4 living room?

5 A Yeah, it was Mark's leather couches. I don't
6 remember the exact color to be honest with you.

7 Q Some shade of blue?

8 A Yeah, I'm color blind, so I don't know exactly.

9 MR. JONES: I don't think I have any further
10 questions.

11 THE WITNESS: Thank you.

12 REDIRECT EXAMINATION

13 BY MRS. HERRING-LASH:

14 Q Mr. Larrick, did Mr. Vail often know what your
15 work schedule would be?

16 A Yeah, we talked about it. It wasn't uncommon
17 just to talk about it, or I would ask him what he had to
18 do the next day or if he had games or anything like that,
19 and he might ask me the same thing.

20 Q Do you remember if you worked on December 6th?

21 A I don't know off the top of my head.

22 Q If I showed you a copy of your time card, would
23 that refresh your memory?

24 A Yes, ma'am.

25 MRS. HERRING-LASH: May I approach the witness,

A. LARRICK - REDIRECT EX. BY MRS. HERRING-LASH

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1 Your Honor?

2 THE COURT: Yes, ma'am.

3 BY MRS. HERRING-LASH:

4 Q Don't read this, but just look at it and see if
5 you can refresh your memory as to whether or not and what
6 times you worked on December 6th.

7 A Okay.

8 Q Okay. What time did you work on December 6th?

9 A It looks like 6:15 to 2:38.

10 Q 6:15 a.m.?

11 A Yes, ma'am.

12 Q Until 2:38 p.m.?

13 A Yes, ma'am.

14 Q And did you -- do you know if you worked on
15 November the 4th?

16 A Not off the top of my head.

17 Q Once again, if I showed you your time card,
18 would you?

19 A Yes.

20 MRS. HERRING-LASH: Your Honor, may I approach
21 please?

22 THE WITNESS: November 4th you said?

23 BY MRS. HERRING-LASH:

24 Q Uh-huh.

25 A It looks like I did not.

A. LARRICK - REDIRECT EX. BY MRS. HERRING-LASH

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1 Q You did not work that day, right?

2 A Huh-um.

3 Q What did you often do when you did not work?

4 A I'm a pretty big -- I'm from Ohio. I'm a pretty
5 big football fan, so I watch either the Browns or the
6 Buckeyes depending on what day it was.

7 Q If November the 4th was on a Tuesday?

8 A Tuesday. Sometimes I would play golf on my day
9 off.

10 Q Okay.

11 A Nothing on a regular basis.

12 Q If you played golf --

13 A Uh-huh.

14 Q -- would you play during the day?

15 A Yeah, I would be gone most of the day from
16 probably 10:00 until 6:00.

17 MRS. HERRING-LASH: Those are all the questions
18 that I have. Thank you.

19 RECROSS-EXAMINATION

20 BY MR. JONES:

21 Q You could have been home, but you could have
22 been -- when you were off sometimes, were you just at
23 home?

24 A Sure.

25 Q And did you ever work at the school?

1 A I helped Mark coach junior varsity basketball
2 team.

3 MR. JONES: No further questions.

4 THE COURT: You may step down, sir.

5 MRS. HERRING-LASH: Your Honor, may Mr. Larrick
6 be excused?

7 THE COURT: Any objection?

8 MR. JONES: No objection.

9 THE COURT: You may be excused, sir.

10 MRS. HERRING-LASH: The state would call
11 Brittany B

12 BRITTANY B

13 being first duly sworn, testified as follows:

14 THE CLERK: Please state your full name to the
15 court and spell your last.

16 THE WITNESS: Brittany Christine B

17 B-

18 DIRECT EXAMINATION

19 BY MRS. HERRING-LASH:

20 Q Brittany, how old are you?

21 A Fourteen.

22 Q And what school do you go to?

23 A First Baptist Church School.

24 Q What grade are you in now?

25 A Ninth.

B. B. - DIRECT EX. BY MRS. HERRING-LASH

456

1 Q Were you one of _____'s friends last year?

2 A Yes, ma'am.

3 Q And that is when she went to First Baptist?

4 A Yes, ma'am.

5 Q Did you also know Mr. Mark Vail?

6 A Yes, ma'am.

7 Q And how did you know him?

8 A Well, he was my teacher in seventh grade and

9 eighth grade.

10 Q And did you know that _____ had a crush on him?

11 A Yes, ma'am.

12 Q Did you ever speak to her about your concerns?

13 A Yes, ma'am.

14 Q What was going on when you had that

15 conversation?

16 A We were at the gym doing something for
17 cheerleading, and we were like painting a run-through sign
18 for a football game.

19 Q And did you voice your concerns to her?

20 A Yes, ma'am.

21 Q What were your concerns?

22 A I was just worried that something was going to
23 happen that she didn't want to happen and that she was
24 going to be put in a situation -- going to be put in a bad
25 situation.

B. B - DIRECT EX. BY MRS. HERRING-LASH

457

1 Q What made you worry about that?

2 A Because like the way she acted and everything
3 like around him.

4 Q How would he act?

5 A Not teacher-like, you know.

6 Q Can you describe that better?

7 A A little more personal than most teachers would
8 act like.

9 Q Like what?

10 A Like talking. Like when they would talk, he
11 would have his arm on her and put his arm around her
12 sometimes.

13 Q Now, after you had that conversation with
14 did Mr. Vail approach you?

15 A Yes, ma'am.

16 Q And do you know if it was the next day or the
17 same day?

18 A It was the next day.

19 Q And what did he say to you?

20 A He asked why I had said stuff about them having
21 sex.

22 Q Had you said anything about them having sex?

23 A No, ma'am.

24 Q What did you say to Mr. Vail?

25 A I said that I didn't, and I naturally got upset.

B. E. _____ - DIRECT EX. BY MRS. HERRING-LASH

458

1 Q What do you mean upset?

2 A Well, _____ and I -- when I had told her --
3 when I told her I was concerned, she got upset with me,
4 and we were kind of in an argument. So it kind of all
5 snowballed, and we were in an argument so I was upset.

6 Q So when he approached you, you were more upset?

7 A Yes, ma'am.

8 Q Now, were you also a cheerleader?

9 A Yes, ma'am.

10 Q Do you remember being at a cheerleader practice
11 where you were with the Tropical Storms?

12 A Yes, ma'am.

13 Q And what are they?

14 A They are like the first, second and third grade
15 little cheerleaders.

16 Q And do y'all always practice with them?

17 A Ever once in awhile, yes, ma'am.

18 Q And do you teach them?

19 A Yes, ma'am.

20 Q Do you remember one particular day that when
21 _____ came to practice you noticed something about her
22 appearance?

23 A Yes, ma'am.

24 Q And what was that?

25 A It looked like she had hickeys on her neck.

B. B. - DIRECT EX. BY MRS. HERRING-LASH

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1 Q Did you say anything to her about that?

2 A Yes, ma'am. I went up to her, just like any
3 other girl would, and said what is that on your neck, you
4 know.

5 Q What was her response?

6 A She said that it wasn't hickeys, I know that.

7 Q What did it look like to you?

8 A Hickeys.

9 Q After this came out about _____ and Coach Vail
10 and what had happened to her, did she talk with you about
11 this?

12 A Yes, ma'am.

13 Q Did she tell you where it had happened?

14 A She said something about in his car and at his
15 house.

16 Q Did she tell you when it had happened?

17 A No, ma'am.

18 Q Did you ask her for details?

19 A Not really, no, ma'am.

20 Q Did you really want to talk about it?

21 A Not really.

22 Q Did she talk about it more than one time?

23 A Yes, ma'am.

24 Q How many times?

25 A Two or three.

(7)

B. B - DIRECT EX. BY MRS. HERRING-LASH

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1 Q Was it always the same?

2 A Pretty much. Sometimes it was different.

3 Q Now, you can't talk about the details that she
4 told you, but always when and where?

5 A Never really when, usually where.

6 Q And where was it?

7 A At his house and in his car.

8 MRS. HERRING-LASH: Court's indulgence for one
9 moment.

10 Those are all of the questions I have for you.

11 THE WITNESS: Okay.

12 MRS. HERRING-LASH: You have to wait.

13 CROSS-EXAMINATION

14 BY MR. JONES:

15 Q Real quickly, Brittany.

16 A Yes, sir.

17 Q You were a close friend of _____ 's?

18 A Yes, sir.

19 Q And Coach Mullins was your coach?

20 A Yes, sir.

21 Q And you knew that they dated?

22 A Yes, sir.

23 Q Did you ever hear they were going to get
24 married?

25 A A little bit of rumors but never anything

B. B - CROSS EX. BY MR. JONES

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1 official.

2 Q Right. And you were concerned for
3 because of this crush?

4 A Yes, sir.

5 Q I mean, she was pretty obsessed with him?

6 A Yes, sir.

7 Q And at Tropical Storm practice, that was on --
8 do you remember the date?

9 A I think that it was some time in December maybe.

10 Q And I think y'all only had one in -- only one on
11 the weekend in December?

12 A Right, it was a Saturday.

13 Q And where were the hickeys on her neck?

14 A I remember there was more than one.

15 Q Okay.

16 A And they were like on both sides.

17 Q And now Tropical Storm practice, there's -- how
18 many little kids are there?

19 A Approximately 30, maybe less.

20 Q Parents are there?

21 A Yes, sir, not all of their parents but a lot of
22 their parents.

23 Q Some of them are there?

24 A Yes, sir.

25 Q Just watching?

B. B. _____ - CROSS EX. BY MR. JONES

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1 A Right. They would sit on the bleachers and
2 watch.

3 Q And do y'all wear your cheerleading uniform for
4 that?

5 A We wore like shorts and a T-shirt.

6 Q And y'all assist Miss Mullins with this,
7 correct?

8 A Yes, sir.

9 Q Now, she didn't tell you -- from what you said,
10 you were told after that day what happened; is that
11 correct?

12 A Yes, sir.

13 Q When was that? How long after? Was that after
14 everything blew up?

15 A Right. It was like maybe a month or more
16 afterwards.

17 Q After --

18 A After the Tropical Storms class.

19 Q After Tropical Storms?

20 A Right.

21 Q Okay. Was that after Coach Vail had left?

22 A That I found out?

23 Q Right.

24 A Yes, sir.

25 Q Okay. Did Coach Vail ever put his arm around --

B. B. - CROSS EX. BY MR. JONES

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1 did you ever see him put his arm around any other
2 students?

3 A Not really, no, sir.

4 Q Not really, or you never saw him put his arm
5 around any other student? There's a difference. I know
6 it's slight.

7 A Right.

8 Q Or do you not remember?

9 A I don't exactly remember, no, sir.

10 Q Would you say he was close to a lot of students?

11 A Yes, sir.

12 MR. JONES: I don't have any further questions.

13 THE COURT: Anything else?

14 MRS. HERRING-LASH: Nothing on redirect, Your
15 Honor.

16 THE COURT: You may step down.

17 THE WITNESS: Thank you.

18 MRS. HERRING-LASH: Can Brittany B also be
19 excused, Your Honor?

20 THE COURT: Any objection?

21 MR. JONES: No objection.

22 THE COURT: You may be excused.

23 MRS. HERRING-LASH: The state would call John

24 C

25 JOHN CARNELL,

1 being first duly sworn, testified as follows:

2 THE WITNESS: Please state your full name to the
3 court and spell your last.

4 THE WITNESS: John C. _____,

5 C- _____

6 DIRECT EXAMINATION

7 BY MRS. HERRING-LASH:

8 Q John, how old are you?

9 A Fourteen.

10 Q And what school do you go to?

11 A Hanahan High School.

12 Q What grade are you in?

13 A Ninth grade.

14 Q What school did you go to last year?

15 A First Baptist Church School.

16 Q And did you know _____

17 A Yes, ma'am.

18 Q How long have you known _____

19 A Three years.

20 Q And did you know Coach Mark Vail?

21 A Yes, ma'am.

22 Q How did you know Mr. Vail?

23 A As my coach and my PE teacher.

24 Q You were in his PE class?

25 A Yes, ma'am.

J. C - DIRECT EX. BY MRS. HERRING-LASH

465

1 Q Was also in that class?

2 A Yes, ma'am.

3 Q During that class, what would Mr. Vail and
4 do?

5 A Talk with each other, spend time together.

6 Q Where would they be?

7 A In front of everybody but off -- sometimes with
8 a group of her friends, but sometimes by themselves.

9 Q If you were in the gym, where would they be?

10 A Sitting together like in different places.

11 Q Can you describe some of those places?

12 A Sometimes on the bleachers, sometimes -- there
13 was a set of stairs in the corner.

14 Q And what would you be doing?

15 A You know, playing basketball or sitting on the
16 stage. We didn't really do much, just kind of sat around.

17 Q And what about did you sometimes go to the PE
18 class at a park outside?

19 A Yes, ma'am.

20 Q If you went to the park, where would Coach Vail
21 and be?

22 A On the set of bleachers by the baseball field.

23 Q And you can see them, right?

24 A Yes, ma'am.

25 Q What would they be doing?

J. C - DIRECT EX. BY MRS. HERRING-LASH

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1. A Talking, really just -- I don't know what they
2 were talking about, but nothing out of the ordinary.

3 Q Did _____ sometimes participate in PE?

4 A Yes, ma'am.

5 Q Was that rare?

6 A Not really but, you know, she wasn't always over
7 there with us.

8 Q If she wasn't there, where would she be?

9 A With Coach Vail.

10 Q Were there other students that were always with
11 him also?

12 A Not always, but there were other students there.

13 Q Would they ever sit and talk alone?

14 A Yes, ma'am.

15 Q Did Coach Vail ever say anything to you and your
16 friends about _____?

17 A One occasion.

18 Q What was that?

19 A Talking about her underwear.

20 Q Her underwear?

21 A Yes, ma'am.

22 Q What did he say about her underwear?

23 A Talking about the color of it.

24 Q Did he tell you the color or what?

25 A He told us.

J. C - DIRECT EX. BY MRS. HERRING-LASH

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1 Q What was your response?

2 A I was kind of shocked, but I didn't know what to
3 think about it, so I just kind of forgot.

4 Q Now, did baby-sit for your little sister?

5 A Yes, ma'am, one time.

6 Q And how did she get to your house?

7 A Me and my brother picked her up from
8 cheerleading practice.

9 Q Do you know when that was?

10 A I don't recall.

11 Q Do you know what day of the week it was?

12 A I think it was a Saturday.

13 Q Did you notice anything about that day?

14 A She had marks on her neck.

15 Q What kind of marks?

16 A Like a hickey.

17 Q Did you question her about that?

18 A Yes, ma'am.

19 Q Now, did she give you an explanation?

20 A Yes, ma'am.

21 Q Were those marks still there on Monday when she
22 went to school?

23 A Yes, ma'am.

24 Q Did other people notice them?

25 A Yes, ma'am.

J. C _____ - DIRECT EX. BY MRS. HERRING-LASH

468

1 Q Did other people question her about them?

2 A Yes, ma'am.

3 Q Was Coach Vail there when other people
4 questioned her?

5 A Yes, ma'am.

6 Q And what would he say?

7 A He said that -- her explanation was that
8 somebody had come up behind her and done it, and he said
9 that he had done that when he was our age.

10 Q That he had done that?

11 A Yes, ma'am.

12 Q So he participated in that conversation?

13 A Yes, ma'am.

14 Q Did _____ talk with you about what had happened
15 after all of this came out?

16 A Yes, ma'am.

17 Q Did she tell you when or where it happened?

18 A No, ma'am, but she told me that --

19 Q You can only say when and where under the rules.

20 A Then, no, ma'am.

21 MRS. HERRING-LASH: Court's indulgence for one
22 moment.

23 Those are all the questions I have, Your Honor.

24 Mr. Jones will ask you some.

25 CROSS-EXAMINATION

1 BY MR. JONES:

2 Q John, real quick. Now, y'all did have a PE
3 class, correct?

4 A Yes, ma'am -- yes, sir.

5 Q No problem. Y'all did -- you know, I don't
6 know, it's been so long since I have done PE. But I guess
7 you run; you play games?

8 A Yes, sir.

9 Q So every day y'all wouldn't just go out and sit
10 on the bleachers?

11 A We did but --

12 Q But did y'all participate -- did y'all do some
13 stuff part of the time?

14 A Yes, sir, but it wasn't forced.

15 Q Okay. And you said he sat with other students
16 at times?

17 A Yes, sir.

18 Q Did he ever sit and talk with you?

19 A Not by myself, but with my friends.

20 Q Now, you said -- now, did anybody talk to
21 anybody about Coach Vail commenting on the underwear? Did
22 anybody go to the principal?

23 A No, sir.

24 Q No parents?

25 A No, sir.

1 MR. JONES: No further questions.

2 THE COURT: Anything else?

3 MRS. HERRING-LASH: Nothing, Your Honor.

4 THE COURT: You may step down. Thank you.

5 MRS. HERRING-LASH: Your Honor, may Mr. C

6 be excused also?

7 MR. JONES: No objection.

8 THE COURT: You may be excused, sir.

9 Call your next witness.

10 MRS. HERRING-LASH: Your Honor, we may need to
11 approach the bench for a moment.

12 THE COURT: Okay.

13 (WHEREUPON, a bench conference was held in the
14 presence of the jury but out of the hearing of the jury.)

15 THE COURT: Ladies and gentlemen, I'm going to
16 send you to the jury room. We need to check on the status
17 of a witness. Do not discuss this case in any way. Thank
18 you very much.

19 (WHEREUPON, the following proceedings were held
20 outside the presence of the jury.)

21 THE COURT: All right. Go ahead.

22 MRS. HERRING-LASH: I will just check with her,
23 Your Honor. She is here. They haven't called her yet.
24 They told her to stand outside the door to be ready.

25 THE COURT: All right.

1 MRS. HERRING-LASH: I can go ahead and call --

2 THE COURT: Well, I mean, what's the difference?
3 How long will it take with this one?

4 MRS. HERRING-LASH: I wouldn't think we would be
5 more than 30 minutes. I just don't know. I guess she
6 just needs some --

7 THE COURT: Which courtroom?

8 MRS. HERRING-LASH: In Judge Jefferson's
9 courtroom, 4B. Well, I mean, if...

10 And she hasn't been able to walk in there to
11 tell the person who subpoenaed her that she has been
12 called here. Her only dilemma is that she would get in
13 some kind of trouble.

14 THE COURT: Who subpoenaed you, ma'am?

15 MRS. HERRING-LASH: Bill McGuire.

16 THE COURT: Hold on just a second. Let me see
17 what Judge Jefferson is saying.

18 Bring her in.

19 MRS. HERRING-LASH: Your Honor, there may be an
20 objection.

21 THE COURT: Yes, sir.

22 MR. JONES: Your Honor, I would object to the
23 testimony. I think she is going to testify to
24 Posttraumatic Stress Syndrome Disorder.

25 THE COURT: Yes, ma'am. State.

1 MRS. HERRING-LASH: Yes, Your Honor, she is
2 going to testify as being the therapist for this child and
3 her diagnosis and the symptoms that she saw as to that
4 diagnosis. The state is relying on State V. Weaverling at
5 337 South Carolina 460.

6 MR. JONES: Well, Your Honor, and I don't mind
7 stipulating that she is seeing her and that she is giving
8 a diagnosis of Posttraumatic Stress Disorder.

9 THE COURT: You are prepared to stipulate to
10 that?

11 MR. JONES: But I think it would be -- well, I
12 think it would be -- I would not want to stipulate that it
13 was because of this. She can say she diagnosed her, you
14 know, to that. But as to her testifying because --

15 THE COURT: What about that? He will stipulate
16 that the expert would say that she was suffering from
17 Posttraumatic Stress Disorder?

18 MRS. HERRING-LASH: I think it would certainly
19 aid -- one of the reasons for having an expert explain
20 what the reasons for the trauma is and what the different
21 symptoms of this trauma is is so the jury can understand
22 the behavior that would be outside of the ability of a
23 layperson to understand.

24 I think especially in this case when -- that
25 it's real significant since this particular victim has

1 testified that this was consensual and the fact that she
2 is suffering from some kind of Posttraumatic Stress
3 Disorder, and they would be left with a question. And
4 this counselor can explain why.

5 THE COURT: Consent is not a defense.

6 MRS. HERRING-LASH: Right. But I'm not
7 convinced that the jury doesn't need some explanation of
8 this, and the case law obviously says that.

9 THE COURT: I understand that the case law is
10 that. But consent is not a defense. So if he's prepared
11 to stipulate that she suffered from Posttraumatic Stress
12 Disorder, why not move it along?

13 MRS. HERRING-LASH: Well, there are other -- his
14 concern, I think, is that she didn't flush out whether
15 this child has had other traumas and how can she be sure
16 that the Posttraumatic Stress Disorder is from that.

17 THE COURT: He very well may -- maybe you very
18 well should hash that out anyway.

19 MRS. HERRING-LASH: That would be
20 cross-examination material.

21 THE COURT: What case or whatever do you have
22 that suggests that is not admissible testimony?

23 MR. JONES: Well, I would rely that it's more
24 prejudicial than probative, I mean, if we're willing to
25 say she has got posttraumatic stress. But I would say

1 that if there were other traumas and the doctor is just
2 dealing with this and there were other issues and she
3 hasn't fleshed those out, you know, we obviously don't
4 have an opportunity to -- she's going to the therapist to
5 deal with this.

6 THE COURT: The fact that she's suffering from
7 posttraumatic trauma, why is that relevant to any of the
8 elements of this case?

9 MRS. HERRING-LASH: Well, Your Honor, I think it
10 is relevant to explain the child's behavior. She has -- I
11 mean, her testimony very well may be very confusing to a
12 jury when she testified that this was all my idea, I
13 wanted to do this. And I know that it is not a legal
14 defense --

15 THE COURT: Why is that confusing to a jury?
16 That happens a lot, as you very well know.

17 MRS. HERRING-LASH: And it may be not a legal
18 defense, but I think it is a factual defense that they
19 could come up without an explanation.

20 And the other concern is that --

21 THE COURT: Well, wait, wait. Why would
22 Posttraumatic Stress Disorder explain that conduct insofar
23 as the issue -- the concept of consent?

24 MRS. HERRING-LASH: I think that it would
25 explain her reactions to this relationship and all of the

1 testimony about how at school she tried to hide this. And
2 another concern is if we stipulate that she suffered from
3 Posttraumatic Stress Disorder without her explaining and
4 flushing out, if you will, under cross-examination, then,
5 of course, defense counsel can always get up and argue,
6 well, she had this other trauma and that is the reason for
7 her suffering Posttraumatic Stress Disorder. When, in
8 fact, the doctor may very well -- the therapist, I'm
9 sorry, may very well be able to explain why she was able
10 to discern that. And I think what he will argue is that
11 she lost her mother at a young age and that that is the
12 reason for this trauma. And from what I have heard, I
13 think, the defendant will also testify to that.

14 THE COURT: But he wouldn't need to do that at
15 all if Posttraumatic Stress Disorder is not an issue at
16 all. It is hard for me to understand when you have a case
17 where --

18 MRS. HERRING-LASH: And I think it would be hard
19 for the jury to understand too. But, in fact, it is true
20 that she does suffer from Posttraumatic Stress Disorder
21 and she has symptoms, some of them which were probably
22 evident on the stand, the very flat affect and the
23 depression. They may very well wonder why wasn't she
24 crying, why wasn't she upset? And the doctor can explain
25 that she has had to have medication, that her flat affect

1 is a result of the depression that she is still suffering
2 from.

3 THE COURT: An equally plausible argument, aside
4 from any theory in that regard, is that she wasn't crying
5 because she was in love with the guy and she consented to
6 the activity, but consent is not a defense. So I'm not so
7 sure why it needs to be interjected in this trial.

8 MRS. HERRING-LASH: Well, I don't plan on
9 interjecting consent, if you will, but just she is
10 suffering from Posttraumatic Stress Disorder as a result
11 of this relationship.

12 THE COURT: Is there -- do you have some concern
13 that the activity -- is this case going to be about a
14 credibility call about whether this actually took place or
15 not?

16 MRS. HERRING-LASH: I think so.

17 THE COURT: And you want to introduce this
18 testimony to show that it was consistent with this
19 activity?

20 MRS. HERRING-LASH: That her diagnosis is
21 consistent with --

22 THE COURT: An abused person or someone that has
23 engaged in this activity?

24 MRS. HERRING-LASH: Yes. And the therapist can
25 explain why Posttraumatic Stress Disorder is unlike a

1 sexual abuse as an assault and what is different about her
2 trauma in this situation. And I don't think -- I mean, I
3 think the defense is not she consented. It is this did
4 not happen. And, in a vacuum, I don't think the jury as
5 lay people will be able to discern.

6 THE COURT: All right.

7 MR. JONES: Your Honor, I think the jury can
8 discern. I think it does go to credibility and just
9 because the therapist says this is my diagnosis --

10 THE COURT: Well, that is all fodder for
11 cross-examination whether or not you accept the theory
12 offered by the therapist --

13 MR. JONES: Sure.

14 THE COURT: -- or do you try to advance the
15 theory she was in love with him and was trying to protect
16 him at all means. I've seen it all.

17 MR. JONES: Sure.

18 THE COURT: But that's fodder for
19 cross-examination.

20 MR. JONES: But I think the issue is is that
21 you've got a medical expert coming up saying this is the
22 cause of it, and I think it's going to be cumulative. I
23 think, you know, she's going to testify and say, well,
24 this is the time and the place, again, that I heard. But
25 for her to get up and say this incident happened and she

1 has Posttraumatic Stress Disorder...

2 THE COURT: Well, the cases allow that kind of
3 testimony based on her observations to indicate that and
4 it would be consistent with that situation.

5 MR. JONES: Your Honor, again, I don't think --
6 I don't think it's relevant. The second issue is is to
7 these new allegations that were raised that were just
8 flushed out, the state did know that ahead of time. I
9 assume that the therapist has been addressing this all
10 this time. Even if we had wanted to talk with the
11 therapist beforehand, we were never given notice of those
12 things, so she is going to address those issues. I mean,
13 if she wants to address the ones that we knew, I would
14 still want it on the record that I would move to disallow
15 and suppress this testimony.

16 But if you just want to -- I mean, if you do
17 allow it in, I would ask that you limit it to the two
18 times that we were given notice of, if she's had notice of
19 all of the others all along. And the state has had notice
20 and not turned it over to us to at least have an
21 opportunity to --

22 THE COURT: How extensive do you plan on going
23 into this?

24 MRS. HERRING-LASH: Your Honor, she, as her
25 therapist, has not gone into the exact details. That's

1 what she's told me. That's not part of her therapy to go
2 into the details of what happened and when it happened.
3 Some things may come out. I don't plan on asking her
4 about the facts of this case. I plan on asking her about
5 her seeing . you know, what was the basis of her
6 referral and what was her diagnosis, what are the symptoms
7 regarding that diagnosis, what was her presenting demeanor
8 and did she have to make any referrals because, in fact,
9 the child had to be put on medication, did she make --
10 what does Posttraumatic Stress Disorder mean, what is
11 that, and how were her symptoms different from that of a
12 person who has been violently raped -- because they are
13 different -- and what were her goals of treatment. In not
14 any way do I plan to say, well, did she tell you what
15 happened or when it happened.

16 THE COURT: Why would the goals of treatment be
17 necessary?

18 MRS. HERRING-LASH: Well, I think they kind of
19 go to what this child needs as a result of this.

20 THE COURT: Well, I don't understand that
21 because -- I mean, I understand the need for treatment.
22 Don't get me wrong. I'm not trying to downplay the
23 situation. I'm trying to understand where we are at in
24 this trial.

25 You have someone that has acknowledged sex

1 consensually, albeit consent is not a defense. The court
2 is going to tell the jury consent is not a defense. And
3 the fact that you have counseling and treatment and all,
4 I'm just not so sure why that's not getting into areas
5 that don't need to be touched in this trial.

6 I mean, the effects on the child, obviously, I
7 would want to know about at sentencing and hear from the
8 family also, but I'm not so sure why that goes to any of
9 the elements of the offense.

10 MRS. HERRING-LASH: Well, I think it assists the
11 jury in the understanding of the aspects of the behavior
12 which is what the case law allows. And, as I said, the
13 defense isn't consent. It is that it did not happen.

14 And I think that what she -- I mean, I cannot
15 ask her the goals of treatment if that is the only
16 objectionable question.

17 THE COURT: Well, I don't see why you need to
18 get to that. But you're saying that her testimony is
19 going to indicate that she is displaying the signs of
20 someone of her age who has had a sexual relationship on an
21 extended basis with another person?

22 MRS. HERRING-LASH: Yes. And I think, Your
23 Honor, the therapist can talk about that even though a
24 child may consent, a child is not emotionally capable of
25 dealing with the relationship with an adult.

1 THE COURT: But, I mean, that is why the law is
2 that consent is not a defense.

3 MRS. HERRING-LASH: Right.

4 THE COURT: So it doesn't matter whether the
5 child is capable of consenting or not or whether or not
6 the child has the level of maturity to consent. It
7 doesn't matter what you want to call it, it's still
8 ineffective under the law.

9 MRS. HERRING-LASH: I understand. I --

10 THE COURT: If this were a case where it was
11 nonconsensual from the child's perspective, then,
12 obviously, I have seen that testimony come in numerous
13 times --

14 MRS. HERRING-LASH: Right.

15 THE COURT: -- to suggest that she displayed
16 those signs. But I'm just at a loss to see where the
17 relevance is going with this in the context of this case.

18 MRS. HERRING-LASH: I can only say to explain
19 her behavior that I don't think the jury will understand.
20 And I will not ask about goals of treatment. The main
21 focus will be her diagnosis and the symptoms that this
22 child displayed and her demeanor when she was referred,
23 which I think is very helpful to the state's case
24 factually also.

25 THE COURT: And that all goes to the fact that

1 she wanted to cover it up?

2 MRS. HERRING-LASH: Right. And that her anger
3 was at her father. I mean, I know from the testimony so
4 far and from doing this case that the defense is that her
5 anger was at Amanda Mullins, and I think this therapist
6 has worked through that.

7 THE COURT: And is it a theory that that anger
8 was such that someone would not tell the truth in this
9 court?

10 MRS. HERRING-LASH: Yes, that is the defense.
11 Yes, sir.

12 MR. JONES: Your Honor.

13 THE COURT: Yes, sir.

14 MR. JONES: I mean, we haven't said -- I think
15 we've asked -- I don't know if we've asked -- I mean, I
16 think anger had been brought up by a bunch of people
17 toward a bunch of people, toward Mr. Mullins, toward her
18 father, toward her stepmother. It's not specifically
19 addressed. And for the doctor to come in and pick out one
20 piece on behalf of the state, I mean, again, I would
21 object to it coming in at all. If so, again, if you are
22 going to allow it in, we would ask that if she wants to
23 talk about the referral, the basis of her diagnosis and
24 the symptoms of that, but I also would object to her
25 talking about this versus a violent rape. I don't know

1 that the jury -- I think that will confuse the jury more
2 as to be bringing this in and even addressing a violent
3 rape.

4 I would ask that, you know, again, if she wants
5 to come in and talk about the referral and the basis and
6 diagnosis and the symptoms, but I just think that it would
7 be --

8 MRS. HERRING-LASH: Your Honor, I'll stay away
9 from asking her about the violent rape. I think if there
10 is a question as to --

11 THE COURT: Hold on. I can hear your argument.
12 We will finish the arguments.

13 Ma'am, they do need you back upstairs in the
14 other trial. How did that fall that you needed her both
15 at the same time?

16 MRS. HERRING-LASH: Just luck.

17 THE COURT: So the court usually breaks at
18 12:00. Because I don't know the extent of the testimony
19 up there, in an abundance of caution, I'm not going to
20 start back until 1:30. But I'm sure the state will want
21 you to report back to them. All right. If you will go up
22 to the other courtroom, please.

23 THE WITNESS: Yes, sir.

24 (The witness exits the courtroom.)

25 MR. JONES: I think I was probably -- I think,

1 Debbie.

2 MRS. HERRING-LASH: I was just saying if there
3 is a question that he has an objection to that he could
4 voice the objection at that time.

5 THE COURT: All right. Any other arguments?

6 MRS. HERRING-LASH: Not from the state, Your
7 Honor.

8 THE COURT: I'm inclined to let it in. I will
9 think about it during lunch since we have a break now, but
10 I'm inclined to let it in.

11 MR. JONES: Thank you, Your Honor.

12 MRS. HERRING-LASH: Thank you, Your Honor.

13 THE COURT: Anything else before I bring the
14 jury back in to excuse them for lunch?

15 MRS. HERRING-LASH: Only one thing, Your Honor.

16 THE COURT: I should have asked, but I guess she
17 wouldn't have known. Do you have any idea how long they
18 are going to need her?

19 MRS. HERRING-LASH: I don't know if she knows,
20 and I don't know anything about her testimony. I don't
21 have any idea.

22 THE COURT: Okay.

23 MRS. HERRING-LASH: If Your Honor could just
24 have defense counsel to instruct his witnesses -- I think
25 one of the witnesses stopped one of our witnesses and

1 questioned them.

2 THE COURT: Make sure that all witnesses are not
3 stopping each other and having conversations about this
4 case.

5 MR. JONES: I didn't know anything about it.

6 MRS. HERRING-LASH: I know he didn't. It was
7 while we were in here.

8 THE COURT: All right. Bring the jury in,
9 please. They do not need their notepads. Leave them in
10 the jury room.

11 (WHEREUPON, the following proceedings were held
12 in the presence of the jury.)

13 THE COURT: All right. Ladies and gentlemen, we
14 were checking on the status of the witness and the witness
15 will be available after lunch, so we will go ahead and
16 send you to lunch. If you will please report back at
17 1:30, we will proceed with the trial. Thank you very
18 much. Have a good lunch.

19 (WHEREUPON, the following proceedings were held
20 outside the presence of the jury.)

21 (WHEREUPON, a lunch break was taken.)

22 THE COURT: Are you ready?

23 MRS. HERRING-LASH: I had just mentioned to them
24 that any publicists wouldn't identify the victim to
25 everybody that she knows and to see if they can take that

1 into consideration, but they can't.

2 THE COURT: All right.

3 MRS. HERRING-LASH: I mean, the statute says
4 identify the victim, and there is a part of the statute
5 that says you don't have to name the victim but can in any
6 way identify them. But I guess the situation happens a
7 lot. If people that are important in your life, a
8 situation like this, you are going to be identified. And
9 I have asked them, but evidentially they won't take that
10 into consideration.

11 THE COURT: Any other arguments on the issue? I
12 will give the state -- tell me why this evidence is more
13 probative than prejudicial.

14 MRS. HERRING-LASH: Your Honor, I think that
15 this -- the fact that it is consensual, although it is not
16 a legal defense, I do believe in some way it will be
17 considered by the jury. And it really makes it a more
18 complicated psychological issue to understand the
19 reactions. It would be much more simple to understand if
20 she were assaulted and had this reaction to the assault.

21 It is much more --

22 THE COURT: And that's the time it's normally
23 used.

24 MRS. HERRING-LASH: Right. And what the
25 therapist explains does aid the jury. I think a situation

1 like this is more complicated for a jury to understand.
2 And I think that we all know that often times juries make
3 factual decisions based on their beliefs and feelings and
4 what they bring into the situation.

5 THE COURT: Let me ask you this. Why shouldn't
6 we approach this more in the line with the rebuttal
7 evidence, if necessary, after the presentation. They
8 don't have to present anything. But if they do, why not
9 then because otherwise the...

10 MRS. HERRING-LASH: If the defense brings up a
11 matter that would make this testimony what the court
12 considered more probative than prejudicial, at that time,
13 then we could call this witness?

14 THE COURT: Yes, ma'am. Because, at this point,
15 what the defense is going to do is theory -- in theory
16 alone. For example, there are two possibilities. Well,
17 three. One is obviously the defense doesn't have to do
18 anything.

19 MRS. HERRING-LASH: Right.

20 THE COURT: And nothing will be presented. Two,
21 the defense may not dispute that there was any kind of
22 sexual event at all but that the defendant has an alibi.
23 And in that event, that theory it seems to diminish the
24 probative value because there is no contest as to whether
25 or not the sexual event took place. See what I'm saying?

1 MRS. HERRING-LASH: I do think that the context
2 in that area then would be it wasn't him.

3 THE COURT: You mean insofar as identity is
4 concerned?

5 MRS. HERRING-LASH: Right.

6 THE COURT: And you think this type of testimony
7 will be relevant as to identity because she was -- I mean,
8 it seems to me the expert is not going to be able to say
9 she was acting this way because it was him.

10 MRS. HERRING-LASH: She's not. And my point
11 about that, I think that it would be relevant not that it
12 was to him but that it was to someone that she had a
13 relationship with like the adult-child as opposed to
14 another young, say, having intercourse with another
15 13-year-old.

16 The psychological impact that she has suffered
17 would go to counteract that she was just leaving the house
18 meeting a peer having intercourse. So I'm not saying that
19 I'm in disagreement that we should wait until rebuttal.
20 But I'm saying if the defense is simply alibi that it
21 would still be relevant as to the fact that it was
22 somebody that had some kind of authority over her as
23 opposed to anybody else.

24 THE COURT: And that may be the case. But I
25 guess my main point was not really to limit you at this