STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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 2 OF 3

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time. But it seems to me that once I hear what is presented, I can make a better determination about probative versus prejudicial value. I mean, do you have any problem with using it during rebuttal?

MRS. HERRING-LASH: I have no problem using it during rebuttal.

THE COURT: All right. Do you understand what I'm saying?

MR. JONES: I do, Your Honor.

THE COURT: All right.

MRS. HERRING-LASH: Can I have a moment to kind of give the witness an idea about when we may need her?

THE COURT: Go ahead.

While y'all do that, I'm going to step downstairs to take the grand jury returns. I will be right back.

(WHEREUPON, other matters were heard by the court.)

THE COURT: All right. Are y'all ready to proceed?

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

THE COURT: Was that going to be your last witness?

MRS. HERRING-LASH: Yes, Your Honor.

THE COURT: So we might as well go ahead and

take care of your motions at this time before I bring the jury in. Does the state rest? Any motions?

MRS. HERRING-LASH: The state rests.

MR. JONES: Your Honor, we make a motion for directed verdict at this time that the state has failed to meet the burden of proof on the charge of criminal sexual conduct or lewd act.

THE COURT: And which elements do you contend have not been proven?

MR. JONES: Your Honor, we contend all of them. They have not proved he was there at this time. They have not put him there. The only testimony, again, the evidence is circumstantial. The only testimony --

THE COURT: Well, you have her testimony.

MR. JONES: Her testimony.

THE COURT: Why is that not good enough?

MR. JONES: In addressing that, Your Honor, I would address the credibility and some of the memory of that.

THE COURT: Well, I mean but that's not circumstantial evidence. If someone tells me that such and such did whatever, that is direct evidence.

MR. JONES: Correct. Other than -- and the circumstantial would be the phone calls, the corroborating witnesses. I'm not addressing her as circumstantial.

THE COURT: All right. Any other elements you claim they have not met for purposes of the CSC charges?

MR. JONES: None, Your Honor.

THE COURT: All right. And lewd act?

MR. JONES: Lewd act is the same, Your Honor. There have been no elements there. There is no conclusive dates. The acts as they occurred with the CSC, if they are not met, all of the acts that were solely lewd acts they become criminal sexual conducts on all occasions.

So, again, the same basis. If he wasn't there at the time of the criminal sexual conducts, he wouldn't have been there for the lewd acts also.

THE COURT: All right. I deny that motion.

Anything further?

MR. JONES: Nothing further, Your Honor.

THE COURT: All right. Are you ready to proceed?

MR. JONES: We are ready to proceed.

MRS. HERRING-LASH: I will need to rest on the record in front of the jury.

THE COURT: When they come back in, you can go ahead and do that. I just wanted to go ahead and take care of the motions.

Please stand, sir. Mr. Vail.

We have reached that point in the case where you

may present your defense. You have a right to testify on your own behalf. However, no one can make you testify.

If you elect to testify and you have some record which falls within the coverage of our rules and procedure of evidence, then the solicitor will be able to present that record to the jury for its consideration for impeachment and possibly other purposes.

If you elect not to testify, I will tell the jury they are not to consider the fact that you did not testify in any way whatsoever, however, and specifically that there is to be no prejudice to you because you did not testify. It will be left entirely up to you as to whether or not to testify.

Have you discussed the advantages and disadvantages of either testifying or not testifying with your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Have you made a decision?

THE DEFENDANT: Yes, sir.

THE COURT: And, counsel, have you had the opportunity to discuss the advantages and disadvantages with him?

MR. JONES: We have, Your Honor.

THE COURT: Have you made a decision with him?

MR. JONES: We have, Your Honor.

THE COURT: And what is that decision?

THE DEFENDANT: I will testify, Your Honor.

THE COURT: All right. And you agree with that decision, counsel?

MR. JONES: I do, Your Honor.

THE COURT: All right. Bring the jury in, please.

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

THE COURT: Thank you. Please be seated. All right. Anything further from the state?

MRS. HERRING-LASH: No, Your Honor. At this time, the state would rest.

THE COURT: All right. Are you ready to proceed?

MR. JONES: Your Honor, we call Mark Vail.

THE COURT: Come forward, please.

MARK VAIL,

being first duly sworn, testified as follows:

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

THE WITNESS: My name is Mark Edward Vail, V-A-I-L.

DIRECT EXAMINATION

BY MR. JONES:

Q Mr. Vail, what is your age?
A Twenty-seven.
Q What is your current occupation?
A I work for Brinker International. It's a mother company for five different restaurants. I'm in restaurant management training.
Q Okay. Where do you currently live?
A Atlanta, Georgia.
Q And who do you live with?
A My mom and older brother.
Q Tell us a little bit about your family.
A It's always been just my mom and my older brother since I can remember. We lived on Hilton Head Island for 12 or 13 years, moved to Atlanta sometime after that. I went to high school in Atlanta, graduated from there with a football scholarship to Charleston Southern University. I graduated from there in 2001. My mom is a paralegal. My brother owns a car stereo company.
Q Okay. Is there somebody special in your life?
A Yes, sir.
Q Who would that be?
A Amanda Mullins. I have been with her for almost six years now. I met her in college, and I have been with her ever since.
Q What are your future plans with her?

A We are getting married.

Q And do you have a date set?

A February 12th.

Q And where will that be at?

A Disney World.

Q Let's go back a year ago, the incident took place. At that point and time, what were you doing?

A I was teaching at First Baptist Church School downtown.

Q Okay. And when did you start there?

A It would have been August of 2002.

Q What were you responsibilities?

A Algebra teacher, PE teacher. I had an SAT prep course and coached football, baseball and basketball. I was also an eighth grade homeroom rep.

Q And where did you live at that time?

A [redacted] on James Island, The Islands Apartment complex.

Q And who was your roommate?

A Adam Larrick.

Q And that was the witness we heard from earlier?

A Yes, sir.

Q And how long did y'all live together?

A I believe we lived in The Islands for a year and a half. We went to college together, and we were

roommates for a little over two years.

Q All right. Where was Amanda living at this time?

A At which time?

Q During this same time period?

A She lived at Sergeant Jasper. It's an apartment -- high-rise apartment complex right down at the corner of Broad and Ashley Avenue, I believe.

Q Okay. And did -- where did y'all sleep at night, typically?

A Typically either at my apartment or at hers. You know, we both had places that we could stay at so it wasn't a -- it wasn't a problem.

Q Was that together or separate?

A Usually together.

Q Okay. So one spot or the other?

A Yes, sir.

Q Did anybody else live with you at Barbados Way?

A Adam Larrick, he had a girlfriend at the time. I believe they still are together. She lived there pretty much. I don't think she had her own apartment. I know her parents live out on Folly Beach, but she did stay there most all the time.

Q Who all had keys to your place?

A Myself, Adam, Kara and Amanda.

Q Okay. Describe briefly where your place is.

A It's on James Island. It's right behind the Wal-Mart off of Folly Beach Road. It's kind of towards the back of the apartment complex.

Q Going back to the period of time of 2003, 2004 year, what was roughly your daily schedule with regard to the school?

A Roughly, I would get up and be at work before 8:00, anywhere from 15 minutes before to ten minutes before. I had homeroom which started at 8:05. First period started sometime thereafter. I had a PE class first period and then I had a break, a couple math classes, lunch, another PE class and then was done for the day at school. School got out 3:05, 3:10, I believe somewhere around there. And then depending on what season it was in, whether basketball, football or baseball, we would have practice right after school either at the gym right downtown if it was basketball season or over on James Island during football season. We have a sports complex out there.

Q And briefly in reference to the sports sequence, when would football end and when would basketball begin?

A Football ended on October 31. It was our last home game. Basketball started the very following week and went halfway through February.

Q Okay.

A Basketball -- or baseball, excuse me, then started actually a week before basketball would end, so it was kind of a mixture right there and then baseball was right after that.

Q Okay. So your basketball -- okay, basketball season would begin when?

A I believe it started November the -- we had tryouts on November 3rd.

Q Okay.

A That whole week we had tryouts.

Q And when would y'all start games; do you remember when?

A Right after school. We didn't have a JV girl's team. We only had JV boys, varsity girls and a varsity boy's team. The games started at 4:00 after school, depending on whether it was home or away.

Q Do you remember the date approximately that basketball season would begin?

A The first game, you mean?

Q Right.

A I don't recall when exactly the first game was, probably about two weeks after tryouts, give or take a couple days, mid-November.

Q Okay. Tell us a little bit about you were

hired -- when did you say you were hired?

A August of 2002.

Q When was Amanda hired?

A Shortly thereafter. School -- after I was hired, Philip Keith who was the athletic director asked me if I knew anybody who knew anything about cheerleading. I said, of course, my girlfriend cheered at Charleston Southern. He knew who she was, and he asked if she wanted to maybe be the cheerleading coach. We were both hired before the first day of school, so give or take a couple weeks.

Q Okay. And you were dating at that time?

A Yes, sir.

Q Okay. And that would have been -- what year was that?

A 2002.

Q Okay. And tell us kind of -- you said the beginning of school, what was the first day of school?

A First day of school happened like everybody's first day of school. You go in. You either meet your new teachers or meet your new students. They would come into the classroom. You would show them the rules, you know, what you expected of them for the year during class period, hand out a syllabus, let them know your grading scale, objectives for that course, what kind of books they

would have, that kind of thing, contact numbers if anybody needed to get in touch with anybody.

Q And tell me about First Baptist when you came into it. What was the environment?

A When I first got there, a lot of the students weren't involved in the school. I know the first year we had our football team, we only had 14 players, five of which were eighth graders on a varsity squad. There wasn't very much student activity involved in the school, at all.

From what I was told, the prior administration had done some things that a lot of people didn't like and they had brought in a whole new staff, new headmaster, new athletic director, a whole new coaching staff. They were trying to do a change around the school.

Q Tell me about the size of the school.

A Very small. I think the whole school, K4 through 12, maybe ranged around 500 people.

Q And tell me about the -- well, your relationship with the students.

A I was very involved in all my students' lives. I related to the kids on their level. We -- I got along with everybody. Everybody felt very comfortable around me. I felt very comfortable around everybody. It was -- it was a really, really good time. I enjoyed every minute

of it.

Q Let's talk about _____. When did you get to know her?

A _____ was in my seventh grade algebra class. She was one of my better students. She was really quiet in class. She never really said anything in class, always did her homework. As far as I can recall, she made 95 or better on everything. She was a very smart and intellectual young lady.

As the year started to progress on and as everybody in the whole school started to get to know each other better, well, we started feeling more comfortable around everyone.

Q What was her interaction with other students?

A In seventh grade, at that time, the girls and the boys really split in class. Like, I mean, in class all the girls sat on one side and all of the boys sat on one side. I mean, there was really hardly any interaction between the two of them -- or between the girls and boys because, you know, at that age, they were still, you know, all -- you know, they didn't really care to be around each other. Girls were girls and boys were boys.

Q And what about eighth grade?

A As eighth grade started, you know, that age when they start to want to have a boyfriend or have a

girlfriend, they started to mingle a little bit more with each other.

Q Tell me about Kelsey R

A Kelsey was -- she was very reserved and also very quiet, never really spoke out. I didn't have Kelsey in class other than study hall towards the end of eighth grade. Kelsey was also a very normal student. I mean there wasn't...

Q And Caroline O

A Caroline was -- she's a little bit set apart from the two of them. They're a little bit more quiet and Carolina she's a little bit more headstrong. She's very confident in herself. She is a very sociable person, but it was odd because she never really -- she doesn't really show any emotion. She is a very straight-faced person. She never really smiled or did anything. She just kind of was there.

Q And what was your relationship with Caroline and Kelsey?

A The relationship was good. I mean, during school between every period, we would -- I mean, the school was very small. It's honestly about the size of these probably three courtrooms right here. You saw every student between every period. There was a five minute period -- five minutes between each period and you really

basically saw everybody. So between each class, you know, kids would come up, Coach Vail, hey, how are you doing, what's going on, bla, bla, bla. And Caroline and Kelsey were always, always there.

Q Now, speaking of between each class, was there roles that faculty was assigned?

A Yes, sir. I wouldn't necessarily say like Mr. Mullins handed out a piece of paper and said, look, you need to do this and you need to do that. But it was assumed that, you know, this area needed to be patrolled and needed to make sure that kids didn't go off campus or anything like that. And, you know, wherever -- I was what's called a floating teacher. I didn't have an exact classroom. So I had classes, you know, in one building and in another building and actually not even on campus. We had a gym all of the way on the other side of town or three or four blocks away.

But each teacher during -- in between classes would, you know, stand out in front of their classroom, make sure the hallways were -- there wasn't a fight or anything like that, just patrolling the students.

Q Now, at sometime, you learned that [redacted] had a crush on you. When?

A Sometime in seventh grade. I couldn't -- my first year there, I really couldn't put an exact date on

it. And it wasn't like, you know, somebody came up and goes you know _____ has got a crush on you. It was more of -- I really wouldn't know how to explain how the whole crush thing came about. I guess it just evolved.

Q Was it evident?

A Yes, sir.

Q And did you ever talk about it with any faculty members?

A Yeah. On occasion, plenty of times Karen Hames and I spoke about it. Many times, me and Virginia Murray.

Q Who is Karen Hames?

A Karen Hames is another teacher there. Actually, I don't know if she's still working there or not. But she was kind of like my -- I would say like mother-in-law there at the school. She kind of put her arm around me and said this is how we are going to handle this. She really -- we took to each other very well.

I spoke to -- I mean everybody knew about it, so it wasn't like -- and when I say everybody knew about it, it wasn't like -- you know, like I said, if we're out in the middle of the hallway, _____ would come up or we would see each other and there would be a hug or hey, how are you. No different than Caroline or Kelsey or any of the other students.

But like Brittany and her -- _____'s close

friends they all knew that [redacted] -- like [redacted] never came out and said I got these feelings for you, bla, bla, bla. It was more of her friends kind of insinuating, you know, this is happening.

And after that came out that, you know, that there were feelings there, we -- we addressed it.

Q All right. Before we get into that, did you talk to any other faculty members about it?

A I mean, Karen Hames, Virginia Murray, Tommy Mullins, I did.

Q And you discussed it with Tommy Mullins?

A It wasn't a situation that I thought was detrimental. And what I mean by that is it was a crush. I mean, it was a teacher student -- a student teacher, you know, those things happen all the time. I know I had it. Like Tommy said, I know I had a crush on my eigbth grade teacher, my eighth grade PE teacher. It was something that -- it wasn't new. It wasn't a secret. It wasn't. You know, so when I would go to Karen -- you know, Mrs. Hames would say, you know, make sure everything is -- you know, I know Tommy said it, make sure you're not ever alone with a student. Make sure you're not ever behind closed doors with anyone. Okay, no problem. Said especially if you feel that there is any kind of detriment toward you. If there's going to be -- if the situation

gets out of hand, then you need to get up and you need to go find somebody and bring them back into the room or bring them -- you know, get somebody else involved in the situation if you feel something is going in the wrong direction.

Q Did other students have a crush on you?

A Yes, sir. I mean -- yes, sure.

Q Let's talk about October 28th. This was the... We are going to talk about the phone calls.

MR. JONES: Your Honor, may I approach?

THE COURT: Yes, sir.

BY MR. JONES:

Q I'm going to show you what is marked State's Exhibit 6. When was the first time y'all had an extended conversation?

A Well, the first time we had an extended conversation wasn't on the phone. You mean the first time we had an extended conversation as far as the phone records are concerned?

Q Correct.

A Okay. As far as minutes are concerned, it looks like October 22nd was the first extended conversation. Going into the records, it looks like October 28th, yeah, I guess that's the date you were just asking me about. October 28th was the first time that we really

had a long conversation about -- about stuff.

Q Let's talk about it. Tell us about that conversation.

A I had just gotten home from practice that day. It was homecoming weekend. I had just finished mowing the field. We had football practice that afternoon. I got home right around 8:00, called _____. She was a little -- she was a little upset, and I asked her why she was upset. And she said that her stepmom had not allowed her to do something she wanted to do. And I was like, well, what did you want to do. And she said she wanted to go out. I said, well, you know, it's 8:00, 9:00 at night and you don't need to go out. She is probably saying the right thing. And _____ was like, well, you know, I don't really --

MRS. HERRING-LASH: Your Honor, I would object to hearsay.

THE COURT: I sustain that.

THE WITNESS: What?

BY MR. JONES:

Q Without saying what she said --

A Okay. All right.

Q -- what was the gist of the conversation?

A The gist of the conversation was that she was upset with her stepmom and was upset with her family at

the time.

Q Okay. Why did the conversation take this long?

A I can't say what she said though, right?

Q No.

A Okay. It was in regards to family matters. As you can -- I don't know if you can maybe put it up on the board. But it's a 14-minute conversation at 7:56 where I had said something to her.

I can say what I said, right?

Q Uh-huh.

A Okay, good. I had said it's in your best interest that your mom had died because that's what God's will is, that's what He has put in your life that Mamie might not be who you want right now or Mamie not doing things that you want, but it's in God's will that it's better off that your mom died when she did. Hello? Hello? She hung up on me. As you can see right there, I called her right back and I further explained what I meant by that.

And what I meant by that was, you know, everything happens for a reason. No matter good, bad, it all happens for a reason. You've got to just take it as it comes.

We began to keep talking about the situation how she -- she was -- she did not like her home situation, at

all.

Q And what gave you the ability to address these matters with her?

A What do you mean by ability? I had the same situation. I had gone through the same trials and tribulations that she was going through.

Q Explain what you mean by that.

A When I was 13, I lost my father. He was never around or anything, but he died. Shortly thereafter, I found out that my mom that I had assumed was my mom was not my mom, that she was really my stepmom. That my mom, my real mom was killed when I was a year and a half old. And so at 13 I found out that the lady that I assumed was my mom was really my stepmom, and so I started wondering, well, where would my life be, what would I be doing right now. Could I have been doing something else if my mom was there? And as that night progressed, you can see in the phone records I was having -- I was cooking dinner while I was talking to her on the phone. I hung up with her and told her that I was going to be having dinner, I would call her back.

I then called her back at, you know, probably about 40 minutes later. She advised me that she was doing homework and that she would call me back. I said no problem, call me back whenever you get a chance. That was

at -- it says 8:11. We talked for 30 minutes. That was right after I had to, you know, make sure she understood the situation that I didn't mean to say your mom, you know...

Q You can use this laser pointer to show them.

A Oh, it's up. All right. Fourteen, 30 minutes at 8:11 until about 8:45, we spoke on the phone. At 8:45 I told her that I was going to be having dinner and I would call her back later.

At about 9:20 or 9:21, I called her. She said that she was doing homework and that she would be calling me back. I said no problem, call me back whenever you get a chance.

She then called me back when she was done with homework at about 10:37. We spoke for 35 minutes or so. And between these two phone calls, the 35 minutes and the 43 minutes is when I had divulged to her -- and she was the only person, other than Amanda and a few really close-knit friends that I had ever said anything about my mom dying. She was the only person that I had ever told that to, as far as any of my students.

Q And where were you at during the time of this conversation?

A In my kitchen.

Q Okay.

A Which one? I know the first two while I was talking to her there and there (indicating), I was in the kitchen cooking. And for this part right here, down in my living room.

Q Okay. Was anybody else there during this time?

A I believe Adam and his girlfriend were probably up in his room, and I know Amanda was up in my room. She was doing work.

Q Did you receive any other calls during that night?

A From?

Q From anybody?

A Yeah, I spoke to -- actually, I spoke to Tommy Hotchkiss as well as Anne P[redacted] that night. I know we went -- after we hung up, it was a -- on a 43-minute phone call, it was a very poignant and touching moment between the two of us, and I felt connected. We -- it was good. I felt good that I could talk and, you know, I told this to her. And for the next, you know -- it says three minutes and two minutes and then one minute back and forth, it was kind of a thank you very much for listening. Thank you very much for talking and letting me know -- I distinctly remember she said letting me know that I'm not the only one that has gone through this, that I'm not the only one that has lost somebody dear in my life.

Q Let's address the phone calls broadly. What did you think when you saw these phone records?

A I about fell over.

Q And why?

A At the time, I don't remember talking to the extent that these phone records show. I didn't see any of these phone records until we got the discovery motion sometime at the end of February, I believe, February or March. And when I got the phone records, I started looking over them and I was like -- I had never gotten a detailed statement of any of my phone records, so I had never seen any of them.

I didn't know what to think. I mean, at the time, I was like I can't believe we talked this much. I mean, I knew we spoke. I knew we text messaged each other. I knew we had conversations all the time. But to look at them and see them on paper, I don't know how to -- you know, it sure as heck didn't dawn on me at the time that it was as often or as many as these phone records show.

Q Let's talk about how were the numbers exchanged. How did y'all get each other's numbers?

A Her -- she got my phone number from just like any other student just having it. Almost everybody there had cell phones. They got the phone and put it -- you

know, put their phone number in there as well as gave it to their parents or whatnot. She, as well as a lot of students, would use my phone, at times, during class or whatever, and she programmed her phone into my phone. I didn't -- I never knew her phone number, as far as the exact phone number, until looking at the phone records. I always just looked down at my phone and it said _____ and hit send.

Q Let's go to November 1st.

A You just want to go to November 1st?

Q Yes.

A Okay.

Q Let's talk about that day. Tell me about November 1st.

A It was a Saturday. It was the day right after our last home game. It was my first and last day off. And what I mean by that is football season was over with and basketball season was starting on Monday. It was going to be the only time that I had to relax.

I got up early in the morning and drove out to Charleston Southern University where my friend Tommy Hotchkiss was attending. I woke him up right about 10:00. I was like, hey, man, college game day is on, let's go. It's time to watch football and relax. It was good to be back in my dorm room because -- not in my dorm room but

into the quads because that's where I went to college, so it was kind of relaxing and, you know, brought back fond memories of just kind of being around school and not having to worry about bills and all the hectic parts of real life.

Was there until probably about 12:00, 12:30. And then the two of us went to Chris Rollinson's house who was also a football coach there at First Baptist, was there from about 12:00 to around 4:00 watching football that afternoon. Then me and Tommy went through the mall. My and Amanda's four year anniversary was coming up that following week, November 5th, and I was looking to try and figure out what I was going to get for our anniversary. Walked around the mall for a little while, was broke as a joke so I didn't end up getting anything. And we got some food there at the mall in the mall food court and then went back over to Tommy's probably around 6:00, 6:30 or so, was there in his dorm room. We watched some football games. The games I don't believe were very good that day so we ended up playing some PlayStation, Tiger Woods, that kind of thing until I was there until a little after 10:00.

Q All right. Were there any calls to or from that day?

A November -- November 1st, correct?

Q Yes.

A Yeah, I mean these are all our phone records, so November 1st, 4:45, we had text message from her to me, spoke to her on the phone. It doesn't look like very much time or length during that day, two or three minutes. I can't really -- that's a one-minute, I think. Yeah, we spoke that night, sure. Oh, wait, it keeps going.

Yeah, we spoke that night.

Q And where were you during those calls?

A In Tommy's dorm.

Q Who else was there?

A Tommy Hotchkiss.

Q And what time did you leave?

A Amanda had called me at 9:30. She told me that she was just getting off work and asked me where I was at. I said I was up at CSU and I'll be home in a little bit, finished playing Tiger game about -- a little after 10:00, I called her back and said that I was on my way and that I would be there shortly.

I think on the way home I called and spoke to on the way home as I was coming home.

There you go, November 1st, a little after 10:00 from CSU to downtown.

Q And where did you go when you went downtown?

A Sergeant Jasper to her apartment.

Q And stop anywhere, go anywhere on the way down?

A No, sir.

Q When you got to Sergeant Jasper, what did you do?

A I went up to her apartment.

Q And who was there?

A Amanda.

Q And what did you do the rest of the night?

A Not much of anything, relaxed, went to sleep, watched TV.

Q And Amanda was there the whole time?

A Yes, sir.

Q So November 1st, at any time, were you ever around I'On?

A No, sir.

Q Have you ever been to I'On?

A No, sir.

Q Do you know where I'On is at?

A I know it's over on Mt. Pleasant, and I heard somebody say something about Matthis Ferry Road this afternoon, I guess that's...

Q All right. Let's talk about November 4.

A Okay.

Q Tell me about that day.

A Actually, can I go back just a little bit?

Q Uh-huh.

A That weekend, Amanda and I had spoke. She told me that during the football game that she had heard rumors, kids talking about [redacted] not wanting to be with -- I think a couple boys asked her out or wanted to date her or whatever and that [redacted] --

MRS. HERRING-LASH: Your Honor, I would object to hearsay.

THE COURT: I sustain that.

THE WITNESS: I said something about somebody said something, hum?

BY MR. JONES:

Q Uh-huh.

A Okay. How do I put this? The situation had come about that [redacted] -- I can't say told.

Q What did she do?

A She did not go out with a certain boy because she told them that she would -- sorry.

Q Why?

A Because she was waiting on me. She was waiting for me.

Q Okay.

A Amanda told me that, you know, she thought that I needed to address --

MRS. HERRING-LASH: Your Honor, I object to

hearsay.

THE COURT: Sustained. Rephrase your question, counsel. Ask your question again.

BY MR. JONES:

Q Tell me about November 4th, what you did.

A Okay. November 4th, went to school. I had a normal school day, got out of school about 2:30, right at the end of sixth period, went a couple blocks over and picked up _____ on the basis of talking to her about our relationship to clarify that she needed to venture out and be with -- I don't want to say be with, but she needed to date boys her age. She needed to enjoy being around boys her age. She didn't need to say that she was waiting on me -- I said say again.

She didn't need to -- she didn't need to wait on me.

Q Okay. And why did you decide to do this?

A Amanda advised --

Q You can't say what somebody told you.

A Okay. Because the situation needed to be clarified. I mean...

Q And did somebody recommend that you clarify?

A Yes, Amanda Mullins did.

Q Okay. Did she tell you how to clarify it?

A No, sir.

Q Okay.

A I said, no problem, I will do that, I'll speak to her and take care of the matter.

Q Okay. So go back to what happened that day.

A Okay. I picked up

Q Where did you pick her up at?

A A block or so from school. It's called Price's Alley. Actually, it's at the end of Price's Alley. Price's Alley and King Street.

Q All right. Let me ask you this. Do you know what time you picked her up at?

A The exact time, no, sir, probably 2:45, yeah, 2:45, 2:40, 2:45, right around there. I had -- class got out at 2:20. John Hill had asked me to come into his office that he wanted to speak about something. I said, okay, no problem, went in there. I can say he said -- well.

Q You can't say what anybody said.

A Yeah. There was a situation where a parent felt that my involvement with her son was becoming more of a -- I was becoming more of a fatherly figure to him than she was. She was a single mom and that her son was confiding in me more than in her is what -- is what the situation was. John Hill told me that is what -- Mr. Hill, that is what our meeting was about right after school or right

after my class.

Following that meeting, I left school and then went and picked up.

Q And is there any way to give an estimate, a rough estimate, about what time that would be? How did you know where to find her?

A Cause I knew where she was going to be.

Q And how did you know that?

A We had talked about it earlier that day.

Q And how did y'all talk about it?

A Um.

Q Were there any phone calls on that day?

A Yeah, I'm sure there was.

Q Can you check the records and see if there is one?

A We are on November 4th, correct?

Q Uh-huh. At the 2:23 call, what was that for?

A I guess she was probably calling to find out where I was at because I told her I would be out there right after sixth period.

Q And did you respond?

A No, sir. I was in Mr. Hill's office.

Q Okay.

A Then at -- what is that, 2:30 -- what does that say, 2:33? I can't really read the time on that right

there.

Q You've got them in front of you also.

A Okay, 2:38, I called her and let her know that I was walking out of John Hill's office. I had to speak to one other person, which was Mrs. Murray, and that I would be right there.

Q Okay. How long after that do you think you picked her up?

A Ten minutes. I mean, like I said, I was leaving campus. I had ran by Mrs. Murray's room real quick and spoke to her for a few minutes. And then it takes a minute or so to drive around, so I would say 2:38 -- 2:45 is probably when I picked her up is a good approximation.

MR. JONES: Your Honor, may I approach?

THE COURT: Yes, sir.

MR. JONES: Actually may I have the witness step down?

THE COURT: Yes, sir. You may step down.

(The witness exits the witness stand.)

BY MR. JONES:

Q Mark, I'm going to show you what has been marked Defense Exhibit 1. This has already been admitted in. What I'm going to do is ask you to step to the side so everybody can see. I'm going to hold this up for you.

A That is a map of downtown.

Q Is that --

A That looks like the peninsula, yeah.

Q Mark, can you show me roughly where the school is?

A This is Meeting, Water Street. That block right there is where the school is.

Q Okay. Show me where you picked her up.

A I don't think it is -- oh, it does. Price's Alley is right there. You see it. It goes right there. The corner of the Price's Alley and King Street.

Q Okay. If you will kind of do it from this angle where they can see.

A I'm left-handed. I picked her up right there.

Q Okay. And show me the route. If you will, talk through the route that you took.

A Okay. Came down King Street, made a right on South Battery, followed South Battery to Ashley Avenue made a right on Ashley Avenue, then left onto Broad Street, drove right there at the corner of Lockwood, followed Lockwood on past the James Island connector.

Q All right. What is this?

A It looks like a broader map of Charleston and surrounding areas and James Island.

MR. JONES: Your Honor, if the record will reflect I'm showing Defendant's Exhibit Number 2.

THE COURT: All right.

BY MR. JONES:

Q Pick up from where the other map cut off and show us where you went.

A That is the connector there. Yeah, that's the connector there. Yeah, that's the connector there. The connector comes down, made a left onto Folly Road, followed Folly Road all of the way down to Folly Beach there at the pier.

Q All right. Did you stop anywhere?

A No, sir.

Q Who was in the car?

A Me and

Q Can you determine on this map approximately where your residence would be?

A Yeah, Camp, Fort Johnson, my residence is in that area.

Q That is approximate?

A Yes, sir.

Q Briefly, what is that map of?

A That's James Island.

Q Okay. And this is --

MR. JONES: Your Honor, if the record can reflect this is Defense Exhibit 3.

THE COURT: All right.

BY MR. JONES:

Q Let me show you approximately -- tell me what this area is of.

A It's James Island. That is Folly Road right there, Port Johnson comes to right there. So, okay, there is Barbados Way. All right. Wal-Mart is going to be right there. You make a right right there at Wal-Mart. There is The Islands complex, and I lived way back here right there.

Q Okay. All right. You may have a seat.

(The witness resumes the witness stand.)

Q All right. So where did you end up? Where was your destination?

A At the time, I really didn't know where it was going to be, but it ended up being the pier.

Q Okay. What did you do when you got to the pier?

A Pulled up, parked right there at the end of the parking lot, got out, walked right up onto the pier, had just talked about my best friend had just gotten married right there on the pier on the beach, was there for maybe five minutes, five or ten minutes, then got back in the car.

Q On the ride from school to the pier, what did y'all talk about?

A The situation.

Q You can't say what she said.

A All right. The situation I told her that -- yeah, I said that, you know, you need to realize that you are missing out on everything. You're -- this is the best time where you should be finding out what really makes you happy. You know, that is the trials of having a boyfriend or having friends. You are with somebody for a little bit and you find out what makes you happy and what doesn't make you happy. And right now you're not allowing anybody to go out with you to, you know, help you -- I don't want to say grow up, but so you can see what it's like.

She didn't -- okay -- she didn't understand what I meant. She was like, well --

Q You can't say what she said.

All right. What did y'all do when you got to the pier?

A Got out and went up onto the pier and talked.

Q Okay. Were there people around?

A Yes, sir.

Q What did y'all do from the pier?

A Got back in the car. When I got back in the car, I turned around and looked in my backseat and realized I didn't have my gear for basketball. I had basketball practice at -- we were having our tryouts that day and I was supposed to be at the gym at 3:30, so we

were kind of in a rush.

Got back in the car and drove -- as you can see, I had to drive right by my apartments. I drove right by my apartment. I told her that I had to go inside to get my basketball gear, pulled up to my apartment, went to go get -- went to go inside, um -- I can't say -- okay.

Q Who went inside?

A Both of us. Both of us walked inside. She walked -- I went to go -- we were in the little foyer area. I walked right inside and said this is our living room. This is where I live. I ran upstairs, went around the corner into my thing, grabbed my basketball shoes and my shorts. And when I turned around, she was standing at the top of the stairs looking into Adam's room. She said that's your roommate's room? I said yeah. She walked into my room. She...

Q What did she do?

A She looked around the room. She -- she looked around the room.

Q Okay. Was there --

A We then left. After I had my basketball stuff, we went right back downstairs, got in the car. We were in my house for a total of maybe three minutes.

Q Who else was there?

A No one.

Q Just you and [redacted], nobody else was home?

A No, sir.

Q And how long were you there?

A I mean it can't take that long to, you know, go up the stairs and grab my stuff and go right back downstairs. Three minutes at the most, three or four minutes.

Q Then what did you do?

A Got back in the gym -- or I got back in the car, drove and dropped her off a block away from the gym at the corner. I believe it's -- I don't know the exact names, Angel and Hazel Street I think is what it was. And then drove right around the corner to the gym and was in practice, got there right at -- right at 3:45.

Q All right. Explain why you chose this method of dealing with the situation.

A Do you want me to explain why I did it now?

Q Uh-huh.

A At the time, I wanted for us to be able to talk alone. I thought it was a private matter. I didn't want to -- I didn't want to hurt her. I never intended, at all, to ever hurt [redacted]. It was -- it was obviously an extremely bad call on my part.

Q Why didn't you just do it at the school?

A There wasn't really enough time.

Q Why couldn't you use that same time to do it at school, the same time you went away?

A There wasn't a -- she had -- that time frame we couldn't talk. As far as her seventh period class, she had a seventh period class and I didn't so.

Q But you had the time to drive down to the beach and all. Why couldn't you have done that right there at the school?

A Like I said, at the time, I didn't think, okay, well, we'll go to the pier. I was just driving around.

Q But why couldn't you have stayed right at the school and done that instead of driving around?

A Well, I wish I would have. Actually, I wish I wouldn't have done it in the first place. Why I did it at the time, I can't answer that.

Q What sort of physical contact occurred at your apartment?

A None.

Q What sort of physical contact occurred on the ride to Folly?

A None.

Q What sort of physical contact occurred on the ride from your apartment back?

A None. Let me rephrase that. When I dropped her off, gave her a hug. She got out. So there was physical

contact there at the end when I dropped her off. She -- I can't say said. Um, we had agreed that everything was okay, that there was no problems in anything.

Q All right. Describe your apartment.

A Open the door. You are in a foyer area. The kitchen is to the left. The stairs go up on the right. You go a little bit further and there's a big open common area. It's got a dining room and my living room -- or the living room. You go up the stairs. Adam's room is straight ahead. You go right around and my room was at the front of the house.

Q Okay. What color is the furniture in the living room?

A Adam had a really nice dining room table and a real big 60-inch big screen TV. And I have a blue leather sectional couch, and there was also my green recliner. It is a cloth recliner. That was also in there.

Q Describe your bedroom.

A When you walk in, I always had -- I learned it from Adam. We put our hats, you know, up on the wall on nails up on the wall. My bed was in between the two windows. There was a TV stand on one wall. A night stand or a night table, whatever you want to call it, with the lamp and everything right underneath the window and a dresser on the front -- on one wall.

Q All right. About approximately how long does it take to get from the school to your apartment?

A Fifteen minutes, probably a little bit longer depending on traffic there on Polly Road. You never know what's going to happen.

Q So the max average time would be how much?

A The max?

Q Without a wreck or something like that?

A Twenty minutes.

Q Okay. And what time were you back at the gym?

A 3:45, 3:50.

Q Now, how did you know Adam wouldn't be home that day?

A I didn't.

Q How did you know Kara wouldn't be home that day?

A I never knew when Kara was going to be home or not.

Q What was Adam's work schedule?

A It was random. He didn't really have a set schedule. I know that he worked a lot. The one set thing was that they were closed on Monday. He never worked on Monday, and then he worked a lot of the time.

Q And what was Kara, his girlfriend's, schedule?

A She also she was a waitress at George's, I believe. That was really -- she really never had a

schedule either. She worked at night.

MR. JONES: Your Honor, may he step down one more time?

THE COURT: Uh-huh. You may step down, sir.

BY MR. JONES:

Q I'm going to once more put up Defense Exhibit 1. I want you to mark with the green marker where approximately Sergeant Jasper would be.

A Sergeant Jasper is right at the corner of Broad and -- or right here. It's right across the street from the -- hold on. It's over here. It's right here by Colonial -- that's it right there. There is a shaded area of it right there.

Q Okay. Now, where did you say Amanda lived?

A Right there at Sergeant Jasper.

Q Okay. And did you have a key?

A To her apartment?

Q Yes.

A Yes, sir.

Q You can have a seat back.

(The witness resumes the witness stand.)

Q How far is Sergeant Jasper from the school?

A A couple tenths of a mile maybe, .2 or three-tenths of a mile.

Q And at this time, what did Amanda do? What was

her occupation?

A She was a student as well as she worked for an accounting firm, McKnight Frampton. It was her internship, and she was our, of course, First Baptist cheerleading coach.

Q What was her schedule like at this time?

A She had classes in the morning and then she had her internship from 12:30 to 3:30, and then she would get out and have practice from 4:00 to 5:30 or so for cheerleading practice.

Q So tell me how that would work each day. How would she -- from one place to another?

A Well, everything was real close. Her McKnight Frampton is also right there on King Street. Her work is right there. On good days, she would walk to and from places. If not, she would drive. She would go to class, get to McKnight Frampton at 12:30, work there usually until about 3:30 or 3:45 and then book it right to the gym.

Q And how set was this schedule?

A Pretty set, pretty set. Amanda is a -- she plans everything. She has everything down to a T what she was going to do.

Q And who are her roommates?

A She did not have any.

Q Okay. And how far is her place from the school?
A A couple tenths of a mile, .2, .3 miles maybe.
Q How long does it take usually to get there?
A Two, three, four minutes maybe, again depending on traffic.
Q And to your knowledge, was she at work that day?
A Yes, sir.
Q Did you tell her that you -- what did you tell her about that day?
A Later on that night, spoke with Amanda and let her know that I had took -- I had spoken with [redacted]. and she said good, how did she take it. I said I think everything went really well. And she said, well, did you do this during PE class or anything.
Q You can't say what she said, but just tell us what you told her.
A I told her that I took care of the situation. [redacted] That understood that, you know, there wasn't anything between the two of us.
Q And tell us what -- how you told her?
A She got mad.
Q Okay. Tell us how you told her you took care of the situation.
A Oh, I told her that I had taken Shelby to the pier and she went what. And I said I took [redacted] to the

pier, and she goes --

Q You can't say what she said. What did she do? How did she respond?

A Well, she got angry. We had a fight that night about it. She told me how stupid I was, that, you put, you put yourself alone with a student. And I said but it was _____. She's not out to get me. She's not -- you know, there's no -- she's not going to say any -- I can't --

Q You can't say what she said.

A I know. Well, I said she's not going to say -- I mean, she's not malicious toward me. Everything is okay. It was handled. Everything is okay. And she kept saying but you put -- that is not the point, what if she goes back to one of her friends --

Q You can't say what she said.

A Um.

Q Okay. How did she respond?

A She was upset.

Q Okay.

A She was very angry.

Q Where did each of y'all stay that night?

A She went back to her place, and I stayed at mine.

Q Okay. And that was on this date?

A Yes, sir. Yes, sir.

Q Was there any other occasion -- when was the next time y'all were alone at your apartment?

A Me and Amanda, the very next night.

Q You and I'm sorry. When was the next time you and were alone at your apartment?

A Never again, never again.

Q When was the next time you were alone with her in a car?

A Never again.

Q Let's talk about your car. Describe your car.

A I drive a 2002 Mazda Protege 5. It's a little small compact sports wagon. At the time, I had a TV, PlayStation 2, DVD player, loud stereo system. I had lights in the car, outside the car, red lights. The theme of my car was a red, white and blue vehicle. I had -- like I said, I had red lights inside the car. You turn the car on, lights were blue on the floorboards and in the speaker box. There were two lights out front. I had a grill light. Lights underneath the car. I mean, you have seen cars. It was completely decked out, sir.

Q Look behind you.

A Yep.

Q What is that?

A That is my vehicle.

Q Okay. Is that the vehicle you had at the time?
A Yes, sir.
Q Okay. Do you still -- what vehicle do you have now?
A I still have the same one.
Q Okay. Use that pointer and describe where the interior lights would be, as well as you can.
A All right. Right there at the hood of the car, I had two lights, two red lights that come off the windshield wiper water fluid thingy. In the front grill of the car, there was a red light. On the back muffler there, there was another red light. And underneath on both sides were red lights, was red bulbs.
Q Okay.
MR. JONES: Let the record reflect that is Defense Exhibit, picture, Number 5.
BY MR. JONES:
Q Mark, let me show you Defense Exhibit 4. What is this a picture of?
A That's a picture of my front seat.
Q Okay. And describe -- tell me what the differences are between the car now and the car then.
A Well, I have had to sell everything out of my car.
Q What is everything?

A All of my stereo equipment, everything. Right there was a TV that came out and flipped up that came up right there. There was a CD, DVD player that was in there. PlayStation controllers came out of my -- whatever you want to call that, the center console right there. And there was a PlayStation 2 that sat right there right between the two seats right there.

Q Did you ever have an occasion or -- or tell me, was there ever an occasion where you and would have watched anything on the DVD player?

A Actually when we first got into the car, when I first picked her up.

Q What date is this?

A November 4th when I first picked her up, I had put in a movie.

Q And tell me about it.

A We actually didn't watch the movie. We watched the special -- special features, the outclips, the outtakes and that kind of stuff of Liar Liar.

Q And why that movie?

A It was right -- I had a DVD magazine thing or whatever, and she had picked it right up off the thing by the door.

Q And which part of the trip was this?

A Right at the very beginning. Between right --

as we were going over the James Island connector right towards -- right at the end of James Island connector is when I turned it off and that's when we started talking.

Q All right. I'm showing what is marked as Defense Exhibit Number 6, and what is that?

A That is my backseat.

Q All right. Describe the room. How much room is in there?

A Not very much, at all. The seats, the backseats are what they call stadium seats so they sit up higher than the front two seats. You know, there's not very much room, at all. As you can see, my car wasn't very clean inside. And, at the time, I always either had my book bag with all my books and stuff in it for school, my grade books and everything and a big ball bag that I carried with a basketball, football, kickball, all kinds of -- a big ball bag that would sit in the back back there.

Q And how often was that bag in there?

A All the time. I had PE every day, so I kept it with me at all times. And like I said earlier, I'm a floating teacher so I had to keep all of my stuff together. I didn't get my own class room or anything like that.

Q All right. Let's go to the weekend of December 6th. Let's start with December 5th, that Friday.

A That Friday we had a basketball game. I had a friend of mine Otis Coffey was going to be -- he called me that afternoon and told me he was going to be coming in town. I said great, come on in town. I told him that we had a basketball game and to tell him to come to the gym, and I would give him the keys there or he could just meet me there.

During the basketball game, Otis came into the gym. He came over to me, let me know he was a little tired. I said we were probably going to be there for about another 45 minutes to an hour, gave him the keys to my apartment, and he went back to the apartment.

Sometime after the games were over with, Amanda and I then drove back to my apartment. We stopped off to grab some food on the way there and stayed there for the night.

Q Mark, I'm showing you again what has been marked State's Exhibit 5.

MRS. HERRING-LASH: Twenty-six.

BY MR. JONES:

Q Twenty-six.

A Yes, sir.

Q All right. December 5th, were there any calls between you and _____?

A Yeah.

Q Okay. Do you know what those were about?

A No, sir. Not anything in particular, no, sir.

Q Okay. And on that Friday night, who stayed at your place?

A Otis, me, Amanda, Adam and Kara. I can't say for sure if Kara stayed or not, but I'm almost positive she did.

Q Where did everybody sleep?

A Adam and Kara in their room, me and Amanda in my room and Otis slept downstairs on the couch. I forgot one other person -- or one other, Neiko was also there, Otis' better half, his dog.

Q All right. For you and Amanda, describe your sexual relationship.

A It was good. We had -- what do you mean describe? We were sexually active, sir.

Q Okay. Now, take us to Saturday morning.

A Saturday morning I woke up. Amanda was getting ready. The alarm had gone off and Amanda was getting ready to go to work that morning. I turned and looked at my phone. There was a few messages, a few text messages. I looked at them. They were [redacted]s. I told Amanda, you know, [redacted] had left me some text messages, I'm going to call her and find out what's going on. I called her. She didn't answer her phone. I left her a message.

Q What time did you call her?

A It was before 8:00 so --

Q Show us.

A December 6, right there. Does that say 7:12? Okay, 7:42, I called her and left her a message, told her that I -- you know, give me a call whenever you got a chance, let me know what the problem is or what the situation was. Approximately ten minutes later or so, I called her back. She didn't answer. I didn't leave a message.

Q So did y'all talk -- you didn't talk the first time?

A No, sir.

Q Where was Amanda during this time?

A Doing her hair in the bathroom, getting ready.

Q Where was she going? What was her schedule that day?

A She works at -- she's also -- she works at Sylvan Learning Center. She tutors kids at Sylvan Learning Center on Saturdays from 8:30 until about 12:30.

Q And what time would she have left that day?

A A little after 8:00. From my house to where she worked, it took maybe ten or 15 minutes, so she probably left a little bit after 8:00, 8:10, give or take a couple minutes or so.

Q Did y'all discuss these calls?

A I had mentioned that I was going to call and she said okay.

Q You can't say what she said.

A Yes, we did discuss these calls.

Q And tell me what happened next, after the calls?

A After the calls, Amanda left and I went back to sleep. Around a little bit after 9:00, I was awakened by Otis and his dog, and he was always avid about McDonald's, had to have a McGriddle from McDonald's. He woke me up. I got ready. We went down to the McDonald's downtown, got some breakfast that morning. Then we went over to Sergeant Jasper's parking lot, got out. He walked the dog for a little bit around the tennis courts. I went upstairs to Amanda's apartment to use the restroom, came back downstairs, and then we went on a walk around Charleston.

Q Okay. What time did Otis wake you up?

A A little after 9:00, 9:15. He has to have his McDonald's breakfast when he goes on vacation or when he goes, you know, to places. And in Atlanta, they close at 10:00, so we had to get there before McDonald's breakfast stopped serving.

Q All right. Did you get there before then?

A Yes, sir.

Q And what did y'all do the rest of the day?

A We had breakfast there in the McDonald's parking lot and then drove over to Sergeant Jasper, didn't really know what exactly we were going to do. We didn't really make plans or anything like that. After, you know, after I used the restroom up in Amanda's apartment, came back downstairs and then we went on a walk all around Charleston. There's Colonial Lake right there. We had walked the dog around Colonial Lake, walked down by South Battery right by the school, went by -- I don't know what the name of the park is, but there is a park right there that has a big fountain in it and a pier that goes out in the water, walked back by the market. But we didn't walk down the market because we had his dog. We walked right by the back of the gym, and then walked over to -- is it -- it's the big park right there. We went to another park there in town and then walked back down towards Sergeant Jasper. We walked around in Charleston, downtown Charleston for two to three hours.

Q Y'all walked, then what?

A Yeah, we walked. Then I called my friend Tommy and told him that we were going to be probably coming out to see him up at CSU. We drove out there, 1:45, 2:00, 1:30, 1:45, 2:00, somewhere around that area. And then we were out there for a couple of hours. Amanda had practice

that afternoon. She called me, or we got back in touch sometime after her practice, came back downtown. And we were together that night at the house.

Q Between the time period of 9:00 and 2:00, who were you with during that day?

A Otis Coffey and Neiko.

Q On that day, how many times did you see _____?

A I did not see _____ that day.

Q Over the course of that weekend, how many times did you see her?

A Not at all.

Q Did you talk to her again any time that day?

A December 6, yeah, it looks like -- I don't know if we talked. Do I remember exactly if we talked for sure? I don't -- like I said, I don't remember all of the times that we talked. Looking at the records, it shows that we either tried to talk or had a conversation or so. It doesn't really say.

Q How do you know that was the weekend that Otis was in town?

A It was -- well, the weekend before that, my mom had come in town. It was Thanksgiving weekend. It was my birthday, and Otis and my brother were supposed to come in town as well, but something came up back at work and neither one of them could come. My brother never really

ever came down because he was so swamped at his office. But Otis came down that very next weekend because he wanted to come see me for my birthday and give me my birthday present.

Q And when did he leave?

A That Monday afternoon. I went to work. Sometime around lunch, he came down, met my class there at the park that I always took my class to. Him and Neiko came back to the school. We were right -- right after my PE class, there was lunch. We were standing out there. He met Kelsey and . and a bunch of other people there in the little part of the school. Sometime after that, he left to go back home, 1:00, 1:30-ish, somewhere around there.

Q How many times has he been to the school?

A The actual school, that was the only time that he had been to the actual school. I think he has been to the gym maybe two or three times.

Q All right. Let's go back one weekend to November the 28th. Tell me about that weekend.

A Okay. Like I said, that was Thanksgiving weekend. That was my birthday. My mom was in town, woke up that morning to the smell of pancakes. My mom was making pancakes for me for my birthday that morning, got up right around 8:00, ate breakfast with my mom and

Amanda. Then me and Amanda left and went to -- I had basketball practice from 10:00 until 12:00 downtown. Me and Amanda then left my apartment 9:15, 9:20 or so, got downtown. And then we got down to the gym. Amanda went on a run, did her workout thing while I was at practice. I had basketball practice. After basketball practice, I went back and picked Amanda up and went back to my house.

Q On November the 27th, where did you spend the night?

A My house.

Q And who all was there?

A My mom, my brother -- or, excuse me, my mom, Amanda. Adam and Kara might have been at Kara's mom's house that night. I don't necessarily recall. But I know my mom and Amanda were there, and we had had Thanksgiving dinner that afternoon.

Q And what time did you get up?

A Right around 8:00. My mom was already up and was cooking breakfast for us.

Q And what time did you leave the house?

A A little after 9:00, 9:15, 9:20, give or take a couple minutes.

Q How do you know you had practice that day?

A It was the day after Thanksgiving and we had -- we needed practice. I mean, I know we had practice that

day because we did. It was my birthday. I just -- I can recall that day.

I also recall it was probably about 9:45, 9:50 is when we got down to the gym. I don't really know the exact time. I got a phone call. I'm sitting in the gym and there was -- 10:00 came around and none of our players were there, and I was like, okay, what's going on. Tommy then called me right at 10:00 and was like, hey, you know we've got practice.

Q Which Tommy?

A Excuse me, Mr. Mullins called me and said we have practice, do you remember we've got practice. And I said, yes, sir, I'm in the gym waiting on you guys. And he goes, well, what do you mean you're in the gym. And I walked out while I was on the phone with him and he was parked in the parking lot right there, and I said I was like I'm here, Buddy, you know, I'm right here. He was like, oh, we didn't see your car. That's why everybody was standing outside looking for my car. I didn't drive my car that morning. I drove my mom's Durango.

Q And who all would have seen that Durango?

A Everybody, the whole basketball team. They had actually thought that I got a new car. I know Duncan and a couple of other guys were like you got a new car, coach, what did you do with your other car.

Q You can't say what anybody said.

A Yes, they did comment on the fact that I was not driving my vehicle.

Q Okay. Let's go back to the relationship with _____ at school. Physically, how did you act towards _____ during school?

A Just like any -- I mean, in between classes, I would see students: Caroline, Kelsey, Alanie (phonetical) a number of students. They would come up, give me a hug. I would hug them back. It was -- I heard somebody say it earlier. It wasn't the quintessential teacher-student relation -- I didn't have a teacher-student relationship, per se, with pretty much a lot of my students. I was really more on their level, more than I should have been.

Q Now, in between -- how much time did you devote -- how much time did you devote to _____ with regard to other students?

A Well, _____ she was very -- like I said, she was very quiet. I mean you saw her when she was up there speaking. She's very -- she's not very outgoing or like forthcoming. A lot of the other students would be around me and talking to me and everything, and _____ never -- we never really like talked. It was, hey, how are you doing, but we never really got a chance to talk at school. It was more of a, hey, how are you kind of thing.

Q And why did y'all start talking?

A When?

Q At any point?

A At any point? You mean, per se, on the phone?

Q Why the relationship with ? Why the bond?

A Because of our -- our -- I connected with her because I knew the pain that she was going through. She didn't have -- she didn't feel that she could speak with her parents. She didn't feel that she could -- she was really -- she really didn't know what to think as far as her -- she was upset. I can't say what she said. She was -- we had the same situation involved as far as both of us learning about our stepmoms and not knowing what could have been.

Q Were there other students that you had a connection with like this?

A Not the -- not as far as following the parents. The reason we connected is because of our -- because of our parents' situation. That is why me and became so connected with each other. Other students, it was more of students would come to me and say, you know, coach, I thought about doing this this weekend or I want to go out with this person. I was a mediator and a mailman to all of my students.

And what I mean by that is in between classes I

can say I had four notes in my hand that I would have to give or that I would pass on to somebody in the next class that I had in my next class.

Students would come up to me and say hey, coach, I think I like this girl, can you maybe talk to her and see if we can date and that kind of thing. I had a really good connection with all of my students. I love and miss them all.

Q All right. Talk about any counseling roles that you had with students.

A I counseled -- at the time I had done a lot of things in my past and I saw -- I spoke to my school the very first year I got there and told them some --

Q Tell us about what those things are that you told them.

A Some drug, some drug problems that I had when I was in school, and I laid it all out on the line. I think I was there for maybe two or three months before I got in front of the whole school and told them all about how many friends that I had lost and how bad things had gone in my life because of drugs, and how important to them that it was not to get involved in drugs.

After that assembly, I had a lot of kids come to me and say, coach, you really touched me. I had really thought about doing things and a lot of my friends are

smoking pot, a lot of my friends are doing this. And from your testimony, you really changed the way I look at drugs and the way -- you really helped me. I spoke to a number of kids during that summer that would call me and be like, coach, I'm at a party. My friends are starting to smoke pot, and I don't want to do it. Will you just talk to me so I have -- give me some help on this. I said, Kemp (phonetical), you're doing the best -- you know, you're doing the best thing you can possible do. I will sit and talk to you on the phone any time you want if it is going to stop you from doing the things you're doing.

A couple of other kids, the same exact thing. I don't really want to get into anyone's names or anything. But, you know, three or four students I had counseled on them not doing drugs.

Q Let me ask you, do you have any tattoos?

A Yes, sir.

Q Describe them and where are they.

A I have my initials Mark Edward here on my arm here, and I have Vail tattooed across the top part of my back right in between my shoulder blades.

Q Okay. Mark, tell us about the references made earlier to -- I don't know if reprimand would be the word -- Principal Mullins about another student. Tell us about it.

A About right before there maybe right before we went to Christmas break, Mr. Mullins asked me if he could speak (sic) into his office. I said sure, came in there. And he had told me that there were rumors --

Q You can't say what he said. Tell what it involved, but you can't say what he said.

A The conversation involved some rumors that were going around that I was speaking to students on the phone. We then discussed who that student was. It was Anne Porcher Chalmers. And I told him exactly what our whole relationship was about. Anne is a very religious -- she was a senior there. She was also a counselor to a lot of the younger students. A lot of the students looked up to Anne.

I was on my path -- I was just now starting my path with the Lord, and I had a lot of questions for her. And we talked numerous times about that, about that good book there. You know, she knew it back and forth, every passage, you know. Almost just about anything I would have troubles with, I would ask Anne and she would -- it was almost like she was counseling me.

I told that to Tommy Mullins, and he said okay, well, I'm going to speak with her. It was then decided that he would speak with her, as well as her parents. And then he got back to me that very next morning and said I

have spoken to the people. That next morning it came --

Q What became of it?

A He said that there was no findings involved. That was the exact connotation of our relationship.

Q All right. Mark, tell us about the November 22nd incident.

A Okay. November 22nd I had also other friends in town. My friend Douglas Finelli had come in town that day before. He had stayed with me Friday night, and we woke up Saturday morning. We were driving around to go get his car. I received a phone call from and she was in hysterics. And she said that...

Q What were the allegations? Not what was said, what was the gist of what was --

A The gist of it was that her sister and her sister's best friend, Caroline, had come to the conclusion that there was something going on between me and that there was sexual -- there was a sexual encounter between me and

Q And how did they come to that conclusion?

A said something to them about it.

Q And why would have said that?

A I found out later on that afternoon that she had written a -- or she had read a note from Caroline O to her sister. Can I say saying?

Q What was the gist of the note?

A Okay. The gist of the note said that I -- that something about Caroline and -- that I had said --

Q Just what was the gist of the note?

A The gist of the note was there was something between Caroline and I that I had...

Q That you what?

A That I had said something to Caroline that didn't like. I had said -- Caroline was upset about breaking up with a boyfriend of hers, and I told her, you know, well, it's his loss, girl. And if I was your age, I wouldn't have let you go. You know, you don't need to worry about him. He's the stupid idiot that let you go. Don't worry about that. And I'm assuming that Caroline had written something in that note to that effect.

Q Did you ever read the note?

A No, sir, I did not.

Q Did you say that?

A Yes, sir, I did.

Q And what was [redacted]'s response to finding this note?

A I assume from what had come out that she was very upset and was very angry at the situation.

Q And --

A I then -- okay, I then called Caroline and, you know, told her I said -- I called and said what's going on. And she said -- the gist of the conversation was I told her exactly what happened. I said on November 4th I took to the pier at Folly Beach. I said I wanted to clarify our relationship and make sure that she understood that she needed to not wait on me, that she needed to go out with guys like John Carnell that was here this afternoon and like other guys that wanted to be with

All the guys there wanted to -- all of the guys in 's grade wanted to go out with , and she always told them no.

I told Caroline that that is what had happened, that I took her out there, we talked. I clarified the relationship and came back and that was it.

She...

Q And what happened?

A It was understood that that is what had happened. They said okay, that they believed me. That very next day in school Kelsey came up to me and she -- that very next day in school, I was informed that had gone into her sister's room that night and admitted that she was lying about the whole thing, that she was upset. She was mad at Caroline and was trying to put

something between Caroline and I, that she was upset about the situation and she just blurted it out.

Q I'm going to show you what has been marked Defense Exhibit Number 10. What is this?

A That is a birthday card that I received.

Q Do you remember when you received this?

A It was right after Thanksgiving. I didn't receive it -- it was between the week of right there, right after my birthday, December -- the weekend of December.

Q Where did you get it at?

A At school.

Q Okay. And what is this referring to?

A It says I just wanted to wish you a happy birthday. After everything that has happened this weekend, I feel like we've become closer. And I think that I can trust you with anything of all -- you were right about one thing our friendship would never be the same. It's gotten so much better. I want to thank you for making me realize that you would never do anything like that because earlier I honestly had my doubts, so thanks for everything. And I hope -- yeah, I hope that you have the best birthday and a happy Thanksgiving. Much love, Kels (sic).

Q And what incident is she referring to?

A That incident right there.

Q So what --

A I thought that this was the birthday present -- or the birthday cards that [redacted] had given me. I didn't get a good look at it. This is the one that Kelsey gave me, and she gave me this before -- before my birthday.

Q Did you ever discuss this with anybody?

A No, sir.

THE COURT: Is this a good stopping point for a break?

MR. JONES: Yes.

THE COURT: Ladies and gentlemen, I will send you to the jury room for your afternoon break. Do not discuss the case in any way. Thank you.

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

THE WITNESS: Can I step down, Your Honor?

THE COURT: You may step down during the break, sir. You may not discuss your testimony with anyone. Thank you.

THE WITNESS: Yes, sir.

(WHEREUPON, a recess transpired.)

THE COURT: All right. Bring the jury in.

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

THE COURT: All right. You can continue with the questioning.

BY MR. JONES:

Q Did you ever receive a card from ?

A Yes, sir.

Q I'm going to show you what is marked Defense Exhibit 8. Tell us about that card.

A This is a birthday card that I received from a little bit after my birthday.

I know we have been going through some very rough times, but we will have to work together to get through them. I hope you have a great birthday. I know you told me not to get you one, but it's been one month.

The writing: Because you're a terrific teacher, I hope you have a very -- can you go back the other way -- hope you have the very best birthday ever.

You may be my teacher, but that will never change the way I feel about you. I love you more than ever, more than you will ever know,

Q Okay. As much as you can, explain this card.

A It's a birthday card. Down here at the bottom, 5/16/07 refers to her 17th -- when she turns 17. It's been one month. It's been one month since we talked. And the dot, dot, dot refers to we have however many more months left to go until I turn 17.

Q One month since you talked?
A Yes, sir.
Q When did you receive this?
A A little bit after my birthday. Sometime in, I think, the very beginning of December.
Q And where did you get this from?
A At school.
Q What is she talking about, I know you told me not to get you one. What does that mean?
A I told her not to get me any presents. She had asked -- we had talked, and I said not to get me any presents at all.
Q How did that even come up?
A I was asked what I wanted for my birthday and I said nothing, I don't want anything, you don't need to be getting me any kind of presents.
Q Were you given a present?
A Yes, sir.
Q What was it?
A A Tommy Hilfiger shirt, collared shirt.
Q How would she have known to give you Tommy Hilfiger?
A That's all I wore at the time.
Q And who else knew that?
A The whole school. I would get everyday, hey,

coach, you're still wearing Tommy? You're still wearing Tommy? Well, of course. Socks, shoes, underwear, everything.

Q Tell me the significance of the date at the bottom corner.

A 5/16/07 is again when she turns 17. I had told her on numerous occasions that nothing can -- we can't be together. You're 13. I'm 26. You know, I would go to jail for a really long time if anything happened. When you're 17, who knows what can happen. You know, but not until you turn 17. You really need to understand that and she did. She understood it. It was -- she was fine with it.

Q Well, explain -- how would she had gotten the idea something could happen when she was 17?

A I didn't want to just be like why would I want to be with you. I'm not going to -- you know, what the heck? You know, what are you thinking? You're this, this and this. I tried to break it to her as in the best way I knew how without really hurting her. And the best way I knew to be was to say, look, you're 13, okay. We can't be together until you're 17. There's no ifs, ands or buts about it. You really -- you really need to start talking to other people.

Q What did she know about your and Amanda's

relationship?

A She knew that we were together.

Q Did you ever -- what did you discuss about your future with Amanda?

A That I had planned to at some -- in the future date that we would probably get married.

Q All right. When you -- let me show you what has been marked Defense Exhibit Number 9.

A Yes, sir.

Q What is this?

A That is a CD that I received in the card that I got as well. It says happy birthday 5/16 -- May 16th, 2007.

Q And that was in the card that I showed you that was marked Defense Exhibit Number 8?

A Yes, sir.

Q This card?

A Yes, sir.

Q What is on this CD?

A Happy birthday, May 16, 2007.

Q Okay. What data would be contained on the CD?

A There are two songs on that CD. One song is Deana Carter, Seventeen or Strawberry Wine and the next song is I Hope You Dance.

Q What is the significance of these songs?

A They're -- they were songs that meant -- they kind of put a good thing around our relationship, nothing can happen unless you're 17. I knew -- she knew that.

The I Hope You Dance is in regards to you're going to love in life and you're going to get hurt in life, but you just can't quit. You have to move on and you have to dance again. You really need to -- I really hope that you don't miss all of the things that you are missing right now. You need to move on and you need to dance again, which means you need to love again. You need to not just think that this is the end of the world. You need to understand that life goes on.

Q What *songs* did you give her?

A I did not.

Q Did you give her any gifts?

A No, sir. I did her seventh grade year, I gave her -- when I first found out that _____'s mom had died or that her mom had died when she was younger that Mamie was not her real mom something had happened at school and somebody had said something to _____ and she was really upset about it.

We talked and I told her about my dad, that my dad had died around the same age too and that I was really distraught about the whole thing as well. My dad had given me a little dog when I was really little, and it was

something I had always spoken to. It was kind of like, you know, I can talk to this dog and I know he will never tell anybody anything. Kind of stupid, but that's the same thing I told her. Look, I'm going to give this to you. If you ever have anything that you need to say to it or you need to rely on it, it won't ever turn its back on you. This will never turn its back on you.

Q Where is that dog now?

A She still has it, from what I -- I guess her sister said she still has it.

Q Clarify for me, on two occasions, you talked about your parents to her?

A Yes, sir, more than two occasions. We would talk about -- I would say two occasions, maybe a couple of more we talked about my parents. But on a number of occasions, we had spoken about hers.

Q Mark, explain to me how did the phone calls get to this portion. Why couldn't -- why didn't y'all just talk at school?

A Like I said, we didn't -- we didn't really -- I honestly can't explain it. I don't know why we didn't talk. I mean, we did talk at school. We didn't talk about the things we talked about on the phone at school. We didn't talk about my parents. We didn't talk about her parents about how she was upset and this and this and that

at school. We talked about that on the phone.

I had spoken with a number of my students on the phone. It wasn't a -- I didn't realize it was to this extent until afterwards. At the time, it didn't dawn on me one single bit that it was as many phone calls as these are.

Q Let's talk about what led up to the arrest. How did you find out about all of this?

A January 8, I came to school. January 8, I came to school. Tommy Mullins asked me if I would come -- he needed to speak to me. I said sure. I came into his office and he had told me --

Q You can't say what he said, but you can tell me why were you there.

A He told me he wanted to speak to me about...

Q What did he want to speak to you about?

A There was a problem with a parent that had said that there were phone records that he was not comfortable with.

Q And what happened?

A I said I don't understand. I mean, they are phone records. They are phone calls. Nothing, there was no -- there was nothing there. I was just talking to a student. And he said, well, that's the problem. You know, the father is upset that you were doing that. And

he said that...

There was a previous incident where we talked also about another student about Anne Porcher Chalmers' phone calls. And the culmination of that was is if this is brought up again, you're probably going to be asked to leave. I said okay. Well, this came up again, and he told me -- he -- he advised --

Q I mean, what is the gist of it?

A I resigned.

Q Okay. And what did you do at that time?

A I then went directly to Amanda's work, told her that I had resigned, was very distraught about it and upset. We spoke for a few minutes. I told her what the reason was and then I drove back --

Q What reason did you tell her? What was the reason?

A I told her that I -- that a parent was upset about the relationship that I had had with her -- with their daughter.

Q What was that relationship?

A Phone records that we were talking on the phone and that that was against school policy. I then drove back out to Folly Beach pier and stood out on the pier for a little while and realized that I had lost everything, that everything that I had worked for, that everything

that had been given to me, all of my students that I had come close with, all of the games that we had done there at First Baptist bringing new students to the school and bringing spirit of the school back was now gone. It was now gone.

I then got in my car and drove directly to Atlanta. I figured I had nothing left there in Charleston that I needed to deal with. I wanted to get away for a while, so I went to Atlanta.

Q At that time, what sexual allegations had been made?

A None.

Q And, at that time, why did you think you had been terminated?

A I wasn't terminated.

Q Why were you asked to resign?

A Because of phone records, because of phone records.

Q You called the first time you were contacted by the police?

A Yes, sir.

Q When was that?

A I don't remember the exact date, but it was about a little over a week after that, after January 8. So I would say around the 15th or so.

Q And who contacted you?

A I believe it was Detectives Billy Crews. He called me and had told me that -- he said can -- he contacted me and asked if we could get together and talk, and I said yes, sir, I will be there. And we set up an appointment.

I then called my attorney and told my attorney that I had made an appointment with the detective. He advised me to not talk to the detective that I needed to just -- to tell the detective that my lawyer advised me not to talk -- talk to him.

I called Mr. Crews and left him a message that my attorney said not to go down there and talk to him. He called me back and said, okay, well, I'm putting out a warrant for your arrest and you need to come and turn yourself in. I said yes, sir. I spoke with my attorney. He set up a date that I would go and turn myself in.

Q So you turned yourself in?

A Yes, sir. Yes.

Q Okay. Let me ask you, during this period of time if somebody were to call your answering machine, what would the message have said?

A On my cell phone?

Q Yes.

A Hey, you have reached Coach Vail. My number is

843-478-97 -- or 9697. Sorry I didn't get your phone call. Please call me back whenever you get a chance or I will call you back.

Q Did you have Mark on your machine at that time?

A I do not believe so, no.

Q You're not sure though?

A No, I'm not sure. It would have been either Coach Vail or Coach Mark Vail.

Q Okay. When did you and Amanda get engaged?

A July 21st of this past year.

Q Was there ever a time that people would have thought you were engaged?

A Yes, sir. I went to Virginia during Christmas of 2003, 2004, and I had asked her -- her family on Christmas morning if it was okay --

Q You went to Virginia, the state?

A Yes, sir, Virginia the state, sorry. That is where her parents live. And I asked her father. Her mom was there, her three younger sisters if it was okay if I was to marry her older -- his older daughter, if I could marry into the family. And they said yes, and it was a big -- it was a good -- it was a good time.

I got back to the school and Susan, Karen Hames, Susan Bowers -- these are teachers -- were like so did you pop the question. I mean, it was a --

Q You can't say what they said. What did you do? When you talked to them, what did you do?

A I said no, I didn't pop the question but I did ask the family. I did set the stage for -- I wanted to make sure that the family was okay that I married their daughter.

Q And as a result of that, what occurred?

A I don't understand the question.

Q Well...

A As a result of that, I know it got around through the teachers that it was -- people thought we had gotten engaged. When I mentioned that to a specific teacher, oh, you're engaged, that means --

Q Don't say what she said. What was the assumption?

A We were engaged.

Q Okay. And did that get back to a number of students?

A Yes, sir.

Q And what was the time frame of that?

A It was right there before I resigned.

Q Mark, how has this affected you?

A It has turned my heart cold. I gave everything I had to my students. I trusted all of them. I opened up to all of them. And I got -- I got the rug taken right

out from underneath me. I'm not the same person I was anymore. I'm not energetic. I don't care to talk to anybody. I don't care to open up to anybody. I really -- I lost my passion for life.

Q Let me ask you a question. How many times have you ever been to ____'s house?

A Never.

Q How many occasions have you ever had sex with ____?

A Never.

Q If you could do all of this over again, what would you do different?

A Honestly, if I -- if I could do this all over again, I would have to say I wouldn't do anything differently. The reason being I couldn't be any happier with where I'm at now in my life with the Lord and where my life is going to go.

If I had the chance now to do -- if I was put in this same position again, would I ever do those same mistakes that I made again? No, sir.

Q What mistake is that?

A From this point on, mistakes, putting myself in a position to be lied upon.

Q Okay. Which time?

A On November 4th, putting myself in a position

to where I couldn't account for what somebody else was saying about me where I was put in a position to where the -- I would -- I haven't been alone with -- I'm so scared to be with anybody alone because I don't know what is going to be said out of it. I know I never did anything wrong. I never did anything illegal and I got -- I got my whole life taken from me.

I'm okay with that because of what I've learned from it and the man I've become because of all that.

MR. JONES: Court's indulgence just one second.

No further questions. Answer any questions Mrs. Lash might have.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MRS. HERRING-LASH:

Q Mr. Vail, you said you went to Atlanta because you had nothing left in Charleston?

A I had nothing else to do here in Charleston.

Q But you had Amanda left here; didn't you?

A Yes, ma'am.

Q You just talked about going to her parent's house. Where was that?

A In Virginia.

Q And that was on the 25th?

A Right there on Christmas, yes, ma'am.

Q And that's the night you asked her father --
A The next morning I did, Christmas eve -- Christmas morning.
Q Christmas morning?
A When we were opening up presents, yes, ma'am.
Q Would you turn around and look at the chart behind you? On December 24th at 11:59 p.m., who did you talk to for 61 minutes on the phone?
A _____
Q And on December the 25th at 1:56 a.m., who did you talk to on the phone?
A _____
Q For how long?
A It looks like 75 minute.
Q No. Turn around again. At 1:56 a.m.?
A Five minutes.
Q At 2:27 a.m.?
A Seven minutes.
Q Who?
A _____
Q On December the 25th at 1:00 a.m, did _____ call you?
A Yes, ma'am.
Q And how long did you talk to her then?
A Forty-one minutes.

Q And this is the day that you got engaged?
A Yes, ma'am.
Q And on the --
A No, ma'am.
Q The day that you asked Amanda's father for her hand in marriage?
A Yes, ma'am.
Q And on the 23rd of December, where were you?
A Driving to -- actually, I was in Atlanta.
Q And you talked to [redacted] at 11:28 a.m. for 75 minutes?
A Yes, ma'am.
Q But you thought you had this situation taken care of back on 11/4; didn't you?
A Yes, ma'am.
Q But you continued these phone calls up until January?
A Up until the day that I resigned, yes, ma'am.
Q What time did you go to work?
A Each day?
Q Uh-huh.
A I had to be there before 8:00.
Q What time did you go? What time did you leave your house?
A 7:30, 7:35.

Q And you said basketball started and that's when practice would be at the gym, right?

A Yes, ma'am.

Q That would be downtown?

A Yes, ma'am.

Q Tryouts would be after school, not during school, correct?

A Correct.

Q You said at the beginning of the year rules were put on the board for students?

A Uh-huh.

Q What were your rules for PE?

A They were required to dress out. They had to -- I didn't care if they had -- they had to change clothes and they had to have tennis shoes on.

Q Those were all of the rules for PE?

A Well, no. They weren't allowed to cross the road unless I was there standing in front of them. They weren't allowed to -- they were -- each different class was a little bit different because I had a fifth grade class and they were supposed to meet me at the cafeteria.

Q Let's talk about the eighth grade class.

A Okay.

Q What were those rules?

A No talk -- there really wasn't any major rules.

Q No rules. So you didn't have rules about sitting on the bleachers talking with one student throughout the class yourself?

A No, ma'am.

Q But you did that?

A Yes, ma'am.

Q And that was ?

A That was many students.

Q Was it very often?

A No, ma'am.

Q You talked to somebody more than her?

A When?

Q Throughout the whole -- from I guess September until January?

A On the phone or at school?

Q At school. We are talking about PE class only.

A Oh, PE class only?

Q Yes.

A Did I speak to anybody more than ? I don't think I spoke to anyone more than anyone, no.

Q And when you went to the park, you sat in the bleachers there and talked with ?

A I also played football. I was the all-time quarterback on the football team. We would put five on five and six on six. I was also the referee for

basketball. I also did pitching the ball when we played kickball. Three times out of the week everyone was required to be part of PE.

Q So there was a rule?

A That wasn't necessarily a rule that was written on the board, no, ma'am.

Q But you did sit on the bleachers and talk with _____?

A On occasion, yes, ma'am.

Q But you didn't have the time to talk to her about this situation then?

A Which situation?

Q Whatever situation you had to take her to the pier and talk to her about?

A No.

Q You didn't have the time then?

A No, because there were people standing right there and there were students standing right there.

Q And you had to be alone?

A Yes, I thought it was a matter that needed to be between the two us, yes, ma'am.

Q When we talked about the -- well, what were the rules as far as student-teacher contact?

A I'm not quite aware of what the rules were exactly. I did not read the rule handbook, ma'am.

Q Were you told it is not okay to be alone with a student?

A Yes, ma'am -- no, I was told not to put myself in a situation where I thought something was going to occur inappropriately.

Q And so you got in a car?

A Uh-huh.

Q What time?

A What time did I get in the car?

Q Uh-huh.

A Which time?

Q Well, how many times did you get in the car with ?

A Well, you didn't -- one time.

Q So what time did you get in the car that day with ?

A I got -- I was in the car 2:30, 2:35.

Q And when did you have to be back at school?

A 3:00 -- I had to be at practice -- I was supposed to be at practice by at least 3:30.

Q And you got in the car at what time?

A 2:30.

Q And how long of a drive did you say it was there and back?

A To where and back?

Q Well, where did you go?
A I went to the pier.
Q How long was it to the pier?
A Twenty-five minutes.
Q Each way?
A Yes, ma'am.
Q And this was a real important conversation you had to have, so important that you had to take her off campus?
A Yes, ma'am.
Q But you chose to drive 25 minutes there and 25 minutes back, and how long did you have?
A An hour.
Q An hour?
A (The witness nods head.)
Q And that was your choice?
A I didn't -- yes, ma'am.
Q Was it also your choice to tell her to lie to her seventh grade teacher?
A Excuse me?
Q Was it your also your decision to tell _____ to lie to her seventh grade teacher?
A She lied to her seventh grade teacher?
Q Well, she didn't go to seventh period; did she?
A I was told -- this is what I was told, that she

was getting math tutoring outside of school and that she was going to go to math tutoring on that afternoon.

Q And you thought that you were going to the Folly Beach pier to math tutor her?

A I was not the one that was tutoring her, ma'am.

Q So she lied to her seventh grade teacher and you knew about it and you condoned it?

A Did I condone it? I guess.

Q And you took advantage of it and took her off campus?

A No, I didn't take advantage of it. It was a situation that happened, ma'am.

Q If she hadn't cut seventh period, you couldn't have taken her off campus; could you?

A I didn't -- I wasn't aware that she was cutting seventh period. I was aware that she was getting tutored by somebody else off campus and she wasn't going to go to that.

Q So you were aware that she wasn't going to her tutoring?

A Yes, ma'am.

Q And on the way there, you watched a movie while you were driving?

A No.

Q But you turned it on and it was right in front

of you?

A Yes.

Q But your testimony also had been that on the way there is when you had this in-depth conversation with her about dating other people?

A Yes, correct.

Q So who was watching the movie?

A As I said earlier, I turned the movie on and we watched the outtakes of the thing, which as I was going over the James Island connector is when it had finished off. It's only about a three or four minute little outtake clip of ha, ha, giggles, giggles. We turned that off, and as we turned onto Folly Road is when we started to talk.

Q So you turned that off and then you started to talk in the car?

A Yes, ma'am.

Q A conversation that you could not have had at school anywhere?

A I'm sure I could have, but I made the decision not to.

Q And you said that you spoke with Virginia Murray and I think Mrs. Hames and they gave you advice on how to handle the crush?

A Sure.

Q And did you follow their advice?
A To an extent, yes, ma'am.
Q What was their advice?
A I don't remember it exactly.
Q Well, think about it for a minute.
A I still don't remember it exactly.
Q But what you did was take her out alone and talk to her about the crush?
A Correct.
Q Do you think that was their advice?
A No, ma'am.
Q When other teachers stood outside of their classes when classes were being changed, did they hug?
A Yes, ma'am.
Q One particular student?
A Yes, ma'am.
Q Give me an example of a student that another teacher hugged.
A Karen Hames and Virginia Murray also hugged and Brittany B as well as John C and Chad S
Q What about one particular student?
A Which particular student?
Q All of the conversation with you has been about you hugging at school.

A Okay. Yes, ma'am. All right. I said that both Karen Hames as well as Virginia Murray as well as my partner, Coach Williams, also hugged

Q So was just getting hugs all over the place?

A Sure. It was a very loving environment.

Q Very loving environment.

A Caring is a better word.

Q Right. Now, after this conversation on the 28th, October the 28th, you had a conversation with ?

A Yes, ma'am.

Q And you said during that conversation that she was very upset?

A Yes, ma'am.

Q And it was a very traumatic time for her?

A Yes, ma'am.

Q And this was October the 28th of her eighth grade year?

A Yes, ma'am.

Q Do you know how old she was when her mother died?

A She was very young. I believe she said she was either seven or eight.

Q But in the seventh grade everything was fine?

A Yes, ma'am.

Q As far as you knew?

A Well, no, in the seventh grade is when I first found out that her mother had died.

Q But she didn't have anything to talk to you about in the seventh grade?

A Yeah, we talked.

Q Did you talk about this?

A At the end, yes, ma'am, that is when I found out about it.

Q But did you have these long conversations with her about it?

A No, ma'am.

Q So after this long conversation on October the 28th, did you report this to the guidance counselor?

A Report what?

Q That she was having all of this trouble?

A No, ma'am. I figured I was the guidance counselor.

Q Pardon me?

A I figured I was the guidance counselor.

Q Was that your job at the school?

A Yes.

Q You were the guidance counselor?

A No. It wasn't my specific job, but, yes, I did

counsel many of my students on that.

Q But there was a person who had that specific job?

A Yes, ma'am.

Q And this was a real important thing that she was talking to you about?

A Sure.

Q Real important?

A Yes, ma'am.

Q Did you report it to the headmaster?

A No, ma'am.

Q But -- and this was -- and correct me if I'm wrong, a pretty stressful, pretty upset conversation?

A Okay.

Q I mean, was it?

A Sure.

Q And you were cooking?

A Yes, ma'am.

Q During this?

A Yes, ma'am.

Q And it was very stressful?

A Not for me, ma'am, no.

Q Oh, it didn't bother you at all?

A No, I didn't say it didn't bother me, but I wasn't crying or upset or yelling or anything like that.

I was talking just normal.

Q And she was?

A She was crying yes, ma'am, on occasion. She wasn't crying the whole time.

Q And you were cooking?

A Yes, ma'am.

Q And then when you called her back, she said, well, I'm doing my homework, I can't talk to you now?

A Well, she didn't really say it in that way, ma'am, no. She said I'm in the middle of homework, I'm doing some things. I said that's fine, just give me a call back, you know, when you have a chance.

Q So later that night you called her back and talked to her about this some more?

A No, actually she called me back.

Q But it was after she got over doing her homework?

A Yes, ma'am.

Q Now, you said that you felt connected with her after that?

A Yes.

Q You had talked to her before alone, you had said, but not on the phone. Where was that that you talked alone?

A I'm not sure what occasion you're talking about.

Q When Mr. Jones asked you if this was the first time you had talked with her for a long period of time, you said on the phone?

A Yeah.

Q So had you talked to her for a long period of time off of the phone before this period?

A No, ma'am.

Q So what were you talking about when you asked him are you talking about on the phone?

A Are you talking about on the phone.

Q You indicated that it had been in person longer.

A I didn't mean to indicate that. I just asked him the question, did you mean on the phone.

Q You had talked to her on the phone longer -- for long periods of time before the 28th of October?

A I believe one other time we had spoken for a 25 minute phone call, yes, ma'am.

Q What date was that; do you remember?

A I don't recall.

Q Let's start in October, I guess.

A Okay.

Q There is a 25 minute phone call, October 22nd, 21 minutes?

A It looks like, yes, ma'am, October 22nd.

Q Well, let's move on, but you did have phone

calls with her before that and after that?

A Yes, ma'am.

Q Who is Tommy?

A There are two Tommys.

Q The one that you keep referring to going to his --

A Tommy Hotchkiss.

Q How old is he?

A Right now he's 19 -- actually, he's 20.

Q Is he your student?

A No, he was not.

Q Was he a First Baptist student?

A Yes, ma'am.

Q When did he graduate?

A In 2002 -- or 2003.

Q So he was a student at First Baptist during the 2003 school year?

A No, excuse me. He graduated in 2002. My first year there, he transferred from James Island High School the second semester and played baseball for us. I coached him then, and then he graduated at the end of my first year.

Q So you did coach him?

A Yes, ma'am.

Q So he was another student of yours?

A Yes, ma'am.

Q Amanda you said on that Saturday night, November 1st, worked until 9:30?

A Yes, ma'am.

Q So sometime she worked at night?

A She had -- she also worked at The Limited in the mall. Amanda had I believe three, four different jobs. And, yes, she did, she worked that night.

Q So she worked nights also sometimes?

A Ever once in awhile, she worked on that -- on a Saturday night, yes, ma'am.

Q And she worked every Saturday morning?

A Just about, yes, ma'am.

Q At Sylvan Learning Center?

A Yes, ma'am.

Q Now, after the day that you took Shelby to the beach, did you not realize that things were continuing to go on between the two of you?

A No.

Q Because of the phone calls?

A No. Because I can't say she said, but the whole things was I don't understand why we have to have this conversation. All we're doing is talking. All we're doing is talking. That's it. Nothing is going on. All we're doing is talking. That was the whole thing. And

she was right. That is all we were doing is just talking so there was no -- I wasn't worried about it.

Q So just had a simple little crush on you?

A I would not say it was simple, no, ma'am.

Q Would you say -- I think you testified before she just had a crush on me?

A Yes.

Q Not an obsession but a crush?

A I don't know the difference between the two.

Q You don't?

A No. My obsession is probably different than your obsession.

Q But had a crush on you?

A Yes, ma'am.

Q And Amanda advised you to take care of it?

A Yes, ma'am.

Q And you took care of it during the afternoon of November the 4th?

A Yes, ma'am.

Q But that night at 10:00 -- it's behind you, if you want to look at it -- 10:30 p.m. she called you for 16 minutes and 10:49 she called you -- you called her?

A November the 4th?

Q Yes.

A At 10:30, there?

Q Yes.

A Yes, ma'am.

Q So she was still calling you and talking to you?

A Yes, ma'am. It wasn't -- when I spoke to her, like I said, we had ended the conversation with she said so can we not talk on the phone anymore. And I said --

Q So it was your -- you felt as a professional educator that it was totally appropriate to speak with her whenever she called you or whenever you felt like calling her?

A At the time, I wasn't a professional educator.

Q You weren't a teacher?

A I was a first year teacher there that didn't understand what I was doing. I got thrown into a situation where I didn't know what to do. I was not a professional at that time, ma'am.

Q Did you not remember the talk that Mr. Mullins had with the students at the beginning of the year -- I mean the teachers at the beginning of the year about not talking to student alone?

A Yes, ma'am.

Q You do remember that?

A Yes, ma'am.

Q You just ignored it?

A Obviously.

Q Now, going back to the sixth -- let's go to the 6th of December?

A Okay.

Q You got up at what time?

A That Saturday morning the first time Amanda was getting up she was -- probably the alarm went off at 7:30, and she was getting ready so I was awake in bed.

Q And when did she leave?

A A little after 8:00, 8:00, 8:15 or so.

Q And you called [redacted] early that morning?

A Yes, ma'am.

Q A couple of times?

A I called -- I looked at my phone and it had some messages on it. I looked at it and called [redacted] and left a message and said, [redacted], I'm calling to let you know I got your messages, just calling to see what's going on and hung up. Please call me back whenever -- whenever you get a chance.

Q And she never called back?

A No, ma'am.

Q And you went downtown and walked around all day?

A Until 1:30, 2:00, yes, ma'am.

Q Did you have your cell phone with you?

A Yes, ma'am.

Q You didn't get a call all day?

A No, ma'am.
Q That day?
A No.
Q What did you do on November the 8th?
A What is November the 8th?
Q It was the Saturday before the -- it was a Saturday in November?
A Okay. We probably had basketball practice that afternoon from 10:00 to 12:00. We wanted to get in as many practices as we could before the end of the day.
Q So you don't remember exactly what you did?
A No, ma'am.
Q What about December the 13th, what did you do?
A I don't recall.
Q Let's go then to your birthday. What time was practice?
A At 10:00.
Q It wasn't 9:00 to 12:00?
A From 10:00 to 12:00.
Q Okay. It was 10:00 to 12:00?
A 10:00 to 12:00.
Q And you got up at 8:00?
A Yes, ma'am.
Q And you called ____?
A I got up and had pancakes with my mom and my

girl, called , and then we left about 9:15, 9:20 and we got back downtown.

Q And you were there until 12:00?

A Well, practice ended at 12:00, but it didn't mean practice ended. We stayed after for a little bit. A couple people probably shot around and did some other things. I ended up leaving there probably right at 12:45, 1:00.

Q And you drove your mother's car that day?

A Yes, ma'am.

Q And your mother's car was what color?

A It is a tan Dodge Durango.

Q And at the time -- well, I want to ask you that in a moment.

When you felt that this had all been resolved -- I mean, it was a real important thing, so important that you took her away alone to talk with her. And when you realized it hasn't been resolved, you made no further movements to speak with anybody to help you resolve this situation?

A I didn't see our relationship going anywhere, so I didn't think I needed to talk anymore. Again, all we were doing is talking.

Q Let's go then to November the 22nd. You realized on that day --

A Yes.

Q -- that there was something wrong; didn't you?

A Yes.

Q What did you do about that? That's the day you found out that _____ had said you had sex?

A Correct.

Q And what did you do about that?

A I told Amanda that this is what had happened, and she advised me that I needed to tell Tommy Mullins and that I needed to get this out there.

Q And that's what you did?

A I called my mom and told my mom the situation and asked my mom what she thought I should do, and she advised me that I needed to please a bee with honey. And what she meant by that was you don't know what she's going to say. You've already done it. You might as well keep being her friend. Try not to get her upset. Try not to get her mad. Keep talking to her. All you're doing is talking to her. You haven't done anything wrong. You haven't done anything illegal. Don't worry about it. It is no big deal. Again, you have talked to many people on the phone. It's not that big of a deal. I said you're right, no problem. I'll just keep being her friend. I'll keep being her confidant. Yes, ma'am.

Q So much of her friend that you spoke with each

other for 1,851 minutes?

A Obviously, yes, ma'am.

Q And you didn't, for one minute, consider maybe going to Mr. Mullins as Amanda had advised you?

A Of course I considered it.

Q But you decided not to?

A (Witness shakes head.)

Q Now, you also knew that Brittany B was apparently spreading rumors that you had had sex with ?

A I really don't recall talking to Brittany, at all, about spreading rumors.

Q So you don't remember speaking to Brittany about --

A No, ma'am.

Q -- saying she had sex with you?

A No, ma'am.

Q When you resigned from your job, you resigned because of the phone calls; is that correct?

A Yes, ma'am.

Q There were no other allegations at the time?

A No, ma'am.

Q So you chose to tell people you were going to drug rehab?

A Yes, ma'am.

Q Rather than you had been simply talking to a student on the phone?

A Yes, ma'am.

Q So you must have thought talking to a student wasn't a good thing to be doing if going to drug rehab --

A Actually, I wanted everybody to think that I went to drug rehab because everybody knew how important First Baptist was to me and how all of my kids were important to me. And if my kid's realized that I had gotten taken away because of drugs, then that would stop at least one of those kids from doing drugs. That's the point I wanted to make.

There was no sexual allegations at the time, so I had no reason to say anybody -- anything to anybody. I wanted the point out my kids knew that drugs had ruined my life for a second time. They didn't need to ruin theirs.

Q So after the poignant testimony you had given them hoping to encourage them, you still wanted them to think once again you had to go to drug rehab?

A Yes, ma'am.

Q Now, lets' talk about the situation with Anne Porcher.

A Okay.

Q You said that you were reprimanded for phone calls with her; is that right?

A Yes, ma'am.

Q Would it refresh your memory about why you were actually reprimanded if I showed you the letter?

A Sure.

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

THE COURT: Yes, ma'am.

BY MRS. HERRING-LASH:

Q I think the sentence with the alleged information is right here. That one sentence, could you read that?

A After receiving alleged information that you were alone during off hours with Miss Chalmers, I allowed you the opportunity to respond. You stated that your relationship with the student was professional and appropriate. In an interview with the student, the student agreed with your assessment.

Q So it wasn't phone calls; was it?

A Yes, it was. That was a rumor, for a second time.

Q But the letter was regarding off hours being alone with Anne Porcher Chalmers?

A Rumors of that, yes, ma'am.

Q But the letter that you were given for disciplinary purposes was for being alone with her off

hours?

A Yes.

Q Now, when you were arrested as was said -- excuse me -- had to resign?

A Yes, ma'am.

Q But you told Amanda that you had been seen with _____ in your car and you had taken _____ to Patriot's Point and had parked there on a Saturday morning?

A I don't recall it being a Saturday morning, but, yes, I did say that.

Q Instead of telling her there were just phone calls?

A On November the 4th when we first got in the first fight and then on November 22nd we got in another fight, considering the whole thing, I didn't take her advice and she was really upset about that. When it came down to it, she kept saying this is going to blow up in your face. And I kept saying there is nothing going on. There is nothing wrong. All we are doing is talking. Nothing can blow up in my face. When it turned out to blow up in my face, I didn't want to go back to her and say you were right. I was being a bull-headed man and didn't want to turn to my woman and say, baby, you were right, I should have listened to you.

Q So you told her instead that you went to

's neighborhood, picked up and took alone in your car to Patriot's Point?

A I concocted a story of that matter, yes, ma'am.

Q That's what you told Amanda?

A I believe so.

Q Now, in your -- this child that was your student?

A In my mistrial?

Q No, this child. , the child --

A Yes, ma'am.

Q -- was your student.

A Okay.

Q And she came to school with passion marks on her neck?

A I did not ever see those passion marks, at all.

Q So you weren't part of the conversation about it?

A The conversation about what?

Q About the passion marks?

A No, ma'am.

Q She also -- I guess you had a conversation about this child with the students about the color of her underwear?

A Not that I recall either. If it happened at all, it would have been something to the effect of

everybody sitting on the bleachers and one of the other students, Trad or anybody like that, mentioning, Coach, you need to make sure that -- because anytime any of the students did this (indicating) --

Q Uh-huh.

A -- and you could see their midriff, they needed to be taken to the office, and they had to take their shirt and put on one of our First Baptist polo shirts. None of the females could show anything, at all, like that. So if any kind of color of anyone's underwear came about, it was because you could see them, and I was supposed to tell them that they needed to take care of it.

Q And did you do that?

A No, ma'am.

Q But you talked to the students about what color her underwear was?

A Did I talk to them about it? I did not necessarily say what color anybody's panties was, no, ma'am.

Q What did you say?

A I don't recall. Like I said, I don't recall that conversation, at all. If it came into context, it was because of that, because of I was supposed to make all of the student -- all of the girl, people, if you ever saw any midriff at all, they were supposed to go and change

their shirts. Did I ever do that? No.

Q So you never saw any midriff, at all?

A Sure.

Q But you didn't follow that rule either?

A No, ma'am.

Q Did you have a hard time following rules as a teacher?

A No, ma'am.

Q There have been several we have talked about that you did not follow.

A Okay. I made mistakes, yes.

Q And you continued after you knew about the crush to have hugs with [redacted], text message her, call her and be with her alone?

A Yes, ma'am.

MRS. HERRING-LASH: Court's indulgence for one moment.

BY MRS. HERRING-LASH:

Q Let's go back to that day when you picked her up. You chose or who chose to pick her up on Price's Alley?

A I don't recall.

Q Why didn't you just leave school with her?

A Because, I can't give you an answer why.

Q Because it was wrong to be leaving with her?

A Sure.

Q And did you consider it, as a teacher, even if you weren't a professional teacher, also wrong to talk with her about another student's private affairs? I'm speaking of Patrick W___

A I didn't speak about his private affairs, no, ma'am.

Q You didn't mention anything to her about the meeting?

A I let her know what was -- yeah, sure.

Q You told her what the meeting was about?

A Yeah.

Q About his mother's complaints?

A Probably, yes.

Q That's what I meant by private affairs?

A Oh, yes.

Q And when you dropped her off, you didn't drop her off at the gym; did you?

A No, ma'am.

Q You dropped her off away from school?

A Yes, ma'am.

Q And why was that?

A For the same reason.

Q Because it was wrong to have taken her?

A Sure.

Q What is the movie Good Girl about?
A I have no clue.
Q You have never seen it?
A No, ma'am.
Q Never heard of it?
A No.
Q And as you sit here today, you would not do one thing different from your behavior at First Baptist?
A From this day forward, I would do a lot of things different. If I could go all of the way back then, no, I wouldn't because I did nothing wrong and nothing illegal. That's why I would never change it.
Q Well, we just talked about it being wrong to take her away from school?
A Okay.
Q Well, was it?
A Yes, ma'am.
Q As far as school goes, it was wrong to be calling her on the phone all of the time?
A Yes, ma'am.
Q As far as school goes, it was wrong to be talking to her in class rather than having her participate in class to be sitting around talking to her?
A No, that is not the situation at all.
Q It's okay for her to miss class so you can talk

to her?

A Say that one more time. What was your question?

Q It's okay for her not to participate in class so that you can talk to her?

A No, that's not what has happened, at all. It wasn't class was going on and we were sitting alone over here. There was no class going on. It was an open environment to where everybody sat around.

Q But it was class time?

A Yes, ma'am.

Q And that wasn't wrong?

A What wasn't wrong?

Q To have --

A PE class, everybody out at the -- PE went like this. We would go to the playground, and there was a big bag of balls. And I would say, guys, you want to go play football, you go play football. You want to play basketball, great. Girls, if you don't want to get involved in sports, there's the bleachers.

Were me and _____ ever alone on the bleachers? No, because all of the other girls would sit right around as well.

Q So you were never alone with her on the bleachers?

A No.

MRS. HERRING-LASH: Those are all of the questions I have.

THE COURT: Follow-up?

MR. JONES: Just a couple, Your Honor.

REDIRECT EXAMINATION

BY MR. JONES:

Q Mark, what about the calls at Christmas?

A I was on the way to driving to Virginia late that night, and I was in the car. I was talking on the phone with her. It was Christmas. She was upset about some other things, but, again, I can't say what she was about -- what she was upset about.

Q Okay. If you could go back today, would you have followed Virginia Murray and Amanda's advice?

A Well, yes.

Q What was the role of the guidance counselor at First Baptist?

A I don't recall anything about -- the guidance counselor, I guess, was John Hill. I don't ever remember anybody wanting or going to confide in Mr. Hill.

Q To your knowledge, was he a licensed therapist?

A No, sir.

Q And why did you think -- and tell us again why did you feel like it was okay for you to talk with about these matters regarding the death of her mother.

A Because it had happened to me, because I knew exactly what she was going through. I knew the pain that she was feeling.

Q And, at any time, did Principal Mullins discourage you from addressing these issues with kids and counseling kids?

A No, sir.

Q After the November 4th talk, did you try to discontinue the friendship with ____?

A No. Was it a different type of friendship? Yes. We still talked on the phone. We still -- we talked on November 4th. And the outcome of that, there was no outcome. Things didn't change because there wasn't anything to change. There wasn't -- did I make phone calls; did we talk? Yes. But that was it.

Q What kind of training did you have as far as to become a teacher?

A I didn't. I went to Charleston Southern University and took a couple classes in education, but I didn't graduate with an education degree.

Q Okay. What formal training did they give you at First Baptist?

A None.

Q As far as November 8th, was there any reason for you to look back and try to figure out what you were

doing that day?

A No, sir.

Q How about December 13th?

A No, sir.

Q Why did you look to see what you were doing November 4th and December 6th?

A On November the 4th and December the 6th were the two things that I was accused of being with _____ and having sex with _____ Those were the two allegations.

Q When the school enforced the underwear rule, what was the -- if somebody came walking down the hall in a T-shirt, how did the school act?

A Oh, everybody -- it was more like this. I can tell you so many times there were a number of teachers that looked for -- there were a number of teachers in homeroom that would make all the girls stand up and go all right. Before anything, they had to do this (indicating). Well, then there was a number of other teachers that didn't care. It was a dumb stupid rule that people did and did not abide by.

Q Okay. And if a student was found to be in violation of it and put on a T-shirt, what was the other students --

A Oh, I mean, ah, ha, you got gaveled by Mrs. Needham; didn't you? She gotcha in homeroom, look at

ya. I mean, you had to wear a man's long white First Baptist polo collar. Everybody knew what had happened.

Q And was there a curriculum for PE?

A No, sir.

Q Why did you not make everybody -- why didn't you require everybody to participate?

A Cause I didn't have to require everybody to participate. My PE classes were very laid back and just -- they were not structured, at all. I was not a -- I was a coach before I was a teacher.

MR. JONES: Nothing further, Your Honor.

MRS. HERRING-LASH: One follow-up, Your Honor.

RECROSS-EXAMINATION

BY MRS. HERRING-LASH:

Q What about Mrs. Bridges? Wasn't she the female guidance counselor?

A I guess.

Q So it wouldn't have been Mr. Hill for ____, it would have been Mrs. Bridges?

A I don't know.

Q When you said that your relationship was different after that day with ____ how was it different?

A We were closer. It was a better understanding of everything. It was okay for us to talk because that's

all we were doing was talking. I wasn't threatened, at all, and that's the whole thing.

Q So, in your opinion, it was appropriate for you to be alone with and talk with a student who had made allegations against you of having sex with her and had a crush with on you? It was appropriate for you to have hugs with her?

A It was appropriate at that time because there were no allegations of that.

Q Well, she had told somebody on the 22nd.

A That was after we had talked.

Q I thought you talked on the 4th of November?

A Correct. On November 22nd is when she said something had happened between the two of us.

Q Right. And you continued to be with her after the 22nd of November.

A Right, because I wanted to be her friend. I did not want to -- I did not want to ruin the trust that we had between the two of us.

Q And you continued to have text messages to her during class?

A Yes, ma'am.

Q While she was in somebody else's class?

A While she was in study hall, yes, ma'am.

Q And this was all appropriate in your eyes?

A At the time, there was nothing wrong with it.
Q What about now?
A Yes.
MRS. HERRING-LASH: Those are all of the questions I have.
MR. JONES: One follow-up.
FURTHER REDIRECT EXAMINATION
BY MR. JONES:
Q Did you ever refer anybody to Mrs. Bridges or to Mr. Hill?
A No, sir.
Q Do you recall if anybody -- was Mrs. Bridges a therapist?
A I don't know, no.
Q Were you ever alone at any other occasion after November 4th with her?
A No, sir.
MR. JONES: No further questions.
THE COURT: You may step down.
MR. JONES: Do you want me to call -- to start?
THE COURT: You can.
MR. JONES: Amanda Mullins.
THE CLERK: Ma'am, come forward, please. Please walk around the petition to be sworn.
AMANDA MULLINS,

being first duly sworn, testified as follows:

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

THE WITNESS: Amanda Mullins, M-U-L-L-I-N-S.

DIRECT EXAMINATION

BY MR. JONES:

Q Amanda, what do you do for a living?

A I'm an accountant.

Q And how long have you been doing that?

A I have been out of school for a year, and I was an intern for about six months, so about a year and a half.

Q What is your relationship to Mark Vail?

A He is my fiance.

Q And when are y'all getting married?

A February 12th, a month from today.

Q How long have y'all been dating?

A Over five years.

Q Where do you live at now?

A I reside in Atlanta, Georgia.

Q Okay. Let's go back a little bit over a year ago, and where did you live at that time?

A I lived at [redacted] in Sergeant Jasper Apartments.

Q Okay.

MR. JONES: May I have the witness step down?

THE COURT: You may step down.

(The witness exits the witness stand.)

BY MR. JONES:

Q If you would, step right here to the side. I'm showing what has been marked as Defense Exhibit Number 1. If you will just put a mark where your place is, where your place would be.

A It's directly across from the coast guard.

Q And is that where you lived in October and November, December, January of 2003?

A Yes, it is.

Q Now, where did Mark live at that time?

A Mark lived in The Island Apartments on James Island.

Q Real quick, before I got off where you lived, who was your roommate?

A I did not have a roommate.

Q And who all had keys to your place?

A Myself and Mark.

Q Okay. Now, let's go back to Mark's place. Who all lived there?

A Mark and Adam and Adam's girlfriend pretty much lived there.

Q Okay. How often did y'all stay together?

A Typically seven nights a week.

Q And do you know who all had keys to Mark's place?

A Well, Mark and Adam. Kara had a key, and I had a key.

Q When did you begin to work at First Baptist?

A In July of 2002.

Q And when did Mark begin?

A About that same time.

Q What were -- what did you do for First Baptist?

A I was the head cheerleading coach for the JV and varsity cheerleaders.

Q And, tell me, did you have occasion to know the R ?

A I knew the girls because they were cheerleaders of mine, and I knew the stepmother in passing. But that was the extent of it.

Q And tell me about how many girls did you have on the squad?

A I had 12 girls on my varsity squad and eight girls on my JV squad.

Q And would you have known Miss O

A I knew Caroline from around the school. She was not on my cheerleading squad, but she was always a friend of the cheerleaders, and I saw her often at games.

Q Okay. Aside from working at the school, what else did you do during that time period?

A I was a student at the College of Charleston and, again, I was an intern at an accounting firm on King Street.

Q Okay. Did you have any other jobs?

A For -- well, I had stopped -- I discontinued my job at the mall on November 1st. So if we're looking at the months of October, November and December through October, I would have had a job at The Limited at Citadel Mall.

Q Okay. And when did you work at Sylvan?

A I worked at Sylvan every Saturday morning from 8:30 to 1:00.

Q All right. Tell me your normal week schedule. What was the routine time-wise?

A Well, every weekday morning I had class in the morning until about lunch. And on Tuesdays and Thursdays and Fridays, I would go to my internship for about three and a half hours in the afternoon from 12:30 until about 3:45. On Tuesdays and Thursdays, I had cheerleading practice from 4:00 to 6:00.

Q Okay. And how strict was your schedule?

A It was pretty stringent. Day in and day out, I had responsibilities and I stuck to them.

Q Tell me a little bit about your personality.

A I'm very detail oriented. I have been known to be an organizer, very meticulous.

Q What about Mark's personality?

A Mark is very upbeat and caring and just an outgoing individual. He will talk to strangers on the street.

Q As far as your living arrangements at that time, where did y'all -- as far as where each of you slept, where was that most of the time?

A Most of the time, it was at Mark's apartment.

Q And who all was usually there when y'all were there at night?

A It was mostly just Mark, myself and Kara and Adam.

Q Okay. How far -- how far is your place from First Baptist?

A Two or three blocks.

Q And do you know if Mark had a key?

A Yes, he did.

Q How many days a week would you say typically you stayed with Mark or he with you?

A Seven nights a week. It was on rare occasion if we did not stay together.

Q Now, you knew his roommate?

A Yes, I did.
Q What was his work schedule?
A I couldn't tell you. I know it wasn't a set schedule.
Q How about Kara's schedule?
A I don't believe Kara worked.
Q Now, you were the cheerleading coach you said?
A Yes.
Q What did that entail?
A It entailed managing over 20 teenage girls. I would run practices. I was at every basketball game. I organized events for the school. I put on cheerleading clinics for little girls. It was fun, but it was very involving. There wasn't a job description.
Q Let's go to -- let me see. Let me ask you about when y'all came -- when y'all got to First Baptist, what was the nature of your and Mark's relationship at that time when you were hired?
A We were together. We had been together for a couple of years.
Q And was that widely known?
A Yes. Yes, everybody knew from the day we got there.
Q How did the students relate to Mark?
A Mark had -- he had a knack for connecting with

kids, and they were always talking to him. You know, it was kind of like the Pied Piper. You know, they would follow him around everywhere.

Q Male and female?

A Yes.

Q Tell me what you know about _____'s crush.

A I was aware of it for a long time, and I kind of dismissed it as being just another crush, just like all the other girls at First Baptist. I didn't realize how intensive it was until the time frame that we are speaking of.

She --

Q What time frame is that?

A Starting in like October and November of 2003. She never did anything in front of me to show me her crush, but everybody at school always talked about it. It wasn't a concern of mine.

Q Was there ever a point that it became a concern?

A There was.

Q When was that?

A That would have been on November 22nd. Mark related to me that he had had a conversation with some other students, or namely Kelsey R_____ and Caroline O_____ where _____ had gone to them and said that her and Mark had slept together and that highly concerned me because

little girls -- you never know if they know the power of their words. You know, if she's willing to say that -- it just concerned me because that is a very severe accusation, and I didn't know what to do with it. I was in a bind because I didn't know if we should go and tell somebody what she had said or.

Q And what did you advise him to do?

A I advised Mark to tell someone because that's -- you know, those are very serious accusations that, you know, are obviously not true. And we kind of had our hands tied. Because, you know, Mark could go and tell someone, but he assured me that everything was fine and that he had spoken to the girls, and _____ recanted that actual day and said that nothing had happened. So if Mark felt comfortable with it, then I was okay with it. But, you know, I had raised eyebrows as to, okay, if she's going to say this, what else is she going to make up.

Q Did you know -- tell me what you thought of the phone calls between he and _____

A The phone calls, Mark spoke with a lot of students. They didn't -- they didn't concern me either. I didn't understand the extent of them until now, until this point where we have looked back and looked at these phone records. I didn't know that they were that excessive. I was with him when he would speak on the

phone to her, and it was things that -- it was things at school that were bothering her. It was her home life that upset her. You know, it wasn't anything inappropriate, therefore, I wasn't concerned.

Q Now, when you say you were there, you don't mean on every occasion?

A No, I wasn't there on every phone call, no.

Q Let's talk about one of the occasions which would have been October -- let me make sure can you read that. Actually, there's a better copy of the phone records up front.

A That is not on this one.

Q I'm sorry. You don't have the October one?

A No, sir.

Q All right. Just look -- can you read that?

MR. JONES: Your Honor, may I approach?

THE COURT: Yes, sir.

THE WITNESS: This starts on December.

BY MR. JONES:

Q Do you see any calls up there between Mark Vail and _____ or on your sheet?

A Yes.

Q And can you point out -- if you look at 7:56?

A Yes.

Q Tell me on that night where you were and what

you were doing.

A That night Mark would have ended basketball practice and had -- probably would have had to stay after. He called me to come over. I know we stayed the night at his house this evening, and I would have been at his house around 7:50 to have dinner and to stay the night. 7:56 would have been when Mark was fixing dinner.

Q Now, where would he have come from?

A He would have come from football practice on James Island.

Q Now, football or basketball?

A October 28th would have been football. That was the week of homecoming.

Q Okay. Why do you remember that night?

A I remember this night because Mark spent about two hours on the phone with _____ counseling her on an issue she was having at home between her stepmother and her, and she was having some feelings about losing her mother and not being able to deal with things.

Q Now, were you downstairs -- or where were you during this time? Were you with Mark the whole time within the house?

A I was upstairs in his room doing my homework for a majority of this time.

There were two phone calls before dinner. We

would have had dinner around 8:45 or so, and over dinner Mark said I spoke with --

Q You can't say what he said.

A Okay. Over dinner it was relayed to me that Mark had spoken with _____ and that she was having problems with her stepmother not allowing her to do certain things and she said --

Q You can't say what she said.

A Okay. And she related to Mark --

Q You can say what the gist of it was.

A The gist of it was that she felt her stepmother wouldn't allow her to do things and if her real mother was there --

MRS. HERRING-LASH: Your Honor, this is still hearsay.

THE COURT: Yes, I sustain that.

THE WITNESS: This is what I have been told that if her real mother was alive --

MRS. HERRING-LASH: Your Honor, she still --

THE COURT: You can't refer to that, ma'am. Is this a good stopping point?

MR. JONES: This is.

THE COURT: All right. Ladies and gentlemen, I will go ahead and send you home for the evening. Do not discuss this case in any way.

I have to attend a county council meeting first thing in the morning. So if you will please report back at 10:00, we will proceed with the trial. Thank you very much. See you tomorrow.

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

THE COURT: See you tomorrow.

Ma'am, you may step down overnight. You may not discuss your testimony with anyone. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

(WHEREUPON, the court was in recess for the afternoon of Wednesday, January 12, 2005.)

Volume IV

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON)

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

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HOLLY HIOTT O'QUINN, RPR
Circuit Court Reporter

(WHEREUPON, the following proceedings were held before the court on Thursday, January 13, 2005.)

THE COURT: Bring the jury in.

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

THE COURT: All right. Ladies and gentlemen, we are ready to proceed at this time.

MR. JONES: Your Honor, I would recall Miss Mullins.

THE COURT: Yes, sir.

THE CLERK: You are still under oath from yesterday. You may have a seat.

(WHEREUPON, the witness, Amanda Mullins, resumed the witness stand.)

CONTINUED DIRECT EXAMINATION

BY MR. JONES:

Q All right. Miss Mullins, I want to pick back up where we left off yesterday. Let's talk about November 1st, 2003. Do you recall that day?

A I do.

Q What did you do that day?

A November 1st was a Saturday. I worked at Sylvan Learning Center from 8:30 to 1:00 that morning. I had a meeting with some of my senior cheerleaders that afternoon to go over some material for the next week's

tryout, and I worked at The Limited that evening from 5:00 to 9:30.

Q Do you know what Mark did that day?

A November 1st was his first Saturday after the football season had ended, the night before was homecoming. His plans were to do a lot of nothing. I know he was hanging out with friends that day.

Q Do you know who he was with that day?

A Tommy Hotchkiss mostly. And he saw a few other friends up in the North Charleston area.

Q Now, why are you so sure it was November 1st? Why do you recall that day?

A Well, I was kind of bummed that I had to work on the day that he had off. It was his first free day, and I couldn't spend it with him.

Q And why was that his first free day?

A Because throughout the football season, his Saturdays were spent reviewing film, going and making film exchanges, having coaches meetings and that all ended. We had a week before basketball started so that was the first day that he didn't have any responsibilities.

Q Now, do you remember talking to Mark that night?

A Yes.

Q And do you know what time that would have been?

A Well, we had spoken probably a few times

throughout that day, and then I would have gotten off work about 9:30 and called him at 9:30 to see if we were going to be going out or anything like that. And he said he wasn't doing anything but sitting around with Tommy and that he would meet me at my apartment later.

Q I'm going to show you what's been marked State's Exhibit Number 1.

A Okay.

Q This is already entered in evidence. If you want to look back behind you, what is this? What am I showing you? What is this document?

A Those are Mark's phone records from that time period.

Q Look at November 1st. Do you see any time there that may reflect the time that you would have called to let him know you were off work?

A The two minutes at 9:29 p.m.

Q Now, that doesn't show your number, correct?

A No, I would have called him.

Q But you believe that's the time?

A I do.

Q And do you recall when you saw him that night?

A Since there was nothing going on, he wasn't -- he didn't leave Tommy's immediately when I spoke with him. He just said he would meet me back at my apartment later.

He called me at about a little after 10:00 just to tell me he was on his way back from North Charleston and would be coming over to the apartment. I would have saw him -- I would say he was with me before 11:00 that evening.

Q Okay. And what did y'all do the rest of the evening?

A Watched TV and probably slept. It was really late.

Q All right. Let's talk about November 4th. What was your schedule that day?

A November 4th was a Tuesday, so I would have had classes in the morning until about noon. I would have gone to my internship at 12:30 and left there roughly 3:40, 3:45 and gone straight to the gym.

I had cheerleading practice for girls who were trying out for the basketball squad that afternoon and that began at 4:00. So I was at the gym on the market by 10 til 4:00.

Q Okay. On that day, was that the squad that and Kelsey and the girls would have been in?

A No. The squad that they were on had the week off. They had already been on the squad for football and they would be cheering basketball. These were for girls who were trying out for the open spots on basketball. They were not cheerleaders yet.

Q All right. Did you see Mark that day?
A I did.
Q When was that?
A At 3:50 when I walked into the gym.
Q Okay.
A He was assisting with the girl's basketball tryouts, so I just stuck my head in and waived.
Q Did you notice anything unusual at that time?
A No.
Q When did you see him next?
A I probably would have waved bye to him as I was leaving the gym. I would have left about 6:00, and he would have stayed through to the end of basketball tryouts that evening. It probably would have ran until 8:00. I would normally go back to my apartment and shower and wait for him to be done with the coaching and we would have met -- we met back at his apartment, I would say, around 8:15, 8:30 at the latest.
Q And did y'all have a conversation that evening?
A We did.
Q And what was that about?
A It was a disagreement on how he handled something that afternoon. Previous to November 4th, we had spoken about s crush on him and how she was telling other little boys at school that she was

waiting --

MRS. HERRING-LASH: Your Honor, I object to hearsay.

THE COURT: I sustain that.

BY MR. JONES:

Q You can't say what she said.

A Okay. It was brought to my attention that _____ was denying --

Q What did she --

A -- going out with other little boys, you know, on the terms that she thought she was waiting for Mark.

Q Okay.

A I didn't think much of it, but I casually said to Mark, well, you might want to make that clear to her that she would be waiting a long time. So he felt that he needed to bring that up to her or speak with her. We decided that prior to November 4. November 4th when we were back at his house we were having dinner, and he said that he had spoken to _____ that day. I said --

Q And you can't say what he said, but you can say the gist of it.

A Okay. I was told that he had spoken to _____ that day, and we got into an argument how he had gone about speaking with her that day.

Q How had he gone about it?

A He had taken her off school grounds and she had skipped seventh period, and he had driven her in his car to Folly pier, and I was upset that -- I think he exercised poor judgment in doing that.

Q And how did you recommend that he take care of it?

A I thought he was just going to casually tell her, you know, _____ you need to understand that that is not going to happen. You know, his main concern was embarrassing her. And he didn't want to do it in front of other students, so he felt he had to take her aside and tell her this. And I didn't agree with how he had done that.

Q And where did you stay that night?

A Well, after the argument, I decided to go home and I ended up staying the night at my apartment.

Q All right. Let's talk about -- let's talk about the November 22nd incident.

A Okay.

Q Without saying what everyone said.

A Uh-huh.

Q Tell us what you know about that event.

A The 22nd was another Saturday, a Saturday for me so I had some responsibilities which is teaching at Sylvan and at cheerleading practice that afternoon. We had a

friend in town who was with Mark. He had come in on Friday and was hanging out with Mark that weekend. And I wasn't freed up to go spend time with him until about 4:00, 4:30 when they came by my apartment and picked me up.

At that time, Mark was getting off the phone with one of the girls involved in the situation. I'm not sure which one, probably Caroline since Kelsey and had just gotten off cheerleading with me, and Mark was visibly upset. I said what's the problem, and he proceeded to tell me --

Q You can't say what he said.

A Okay. It was told to me what had played out that day.

Q Okay. And what had played out that day, without saying what was said?

A That's difficult.

Q What were the allegations?

A There were phone conversations between --

MRS. HERRING-LASH: Your Honor, I object to this being hearsay.

THE COURT: Do you want to -- are you going to ask her anything she did in response to the phone conversations?

MR. JONES: I will, Your Honor.

THE COURT: All right. Go ahead.

BY MR. JONES:

Q And what did you do when you found out about that?

A Well, the allegations were severe. And I was concerned if she's going to say this, what else would she say. I advised Mark that he should -- that we should tell someone now. This wasn't a -- you know, there was nothing to ignore about this. And we had spoken about it later and we were to go -- we didn't know how to go about telling someone because then we would have had to explain the incident on November 4th where he would have taken -- you know, would have taken her off school grounds. He would have been reprimanded if anybody had found that out. So we were kind on between a rock and a hard place on who do we tell and how do we tell anyone.

Q So what did you recommend he do?

A I felt that we could go to Tommy Mullins. He was a personal friend of ours outside of school, and he would have known how best to handle this. He would have understood if we went and told him everything that had happened, so I felt we should have done that.

Q And what did Mark do?

A Well, he spoke with his mother --

Q You can't say what she said.

A Okay.

Q You can say what advice she had given him.

A She gave him the advice --

MRS. HERRING-LASH: Your Honor, I would object to the hearsay.

THE COURT: I sustain that.

THE WITNESS: It was different than what I felt he should do.

BY MR. JONES:

Q What did he end up doing?

A Smoothing it over and just letting it rest. He felt comfortable that everybody involved understood that that was not true and it did not happen. He said let's just let it rest.

Q And once everything had been smoothed over, what were your feelings about the incident at that time?

A I was still concerned. I -- if Mark felt that it wasn't, you know, a concern, it helped me relax a little bit. But little girls say these things all the time, and they know the power of their words. And I felt that she felt she could say this and get a reaction from it.

Q Let's talk about November 28th.

A Okay.

Q Tell me about that weekend. What did y'all do?

A The 28th is the day after Thanksgiving and it is Mark's birthday. Mark's mother had come into town that Wednesday evening to spend Thanksgiving and that weekend with us.

November 28th, we both -- Mark had off school and I had off work and school. And I was disappointed because he had basketball practice that day, and I thought it was crazy to have basketball practice on the day after a holiday.

We woke up that morning and his mom had fixed pancakes for his birthday. And I would say we woke up about 8:30, 8:45 and she was cooking pancakes. We probably sat down around 9:00 to have breakfast with her. And over breakfast it was discussed I needed to go back to my apartment to feed my cat and take care of some stuff at the apartment, so I was going to ride with Mark when he had to go downtown to practice.

Mark and I left his apartment on James Island, I would say, no earlier than 9:20 or so. He wanted to be there by 9:45 to let the guys into the gym and to let them start warming up, so we would have left James Island about 9:20, gotten downtown before 9:45. I got out of the car and we met at the -- or we were at the gym and went on a run and went back to my apartment while Mark was at practice. Practice went over a little bit that day and we

did not -- he did not call me to come by and pick me up at my apartment until about 1:00.

The rest of that day we went back and picked up his mom and spent the rest of that day together with her shopping and so forth, went to a movie.

Q So where did y'all stay this weekend, that weekend?

A Every night we stayed at Mark's house that weekend.

Q Who all was there that weekend?

A Mark's mother, myself, him, Adam and Kara were in and out that weekend.

Q At 9:00 a.m. that morning, where were you on the Saturday morning on the 28th?

A The 28th was a Friday.

Q Oh.

A November 28th.

Q I'm sorry, on that Friday, yes?

A 9:00 we would have been sitting at the breakfast table.

Q And what vehicle were you in when he took you to -- or when he went to practice?

A We went to practice in his mom's Durango.

Q And let's talk about December-6th, the weekend of December-6th. Let's start out with that Friday night.

A That Friday night we had a home basketball game versus Beaufort Academy. When we had home basketball games, we were at the gym from 3:30 in the afternoon until 9:30 at night for JV girls, JV boys, varsity girls, varsity boys.

Otis was coming into town that weekend to see Mark. He had missed his birthday. He wanted to come spend time with Mark. He was in route from Atlanta going to Hilton Head and dropped in. And he came to the gym to pick up Mark's keys that evening and was to meet us back at Mark's apartment that night. Mark and I would have left the gym about 9:30 to go back to his apartment on James Island and wouldn't have done much, just spent some time with Otis.

Q So where did y'all stay that night?

A We stayed at Mark's house.

Q And who all stayed there?

A Mark, myself, Otis and his dog, and I'm not sure if I saw Adam and Kara that night. They could have been there up in his room.

Q Where did everybody sleep that night?

A Mark and myself slept in his bed. Otis slept on the couch downstairs in the living room, and Adam and Kara, if they were there, slept in his room.

Q What time did you get up that Saturday morning?

A I had Sylvan Saturday mornings. I did not have to be there until 8:30, and it's here in West Ashley so I would not have left Mark's house until about 8:15 to allow myself 30 to 45 minutes. I think the alarm went off about 7:30, 7:45.

Q And where was Mark?

A In bed with me.

Q Did he receive any calls that morning?

A That morning the alarm went off and I rolled over to turn the alarm off. And Mark's cell phone was sitting on the night table, and it was flashing that he had messages. When the alarm went off, Mark wakes up partially with me while I'm getting ready, and I just told him that he had messages on his phone.

When I got up, he checked his messages and they were all from And I said, well, why don't you call her to see if she's okay, and I walked into the bathroom to proceed to get ready. I heard Mark's voice briefly while I was in the bathroom. I came back out to start to dress and said is everything okay, and he said he didn't --

Q You can't say what he said.

A I asked if everything was okay.

Q What did he do?

A He had left a message on her -- she did not

answer, so he had left a message on her phone.

Q Okay. Do you know how many times he tried to reach her?

A No, I don't remember.

Q And what time did you leave the house?

A 8:15.

Q And where was Mark at that time?

A In bed.

Q Where was Otis at that time?

A Down on the couch.

Q What was your schedule for the rest of the day?

A I would have been at Sylvan from 8:30 to 1:00. I had scheduled a Tropical Storms cheerleading practice that afternoon from 2:00 to 3:30. I would have gone straight from Sylvan, picked up food and went straight to the gym, so I wouldn't have stopped off anywhere between 1:00 and 2:00. I was at the gym from 2:00 to 3:30. It may have ran a little bit over speaking with parents afterwards. And then I would have met back up with Mark and Otis about 4:30.

Q All right. Explain Tropical Storm practice.

A Tropical Storm practice is where my cheerleaders and I invite younger girls grades one through five to come and learn some of our cheers and chants and maybe a little dance to perform at a home basketball game. We had 22

little girls and their parents in our gym that day.

Q Do you recall [redacted] or Kelsey being there?

A I believe they were there more times than not. I didn't take attendance on these days. It was not required for my cheerleaders to go. I just made sure I had enough of them to help me with the young ones.

Q And what do you -- how do you -- what attire do you have your cheerleaders in?

A T-shirt and shorts with their hair pulled up and sneakers.

Q Why do you have their hair pulled up?

A We would do stunts where hair can be in the way or pulled out.

Q How many people would have been in the gym that day?

A Including me and my cheerleaders and 22 little girls and their parents that stayed the entire time, I would say 30 to 40 people.

Q And what role -- how involved would your cheerleaders have been with the parents and the little girls at that time?

A Well, hands-on. I mean, the girls would break up in little groups and I would assign two or three cheerleaders to each group. The parents would, you know, stand around the corner and watch their little girl do the

stunts and learn the material. I don't know if there was a lot of interaction between my cheerleaders and the parents. They were mostly coming to me for questions and so forth. But they were -- a lot of them knew each other. You know, my girls baby-sat for a lot of these parents.

Q How many people came to you and reported any concern about marks on _____'s neck that day?

A No one.

Q And then when did you meet back up with Mark that day?

A I would say about 4:30.

Q And who was he with?

A Otis.

Q And when did Otis leave?

A Oh, gosh, he probably didn't leave until that Monday. He had a knack for overstaying his welcome.

Q Let's talk about what -- explain -- Mark said he went into drug rehab was the reason for the termination. Can you explain?

A That was agreed upon between Mark and Tommy Mullins to tell the students why he was leaving. When Mark resigned this ordeal had not -- _____'s allegations had not come out. But the reason for him resigning were concerns expressed by Dr. R_____. And if it was told that Mark left because _____'s dad -- you know, if we told the

truth, _____ would have been pretty much persecuted at school for being the reason Mark left. So in order to prevent, you know, rumors or harm to who would be staying in school, Mark and Tommy decided that that would be an adequate cover for why Mark left.

Q How often were you present when he talked with _____ on the phone?

A Often. When they spoke in the evenings, I was there.

Q And, again, you can't say what they said. But did any part of one side of the conversation you heard cause you concern?

A No, not at all.

Q Did he make any secret of who he was talking to?

A No.

Q What type of cologne does he wear?

A Mark does not wear cologne.

Q What are the effects you have seen this have on him?

A Well, prior to this, Mark was the center of attention. When he walked in a room, you knew it. He's more reserved now and a little standoffish.

Q How does this affect your's and Mark's relationship?

A It has brought us a lot closer. When you go

through something like this that is so traumatic, you depend on each other a lot more. We have grown together spiritually and know who to depend on.

Q So no matter what, you're still going through with the marriage?

A Yes.

MR. JONES: Court's indulgence for just a second.

THE COURT: Yes, sir.

MR. JONES: Nothing further, Your Honor. Please answer any questions Mrs. Herring-Lash has.

CROSS-EXAMINATION

BY MRS. HERRING-LASH:

Q Miss Mullins, what is your phone number, your cell phone number?

A 843-478-2231.

Q And that was what it was back in October of 2003 also?

A Yes, it was.

Q On October the 28th, what time did you get home?

A To my apartment or to Mark's apartment?

Q To Mark's apartment?

A I would have gotten there about 7:50.

Q And that day, what had you been doing?

A On a Tuesday, I would have had class in the morning and my internship in the afternoon and would have gone to basketball clinics, basketball cheerleading clinics that evening from 4:00 to 6:00, gone back to my apartment to wait for Mark to get off practice.

Q So you would have been at your -- at work or at practice or at your apartment before that time?

A I'm sorry, this is October 28th. The practice was cheerleading practice. And, yes, I would have gone home about 6:00, 6:30 and waited for Mark to get off.

Q Now, on November 1st, that was the Saturday, and you worked?

A I did.

Q And you worked every Saturday morning?

A Not every Saturday morning.

Q But on this one?

A Yes, ma'am.

Q Did you regularly work on Saturday mornings?

A I did regularly work on Saturday mornings.

Q And what time did you get off of work that Saturday?

A From Sylvan, I got off of work at 1:00.

Q And then you went to what?

A Then I would have gone home, changed. And on November 1st, I had arranged to meet some of my senior

cheerleaders who would have been helping me out with the tryouts that next week to go over the material we would be teaching. I probably met them in the afternoon for about an hour and a half to two hours, maybe from like 2:00 to 4:00 or 2:00 to 3:00 or 2:00 to 4:30, maybe.

Q Then what did you do?

A I got ready and went to work at the mall at The Limited from 5:00 to 9:30.

Q So you didn't actually get home until after 9:30?

A Well, I would have gone home in my break from Sylvan to meeting the girls. And then after I met with the girls, I would have had to go clean up before I went to work.

Q When you went home at your break, you went to your house or Mark's house?

A My house.

Q Do you remember speaking with Shaw Goodrich and Susan Hill and myself on the speaker phone January 5th, 2005?

A I do.

Q And do you remember at that time saying you spent the entire evening with Mark?

A Yes.

Q What were you talking about when you said the

entire evening?

A I did not realize that that day I had worked that afternoon. I remember telling you that I did not have my planner in front of me, therefore, I couldn't recall exactly.

Q And if it changed you would call and let me know that you had been mistaken?

A I was advised that that would come out later. It wasn't necessary.

Q So actually you weren't back to his house until after 9:30?

A We did not go back to Mark's house that evening. He came to my apartment.

Q And he stayed there?

A He did.

Q He stayed at your apartment on 11/1?

A That evening, yes.

Q Now, on 11/4, you didn't see him until what time?

A The first time I would have seen Mark would have been about 3:50 that afternoon at the gym.

Q Because he would have been at school during the day?

A Yes, and I would have been at school during the day.

Q Now, that evening is when you found out what he had done that day?

A Yes.

Q And that was against what your advice would have been?

A It wasn't against what my advice had been. I said you needed to talk to _____ and address it. I didn't tell him how to do it, and he made that call. I didn't agree with his decision after he told me what he had done.

Q What did you envision when you told him that?

A Just in conversations with the kids or, you know, maybe pulling _____ aside at school and saying, you know, hey, I just want you to understand that I'm here for you to talk to you but that's the extent of it.

Q Did he have conversations -- was he able to have conversations with students at school?

A Oh, yeah.

Q Would there have been any reason that you know of that he wouldn't have had the opportunity to speak with her at school?

A I think his concern with speaking with her at school was going to be embarrassing her in front of other students. He wouldn't have been able to have had a conversation without others around.

Q So he couldn't have had a conversation alone with her at school?

A I think if -- I don't think they would have had the setting, no. But I didn't understand -- I understand after why he said that he wanted -- he wanted it to be alone so he wasn't embarrassing her, but I wasn't thinking that. I casually said you might want to make it clear to her. I didn't really think out how he should do it.

Q Did he tell you he just did not have any time at school, at all, to speak with her?

A No.

Q So he didn't say that to you?

A No, ma'am. I don't understand the question.

Q Well, I don't either. But I'm just asking if he told you he had no time at school that he could have spoken with her?

A No, he never told me that.

Q You worked around First Baptist, I guess?

A I did.

Q Were you there during the day when school was going on?

A Sometimes, but not often.

Q Do you have an opinion as to whether a teacher could have a private conversation with a student at First Baptist?

A It would have been difficult because it's a small family environment. There are always people walking around.

Q Have you ever been to Mark's PE class?

A I have.

Q Have you ever noticed that there's bleachers that people can sit on and talk alone during class?

A Mark could not have walked away from those students without them following him. He could have done that, but kids would have followed.

Q Have you ever been in his class and watched?

A I have.

Q How many times?

A A few times for short periods of time, me stopping through to pick up keys. His PE class was more of a social hour. Him and another coach ran the class. They were both young guys that had -- I think there were probably like 30 eighth graders that they had to control, and it was mostly the boys playing sports and the girls all standing together talking.

Q But you did not agree with what he did?

A I think he could have handled that better on November 4th, yes.

Q And it caused a confrontation between the two of you?

A It did.

Q Now, on the 28th, you had to go to practice that morning?

A The 28th I did not have practice that morning.

Q But you went to practice?

A I rode to Mark -- I rode with Mark to his practice, got out of the car on Market Street and ran to my apartment.

Q And do you remember speaking with Susan Hill and Shaw Goodrich and myself on January 5th of 2005 and saying that y'all had to be -- that Mark had to be at practice at 9:00 a.m. that Saturday?

A I said I believe we left at 9:00 a.m.

Q You don't remember saying practice was from 9:00 to 12:00?

A I don't remember that, no.

Q But now you are saying it was 10:00 that he had to be there?

A I did not have my planner in front of me. I did not know the exact times and that was expressed.

Q But that was at 10:00 now?

A Yes, ma'am, the practice was from 10:00 to 12:00.

Q Let's go to 12/6. You actually were gone, I guess, from that morning until late that afternoon?

A Yes.

Q So you didn't see Mr. Vail that day from the time you left until 5:00 or so that afternoon?

A Correct.

Q And you spent the entire night with him that night?

A I did.

Q On 12/6?

A From about 4:30 on, I did.

Q You also said I think he never drove his roommate's car?

A Not that I recall, no.

Q So if he did, you didn't know when it was?

A Right.

Q And how often did [redacted] call Mr. Vail?

A Often.

Q Do you have -- every night?

A I don't remember. I just know it was often.

Q How often did he call her?

A If it was to return a message, I don't know, often.

Q Is it still your opinion that she called him 80 percent of the time?

A I told you that I was present at 80 percent of the phone calls. I wouldn't -- I wouldn't feel

comfortable saying how often I think she called him.

Q But you think she called him more than he called her?

A I do feel it was that way, yes.

Q Would it surprise you to know that he called her 1,308 minutes and she called him 543 minutes?

A No, it wouldn't surprise me.

Q And you were there for 80 percent of those calls?

A I would say so, yes.

Q What would you do while he was talking on the phone to this little girl?

A I would be sitting in the room or -- I mean, sometimes he was down in the front room in the living room and I was upstairs doing homework.

Q What time did you go to bed, generally?

A That varied so much depending on my workload, my schoolwork at evening.

Q Do you have any -- or you a person that stays up like until 12:00 or 1:00 in the morning, or do you usually go to bed a little earlier? I know you can't commit to every night.

A Well, midnight was typically when I would be asleep around then. But there were often times I stayed up past that.

Q Now, you were listening to his end of the calls only?
A Yes.
Q And that was not really always because you were sometimes doing your homework and you were upstairs and he was downstairs?
A Yeah.
Q You just knew he was on the phone to ____?
A Yes.
Q Now, on the 22nd of November, you were gone most of the day when many of the phone calls occurred, right?
A Yes.
Q You had -- I think you had testified earlier that you did not -- that you knew there was a crush?
A Yes.
Q But you did not become concerned about it until the 22nd of November?
A Correct.
Q So what happened on the 4th didn't concern you?
A No. My concern on the 4th was that someone would have found out that Mark took a student off of school grounds, and he would have been reprimanded by the school. I wasn't concerned with ____ or anything.
Q You weren't concerned for ____?
A No.

Q Now, on the 22nd, you thought that you-all should go to doctor -- to Mr. Mullins?

A I did.

Q Why did you think that?

A Because this was serious. These were false allegations and it did not happen, and Mr. Mullins would have understood that. He would have understood how it played out. And I think he could have counseled us on how best to handle it.

Q So thinking they were false allegations --

A Knowing, yes.

Q -- the appropriate thing to do if they were false allegations would have been to go to Mr. Mullins?

A I advised us to. I also realized that if we were to have gone to Mr. Mullins it would have put us in a bind of also explaining Mark taking a student off school grounds.

Q When you say it would have put us in a bind, are you talking about what Mark did and Mark's bind?

A Mark and I are together. Whatever affects him, affects me.

Q So his behavior would have put you in a bind?

A It would have affected me, yes.

Q And believing it was totally, totally false allegations, the thing to do would have been to go to

Mr. Mullins but that is not what his decision was to do; is that correct?

A Because he did not take my advice. He took the advice of his mother.

Q And just said that he smoothed it over to you?

A He did not use those words. He said it was settled, everybody involved understood.

Q I thought a while ago those were the words you used?

A Well, I don't think those came from his mouth. That is how I would have described the events happening that day.

Q How did he go about taking care of it?

A I'm assuming it was through a series of phone calls between him and the girls involved.

Q And you testified, I think on direct, that he told you that _____ recanted the very same day that she said this about him having sex with her?

A Yes.

Q And how did you know that she recanted the very same day?

A Because I believe Mark had told me that.

Q You never spoke to _____ about this at all?

A No, I didn't.

Q But his -- what he said to you was she recanted

this same day?

A That is how I understood it happened, yes.

Q Did he tell you where she -- what she said about what had really happened?

A I don't understand the question.

Q Well, when she took it back and said they did not have sex --

A Yes.

Q -- she said where they had been and what they had done. Did he tell you about that?

A Yes.

Q And what was that?

A She described the November 4th incident not correctly, incorrectly. She had put a swing on it and said that she had gone back to the apartment with him.

Q So you don't think she went back to the apartment on November 4th?

A I wasn't aware that she had gone back there until a later date.

Q So when he explained to you that he took her to the Polly pier, he never mentioned that he had, in fact, taken her to his apartment?

A I didn't let him get that far before I became upset with his actions that afternoon.

Q But you saw him again after November 4?

A Saw Mark again?

Q Yes.

A Of course.

Q And you talked about what had happened? Especially, I guess, by the 22nd, you were talking about it?

A We pretty much dropped what happened on November 4th until it had come up again on the 22nd.

Q And you still didn't know that she had been to the apartment?

A No, I believe it came out after the 22nd.

Q Like after he was charged with this?

A I couldn't -- I can't remember.

Q Like perhaps after she was able to describe the apartment, his apartment?

A No, I knew it before then.

Q When did you know?

A I knew it was before -- I can't tell you exactly when.

Q Now, you were _____ s coach. Is that what you were, a cheerleader coach, advisor?

A Correct, I was her cheerleading coach.

Q Did you ever speak with her about these concerns?

A I didn't because I felt she was highly

embarrassed in front of me.

Q In front of you?

A Yes.

Q What made you feel that?

A I feel like she may have known that whatever she told Mark he was relaying to me, like, for instance, her troubles at home and so forth. And it was -- I mean, the incident on November 22nd would have been embarrassing for her to know that I knew about that.

Q And you think that why?

A Because she lied about something that was pretty severe and then came back and said that she had lied and it was about my fiance.

Q Who all did she tell that she had lied?

A I believe this was a pretty secluded incident between her and her sister and Caroline O

Q So you don't know?

A No.

Q Now, on the morning of the 6th, you said that you saw text messages on the phone?

A Yes.

Q How many?

A I don't know how many. The phone was blinking and that shows that there's text messages.

Q Now, the evening of the 5th, Mark did speak with

though, right?

A The evening of?

Q December 5th?

A December 5th?

Q That Friday night?

A He may have.

Q You were there if he did, right?

A I don't recall. I would have been because I was with him from 3:30 on, but I don't remember a specific time, no.

Q So that is one occasion where you can't remember if you were there when she called or not?

A I know I was with Mark from 3:30 until -- we left the gym at 9:30 and I was with him. I don't recall every phone conversation, no.

Q Now, on -- when he was terminated from -- or I guess allowed to resign?

A Yes.

Q You have said that Mr. Mullins decided that a lie should be made up about drug rehab?

A It was an agreement that he allowed Mark to say that.

Q And did Mr. Mullins tell you that?

A No, Mark told me that him and Mr. Mullins had decided that that would be all right to say.

Q So you have never spoken to Mr. Mullins to find out if that indeed is something that Mr. Mullins -- if that's a lie that Mr. Mullins agreed to go along with?

A No, it was never spoken like that.

Q Well, it was a lie; wasn't it?

A Yes, it was.

Q And if Mr. Mullins and Mr. Vail agreed upon it, then they agreed upon a lie?

A I never spoke with Mr. Mullins about what was said about that -- about us telling the children at the school that that is why Mark had left, and we never had a conversation about that.

Q And do you know what the children at the school were told?

A There were a thousand rumors that day on why he left.

Q What they were told?

A I don't know what they were told. I think they were told different things.

Q But there was a meeting at the school, correct, and the principal, Mr. Mullins, spoke with the parents about what had happened?

A I guess he did.

Q Are you aware of that? You were?

A No, I wasn't -- I would assume he would address

it, but I didn't know that that was the formality of how he addressed it.

Q So if what you're saying Mark told you is actually true, what he would have told the parents was that Mark Vail left to go to drug rehab?

A I don't know if that's what he told the parents.

Q If that was the agreement?

A I left the school shortly after Mark, and I did not know that that event was held, and I do not know what was said.

Q But that was the agreement between Mr. Mullins and Mark, as far as Mark has told you?

A As far as I understood that, yes.

Q Now, Mark told you also that he went to _____'s neighborhood and picked her up in his car and took her to Patriot's Point and that was why he was allowed to resign; isn't that right?

A Yes, along those lines.

Q And when had he told you that?

A January 8th.

Q Now, he didn't come by your apartment -- excuse me -- your work immediately after and tell you that a parent had some troubles with phone calls and had complained and he was allowed to resign because it was against school policy?

A He told me that, yes.

Q Was that -- and he told you that same day about being in the car with in her neighborhood?

A Yes.

Q And taking her out of her neighborhood?

A He said that Dr. R had gone to Mr. Mullins and said that he had hired a private investigator or someone had told him that he had seen Mark and --

THE COURT: Counsel approach.

THE WITNESS: -- and that this had happened.

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

THE COURT: I'm going to send you to the jury room. Do not discuss this case in any way. Thank you very much.

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

THE COURT: All right. I needed a short break. Ma'am, you may step down momentarily. Do not discuss your testimony with anyone. It is not going to be a long break. Thank you.

(WHEREUPON, a recess transpired.)

THE COURT: Is the jury ready? The witness may return to the stand.

(The witness, Amanda Mullins, resumed the

witness stand.)

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

THE COURT: You may resume your questioning.

BY MRS. HERRING-LASH:

Q To start back where we were, Miss Mullins, Mark came to your office and told you that there had been phone calls and he had to resign because that was against school policy?

A I wouldn't say those were the exact words, no.

Q What were the exact words?

A I don't remember. I know that the gist was a parent had come to Mr. Mullins, namely Dr. R , and expressed concern and I think phone records had something to do with it.

Q Now, was it that same conversation when he had told you about that he had taken her off in his car from her neighborhood?

A Yes, it was.

Q And he told you he had gone to her house and picked her up?

A He never told me he went to her house and picked her up.

Q But he went to her neighborhood and picked her up?

A Yes, that would be more accurate.
Q And took her away from her neighborhood?
A Yes.
Q And he said that on January 8th to you?
A Yes.
Q And has he since told you that did not happen?
A Yes.
Q But you believed him on January 8th when he told you?
A I -- yes.
Q And you believed him when he told you that he took her to Folly pier and never mentioned going by the apartment?
A I didn't let him get that far to explain that. He did explain that to me at a later date and, yes, I did believe him.
Q And you believed him when he told you that Dr. Mullins --
A Mr. Mullins.
Q Mr. Mullins and he got together and made up the story about drug rehab?
A It's not accurate to say that they got together and made up a story. It was a quick time when that was something decided on that that is what Mark was going to say to students. And this was all under the understanding

to protect _____ from being --

Q That you know from Mark, not from Mr. Mullins?

A Mr. Mullins and I never had a conversation on what Mark was to say why he was to resign.

Q And, now, just to go back over, on 11/6 you were not with him, at all, from sometime that morning when you left to go to Sylvan until 4:30 or so that afternoon?

A 11/6 is November 6. That would have been a Thursday --

Q I'm sorry, 12/6?

A 12/6, the Saturday, I left his apartment at about 8:15 to go to Sylvan and, correct, I would not have seen him until 4:30 or so that afternoon.

Q And 11/1 you didn't see him until 9:30 that night?

A Correct. No, I saw him later than that. I spoke with him first at 9:30 and didn't see him until some time before 11:00.

Q And on school days, you don't see him until school is out?

A I see him at the gym shortly before practices begin.

Q And practices began after school was out?

A Correct.

Q Now, after your concern on November the 22nd,

you were aware that he continued to talk constantly to _____ weren't you?

A I wouldn't say constantly but, yes, I was aware that they did speak.

Q Did that concern you, at all?

A Nothing was inappropriate about that. I believed Mark when he felt that _____ understood the basis of their relationship.

Q So what Mark has told you, you believe?

A Yes, ma'am, I do.

Q And everything he has told you, you believe?

A I do.

Q That he went to her home, neighborhood and picked her up and took her off in the car?

A He has since told me that that did not happen and I believe him.

Q And you believed him when he told you that?

A Yes, I did.

MRS. HERRING-LASH: Those are all of the questions I have.

REDIRECT EXAMINATION

BY MR. JONES:

Q Amanda, when you spoke with the solicitor on that earlier phone call, did you tell them that practice was from 9:00 to 12:00?

A I specifically remember telling her that I can tell her the gist of what may have happened that day, but without my planner in front of me, I could not tell her times correctly.

Q And what is contained in your planner?

A My planner was nicknamed my life, and I was very meticulous about what I wrote down each day. I was planned to the hour, wrote everything down, things I had done that day, things I should have done that day and crossed it off. I had dates and times.

Q When the solicitor asked you about the percentages of phone calls from Mark and _____ or _____ and Mark, have you figured that up and calculated percentages on the phone numbers?

A She never asked me about the percentages of phone calls between Mark to _____ or _____ to Mark. I told her that after viewing the phone records I am comfortable saying I was there 80 percent of the time they spoke on the phone.

Q And did you, at any time, ever figure out who called who more or less?

A No.

Q So you were just going off of what you thought?

A What I had perceive it, yes.

Q And there were a number of times you weren't

present when the phone calls were made?

A Yes.

Q And on December 5th, that Friday night, you were with him at the gym. When you were with him at the gym, does that mean you were right there with him the whole time at the gym?

A No. We would have both been doing our own responsibilities that evening.

Q So what you mean you were around him at the gym?

A Yeah, I mean, we were always -- visibly could see each other besides when he was in the boys' locker room.

Q So you wouldn't know if he were -- if he were on the phone or wasn't on the phone, you wouldn't have known that the whole time?

A I wouldn't have noticed that, no.

Q On the time that we now know he lied about the Patriot's Point issue, did he tell you what date that was or anything?

A No.

Q And the dates, October 28th, are you positive that is the date that you were home?

A Yes.

Q November 1st, you are positive about the details of that date?

A Yes.

Q November 4th, you are positive about the details of that date?

A Yes.

Q December 6th, you are positive about the details of that date?

A Yes.

Q November 28th, I might have asked you, but you are positive about the details of that date?

A Absolutely.

Q Have you ever ridden in Adam's car with Mark?

A Yes.

Q And who was that -- what occasion was that?

A Adam, Mark and myself rode in Adam's car to a friend's wedding once.

Q Have you ever been in Adam's car with Mark by yourself?

A No.

MR. JONES: Nothing further, Your Honor.

THE COURT: Anything else?

MRS. HERRING-LASH: Just a couple questions, Your Honor.

RECROSS-EXAMINATION

BY MRS. HERRING-LASH:

Q You were not positive about all of these things

when you spoke with me and Mrs. Goodrich and Mrs. Hill earlier; were you?

A I told you I knew the gist of everything that happened that day, but I was not positive about times, no.

Q And now you are positive?

A I have had my planner in front of me and have been able to review it, yes, ma'am.

Q Where is your planner?

A It's in my car.

Q Did you bring it here to court today?

A It can be obtained. My car is not located at court, but I can obtain that for you.

MRS. HERRING-LASH: All right. That is all of the questions I have, Your Honor.

THE COURT: You may step down, ma'am.

MR. JONES: Your Honor, I would ask this witness be released.

THE COURT: Any objection?

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

THE COURT: You may be excused, ma'am. Thank you.

MR. JONES: Your Honor, I call Anne Chalmers.

ANNE CHALMERS,

being first duly sworn, testified as follows:

THE CLERK: Please state your full name to the

court and spell your last.

THE WITNESS: Anne Porcher Chalmers, C-H-A-L-M-E-R-S.

DIRECT EXAMINATION

BY MR. JONES:

Q Good morning.

A Good morning.

Q Anne, I know you've got school, so I will get you in and out quick. What do you do now?

A I am a student at College of Charleston, freshman.

Q And where were you a student? Where did you go to high school at?

A First Baptist.

Q How long were you a student there?

A Third grade all of the way through until I graduated.

Q Do you know Mark Vail?

A I do.

Q How do you know him?

A He was a coach at First Baptist.

Q Do you know Amanda Mullins?

A I do.

Q How do you know her?

A She was a cheerleading coach.

Q You were there when they were hired?
A Yes.
Q What was the nature of their relationship when they were hired?
A They were going out. They were dating.
Q Was that widely known?
A Yes, sir.
Q What did you foresee for their future?
A I assumed that they would get married.
Q Did you know ?
A I did. I do.
Q How do you know her?
A She was a student at First Baptist.
Q Were you ever aware of a crush --
A Yes.
Q -- she had. Who was that crush on?
A On Mark Vail.
Q Was that widely known?
A Yes.
Q Have you ever spoken with Coach Vail on the phone?
A I have.
Q What was the -- you can't say what he said, but what was the nature of those conversations?
A Well, we talk about school. One thing we had in

common is we both loved First Baptist. And we would talk about sports a lot. If I had an issue with my volleyball coach, I would talk to him about it. And if he gave advice to a kid, he would get my take on it. It was good because we were kind of on both sides of the totem pole, so he would give me advice on how to talk to my coach and vice versa. We talked about faith. He had a lot of struggles and most of them I had been through, so I could relate to him and talk to him about that.

Q How often would y'all talk?

A Maybe every other day.

Q And at any time, did you ever feel anything inappropriate about these calls?

A No. We grew a strong friendship.

Q Did you have any concerns about the calls?

A No.

Q Have any regrets about the calls?

A No.

Q At some point, your family approached Tommy Mullins regarding something -- some sort of relationship with y'all; is that correct? Do you know anything about that?

A I don't -- oh, well, Mr. Mullins had told me that he had gotten written up and I told my mother about it saying that I didn't understand it because nothing -- I

think it was something that we had been with each other outside of school alone and that never happened. And I got upset about it, and I told my mother and she called Mr. Mullins or Mr. Mullins contacted her. But other than that, I don't.

Q Did you talk to Mr. Mullins about that?

A I did.

Q And what was the finding in that?

A What was what?

Q What ended up happening with that?

A Nothing. I believe he got written up, and he just kind of talked to me about it. And I told him we had never been alone outside of school, and we talked on the phone sometimes. But we just were friends.

Q Would you have any hesitation calling him and talking to him now?

A Other than the fact that I wasn't supposed to for a while, no.

Q But if you could?

A Oh, yeah.

Q Did he ever talk to you about the conversations that he had with

A No.

Q Did you know they talked on the phone?

A I knew she called him sometimes, but I know -- I

think some kids called him like football kids and one time he told me he had left his number on the bulletin board or something for the football players, and then all of the kids wrote it down. So I figure he's a good looking guy some of the girls are going to call him.

Q Did other girls have crushes on him at school?

A Uh-huh, yes.

MR. JONES: Nothing further.

CROSS-EXAMINATION

BY MRS. HERRING-LASH:

Q Hi.

A Hi.

Q You said you talked to Mr. Vail often on the phone?

A Uh-huh.

Q He never -- did he ever mention to you about -- you haven't talked to him about the crush that _____ had on him? Did he talk to you about the crush?

A Not really, no, not that I remember.

Q Did he ever express any concerns about her feelings for him?

A No, ma'am.

Q You didn't know how often he was calling her?

A I have no idea.

Q Now, you said that you -- he got written up for

being with you off of campus?

A Uh-huh.

Q You have been with him off of campus, correct?

A Correct, but with someone else.

Q And so what you were written -- what he was written up for was being alone with you off campus?

A Yes, ma'am.

Q And that was after Mr. Mullins spoke with who all he spoke with? You don't know; do you?

A Will you repeat the question?

Q He got information about the two of you being alone off of campus?

A Right.

Q Do you know who that information came from?

A Oh, no, ma'am.

Q So you don't know who saw you and told?

A No. I don't think anybody did because I was never alone with him.

Q But somebody did tell Mr. Mullins that?

A Yes.

Q And he spoke with you about it?

A Yes.

Q Do you know a girl named Erica B (phonetical)?

A I do.

Q And have you ever spoken to her, at all, about Mr. Vail?
A No, not that I can remember.
Q Who is she?
A She was a classmate of mine.
Q Was she a friend?
A Not really, just kind of knew her.
Q Did you ever talk with her?
A Not that I remember.
THE COURT REPORTER: Your Honor.
THE COURT: Can you repeat that answer, please.
THE WITNESS: Not that I can remember.
BY MRS. HERRING-LASH:
Q You don't remember ever talking with her?
A No, ma'am.
Q So you don't remember telling her that you were staying in Charleston, going to the College of Charleston because you wanted to marry Mr. Vail and that [redacted] better stay away from him?
A No, I never said that.
Q You never said that to Erica [redacted]?
A No, ma'am.
MRS. HERRING-LASH: Those are all of the questions I have.
MR. JONES: Your Honor, just a few.

REDIRECT EXAMINATION

BY MR. JONES:

Q Do you have any explanation for that, for the Brica B thing?

A No, I really don't. I don't know where that came from. I have never talked to her about him. I may have told her that we talked on the phone but.

Q Why did you stay -- why are you going to the College of Charleston?

A Because I want to pursue meteorology and that is, to my knowledge, the strongest undergraduate school for meteorology there. I'm majoring in it. I was considering going to Presbyterian College, but they didn't have it there so I stayed here.

MR. JONES: Nothing further.

MRS. HERRING-LASH: Just one question.

RECROSS-EXAMINATION

BY MRS. HERRING-LASH:

Q You do remember now that you spoke to Brica B on the phone?

A Not on the phone.

Q You spoke with her -- what did you say about the phone? Maybe I didn't hear you.

A I have never talked to her on the phone, at least not about that, and like maybe once outside of that.

I think maybe in class.

Q Outside of what, when you say that?

A Outside of like not talking to Mark. I mean, I have never talked to her on the phone about Mark.

Q Or in person?

A In person I think I talked to her about that we had phone conversations and that he was a good friend of mine, but nothing more than that.

MRS. HERRING-LASH: That is all of the questions I have.

THE COURT: You may step down. Thank you.

MR. JONES: I have one witness that might be a little bit longer. I have one that would be a fairly short witness. I don't know if you have any preference.

THE COURT: I usually break about the same time every day. If you want to take a short one, that is fine.

MR. JONES: Cathy Vail.

CATHY VAIL,

being first duly sworn, testified as follows:

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

THE WITNESS: Cathy B. Vail, V-A-I-L.

DIRECT EXAMINATION

BY MR. JONES:

Q Ms. Vail, good morning.

A Good morning.

Q Ms. Vail, how do you know Mark Vail?

A He is my son.

Q And how do you know Amanda Mullins?

A She is his fiancee.

Q Describe Mark's personality.

A He is very outgoing, very caring. He likes to do things to help people. He has a wonderful personality. He's funny.

Q Describe Amanda's personality.

A Very sweet, very caring. She enjoys Mark's personality.

Q Are they a lot alike?

A No. I don't think so. I think they're a lot alike in some ways and then they're different in other ways. I think they mesh very well together and their personalities go very well together.

Q How would they be different?

A Amanda is more detail oriented. She can tell you what she was doing 13 days ago at 3:00. She likes things to be organized. She likes everything to go in an orderly fashion. She likes to be in control of everything. Whereas Mark, he just likes to enjoy life. He likes to -- he doesn't care what time it is usually. He doesn't carry -- except when he was a schedule. With

his schedules, he's pretty, pretty intense with those. But, otherwise, just in life, he doesn't really care what time it is. He just enjoys life and enjoys Amanda. She is a very sweet girl.

Q Tell us a little bit about his background, his past family life.

A When Mark was 13 months old, his biological mother died very tragically. And I was married to his father first, and we had a son together and we divorced. And my husband married Sandra and they had Mark. And Mark -- and Sandra died very tragically, and I took Mark to take care of. And I have had him with me since he was 13 months old, and I have raised him as my son and he calls me mama.

Q And why did you take him to raise him? When did that occur?

A Well, his father was not really -- after Sandra died, his father was not really emotionally able to take care of him, and so he just said I could take care of him because he knew I was a good mother. And he had just asked me to take care of Mark, and I did.

Q Let's talk about November 28th. That weekend, where were you?

A At Mark's house.

Q And when did you come into town?

A I came in on Wednesday afternoon.
Q And how long did you stay?
A Until Sunday night.
Q And what was the reason for coming into town?
A I came to spend Thanksgiving with Mark and Amanda. Amanda was not able to go home for Thanksgiving to be with her family so -- and Mark because of his practice schedule was not able to come home, so I came to them. And we had Thanksgiving together, and we celebrated Mark's birthday together, which was Friday.
Q And where did y'all stay?
A At Mark's house.
Q Who all stayed there?
A Mark, Amanda, myself and Adam, his roommate was there, in and out, and Adam's girlfriend was there.
Q Friday morning, tell me about Friday morning.
A Friday morning I knew that Mark had practice. He was supposed to be at the gym by 9:45. So I got up and cooked him pancakes and sausage, which is a family tradition that we have for birthdays and holidays and Sundays. I got up and cooked him his breakfast, and he and Amanda and I sat down and ate breakfast. And then he and Amanda left sometime after 9:15, sometime between 9:15 and 9:30 to go to the gym for him to be there for practice.

Q And what time did y'all have breakfast?
A Around 9:00.
Q Okay. And what time did they leave?
A It would have been after 9:15 but before 9:30, just like it takes -- however long it takes you to eat pancakes and sausage and get up and leave, so I would say 9:20, 9:25, something like that.
Q And what did they drive that day?
A They drove my car.
Q And why did they drive your car?
A Because Mark wanted to.
Q And what kind of car do you have?
A I have a Dodge Durango.
Q What color is it?
A It's kaki or tan.
Q And you are positive of the date and the times that you were there? You are positive it was that weekend?
A Absolutely. It was his birthday.
Q And positive of the time?
A Absolutely, because I was warned the night before that he had to be at practice by 9:45.

MR. JONES: Nothing further, Your Honor.

THE COURT: Please answer any questions Mrs. Lash has.

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

THE COURT: You may step down.

Go ahead and start the next witness.

MR. JONES: Tommy Hotchkiss.

THOMAS HOTCHKISS,

being first duly sworn, testified as follows:

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

THE WITNESS: Thomas Glenn Hotchkiss, H-O-T-C-H-K-I-S-S.

DIRECT EXAMINATION

BY MR. JONES:

Q Tommy, how old are you?

A Twenty.

Q And what do you do now?

A I play baseball at Erskine College.

Q And where did you go to high school?

A I took my first three and a half years at James Island and then my last semester my senior year I was at First Baptist Church School.

Q And would that have been the 2003, 2004 year?

A Yes, sir.

Q Do you know Mark Vail?

A Yes, sir.

Q How do you know him?

A He was my baseball coach and then afterwards we became pretty close. We had a lot of common interests and ended up becoming pretty good friends.

Q Do you know Amanda Mullins?

A Yes.

Q How do you know her?

A Through Mark.

Q Tell me a little bit about Mark's personality.

A He is a very lovable guy. Everybody likes him. Everybody at the school always seemed to be happy to be around him. All of the students loved him. He was a very lovable guy. There is not much more to say other than, you know, he would always be there for anybody that needed anything from him.

Q Tell me about Amanda. What is her personality like?

A She's very much the same. She would do anything for anybody. She is real quiet. She doesn't try to cause any trouble. She is just a real calm, low-key person.

Q Since you have been out of First Baptist, have you had any occasion to go back there?

A Yes, sir. I coached baseball there last year. And also my dad kept the stats for the football team the following year after I left, so I was around the football team a pretty good decent amount as well.

Q Let me ask you, when Coach Vail and Amanda were at the school, what was the nature of their relationship?

A As in?

Q What is Mark and Amanda's relationship?

A They are engaged I know now. They have always been together for the past five years.

Q So they were together while you were at First Baptist?

A Yes.

Q Was that known?

A Yes, sir.

Q Anybody ever talk about them getting married?

A I hadn't really heard much talk about it until about a year ago, so, yeah, I guess. Not while I was there, but about a year ago I heard it.

Q And do you know [redacted] ?

A I know of her. I don't know her personally, but, yeah, I know who she is.

Q Were you aware of any crushes towards Coach Vail?

A Yes.

Q By whom?

A By [redacted]

Q How about anybody else?

A I do know some other ones, but no names stick

out. Just here sticks out because I heard that one going around the school quite a bit.

Q All right. Let me ask you about November 1st. Tell me about that day.

MRS. HERRING-LASH: Your Honor, we have a matter of law.

THE COURT: All right. Come forward, please.

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

THE COURT: Ladies and gentlemen, I'm going to go ahead and send you to lunch. Do not discuss this case in any way whatsoever. If you will please report back at 1:30, we will proceed with the trial. Thank you very much.

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

THE COURT: All right. Let the record reflect that at the bench conference the state requested time to speak with this witness because he is an alibi witness and the court has granted a recess to allow the state to speak with this witness, and we will pick back up after lunch. All right. Thank you.

(WHEREUPON, a lunch recess transpired.)

THE COURT: Are you ready to proceed?

MRS. HERRING-LASH: The state is ready. Your

Honor.

THE COURT: Is the defense ready?

MR. JONES: Yes, sir.

THE CLERK: Do you want the witness to resume the stand?

THE COURT: Yes.

(WHEREUPON, the witness, Tommy Hotchkiss, resumed the witness stand.)

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

THE COURT: All right. We are ready to proceed, ladies and gentlemen.

BY MR. JONES:

Q Tommy, I think we left off on November 1st.

A Yes, sir.

Q Tell me about that day.

A Mark came to my room at Charleston Southern about 9:15 and woke me up. And I got up, took a shower, got dressed, and we went over to our friend Coach Rollinson' house who lives about ten minutes away from me, and we sat over there and watched football all day long. Left there late that afternoon, went to the Northwoods Mall because he was wanting to find something for Amanda for their five years anniversary. He looked around and didn't find anything. We went and got food at the food

court, ate there, left and went back to my dorm. We hung out there, played PlayStation, didn't do a whole lot of nothing.

Then around 9:30, Amanda called him. He hung up the phone and said I have to leave in a little while. That was Amanda, I told her I would leave here in a little while and come home. So we finished up what we were doing, playing a video game. And probable about 30 minutes later he left, so he left around 10:00 or 10:15.

Q How do you know it was that day?

A Because, for one, it was the day right after their football season ended at First Baptist and also because I just remember when people wake me up that early. I'm not a morning person.

Q At any point during that time, was he apart from you for any significant amount of time?

A No.

Q Whose car were y'all in when you drove around?

A Mine.

Q Which mall did you go to?

A The Northwoods Mall.

Q And do you know if that is the one that Amanda would have been working at?

A I don't believe so. I think she worked at Citadel Mall.

Q And you are positive about the times?
A Yeah.
Q And the date?
A Yeah.
Q All right. Do you remember seeing Mark on December 6th?
A Yes.
Q And when was that?
A That was the week after his birthday when Otis was in town.
Q Why do you remember that?
A Because it was a week after his birthday and Otis was in town because Otis came in to see him. He was going to come on his birthday but couldn't get down here.
Q Now, who is Otis?
A Otis is Mark's best friend he grew up with.
Q And how many times have you met Otis?
A Three or four times.
Q What did y'all do when y'all got together?
A Otis works on cars and fixes speakers and everything. I have speakers in my car, so I got Otis to help me fix my speakers in my car. And then we didn't do a whole lot of anything after that. They were only there for about two hours, and they left around 3:00 or 3:30.
Q And where was this at? Where did you see him

at?

A Charleston Southern at my dorm.

Q And just for that period of time, that was the only time that you saw them day that?

A On December 6, yeah.

Q Do you remember -- where do you live? Where do your folks live?

A On James Island on Camp Road.

MR. JONES: I have nothing further, Your Honor.

CROSS-EXAMINATION

BY MRS. HERRING-LASH:

Q Is it Mr. Hotchkiss?

A Yes, sir.

Q How long have you known Mr. Vail?

A Since the second semester of my senior year in high school.

Q Was he your coach then?

A Yes, ma'am.

Q And when did you start Southern Baptist? Is that where you went?

A Charleston Southern.

Q Charleston Southern?

A I started that the fall of 2004.

Q 2000 and?

A Four.

Q So just this last fall?

A Yes, ma'am. It was -- yeah, the summer after I got out of high school, I started there.

Q And when did you graduate from high school?

A 2003.

Q So the fall of 2003, you were at First Baptist?

A Yes, ma'am.

Q Now, the summer after you graduated, how much time did you spend with Coach Vail?

A A fair amount.

Q Like how much?

A I saw him close to every day.

Q And that would have been the summer of 2003?

A Yes, ma'am.

Q So when you went to Charleston Southern that fall, how much time did you spend with Coach Vail?

A Not quite as much because I was so far away. I probably saw him three or four times a week.

Q So in that fall, you saw him three or four times a week?

A Yeah.

Q And what would y'all do?

A Anything and everything, go to the beach, hang out, anything that a friend would do. Go to the mall, go eat food.

Q Play PlayStation?
A Play PlayStation.
Q You did that a lot?
A Yes.
Q And I guess if you went to the beach, it was the summer?
A Yes, ma'am.
Q And you hung out in your room?
A Yes, ma'am.
Q He would come out there a lot?
A I mean, define a lot?
Q You said three or four times a week you saw him. Of those times, when would he be at Charleston Southern?
A Maybe half the time.
Q So a couple times a week he was at your dorm room?
A Yeah.
Q Were other friends around y'all, did y'all hang out with other people too?
A Yes, ma'am, my friends from school from Charleston Southern.
Q From Charleston Southern?
A And my friends from James Island had met Mark.
Q And on 11/1, what time did he get there?
A Around 9:15.

Q And what did y'all do?
A We went to Coach Rollinson's house and watched football. And then we left there later that afternoon. I couldn't tell you exactly what time it was, went to the Northwoods Mall. He was looking for something for him and Amanda's five year anniversary, ended up getting food in the food court and ended up we went back to my dorm and stayed there.
Q And you said he got a call from Amanda?
A Yes, ma'am.
Q Did you talk with her?
A No.
Q How do you know it was Amanda?
A Well, I assume it's Amanda because he hung up the phone and said that was Amanda and said I have to go home in a little while.
Q So you know it was Amanda because he told you?
A Yes, ma'am.
Q When had he been there before 11/1?
A Many times. I can't tell you exact dates.
Q On 11/1, he was there. What was the time before that he was there?
A I couldn't tell you the exact day or time.
Q What was the time after that he was there?
A He was there like off and on all the time.

Q Well, a date?
A I really couldn't tell you a date that he was there exactly.
Q The only date you know is 11/1 and 12/6?
A Yes, ma'am.
Q Out of all of the times he was there?
A Yes, ma'am.
Q So on 12/6, he and Otis came just between 1:00 and 1:30?
A Yes, ma'am.
Q How long were they there?
A About two hours.
Q And what did y'all do?
A Otis fixed my speakers in my car, and we just hung out after that and didn't do much of anything.
Q Nothing in particular?
A No.
Q Do you remember what?
A We left there and went and got some food and ate, ate out. I don't even remember where we stopped and got food at.
Q You don't remember where you ate?
A No.
Q What did you eat at 11/1 at the food court?
A McDonald's.

Q And what did you have there?
A A double cheeseburger and fries.
Q Is that what you always have?
A Yeah.
Q Do you go to McDonald's a lot?
A Not a whole lot.
Q No?
A Not a whole lot.
Q So you got back around 3:00 or 3:30 and they left?
A Yes, ma'am.
Q When is the next time you saw Mark?
A Probably two or three days after that.
Q What did you do then?
A We probably hung out at the apartment. I don't know exactly what we did or when it was.
Q Do you remember the date?
A No.
Q Now, did you know [redacted] ?
A Not personally.
Q Did you know whether or not she had a crush on Mark?
A I heard it, yeah.
Q Did he ever talk to you about it?
A He told me that, you know, that a student had a

crush on him and that she needed to understand that nothing could be of it.

Q Until when?

A Until she was 17.

Q Did he tell her that nothing could be of it until she was 17?

A Yeah.

Q He told you that?

A No, he didn't tell me that. I found that out after it happened.

Q But he told you that nothing could happen until she was 17?

A Yeah.

Q Did he tell you that she had been calling him a lot?

A No.

Q Did he tell you that she needed to stop calling him?

A Yeah.

Q So how did that come up that he was saying she needs to stop calling me?

A It was during the same conversation that was brought up when he said, you know, this student has a crush on me.

Q When was that conversation?

A I couldn't tell you the date.
Q No date, not even vaguely?
A No, I couldn't.
Q What did you tell him, or did you advise him he needed to go to Mr. Mullins?
A I told him he needed to take care of it by either talking to her or talking to somebody at the school.
Q Did you give Mr. Mullins as a name?
A Yeah.
Q Did he talk to Mr. Mullins about it?
A I don't know.
Q Did he ever tell you if he did?
A No, he didn't tell me.
Q You said you live on James Island?
A Yes, ma'am.
Q So when you went to First Baptist would you drive to school?
A Yes, ma'am.
Q How far -- and have you driven from First Baptist to Mark's apartment?
A Yeah.
Q How long does it take you to get from First Baptist to Mark's apartment?
A Fifteen, 20 minutes, depending on traffic, I

guess.

Q Pardon me?

A Depending on traffic.

Q I know that's always an important factor here. What about to get from his apartment to Folly Beach?

A It would take another 15 to 20 minutes.

Q An additional 15 to 20 minutes from his apartment?

A Yeah, from the apartment.

Q And I guess being on James Island and going to First Baptist you've made this drive a lot of times?

A Yeah.

Q So 15 to 20 minutes to Mark's apartment?

A Uh-huh.

Q And another 15 the 20 from his apartment to get to Folly Beach?

A Yes, ma'am.

Q Now, when Mark left school, did he talk to you about that?

A About?

Q About why?

A About why he left? Yeah.

Q When did he talk to you about that?

A Shortly thereafter he left.

Q Do you have a date, an estimate of a date?

A No.

Q Did you think at one point it was 11 -- 1/11?

A Did I think it was 11/1?

Q No. January 11th?

A It could be.

Q Was it the day he resigned?

A I don't know.

Q Was it shortly after?

A It was shortly after, yeah.

Q Like the next day?

A If it wasn't that day, it was within the next three or four days.

Q And what did he tell you was the reason he resigned?

A He told me that -- he told me the truth. He told me that there was a student that had accused him of -- he didn't tell me what. He said there is a student that is accusing me of sexual advances or something to that effect.

Q And he told you that either the day or two or three days after he resigned?

A Yes, ma'am.

MRS. HERRING-LASH: Court's indulgence for one moment.

THE COURT: Yes, ma'am.

BY MRS. HERRING-LASH:

Q Did he speak to you about Caroline and Kelsey having a conversation with ____ about the sexual relations also?

A No.

Q Did you hear about that?

A Yes, ma'am.

Q Do you know how you heard about it?

A Just through the school.

Q Through the school?

A Yes, ma'am.

MRS. HERRING-LASH: Those are all of the questions I have, Your Honor.

REDIRECT EXAMINATION

BY MR. JONES:

Q Tommy, tell me again why you remember November 1st. Why does that day stand out?

A Because that was the day after the football season ended, and my dad does all of the stats and everything for the football season. And I'm still very closely associated with the school, so I was at most of the games, so I remembered when the football season ended.

Q And what time did Mark come up there?

A 9:15 in the morning.

Q How often did he come over and wake you up at that time?

A He knows better than to wake me up before 12:00 usually, but, for some reason, he decided to do that.

Q Well, do you know why he decided to come that early that day?

A Yeah, because he wanted to go watch football.

Q Do you remember any games that day?

A No, not that were played.

MR. JONES: Nothing further, Your Honor.

MRS. HERRING-LASH: Nothing further, Your Honor.

THE COURT: You may step down.

MR. JONES: I just noted the time. He might not be here. Otis Coffey.

THE COURT: While we're waiting, ladies and gentlemen, the reason I'm looking at my screen so much is I can see everything on my screen. The entire trial is on my monitor. I'm not playing Pac-Man.

OTIS COFFEY,

being first duly sworn, testified as follows:

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

THE WITNESS: Otis Coffey, C-O-F-F-E-Y.

DIRECT EXAMINATION

BY MR. JONES:

Q Otis, how old are you?
A Thirty-six.
Q And what do you do?
A I'm a construction worker. I'm a carpenter.
Q Where do you live?
A On Hilton Head Island.
Q And how do you know Mark Vail?
A I grew up with Mark on Hilton Head Island, went to school with his brother.
Q How long have you known Mark Vail?
A Twenty-two years.
Q Do you know anybody else in his family?
A His whole family, mom, brother.
Q Do you remember the weekend of December 6th?
A I do.
Q Why do you remember that?
A It was the weekend after Mark's birthday. I came to visit him.
Q And tell me, now, how do you know it was December 6th?
A It was the weekend after Mark's birthday.
Q When is Mark's birthday?
A On November 28th.
Q And when did you come in? How long were you here for?

A The weekend, til Monday.
Q And when did you get into town?
A Friday night.
Q And when was the first time you saw Mark?
A That night.
Q Where?
A At the gym.
Q Which gym?
A His gym, the school's gym.
Q Okay. Where he teaches?
A Yes.
Q And was there a game going on?
A Yes, there was.
Q Why did you go by there?
A To pick up the key to go to his apartment because I didn't want to stay at the game.
Q And how long were you at the gym?
A Walked in, two minutes.
Q And do you think anybody else saw you at the gym?
A Everybody saw me at the gym.
Q Why is that?
A I walked in and walked underneath one of the goals. So when you walk in, everybody is looking at you at the door.

Q What did you do after you got the key?
A Went back to Mark's apartment.
Q And when was the next time you saw Mark?
A Later that evening.
Q And do you know roughly what time? Do you remember any of that?
A No.
Q And what did y'all do that night?
A Nothing, like just talked and hung out at his house.
Q Who all was there that night?
A Amanda and Mark, myself, my dog.
Q Okay. And where did everybody sleep that night?
A Pardon?
Q Where did everybody sleep that night?
A I slept on the couch. Mark and Amanda slept in Mark's room.
Q Do you know where his roommate was that night?
A No.
Q Did you ever see them that night?
A No.
Q Tell me about Saturday morning.
A I woke up and walked my dog and had of craving for McDonald's and went in and got Mark up, and he took me to McDonald's.

Q And what time do you think you woke up?
A 8:00, 8:30.
Q And where was Amanda when you woke up?
A I just woke up and went straight outside.
Q Was she at the apartment?
A I don't think so.
Q When did you see Mark that morning?
A After I came back from walking my dog.
Q And what time was that?
A Probably about ten til 9:00, 9:00-ish.
Q And where -- tell me where you saw him.
A Oh, I went upstairs and woke him up in his bedroom.
Q Why did you do that?
A Because I wanted to go to McDonald's.
Q And where was he when you woke him up?
A Inside his bed crashed.
Q Was he awake, asleep?
A No, he was sleeping.
Q And what did y'all do when you got him up?
A I then went back downstairs and waited for Mark to get dressed, and he then came down 15, maybe 20 minutes later. And I told him I wanted to go to McDonald's, and we proceeded to get into his car and go.
Q Now, whose car were y'all in that day?

A In Mark's car.

Q What kind of car does Mark have?

A A Mazda Protegee.

Q And have you ever done any work on his car?

A I have done all of the stereo work and his neon lights.

Q Where did y'all go after McDonald's?

A We went walking around the City of Charleston, went to the lake, a park that has a big lake. And then we went to another park that is by the ocean, and then we went to another park. The reason we went to all these parks is because I had my dog. And then we went to another park which had a big fountain. And then after that, we were walking back and went to a park that just popped up. I don't know what the name of that is.

Q Where did y'all -- and how long were you downtown?

A We got there before 10:00, ate McDonald's. We left out of downtown probably around 1:00 to 1:30.

Q And how long did y'all stay down there -- stay downtown?

A Between 10:00 and 1:30.

Q And where did y'all go at 1:30?

A Then we proceeded -- I wanted to get a CD back from Tommy and so I asked Mark to take me to Tommy.

Q And where did y'all go to?
A Charleston Southern.
Q And did you get your CD?
A No.
Q What did y'all do while y'all were at Tommy's?
A We went inside his dorm room and waited for him to get ready, and then we drove around Charleston Southern. That was about it. I guess rode around there, that area.
Q And did y'all -- whose car were y'all in?
A Mark Vail's.
Q And how long would you -- how long were you up there? How long were you with him?
A Two hours, three hours.
Q And at any time were you apart from Mark for any extended period of time?
A No.
Q And you are positive this is the weekend you came into town?
A Yes.
Q When did you leave town?
A Monday afternoon.
Q And did you see Mark that day?
A Yes, I did.
Q Where did you see him?

A I went to Mark's school.

Q And what did you do while you were there?

A Mark was having class, gym class. They were playing at a park. And I stayed there, hung out with the kids.

Q Did you see the kids?

A I saw a lot of kids.

Q Did you see any of the faculty?

A I met Mr. Mullins. I met a teacher named Virginia. I met some of the office people, you know, over inside the office.

MR. JONES: Nothing further, Your Honor.

CROSS-EXAMINATION

BY MRS. HERRING-LASH:

Q Is it Mr. Coffey?

A It is.

Q And you have known Mr. Vail for 23 years?

A Yes, ma'am, 24.

Q Are you really close friends with him?

A Am I really close friends with him?

Q Yes.

A Yes, ma'am, I consider him my younger brother.

Q How many times have you been to Charleston to visit him?

A How long, what period of time?

Q How long has he lived here?
A I'm not really sure on that one. I don't know how long he's lived here. I've visited him probably six, no more than eight times.
Q For the whole time he has lived here?
A Yes.
Q When were you here before this day that you were here?
A I don't really know, ma'am. I mean, I came down -- I came down on the 15th.
Q Of?
A November.
Q Of November?
A Yes, ma'am.
Q What did y'all do then?
A Went to Savanna and then went to Hilton Head.
Q And he had something he had to do in Savannah on that day, right?
A Yes, ma'am.
Q And did you stay in Hilton Head or did you come back here?
A I came back.
Q To Charleston?
A Yes, ma'am.
Q What did you do here in Charleston?

A When I came back?

Q Uh-huh.

A Nothing, sat around the apartment and watched TV.

Q You didn't go out at all?

A No, ma'am.

Q You came here on the 15th and then went to Hilton Head?

A Yes.

Q And the 15th was what day?

A Friday.

Q Friday. What did y'all do that Friday?

A Got up, went to Savanna, then went to Hilton Head and visited my folks.

Q So you came from Atlanta that Thursday night?

A Yes, ma'am.

Q So you came on the 14th?

A Yes.

Q And you came, the visit you've just been testifying about, on what date?

A December 6th.

Q So you came on December 6th?

A I came on December 5th night.

Q What time did you get here?

A Around 7:30-ish.

Q And where did you go?
A To the gym.
Q Was there a game going on or practice?
A It was a game.
Q And you did not stay at the game?
A No, ma'am, I had my dog with me.
Q And you went back to his apartment? What time did you go back to his apartment?
A If you want the truth, I got lost in Charleston, so.
Q So you don't know?
A I can get lost here.
Q You can?
A I can get very lost. I got lost on the way to the courthouse and ended up at the hospital.
Q That's easy to do. So you were here that weekend. You got up that morning at what time?
A I got up at around 8:00, 8:30-ish.
Q And you had to wake Mark up later?
A Yes, ma'am.
Q And you left downtown Charleston at 1:00 or 1:30?
A Yes.
Q What time did you get to Charleston Southern?
A I really don't know how long it takes to get

there. I'm not very familiar with Charleston.

Q But you went straight there from downtown?

A Yes, ma'am.

Q What did you do that Sunday?

A Nothing, watched sports. I don't like sports. That is how I can remember.

Q What time did you get up?

A I have a dog. He normally gets me up about the same time every day.

Q Is that how you know what time you got up because of your dog?

A I get up around the same time almost every day.

Q And that's 8:00?

A Around 8:00 to 8:30-ish.

Q So you did nothing that Sunday but just sit around the apartment?

A Uh-huh, and watch sports.

Q Do you remember going out anywhere in the evening.

A No, walk my dog.

Q And that Monday, what did you do?

A Got up, and I went to the school. Mark said I could, and I brought my dog.

Q What was going on when you got to the school?

A Like I said, he had a class. He was at a park

outside the school.

Q And you met the students?

A Yes, I did.

Q Do you remember any particular students that you met?

A Do I remember any, yeah.

Q Who?

A That girl named Caroline.

Q Who else?

A _____. I remember some kids. I don't really remember their names. They were real interested in my dog. So there was this little boy who just liked my dog. He was all about my dog and stuff.

Q But the names you remember are _____ and Caroline?

A And...

Q Had you seen them before?

A No.

Q Did you see them again?

A At the games.

Q Which games?

A I have been to games, other games.

Q And what date did you go to another game?

A That I don't know.

Q Was it after this or before?

A After what?
Q After the 6th?
A I really don't know.
Q But you did see them at a game?
A Yeah.
Q Did you speak to them?
A No.
Q But you recognized them?
A Uh-huh.
Q What did you recognize about them?
A I -- I mean, I can pick out other ones, other people too like her sister and --
Q Whose sister?
A [redacted]'s sister.
Q What was her name?
A Ma'am, I'm so not good with names.
Q If you don't know, that's fine.
A I'm just not good with names.
Q But you don't know the date of the game that you went to?
A I have been to more than just one, and I don't know the dates right off hand.
Q Do you know the date of the next time that you came to Charleston?
A January 1st.

Q January 1st. And how do you remember that date?

A It's New Years.

Q And you came for New Years?

A Yeah.

Q Right?

A Yes, ma'am.

Q What about after that?

A I came a few times. Because, what it was, was I was leaving Atlanta, and I was bringing my stuff from Atlanta to Hilton Head. So I would pass through and maybe say hi or maybe stay a weekend.

Q When did you move?

A From January to February -- I mean, from December to February.

Q From December to February?

A Yeah, because I have a small car, and I could only take so much stuff and I had a lot of stuff.

Q So you were here a lot between December and February?

A Okay, yes.

Q More than you had normally been visiting?

A Yes.

Q And it was because you were coming from Atlanta to Hilton Head?

A Yes.

Q And you could go by Charleston to get there?

A Yes, ma'am, to say hi to Mark.

Q Pardon me?

A To say hi to Mark.

Q And so how many times do you think you were here between December and February?

A Like three times, four times.

Q So you had only been here six to eight times altogether in all the years he had lived here?

A Yes.

MRS. HERRING-LASH: Court's indulgence for one moment.

THE COURT: Yes, ma'am.

MRS. HERRING-LASH: That is all of the questions I have, Your Honor.

MR. JONES: I don't have any follow-up.

THE COURT: You may step down, sir. Thank you.

MR. JONES: Your Honor, may this witness be excused?

THE COURT: Any objection?

MRS. HERRING-LASH: No objection.

THE COURT: You may be excused, sir.

MR. JONES: Your Honor, my last witness was coming. She is a -- she was suppose to be here at 2:00.

She was coming from a job, but I don't know if she has gotten held up for a moment or not. I can step outside and try to call her, if that's all right, and see if I can get her. If not, we can move on without that. If I can have an opportunity just to try to give her a call, she is suppose to be here at 2:00.

THE COURT: All right. Ladies and gentlemen, I will send you to the jury room. Do not discuss this case in any way. Thank you very much.

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

THE COURT: All right.

(WHEREUPON, a recess transpired.)

THE COURT: Is the witness here?

MR. JONES: She is, Your Honor.

THE COURT: Bring the jury in.

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

THE COURT: Call your witness, please.

MR. JONES: Cesurian Champagne.

CESURIAN CHAMPAGNE,

being first duly sworn, testified as follows:

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

THE WITNESS: Cesurian Champagne,

C-H-A-M-P-A-G-N-E.

DIRECT EXAMINATION

BY MR. JONES:

Q Can I call you Coach Ces? I think that's what they call you.

A That's fine.

Q Do you know Mark Vail?

A Yes.

Q How do you know Mark Vail?

A We went to college together.

Q Okay. And do you know him for any other reason?

A Just as a friend, yeah.

Q And did y'all ever work together?

A He was my assistant coach for basketball.

Q And where was that at?

A First Baptist.

Q And what time period was that?

A November of 2003 until about the end of the season this year, 2004. I would say about February, March.

Q Very quickly, do you recall the date November 4, 2003?

A That was tryouts. We had tryouts.

Q And was Coach Vail with you that day?

A He was with me.

Q What time did Coach Vail --

A It was around -- I want to say we had tryouts from 3:30 to 6:00. I recalled him coming a little bit late, but it was no later than 4:00 that he was in the gym with me.

Q And you definitely remember that?

A Yes, yes.

Q And do you recall about what time your basketball game season would start when you would start games?

A Well, I know we had two weeks to get ready after the day of tryouts, so I want to say the timeframe between the 18th and the 19th of November.

Q And over the course of a game, how many games would you play in a day?

A There are four games, JV and varsity. Well, actually, we didn't have varsity -- JV at that time. We didn't have a JV girls squad. We just had a varsity girls squad. So it was JV boys and then varsity girls and varsity boys.

Q So y'all would play three games each at each game?

A Yes.

Q And how long typically -- did it vary on the times they started, or did they pretty much start on a

consistent time?

A JV boys started, I want to say -- I know our girls started around 6:00, so JV boys had to start between 4:30, I would say around that timeframe, if I'm not mistaken.

Q So started around 6:00, and what time would the games usually end, all of the games? What time would they clear out the gym?

A The time frame would be -- I don't know because I never really stayed for the games. After my game, I would leave.

MR. JONES: Nothing further. Answer any questions Mrs. Lash may have.

CROSS-EXAMINATION

BY MRS. HERRING-LASH:

Q Your testimony is that on the 4th of November he got there at what time?

A Around the timeframe -- I want to say no longer than 4:00. I knew he was running a little late, and I did make a comment to him when he walked in, but it was a joking comment.

Q What was it?

A I was just like you're running late on me early, you know, something to that frame, and he was just like I'm sorry coach and that was that.

MRS. HERRING-LASH: That is all the questions that I have.

MR. JONES: Nothing further, Your Honor.

May we excuse this witness, Your Honor?

THE COURT: Any objection?

MRS. HERRING-LASH: No, Your Honor.

THE COURT: You may be excused, ma'am.

MR. JONES: Your Honor, the defense would have no more witnesses. We would rest.

THE COURT: The defense rests.

All right. Ladies and gentlemen, I need to send you to the jury room. Thank you very much. Do not discuss the case in any way.

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

THE COURT: Any matters for the court?

MRS. HERRING-LASH: Your Honor, as far as rebuttal?

THE COURT: Yes, you said you wanted to put something on the record about that.

MRS. HERRING-LASH: Well, yes, a couple of things, Your Honor. I do have one witness here, Mr. Mullins. But I also wanted to have your ruling on whether or not the therapist could testify in rebuttal.

THE COURT: Well, why is it more probative than

prejudicial?

MRS. HERRING-LASH: During the defense presentation, there was -- during Mr. Vail's testimony particularly, there was a lot of testimony about how troubled this little girl was and it was all due to the fact that her mother had died back when she was younger. And I think that opens the door -- well, I don't know if opens the door is the correct word in this situation. But it does make relevant her mental state before this and after this.

I think the therapist has told me -- and I didn't go into great depth about this with her but that the child had done remarkably well after that event. She did not see the child back then. I'm talking about the death of her mother, but that she had done remarkably well after that and that would be what the state would pose how it now becomes more probative than prejudicial because of that testimony being in the record about her mental state and that that was the reason for him paying attention to her when, in fact, what the therapist is going to say her mental state is now the depression is a result of this relationship.

And also the other part of her -- his testimony was that the relationship between she and her stepmother was horrible, and I think the therapist has delved into

that and found out what the situation there is.

MR. JONES: Your Honor, one is I don't know that the testimony was that it was horrible between she and the stepmother. And the testimony -- there was no testimony by her one way or the other that she had a condition one way or the other. That was never testified to.

It would seem that originally what they were going to bring her for was to explain her demeanor on the stand and why that might address credibility. It appears that the issue of credibility is basically two totally opposite sets of facts. It's not really a matter of her demeanor affecting that credibility as to which facts basically fit into the circumstances.

How her demeanor was, I mean, the facts are so skewed. It's not as though we were here and there was no other corroboration. Really, this is going to come down to, unfortunately, alibi witnesses than to either the defendant or the victim's testimony in this case as to who is believed.

THE COURT: Was it your position that she was acting a certain way for a particular reason? Is that what you elicited in your questioning?

MR. JONES: Well, I don't know that the theory -- I think -- I'm not sure the relationship between her stepmother was really any different than maybe -- I

mean, it was probably strained at times but any relationship would between mothers, a natural parent or not. Now, that may have played into it, but I'm not sure that we were saying that that was the cause of all of this. It may be a factor in all of this. We probably will address that to some degree, a factor. But it's not the underlying basis. I don't think there has been any testimony to that. I mean, the crush is also an underlying basis.

MRS. HERRING-LASH: Your Honor, the testimony that I was referring to was the testimony from Mr. Vail when he said that she was very upset, that she was going through an extremely hard time because her mother had died when she was young and that that is what they had all of these long conversations about because it was so stressful for her at this point and time and that it was impacted by the fact that now she had a stepmother. She wanted to know what would my real mother be doing now and I could -- he could talk to her about that because he had lived with the same situation.

THE COURT: Well, have they raised, in any way, that her personal conduct suggests that she is not telling the truth?

MRS. HERRING-LASH: Well, I think that his suggestion is that, yeah, that she is not telling the

truth, that she was talking to him about problems and that she made this up as a result of all of these problems that she had and that she made it up because she got jealous of his engagement. I mean, that is what the defense is, so that is that she wasn't telling the truth because of the problems.

THE COURT: And you want to elicit the testimony that she was acting the way she did because she was depressed because of this sexual relationship?

MRS. HERRING-LASH: Well, what I wanted to bring out the testimony to explain is her demeanor and her depression, and the therapist has been seeing her since this and has spoken with her about it and has diagnosed her as having Posttraumatic Stress Disorder and what the symptoms were. And she has talked with the child about her feelings of anger and the reason that she had been put on medication and her depression.

THE COURT: Anything else?

MR. JONES: Your Honor, she stated on the stand that she still loved him. There hasn't been any real feelings of anger toward him. That would be the doctor saying there are feelings of anger. But, on the stand, I think -- I noted in here at one point on cross she stated she still loved him.

I'm not sure that there are feelings of anger,

and I'm not sure getting into all of that -- I mean, her position today -- I think they are trying to get away from just addressing her demeanor on the stand. If we are going to get into all of the baggage, it is more prejudicial than probative. She is not saying -- I don't think we have attacked the way she testified on the stand in any way.

MRS. HERRING-LASH: Excuse me, just for the record, maybe I misstated it. The anger, that's one of the issues to address, the fact that there is absolutely no anger at him at this point. Even though we are in this trial for criminal sexual conduct with a minor, there is absolutely no anger at him. Actually, there is still love for him. The anger is at her father for bringing this out, which is very probative in this situation.

THE COURT: I'm going to allow it.

MR. JONES: Thank you, Your Honor.

THE COURT: Do you wish to take up directed verdict motions now or after rebuttal? You have to make them for the record.

MR. JONES: If we could -- I hate to bring the jury back and forth, but I would like to do it after rebuttal, if we could.

THE COURT: That's fine. Bring the jury in.

MRS. HERRING-LASH: Your Honor, one issue before

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.

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we bring the jury in.

THE COURT: Hold off on the jury.

MRS. HERRING-LASH: This very well could be something we could do later, but I noticed that there was a long article in the paper today about this case. And I don't know that the jury was told before they left not to read it. And, at some point, out of an abundance of caution perhaps we should poll the jury as to whether they watched the television or read that article.

THE COURT: I will do that at the end of the day.

MRS. HERRING-LASH: Thank you.

THE COURT: Bring the jury in.

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

THE COURT: Proceed with your witness.

MRS. HERRING-LASH: The state would call Mr. Thomas Mullins.

THOMAS MULLINS,

being first duly sworn, testified as follows:

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

THE WITNESS: Thomas Mullins, M-U-L-L-I-N-S.

DIRECT REBUTTAL EXAMINATION

BY MRS. HERRING-LASH:

Q Good afternoon, Mr. Mullins.
A Good afternoon.
Q I want to bring your attention back to a day that you testified about here yesterday -- I think it was yesterday.
A Okay.
Q January the 8th, I think, of 2003 -- 4. I'm sorry.
A Yes, ma'am.
Q Is that the day that you spoke to Mr. Vail about his resignation?
A Yes.
Q And did you bring him into your office, is that what you did?
A Yes, ma'am. I might have called him and told him to meet me in the office, but I'm not certain how it went down. But it took place in the office, yes, ma'am.
Q And after the discussion with him about the issues that Dr. R had talked with you about, you gave him an opportunity to resign?
A Yes, ma'am.
Q And did you have any further discussions with him about what he was going to say about that resignation?
A Yes. I think I asked him what he was going to tell Amanda, but we talked about it being a personal

resignation and that is what it was, personal. But we had a conversation about it, yes.

Q Did you come to any agreement with him as to what you were going to say?

A It was for personal reasons.

Q And when I say agreement, that is what you were going to tell people?

A Yes, ma'am. As a matter of fact, I met with faculty and students, students later, but faculty to inform them of that potential and that reason for his departure.

Q And they were told personal reasons?

A Yes, ma'am.

Q Did you have a discussion with him later about his reasons?

A Yes, ma'am. I'm trying to recall the exact timing and exact date. But I think it was a Friday night after a basketball game. He had called me on the phone, and we had talked on the cell phone. I may be wrong about the date and time, but it was after the Dorchester Academy game. And he informed me that he may be going back for drug rehab or alcohol rehabilitation.

Q Was it your understanding that that is what he was going to do or that is what he was going to say he was going to do?

A Well, that is what I thought he was going to do, yes.

Q Did you, at any point, come to some kind of agreement with him as to it would be better for if everybody was just told that he was going to go to drug rehab?

A No, ma'am.

Q You never had that conversation with him?

A I don't recall he and I talking about what would be best for at all.

Q Did you and he have a conversation about telling any group of people or anybody that it was for drug rehab and not for personal reasons?

A On the phone that night when he called me, I think he said that that was what he was going to do, and I think my comment back to him was something like, Mark, if that is what you feel like you need to do, that's what you need to do. If that going to make things better for you, you need to do that.

Q And that was -- if it was a Friday, that would have been the 9th?

A Yes, but it could have been a Saturday. I don't have that schedule in front of me, and it could have been the next Tuesday. It was shortly thereafter. It was a couple days after our conversation.

Q But your belief was that is what he was going to do, not something that you and he worked out together to tell people?

A Correct.

MRS. HERRING-LASH: No further questions.

MR. JONES: No further questions, Your Honor.

THE COURT: You may step down.

MRS. HERRING-LASH: The state would call Lindy Clifton.

LINDY N. CLIFTON,

being first duly sworn, testified as follows:

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

THE WITNESS: Lindy N. Clifton, C-L-I-F-T-O-N.

DIRECT EXAMINATION

BY MRS. HERRING-LASH:

Q Mrs. Clifton, where are you employed?

A I'm self-employed in private practice here in Charleston at 3 Gamecock Avenue, Suite 305.

Q And what does your practice entail?

A I'm a licensed marriage and family therapist, and I do a little bit of everything. I see couples. My speciality is trauma in children.

Q What is your educational background?

A My educational background, I have a Bachelor of

Science degree in education from the Ohio State University. I have a Master of Arts degree from the Ohio State University in early childhood education. I have a secondary Master of Education in clinical counseling from the Citadel.

Q And what is your training in the area of trauma recovery?

A In the area of trauma recovery, post-degree through the International Association of Traumatic Stress Specialists, I'm a certified trauma specialist which means post-degree I have over 300 continuing education hours in the field of trauma and also over 3,000 client hours.

Q And have you -- you just talked about some courses, but have you attended other specialized seminars and training in the area of trauma recovery?

A Yes. Additionally, I have additional training in being a first responder to disasters. I also have specialized training in-house in helping families who have experienced a family member who has been murdered.

I also have additional training in trauma play therapy. I am and have been a certified continuing education provider for the State of South Carolina for licensed professional counselors, licensed marriage and family therapists and licensed social workers also.

Q Have you provided previous court testimony as an

expert in the area of trauma therapy?

A Yes, I have in the Tri-County area multiple times, also in the State of New York, in the State of Texas and in the State of Florida as an expert and also for the United States military.

MRS. HERRING-LASH: Your Honor, at this time, the state would offer Mrs. Clifton as an expert in trauma recovery.

THE COURT: Any objection to her qualifications?

MR. JONES: Your Honor, we would object.

THE COURT: To her qualifications? Do you wish to voir dire her?

MR. JONES: Your Honor, we will withdraw that.

THE COURT: All right. Objection withdrawn.

BY MRS. HERRING-LASH:

Q Mrs. Clifton, did you see _____ ?

A Yes, I have.

Q And how was the referral made to you?

A The referral was made to me through the Children's Medical Assessment Center, Dr. Betsy Baker, who was the initial one to do the forensic medical examination.

Q And what was the date of your first visit with _____ ?

A My first visit was January 13 of 2003.

Q And do you know how many visits you have had since then?

A I have had 32 visits.

Q And what was her presenting problem?

A Her presenting problem was as a child who was completely out of control, was enraged with her father, was desperate to get her cell telephone back, and I had very strong fears and talked with both of her parents about my concern over fear of flight. That if at all possible if she could gain contact with the offender, she would.

Q And what was the presenting problem?

A The referral was --

Q I'm sorry, the basis for the referral?

A The basis for the referral was child sexual abuse.

Q And what was the presenting demeanor?

A [illegible]s initial demeanor was extremely enraged, out of control, devastated, was having a very, very difficult time.

Q Who was she enraged at?

A Towards her father.

Q And was there any emergency situation that you had to deal with?

A Yes. When children have a sexualized

relationship with an adult and have then been left behind to suffer the consequences, in other words, they are the trauma of their life just exploding in all different ways, a threat of suicide is always prevalent. And I also met with both parents and asked them to watch _____ very carefully.

Q Did you make any referrals to a physician for that?

A Yes, I did.

Q And for what?

A I referred _____ and her parents to a child psychiatrist for antidepressant medication and also some type of sleeping aid medication since with the hyperarousal _____ was not able to sleep.

Q What is hyperarousal?

A Hyperarousal is a physiologic sign of the diagnosis of Posttraumatic Stress Disorder where after a traumatic event, which is explained as any event which is outside of the normal range of human experience that would be markedly distressing to anyone and, for children, top of the list is child sexual abuse being sexualized by an adult whether they give consent or not, the body is hypervigilant, is very much on guard. People cannot sleep. They are extremely anxious. They are irritable. They are agitated, and there are also signs of depression.

Q And was she, in fact, put on medication by that child psychiatrist?

A Yes, she was on two medications: An antidepressant for full-blown clinical depression and also a prescription for a sleeping aid to help her with the horrific nightmares she was having.

Q And I think you said that you diagnosed her with Posttraumatic Stress Disorder?

A Yes.

Q And what was the basis of that diagnosis?

A The basis of the diagnosis of Posttraumatic Stress Disorder is in our diagnostic and statistical manual IV, which is used by psychiatrists, psychologists and clinicians like myself to diagnose that this child fit the diagnostic criteria acutely on all levels of criteria.

Q And what are those criteria that she fit?

A Do you want me to go through the whole DS?

Q Just the ones that she fit.

A Okay. To have a -- to fit diagnostic and medical criteria for having chronic Posttraumatic Stress Disorder, the first thing that needs to occur is an individual must experience or witness a trauma. And a trauma by definition, once again, is an event that is outside of the normal range of human experience that would be markedly distressing to anyone.

So on a life continuum, if you think about a line, we start on one end with a life event. You get up in the morning. As we move further down, we have what is called a normative life crisis. That is something bad happens that we don't like: A check bounces, we have a minor car accident. And the emotional side of our brain, our psyche, can pretty easily get over it.

As we travel down that continuum, we come to trauma. And trauma for all individuals, what we find, there is a clustering or grouping of symptoms that is very individual. There are natures' traumas. Right now we certainly see that on television. We all experienced a little Posttraumatic Stress after 9/11, if you are an American that assumed we were safe in our country.

Q Just talk about her specific --

A Okay. And her specific trauma was child sexual abuse and the relationship that she had had with the offender.

Q What was the trauma of having this relationship since she had been in love with the person?

A Uh-huh. The trauma of this relationship -- and I once again am going to cite the research and the nationally used diagnostic and statistical manual is that trauma as an event outside of a child's normal range of experience in the diagnostic manual is child sexual abuse

which does not need to be violent in nature. Children cannot give consent. If there is a pedophile, a child offender who knows the child who is well-spoken and extremely verbal who wins that child's trust, and secondarily if that individual is in a position of prominence and has authority over that child, such as a teacher, the child is absolutely unable to be in control. And that is the trauma, along with the grief of losing a first love.

Q Was there any feelings of betrayal?

A Oh, absolutely.

Q What was that?

A This case was in terms of the -- as I met with and obviously quite a few sessions individually, the other prong of the manipulation and brainwashing of this adult offender was that there was another individual involved which also gave feelings of jealousy and yet stated to me that the reason that their sexual relationship could not be -- needed to be secret is that it was extra special.

So here was this child in this untenable situation where she really could not do anything to take care of herself.

Q And did some of the trauma that she experienced come from having to tell on him?

A Absolutely. Once again, an untenable situation, what we call a classic double bind situation where you are darned if you do and you're darned if you don't. Since had been told not to tell and shared with me that the offender had said that he would get into a lot of trouble if she ever told --

Q You won't be able to talk about what she said, just what your diagnosis was and your --

A Okay. The sense of that if she told this individual would not -- that she wouldn't be loved anymore. And when she became of age, he would not come back for her.

Q What is meant by a flat affect?

A A flat affect is one of the symptoms of Posttraumatic Stress Disorder. Flat affect means that when an individual speaks there is no emotion. It is completely flat. It's also a sign of depression. With Posttraumatic Stress, particularly with children, we see a very flat affect, no tears. You would think they can talk about something with no emotion, and you might think that it wasn't any kind of big deal to them. But the opposite has happened. Physiologically their mind has more or less taken a break and put them in a place where they can't feel the intensity of feelings because it just hurts so bad.

Q At any point during your therapy has been able to express or feel anger toward the defendant?

A In trauma specific therapy, it's extremely important to be able to feel feelings of anger towards a sexual offender. And the reason for that is if you cannot, if the individual cannot feel angry, then we know internally that individual feels shame. In other words, they blame themselves in some way. And the difficulty here, even with all of the techniques that I have -- I'm also a play therapist, so I use a lot of expressive techniques. was not able to feel anger towards the offender. She is just devastated and extremely sad.

And we have not -- I have not had a lot of success in moving her to a place of anger, which, once again, is a very needed step in trauma work.

Q So she is still at the point of being sad and depressed?

A Very much so. Her demeanor, the way she looks, the flat affect, the depression is very evident, yes.

MRS. HERRING-LASR: Those are all of the questions I have. Thank you.

CROSS-EXAMINATION

BY MR. JONES:

Q Good afternoon.

A Hello.

Q Doctor, since January 13th, 2003, how many visits have you had, 32?

A Thirty-two. And may I please correct the record. I'm not a doctor. I'm a licensed professional counselor and supervisor.

Q Okay.

A Okay.

Q Have you referred her to a medical doctor?

A Yes, I have to a child psychiatrist.

Q You spoke of the -- and I'm not sure if I'm using the right -- the out of control and enraged with a father. I don't think those are presenting problems; are they? I think there was another name for those. I don't know if they are symptoms or --

A When I was asked what was her presenting or what was her demeanor when I first saw her, yes.

Q Okay. Those demeanor, out of control, enraged with the father, wanted cell phone back, fear of flight, have you ever seen those -- that demeanor associated with something other than Posttraumatic Stress Disorder?

A Can you be more specific?

Q Those four factors, are they -- could they be caused by anything other than Posttraumatic Stress Disorder?

A Those four factors when I know as a clinician

what has gone before that the child has been through a medical forensic interview, has been talked with the police, that systemology is very strong for a sexual abuse --

Q Okay.

A -- victim and that clustering of symptoms I'm seeing more and more with young girls who, for example, talk to pedophiles over the internet and willingly get in the car with them.

Q But out of control --

A I can't --

Q Let me ask this. In a vacuum, out of control, a child that is out of control is not just Posttraumatic Stress Disorder? If you have a child that is out of control, that doesn't necessarily --

A Well, of course, right. Yes.

Q Same thing with enraged with the father, that is not in and of itself a symptom of -- only of Posttraumatic Stress Disorder, correct?

A True.

Q Wanting your cell phone back, that is not a symptom only of Posttraumatic Stress Disorder?

A Exactly.

Q Fear of flight, I guess fear from family member of flight, is not only a symptom of Posttraumatic Stress

Disorder?

A Fear of flight to be with an adult offender is certainly.

Q Okay. Just with that, I agree.

Depression is a separate condition from PSD, correct? I mean, it can be a separate condition, just general depression?

A Yes. If I were diagnosing this child fully on Axis One, I would diagnose Posttraumatic Stress Disorder and clinical depression as a separate disorder, yes.

Q But, in general, those can be two separate conditions, Posttraumatic Stress Disorder --

A Yes.

Q And depression?

A Yes.

Q And a traumatic event outside of the norm, again, I think you said any traumatic event outside of the norm would be deemed -- is that the definition of a traumatic event?

A The definition of a traumatic event is any event that is outside of the normal range of human experience that would be markedly distressing to any human being, yes.

Q Which could be the death of a family member?

A Often times is, yes.

Q Which also could be, you said, the loss of a first love?

A The loss of a first love would be a traumatic event?

Q As I wrote that down, I think it was one that you put on the list.

A Depending on how that first love, you know, if a first love was lost through murder, yes, that kind of thing. However, most of us, the loss of a first love get through that. It would be more in the realm of that normative life crises that I talked about.

Q Sure. You stated 9/11 would be -- oftentimes there is an effect of Posttraumatic Stress Disorder from 9/11. I guess there have been numerous cases for that. Is that what you were stating earlier?

A Numerous cases and numerous cases of a posttraumatic stress reaction.

Q Okay.

A Which is the initial response which may not end up as being a full-blown disorder.

Q Okay. Same symptoms saw oftentimes after Vietnam and after Iraq?

A Yes.

MR. JONES: I don't have any further questions.

MRS. HERRING-LASH: Just a couple, Your Honor.

REDIRECT EXAMINATION

BY MRS. HERRING-LASH:

Q The anger and the cell phone and those were in answer to the presenting demeanor question, not the symptoms; is that correct?

A Yes, how presented the first time that I saw her.

Q And some of the symptoms you gave were hypervigilant and nightmares and not being able to sleep?

A Clinical depression, hopelessness, irritability, agitation.

Q Now, were you aware that had had a family member die?

A Yes. We spent considerable time -- I spent considerable time as a clinician assessing that issue.

Q Were you able to discern where the -- if the trauma you were dealing with, the acute trauma that you were dealing with was from that or from the sexual abuse?

A Yes.

Q What was that?

A On more than several occasions -- of course, any time that there has been such a severe loss, as a clinician, I'm going to check out if there were any lingering kind of posttraumatic symptoms from that and there were none. [redacted] was fortunate enough, very, very

strong family to have received ongoing and immediate trauma counseling when her family member died. And on no level did I find that this posttraumatic stress was in any way linked to the death of her parent.

Also, I might add that, you know, as a clinician when a child comes in, we always meet with both parties to get a full medical and psychological and academic history of the child. And previous to this event, there were not the acute posttraumatic symptoms present --

Q That you saw?

A -- for years. No, I'm saying in terms of my interview with both parents, there were no symptoms of posttraumatic stress previous to this issue.

Q And then when they began is when she was forced to tell?

A Yes. They began treatment when she was forced to tell.

Q And the symptoms began when she was forced to tell?

A The symptoms began when she was forced to tell with no posttraumatic symptoms that as a clinician that I found in my initial time with both parents for several years.

MRS. HERRING-LASH: Thank you.

THE COURT: Anything else?

MR. JONES: Briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. JONES:

Q The symptoms began -- do you know what date she was forced to tell? Do you recall that?

A It would be somewhere around January 13 and through there.

Q So really --

A I believe. I'm not sure about that. That was the first date she came to see me. It could have been previous to that. I believe everything broke loose in December.

Q So really prior to that there were no conditions at that time, at least from your research into her past prior to January 13th or that date -- not exactly that date, but that time period?

A I apologize. I'm not being very clear. Obviously, there were symptoms of trauma during the time when this child lost her parent when her parent died, and there was immediate psychological treatment. So I'm saying after the trauma therapist terminated the trauma therapy for this family and these three children, I did not hear that there were lingering symptoms.

Q Okay. Until --

A Of posttraumatic stress.

Q Until roughly that 13th day, not that exact date, but that time period?

A The 13th of January is when I first had contact with this family. The symptoms began when the child was forced to tell, police involvement, forensic involvement, when professionals were involved.

Q And you stated, even at this time, she has not expressed anger toward the alleged offender, at this time, correct?

A I have -- let's see, the last time that I saw [redacted] was about two weeks before Christmas. She could state that she, from time to time, felt anger. And my sense that she was as a very good girl was trying to please me as the therapist. She was not able to carry out any of the techniques that I asked her to express any anger.

MR. JONES: Nothing further, Your Honor.

MRS. HERRING-LASH: May she be excused, Your Honor?

THE COURT: Any objection?

MR. JONES: No objection.

THE COURT: You may be excused, ma'am.

Anything else?

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

THE COURT: Anything else?

MR. JONES: No.

THE COURT: All right, ladies and gentlemen, I don't mean to keep shuffling you in and out, but at each stage I have to take up certain matters. Please do not discuss this case in any way. Thank you very much.

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

THE COURT: Any matters for the court?

MR. JONES: Your Honor, we would, at this time, move for a directed verdict.

THE COURT: Which elements do you contend the state has failed to offer evidence in?

MR. JONES: Your Honor, we would -- the elements of the sexual acts, the presence there by virtue of alibi, again, there has been no proof other than the statement which we have presented alibi witnesses to account for that time. No further proof has come forward aside from the statement of the defendant.

THE COURT: That would be tantamount to me making a finding --

MR. JONES: I understand, Your Honor.

THE COURT: -- as to the facts. That is why we have juries.

MR. JONES: I understand.

THE COURT: Any other basis?

MR. JONES: No.

THE COURT: I deny that motion. Anything further?

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

THE COURT: Now, any special requests to charge?

That is pretty much what I charge for second degree, CSC, similar lewd act. And I will charge alibi a little differently than your charge though, pretty much entails that same request.

How much time do you need for your closing?

MRS. HERRING-LASH: I would think 45, 50 minutes.

THE COURT: Forty-five minutes?

MRS. HERRING-LASH: Forty-five.

THE COURT: How much time do you need?

MR. JONES: Probably about the same, Your Honor.

THE COURT: Forty-five minutes.

MR. JONES: I don't know if you would entertain letting us do this in the morning and pull all of this stuff together. I don't know if the state has any objection to that.

THE COURT: What is your position on that?

MRS. HERRING-LASH: I have no position. I will

be willing to wait until in the morning.

THE COURT: Well, because of the length of those arguments will take us to the normal stopping point, the only other option would be to argue and let you charge in the morning. So if that is the option, would you prefer to break it up or not break it up?

MRS. HERRING-LASH: To not break it up.

THE COURT: All right. Then we will charge -- argue and charge in the morning. It is my understanding at the pretrial that everyone indicated it was a straight up or down as to these charges, no lesser included?

MR. JONES: No, Your Honor.

THE COURT: Is that correct?

MR. JONES: It is.

THE COURT: Is that correct?

MRS. HERRING-LASH: Yes, sir. Your Honor, as far as your normal charge, I have no requests except that -- I think you have said that, but you will be charging lack of consent.

THE COURT: Yes, I will be charging that is not a defense. I will also be charging the language that I normally charge about when you have this range of conduct that the jury has to unanimously agree --

MRS. HERRING-LASH: On one particular act.

THE COURT: -- that an act occurred. And they

have to agree on the same act, not that an act -- some of them agree an act occurred on this day, some agree an act occurred on that day. That would not be sufficient.

MRS. HERRING-LASH: I understand the rule of unanimity that --

THE COURT: Right. And, after that, it is a fairly short charge.

All right. Then I have to meet at 9:00 a.m. about that murder trial that's coming up this month, so we will start back at 10:00 a.m.

All right. Thank you. Bring the jury in please. They do not need their notepads.

MRS. HERRING-LASH: Your Honor, are you going to speak with them about the paper?

THE COURT: Yes.

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

THE COURT: All right. Ladies and gentlemen, that completes the presentation of the evidence and testimony in this case. At this point, we have reached that phase of the trial where you get to hear the closing statement by counsel, closing arguments. Then I would normally instruct you on the law. However, that would take us to a point beyond which I would normally release you. If I let you start the deliberations tonight, I

would have to keep you here. So rather than do that, I will bring you back first thing in the morning to hear the final arguments and the charge and let you begin your deliberations at that point.

One thing I need to take care of as an order of business is, obviously, you are not to expose yourself to any type of media coverage. And I did not ask this morning, and I would like to ask at this point has anyone been exposed to any media coverage, whether on television or newspaper about this case?

I understand there has been some coverage. There has been some newspaper coverage and perhaps television coverage. Has anyone read or been exposed to any type of coverage, if so, raise your hand.

(Hands raised.)

THE JUROR: I saw the Channel 2 --

THE COURT: Hold on. All right. I'm going to send you back into the jury room. You can come out one at a time to tell us about that. If you will go back to the jury room, please.

And just before I let you go, once I have completed this process, ladies and gentlemen, you must not expose yourself to any type of coverage. If you see a headline in the paper, do not read the story. If you see something on the news, turn it off.

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

THE COURT: Bring them in one at the time, please. You may be seated. Counsel approach.

(WHEREUPON, a bench conference was held on the record with the jurors.)

THE COURT: Ma'am, your name and number?

THE JUROR: Tracy Burgess, 32.

THE COURT: Do you want to tell me what you saw or heard?

THE JUROR: What I have seen is on the news in the mornings getting ready to come to court.

THE COURT: And what did you hear?

THE JUROR: Just about what the case -- who the case was. They showed a picture of the defendant or the victim -- excuse me, I'm just nervous -- Mark Vail and showed a picture of you and that is all.

THE COURT: Did you hear anything that you had not heard in court?

THE JUROR: No, sir.

THE COURT: Okay. Would that in any way affect your ability to give everyone a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: All right. Thank you. Please do not expose yourself to any medical coverage tonight or

tomorrow morning. Thank you.

If you will just return to the jury room.

(The juror exited the courtroom.)

THE COURT: Any matters pertaining to that juror, from the state?

MRS. HERRING-LASH: None from the state.

MR. JONES: I don't have any.

THE COURT: All right.

(The juror entered the courtroom.)

THE COURT: Your name and number, sir?

THE JUROR: David Shorter, 208.

THE COURT: Were you exposed to any type of TV or newspaper coverage?

THE JUROR: TV. I caught the tail-end of the 6:00 news.

THE COURT: What did you see or hear?

THE JUROR: I just heard the lady reporting about the two girls being really distraught and that's it.

THE COURT: Did you hear anything that you did not hear in court?

THE JUROR: No.

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

THE JUROR: No, sir.

THE COURT: Anything further?
MRS. HERRING-LASH: No.
MR. JONES: No.
THE COURT: You may step back to the jury room. Thank you.
(The juror exited the courtroom.)
THE COURT: Any matters pertaining to that juror, from the state?
MRS. HERRING-LASH: Not from the state.
THE COURT: Defense?
MR. JONES: No, Your Honor.
THE COURT: All right.
(The juror entered the courtroom.)
THE COURT: State your full name.
THE JUROR: Roderick Smith, 270.
THE COURT: All right. Were you exposed to any television or newspaper coverage?
THE JUROR: Not the television. I saw the headlines in the paper this morning in Section B. I read the article real quickly, but I was not instructed that we couldn't read the newspapers. I read it hurriedly, but it's nothing that I don't already know.
THE COURT: Did you see anything that you had not been exposed to in this trial?
THE JUROR: No, I did not.

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

THE JUROR: No, it will not.

THE COURT: All right. You may not expose yourself to any media or television coverage tonight or tomorrow.

THE JUROR: All right.

THE COURT: They should have instructed that at the qualification.

THE JUROR: We weren't instructed at first or I would not have done it.

THE COURT: I understand.

THE JUROR: I wasn't instructed that we couldn't do that.

THE COURT: Okay. Thank you, sir. Okay, sure.

(The juror exited the courtroom and the next juror entered the courtroom.)

THE COURT: Yes, sir, your name and number?

THE JUROR: Juror 245, Dan Wise.

THE COURT: Were you exposed to any television or newspaper coverage?

THE JUROR: Yes, I heard the headlines while I was in my bathroom.

THE COURT: What did you hear?

THE JUROR: Just the part about the coach --

sexual assault of the coach at First Baptist, the school.

THE COURT: Hold on.

And would that in any way affect your ability to give everyone a fair and impartial trial?

THE JUROR: Oh, no, sir.

THE COURT: Did you hear anything that you had not heard in this case?

THE JUROR: No, sir.

THE COURT: Do not -- anything further from the state?

MRS. HERRING-LASH: Not from the state, Your Honor.

MR. JONES: No, Your Honor.

THE COURT: All right. You must not expose yourself to any newspaper or television coverage.

THE JUROR: Okay.

THE COURT: Thank you. If you will, return to the jury room.

(The juror exited the courtroom and the next juror entered the courtroom.)

THE COURT: Yes, sir, your name and number?

THE JUROR: Anthony Rivers, 196.

THE COURT: And did you -- have you been exposed to any television or newspaper coverage in this case?

THE WITNESS: No.

THE COURT: None?
THE WITNESS: No.
THE COURT: All right. Thank you. Return to the jury room.
(The juror exited the courtroom and the next juror entered the courtroom.)
THE COURT: Yes, sir, your name and number?
THE JUROR: Jeffrey Collier, 255.
THE COURT: All right. Were you exposed to any television or newspaper?
THE JUROR: I saw about half of it on the news last night.
THE COURT: All right. And what did you see?
THE JUROR: A shot of you, a shot of Mr. Vail.
THE COURT: Anything that you did not see in this courtroom?
THE JUROR: No.
THE COURT: And would that in any way affect your ability to give everyone a fair and impartial trial?
THE JUROR: No.
THE COURT: Did you say no?
THE JUROR: I said no.
THE COURT: Anything further, state?
MRS. HERRING-LASH: No, Your Honor.
MR. JONES: No.

THE COURT: All right. You must not expose yourself to any media or newspaper coverage.

THE JUROR: Got it.

THE COURT: If you will return to the jury room. Thank you.

(The juror exited the courtroom and the next juror entered the courtroom.)

THE COURT: Yes, sir, your name and number?

THE JUROR: Thomas Duke, Number 65.

THE COURT: All right. Were you exposed to any newspaper or television coverage?

THE JUROR: The only thing I saw was the Channel 2 report last night.

THE COURT: All right. And what did you see or hear?

THE JUROR: Just some pictures from the courtroom.

THE COURT: All right. Were you exposed to anything that you had not seen in the courtroom or exposed to?

THE JUROR: No, not at all.

THE COURT: All right. Would that in any way affect your ability to give everyone a fair and impartial trial?

THE JUROR: No.

THE COURT: Anything further from the state and defense?

MRS. HERRING-LASH: No, Your Honor.

MR. JONES: No, Your Honor.

THE COURT: All right. Sir, you must not expose yourself to any media or newspaper coverage. Thank you.

(The juror exited the courtroom and the next juror entered the courtroom.)

THE COURT: Your name and number, sir?

THE JUROR: 231, Roger Walker.

THE COURT: Were you exposed to any television or newspaper coverage in this case?

THE JUROR: None on television, just the B Section headline. I did not read the article at all.

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

THE JUROR: No, sir, I haven't learned anything new.

THE COURT: All right. Anything further from the state or the defense?

MRS. HERRING-LASH: No, Your Honor.

MR. JONES: No, your Honor.

THE COURT: Thank you, sir. Please do not expose yourself to any media coverage.

THE JUROR: Yes, sir.

THE COURT: Thank you.

(The juror exited the courtroom and the next juror entered the courtroom.)

THE COURT: Yes, ma'am, your name and number?

THE JUROR: Linda Yaeger, 249.

THE COURT: Have you been exposed to any type of media coverage?

THE JUROR: I saw just a snip-it of it this morning on the news, didn't hear a thing.

THE COURT: Did you learn anything that you had not learned in the courtroom?

THE JUROR: No, no.

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

THE JUROR: No.

THE COURT: Anything further from the state?

MRS. HERRING-LASH: Not from the state, Your Honor.

THE COURT: Defense?

MR. JONES: No, Your Honor.

THE COURT: Thank you, ma'am. You must not expose yourself to any media coverage, ma'am.

(The juror exited the courtroom and the next juror entered the courtroom.)

THE COURT: Yes, ma'am, your name and number?
THE JUROR: Lisa Brown, 253.
THE COURT: Were you exposed to any media coverage in this case?
THE JUROR: Yes, last night Channel 2 news.
THE COURT: And what did you see or hear?
THE JUROR: Nothing I didn't see in here. It was very, very brief.
THE COURT: And did you see or hear anything that you had not been exposed to in the trial?
THE JUROR: No.
THE COURT: Would that in any way affect your ability to give everyone a fair and impartial trial?
THE JUROR: No.
THE COURT: Anything from the state?
MRS. HERRING-LASH: No.
THE COURT: Defense?
MR. JONES: No, sir.
THE COURT: You must not expose yourself to any media coverage, ma'am.
(The juror exited the courtroom and the next juror entered the courtroom.)
THE COURT: Yes, sir, your name and number, sir?
THE JUROR: Gregory Pearce, 266.
THE COURT: Have you been exposed to any media

coverage?

THE JUROR: I saw a headline in the paper but didn't read the article.

THE COURT: All right. Would that in any way affect your ability to give everyone a fair and impartial trial?

THE JUROR: Certainly not.

THE COURT: All right. Anything further from the state?

MRS. HERRING-LASH: No.

THE COURT: Defense?

MR. JONES: No, Your Honor.

THE COURT: Thank you. Do not expose yourself to any coverage. Thank you.

THE JUROR: Yes, sir.

(The juror exited the courtroom and the next juror entered the courtroom.)

THE COURT: You can come forward. Your name and number, sir?

THE JUROR: My name is John Ozmore, O-Z-M-O-R-E, 177.

THE COURT: Have you been exposed to any media coverage?

THE JUROR: This morning I just caught the tail-end of Channel 2's news, and all they did was show

pictures of the defendant and you. It didn't say anything that -- they really didn't say anything, just commented on it.

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

THE JUROR: No.

THE COURT: Anything further?

MRS. HERRING-LASH: No, Your Honor.

MR. JONES: No, Your Honor.

THE COURT: All right. Please do not expose yourself to any media coverage.

THE JUROR: Yes, sir.

(The juror exited the courtroom.)

THE BAILIFF: Last one, Judge.

THE COURT: That's it?

THE BAILIFF: Yes.

THE COURT: All right. Thank you.

Any matters pertaining to that issue, from the state?

MRS. HERRING-LASH: No, Your Honor, none from the state.

THE COURT: Defense?

MR. JONES: None, Your Honor.

THE COURT: All right. Bring the jury in, please.

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

THE COURT: All right. Ladies and gentlemen, thank you very much. I have to go through that process just in an abundance of caution. I think I told each and every one of you, at this point, please make sure that you do not expose yourself to any type of coverage. I understand that is difficult. You might hear something on the radio and you have to do the best you can. And so please comply with that. If you see a newspaper article, don't read it. Television, turn it off. Obviously, you have front-row seats in this case and you get to see what is going on.

Now, at this point, as I indicated, it would take us beyond a good stopping point. And I would be hesitant to let you begin your deliberations. Once those closing arguments are made, that will take us past probably close to 5:15, 5:30, so I'm just going to go ahead and let you go at this point.

I have a matter in another case first thing in the morning. So if you will report back at 10:00 a.m, again, we will proceed with the final closing arguments and then I will charge you, and you will begin your deliberations at that point.

All right. Thank you very much. Do not discuss

the case in any way and have a good night.

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

THE COURT: All right. There being nothing further, we will see you first thing in the morning.

(WHEREUPON, the court was in recess for the afternoon of Thursday, January 13, 2005.)

(WHEREUPON, the following proceedings were held before the court on Friday, January 14, 2005.)

THE COURT: Are you ready?

MRS. HERRING-LASH: Yes, Your Honor.

THE COURT: Are you ready?

MR. JONES: I am, Your Honor.

THE COURT: Bring the jury in, please.

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

THE COURT: All right. Good morning, ladies and gentlemen. We are ready to proceed. At this time, as I indicated yesterday, this will be the time for each side to make their closing statements or closing arguments to you. This is an opportunity to summarize the evidence from their respective points of view.

Please remember closing arguments are not to be considered as evidence. Once I have -- once the parties have completed their closing arguments to you, I will then instruct you on the law of South Carolina as it pertains to the issues in this case. When I have completed my instructions to you, you will then be permitted to begin your deliberations in order to reach a verdict. Are you ready to proceed?

MRS. HERRING-LASH: Yes, Your Honor.

THE COURT: Defense?

MR. JONES: Yes, Your Honor.

MRS. HERRING-LASH: I'm just going to open on the law.

THE COURT: All right. Go ahead.

MRS. HERRING-LASH: Ladies and gentlemen, I will just take a few moments to talk with you about the law involved in this case, and then Mr. Jones will do his closing argument. And then I'll have the opportunity to come back and do the argument on the facts for the state.

I would like to thank you for you attention this week. I will go back over the same law that I explained at the very beginning. The statute involved in this case is criminal sexual conduct with a minor. A person is guilty of criminal sexual conduct in the second degree if the actor engages in a sexual battery with the victim who is 14 years of age or less but who is at least 11.

The element of the part of that statute that the state must prove and the elements that the actor, the person that is charged, committed a sexual battery upon a victim who was less than 14 -- excuse me -- less than 14 but at least 11.

As I explained before, there are no elements of force or coercion or anything like that involved in the statute. It is simply that a sexual battery was committed upon a victim who was 14 or less.

And a sexual battery means intercourse, cunnilingus, fellatio, anal intercourse or any part or intrusion. But the part of this that we are concerned with in this case is sexual intercourse and fellatio, sexual intercourse and then oral with the penis into the victim's mouth. Those are the two sexual batteries that we are involved with.

Also there is a charge for committing a lewd act upon a minor. It is what is commonly thought of as child molesting or fondling. It would be the hugging, the kissing, the touching, the things that go on before the actual penetration.

Now, there is another area of this that the judge will speak with you about and I will try to briefly explain. These indictments cover a time period of November through December. And you have heard testimony from _____ about many episodes of sexual intercourse. And the law is that there has to be a unanimous verdict. That means that each of you have to agree on at least one of the instances.

Let me explain it. If you decide to take each of these instances and you look at one and everybody agrees that that is guilty, then you don't even have to go to the others. But if you look at one instance and there is a split, then you go to another, and another. Because

everybody has to agree on at least one. It may be that everybody agrees on all of them. But it may be that there is one incident that some people agree and some people don't. But in order to find Mr. Vail guilty, you all have to agree on at least one incident, and the same incident of sexual intercourse happened. So you could start by taking one and deliberating on that. And if everybody agrees that is guilty, you don't even have to go on. If you don't agree that that is guilty, you can go on.

The same with the lewd act upon a minor. But with the fellatio, there is only one incident of that. So you would just be discussing the one incident that she talked about. You would all have to agree on that, either guilty -- and if there is one disagreement, it would be not guilty. But with the intercourse, you can take each one and go over that separately until you reach a verdict of guilty.

Now, I will sit down and Mr. Jones will talk to you about the facts from the defense's side. Thank you.

MR. JONES: May it please the court?

THE COURT: Yes, sir.

MR. JONES: If I may relocate this podium. Ladies and gentlemen, this is my opportunity to address you. I told you at the beginning of this week it was going to be a long week. It has been. I'm tired. I know

y'all are tired. But I ask that you bear with me through these few minutes. It's probably going to take me 30, 40, 45 minutes and then I'll be done.

This has been a complicated case, but really this case boils down to one thing. Either you believe the victim and you disbelieve all of the defense's witnesses or you believe the defense's witnesses and you disbelieve the victim.

There is no physical evidence in this case. Everything is based on credibility in this case. Everything is based on either the credibility of _____. Kelsey, Caroline, Dr. Gibbs, Lindy Clifton, her parents. Everything is based on _____'s allegations, or you believe Mark Vail, Amanda Mullins, Cathy Vail, Tommy Hotchkiss, Otis Coffey.

Now, all of the witnesses, defense and state, are subject to the issue of perjury. That means if you lie on the stand, you can go to jail. All of the witnesses have had an opportunity for both sides to corroborate or attempt to corroborate stories as much as you know from the facts. Keep that in mind that everybody is subject to perjury. And to the facts each side has at that time, each side is available to corroborate and check out that witness' story and see whether or not they are telling the truth.

Let's talk about the evidence. Let's talk about how this case got started. Why did Sergeant Crews arrest Mark Vail? He testified it was based on the phone records and based on s allegations, based on the phone records and based on 's allegations. That is what it was.

We have talked about the phone records. has never said there was any sexual conversation that occurred during the phone calls. Make Vail said there was never any sexual conversation that occurred during the phone calls. Amanda Mullins said from the side that she's heard there has never been anything, albeit, that's not -- for a portion of time, she's only heard parts of the time. But, to date, there has been no allegation of any sexual conversation based on the phone calls.

Now, the allegation has been that sexual events were set up based on the phone calls. Again, that goes back to s credibility also.

The second thing is 's testimony and whether or not you believe that. Now, if you think back to the November 22nd incident, both Kelsey and Caroline stated that they believed Mark Vail when he said nothing happened and we went to Folly Beach, and they disbelieved at that time. And you have to ask yourself, again, what has changed since then. What has come out, and what

physical evidence has come out? No witnesses have come out. New allegations have come out. And remember, new allegations are not evidence. They are something that require evidence to be proven.

Again, we look at the phone records. And just going through the evidence, the phone records, there have been no allegations of sexual conversation over the phone. Late at night, a student teacher, not recommended, probably not appropriate, but not illegal and that is from everybody's testimony. You recall the solicitor saying when [redacted] and when Kelsey and Caroline were testifying they sometimes would look around. She would put the phone records up, and she would say look around. Now, you're putting these times guessing according to the phone records. This is a way to road map things in a backwards approach.

A lot of this evidence we were hearing for the first time this week, just like you were. November 4 and December 6, we have known about all along. The times on December 6, we have known about all along. But the times on November 4, we knew about, and I told you the very first day he was alone with her.

And then think about it. If Mark Vail had wanted to lie about that, he could have lied and said I was never with her on November 4th, and it would have been

purely his word against hers. Nobody saw them. Nobody knew. He could have said I was at school the whole time, she's making this up. Nobody knew that. But he told his fiancee. From day one, he said I was alone with her, I used poor judgment. That he did.

But, again, that is not illegal or at least it is not -- does not meet the elements of criminal sexual conduct of a minor or lewd act of a minor. There has got to be some sort of contact on both of these. He's not being charged for hugging at school. If that were the case, probably a number of teachers would be. Virginia Murray said I hug the students there.

So, again, there has been no new evidence that has come out of this.

Let's talk about the gifts. You have got a shirt that he got from You saw in the card. The card said I know you told me not to, told her not to get him a gift. He doesn't want the gift. He pointed that out to her. He said I don't want the gift. She gave him a gift. That is not illegal. That is not illegal.

The next gift is a bottle of Obsession cologne that was in a bag in her room unlabeled. He said -- his fiancee said he doesn't wear cologne. We don't know who the cologne is for, or it has been inferred by the family that it was for him. But why couldn't it have been for

John C ? Why couldn't it have been for her dad? Why couldn't it have been for another teacher? Why couldn't it have been for another school friend? We don't know, and to infer is just basically speculation, again, based on 's testimony.

There was a Victoria Secrets card in the bag, again, not labeled to anybody. Mamie R said I bought that. I remember when she bought it. I was there. We bought it for friend. Why does that not fit now? What changes that? Is it the two cards that were in there that weren't attached? Neither of the cards have Mark Vail's name anywhere on it. Neither of the cards address coach. Now, I imagine during Christmas probably a lot of people go home to see their mother and brother.

You know, the card addressed the toys. There were never any toys -- or no toys have ever been submitted into evidence. No toys were ever found. I'm not sure. But, again, even assuming that that was for Mark Vail, that's not illegal. Again, we are jumping light years ahead and saying because of a card something criminal happened, and there has been no evidence of that.

As far as the cards labeled, one of the cards said what about kisses in a half built house. And you kind of have to ask yourself, going back to that incident if you look at October 28th, the first time that they

had talked, supposedly he rode over from football practice. I think the call about 7:56, somewhere around there she said he called and said I want to see your house after football practice. He gets over there at 8:40, a little bit over 40 minutes later. He says he's riding by. She says, you know, I want to come out and see you. She begged him to come out and see him. She gets in his car down the street. They ride, sounds like past this house, go to I'On Creek parking lot and they kiss.

Now, obviously, Amanda says he was with me that night. We had dinner. We talked about the phone conversation. He then -- I saw him on the phone with her after the fact.

But in all of that, if we then go back to the next incident date, which would have been the November 1st date where she says -- talks about the half built house, you know, the funny thing is she never said she showed which window was his. How did Mark know which window was hers to be sitting across from?

And why does the screen come out? If they are on the phone, why take the screen out? And if he's sitting in a half built house across from her, it's dark. He can't cut on the -- one, that house doesn't have lights. But he can't be out there with a flashlight in the middle of I'On because the police ride by. There are

people walking through. It's going to be suspicious him sitting in a half built house at nighttime with a flashlight. Why would he sit in it? Why wouldn't he go ahead and drive home? There is no reason for him to be sitting in that house. Go home. Talk on the phone. Talk on the ride. Why would you do that? That doesn't add up.

So you kind of have to ask yourself did _____ -- was there a fantasy relationship between _____ and Mark Vail that was based on this mentoring counselor friendship that they had. Again, I'm not saying it is right for him to have been talking and trying to counsel in that format. We're not -- and he said if I could do things different, I would do things different. But that is not criminal. That is not criminal.

And you have to wonder his name wasn't on the card. And you have to wonder why a 26-year-old man would sit in a half built house and risk getting caught, and nobody has really addressed that question.

And at one time -- and I believe it was Caroline that was testifying about the songs, I think Strawberry Wine and I Hope You Dance. But she says I don't know whether or not Coach Vail gave her those songs or whether _____ just sort of assumed that.

You wonder where did this come in at? Where did this assumption come? Based on this friendship and these

conversations, did a relationship get developed in her mind that was different from what really happened? I mean, you have to ask. She says out of all of the girls, Mark Vail picked me. But really and truly, Mark Vail had picked Amanda and everybody knew that. Everybody knew.

You heard people testify and some people disputed it. But, all and all, the testimony is pretty consistent that from day one people saw them kind of as a fairy tale couple, the cheerleader and the coach, and they were going to get married. Where did [redacted] get the idea that out of all of the girls he picked her? He picked Amanda and that was kind of known from day one.

She also stated at one time when they were talking about one of the incidents of sex that I didn't want to tell him it hurt because I appreciated the affection and I thought it was a normal relationship. Where does that idea of a normal relationship come from? And you have to wonder.

I don't know about the cards. I don't know. The cards were never given to him. They don't address anybody on there. You have got the May 16th, 2007, date. If nothing can happen until then, why does this date resurface time and time and time again?

We know that there was a crush. That was testified by [redacted]. In fact, she said at one time she

still loves him. It was testified by Lindy Clifton, the therapist. It was testified by her parents. It was testified by Kelsey, her sister; by Virginia Murray, the teacher; by Anne ____; by Amanda Mullins; by Mark Vail; by Tommy H _____. And all of them, the crush is not at issue.

As a matter fact, Caroline comes up and says, well, it was an obsession. It was an obsession. And Brittany B ____ says when asked if she was obsessed with him, yes, it was an obsession.

And you have to wonder whether it created a relationship that was parallel to an appropriate relationship that in her mind was an inappropriate relationship, at least the question needs to be asked.

Now, the therapist testified yesterday that ____ is still dealing with some sort of traumatic event and she had not made the progress that she hoped and that's in light of 32 visits, which is a little bit less than three months with her, and says she's still dealing with this traumatic event.

We heard _____'s testimony that she hadn't told the police everything. That things kind of came out in bits and pieces. And, in fact, since January the 12th, she really hasn't spoken to the police. In fact, some of the events came out last week before trial, and some of

the events came out on the stand. She says that there are issues of truthfulness throughout.

But you are going to hear probably the solicitor talk about the lies that Mark Vail had. And she is going to insinuate because Mark Vail lied to Amanda Mullins and said I took [redacted] to Patriot's Point and because Mark Vail told some of the students he went to drug rehab that we should not -- or you should not believe what he says. Fair enough. Let's draw that across the board. Let's say anybody who has lied up on the stand up there we don't -- we hold their testimony irrelevant.

Well, that goes to [redacted]. We know that she lied, at some point, because she told her parents that there was a girl named Melissa. We know she lies, at some point, because at least on the 22nd, at one point, she said she had a relationship with Mark and at another point she said she didn't.

So if we're going to base this across the board on credibility, fair is fair. Let's do that. That's okay. We know Mark Vail lied to Amanda.

Let's look at the lies. Mark Vail lied to the students, some of the students, and said I went into drug rehab. Now, you heard Tommy Mullins and you heard Mark Vail testify that there has been some history way back and that was the basis for some of his connection with some of

the students in the counseling.

And it is not a far leap for Mark Vail to say I went back to drug rehab. Why do I say that? And he used that as an excuse for why he resigned. Why do I say that? Because let's say he uses the excuse -- remember, at this time, sexual allegations haven't come out yet. Mark has been asked to resign on the basis of the phone calls and on the basis of putting his hands supposedly on _____'s knee and a kiss, I think is -- if I've got all of it when it came out -- and I know it came out piecemeal -- but if those were the ones that came out at that time, and it may have just been phone records, but that's what all came out at that time.

If Mark Vail says I resigned because of some sort of relationship with a student, who is everybody immediately going to point to? They are going to point to _____. There is no reason for that. If he has resigned, he's resigned. Let's just turn it totally away from her.

All the students knew that he loved First Baptist. If there is a reason for the resignation -- and, again, I can't say exactly how Mark's mind works. But if there's a reason for the resignation, at least he can fall back on something that everybody knows that there has been an issue with and that would be the drugs. It doesn't

point, at all, towards [redacted]. And at least in his mind, some of the students that knew he loved First Baptist so much might think, well, since he lost that, I better not mess with this because I may lose something I love.

Again, none of the sexual allegations had come out. If they had at that time, this would be irrelevant because it would have been all in the news, as it was, shortly thereafter, so there wouldn't have been a need to come up with it.

Tommy Mullins said, yeah, we talked about that. You know, it wasn't something that Tommy proffered to him or said, yeah, go ahead and do. But Tommy knew about it. It wasn't something that Mark tried to cover up. At that time to Mark, it made sense.

Now, the solicitor is probably going to reference him going back to Atlanta and say, well, he lost everything, as he said, and he went to Folly Beach and everything, why did he go to Atlanta? He had Amanda here. Amanda was in college. Amanda was finishing college and could go wherever. He told you he went to her office that day, talked to her and told her he had taken [redacted] to Patriot's Point.

Why did he do that? Because as you have seen throughout this case, Amanda was right on so many occasions, and he wouldn't be here if he had listened to

Amanda. But if that's a crime, probably every man in here is going to be, because I know in my life most of the women are much smarter than I am. Most of the time if I listened to them, I would be in a lot better shape. But he didn't want to admit that he was wrong, and he came up with this.

And, again, if male pride is an issue, we might as well go ahead and form a line and walk off. We are bullheaded. We are stubborn, and it is part of the male nature.

But Amanda wasn't -- he didn't lose Amanda. He talked with Amanda that day. He went to Atlanta, and Amanda would follow thereafter, which she has.

What he lost was First Baptist, and the kids knew that meant a lot. His thought was if it's drug use, they know I lost one of the things I cherish the most. One, maybe some of them won't do it. Two, it doesn't point towards _____ At least she gets that coverage on that.

You know, was it a wise decision? No. But, again, those are the lies. And if we're going to base it and say don't believe anything he said, that's okay. But we have got to do the same thing on the other side.

Now, if we eliminate _____ and we eliminate Mark's testimony, what does that leave us with? Well, on

's side, it leaves us with the phone records. Remember, everything that Kelsey, Caroline and the parents testified to is based on 's allegation.

If it is -- if we eliminate Mark on his side, then what does that leave us with? It leaves us with Amanda's testimony. And at no time during her testimony did she give you any reason not to believe her. You saw the solicitor try and trip her up on some of the questions and try and slip her up on some of the dates, and you saw her come back time after time and a say, no, I told you I didn't have my book with me, but this is what I remember. No, practice wasn't 9:00 to 12:00. It was 10:00 to 12:00.

Time after time, she came back and corrected the things that the solicitor was trying to put up there. She gave you absolutely no reason to not listen to her. She is a CPA. She is detailed-oriented. That is part of the nature of it.

She responded to every question truthfully and, those that she couldn't, she said I don't know. She didn't tell you she listened to every phone call and that was the way the question was construed is that she said she had listened to 80 -- that is not what she said. That is not what she said. She said the pieces I listened to, you know, it sounded appropriate. But Amanda gave me no reason not to believe her testimony.

October 28th, she said I was in the house with Mark. We were eating, and he talked about the phone conversation, got off the phone with her. We ate. He got back on the phone with her, I came in and out during that time. It doesn't seem that unreasonable.

On the November 28th date, she says we had breakfast with his mom. It's Thanksgiving weekend. His mom is in town. His mom says I'm in town from Wednesday to Sunday or Wednesday to Monday, or whatever point on that weekend. And she says we sat down with Mark's mom and with Mark and we had a pancake breakfast. We had the breakfast that they usually have on the birthday. We left, drove to the gym. I was at the gym by 9:30, left about 9:15, got out and jogged back to my apartment. You don't have any reason not to believe her about that. She has given you no reason not to believe her, no reason to lie. And, again, she is subject to perjury. She is subject to discovery. She said we were in Amanda's (sic) mom's vehicle. There is no reason not to believe her.

You have listened to Cathy Vail, Mark's mom. She sat up there. Did you think she was lying when she was sitting up there? Did you think she was mistaken? She knows her son's birthday. It's not unreasonable that a mom is going to come into town for her son's birthday. It's Thanksgiving weekend. She comes into town for

Thanksgiving weekend. She said we cooked the pancakes. We had breakfast. Now, she's in town from Wednesday until either Sunday or Monday. If she were going to lie, that is a long stretch to be able to cover, if she wasn't in town or if she was -- you know, there may be receipts from places that they went. The solicitor has the opportunity to try and determine that. She gave you no reason not to believe her.

And on November 28th, you've got two witnesses to disprove. Both Amanda, aside from Mark, both Amanda and her mom both had to have lied.

And you've got to remember, what did say? That on 9:00 that morning between -- he gets there at 8:46, says calls at 8:46. There is no phone call before that to tell her to get ready. 8:46 is the first phone call. He is sitting there in the Creekside parking lot on the holiday morning, and they have sex in a Durango in I'On. It just doesn't fit. It just doesn't fit. People are going to be home on that day. People are going to be walking around the neighborhood. Why would you do that? Why would you risk that?

And you've got to remember, keep in mind that's after the November 22nd blow-up. That is after she has made this accusation and recanted it. Whether you believe that something happened or you believe that it didn't,

just six days before that an allegation was made. Why would you risk it again? Why would you risk it for December 6 or any of these other two acts that would have come after that? Why would you risk it?

I mean, you have got to ask yourself does it fit, and every incident has got to fit. She has lied about one. Why would she lie about this one and this one be true and this one be true? If she lied about one, her credibility is, you know, to be looked at on all. You have got no reason to doubt Amanda or her mother on that.

Let's talk about Otis Campbell (sic). Otis came and said I came into town for the weekend. And notice what Otis says. He says I went to the ball game on Friday night, yeah, a bunch of people saw me. I wasn't there long, but I picked up a key. Why would you put yourself at the ball game where people can see you if you were going to lie? Why would you put yourself in a position the set yourself up for perjury? I mean, you are not going to say people saw me at that ball game. It would be much easier to not -- if he was going to lie to say, you know, I wasn't there. I came in Saturday. I came in Friday night and went straight to the apartment. He left the key under the mat. Why put yourself where people can see you? They can check up on that.

Why put yourself on Monday playing with those

kids with the dog at the school? He says -- and you heard them, Tommy Mullins, Virginia Murray testify we saw him. We don't remember the date, but he did come to the school. And Virginia said I didn't see him with the dog, but she says he was at the school, came in and met him. Tommy Mullins said, yeah, I saw him there. And Otis said he saw all of these kids out there. Why would you do that if you are going to put yourself subject to perjury? Why would you do that?

Let's add another layer onto that. On into the weekend, you've got Tommy H . Now you've got three people subject to perjury -- well, counting Mark Vail. But you've got Tommy and Otis. If any one of them collapse, if Tommy is found out to have been lying, well then that means Otis was probably lying because Otis says I was with Tommy. Why would you create another layer of possible perjury for that weekend? Why would you do it?

You know, why not just have one person? If you have one person to corroborate your story and alibi, it's a lot easier for a lie between two people than it is for three people.

Now, let's add in Amanda Mullins that morning. She says I got up. I saw the text message thing blinking. I told Mark that morning I had to be at Sylvan at 8:30. I got up a little before 8:00, got up, told Mark the phone

is ringing. He wakes up when she gets up. They have been in the same bed. He calls. You saw the two minute phone call there, says I left a message, called back one more time. She wasn't there, didn't leave a message that time, hung up. There's not other calls until later that day.

Amanda says I left around 8:15. You know, during this time, _____ says he is in the neighborhood to pick me up and bring me back over to his apartment. Amanda says -- now you have got three people, aside from Mark Vail, subject to perjury. You have got Amanda. You have got Otis, and you have got Tommy. Why set that up to where any one of those stories are discredited? Because if any one of them is discredited, they've all related that each saw each other on that day. Then all of them are lying. Why do that? Why not just use one of them? Like I said, a lie is a lot easier between one and one person.

They weren't mistaken on the facts. You saw the solicitor try and shake up Otis. Are you sure it was that weekend? Are you sure it was this? Otis said I know it was that weekend because it was after Mark's birthday. I'm moving from Atlanta. I'm coming through and spent the night there. We got up the next morning. We hung out. We took the dog to the park. I can't remember that park over there, but we went to this park. We went to a park

with the water fountain. We went to a park with a lake. Then we went up to see Tommy.

And what happens is, let's look at it. He picks up _____ that morning. Let's say he does that. She spends from 8:00 in the morning until 1:40 at his house. Now, you heard his roommate testify Mark -- my schedule is pretty random. He says, yeah, Mark and I talk about my schedule. But how many of you really remember somebody else's schedule? I can't remember what I have got for tomorrow, let alone another person's whole schedule. And Adam says I can't tell you what my schedule was. My schedule was all jumbled around. He also says I have a girlfriend that lives there and stays with me. She's got a key. She's a student. This is a Saturday. They never say we were out of town. We weren't there. They never say we saw her.

But what they do say, what _____ says is that Mark was in Adam's car. Adam never said that. Adam said he borrowed it on sometimes, but Adam didn't even say he wasn't there that weekend.

Again, why would you put another person in to destroy your story? Why would you do that? It just doesn't make sense.

Otis says I know I was here that weekend. I came in from Atlanta. I came in after his birthday. This

is what we did. We went up and saw Tommy. We came back down, and we hung out the rest of the afternoon. Amanda says I was at Tropical Storms practice that afternoon.

Now, let's add in another level of this. Now, all this time _____ is sitting at Mark's house subject to possibly being caught by either Adam or his girlfriend coming in at any time randomly. No testimony was given that his schedule that he couldn't have come in at some time. And she is there from, what, 8:00, 9:00 to 2:00 or 1:40, somewhere around there?

She then goes to Tropical Storm practice. Now, she has got hickeys or passion marks all over her neck. Brittany testifies that they wore T-shirts with their hair pulled up. And Amanda testified they pull up their hair because of the cheers so as not to, I guess, get it hung up or whatever.

The only people that see this is Brittany B_____ and John C_____. None of the parents there see it. None of the little girls who were there see it. And you heard Amanda testify and Brittany testify that there were parents there, that there were all of these little girls there. Kelsey never sees these passion marks or hickeys. Caroline never sees these passion marks or hickeys. Mom and dad never see these marks. No teachers ever see these marks.

And, again, keep in mind that this is December 6th. This is after the November 22nd blow-up. Whether you believe that or not, why would you do this? Why would you leave visible marks on a girl's neck that can be seen?

John C says the marks were still on there on Monday. Nobody else sees those. Over the course of the weekend at school, nobody else raises this.

All of this has got to fit on December 6th. All of his witnesses have got to be disproved. You have got these visible marks on the neck. You have got him sitting at his apartment with her for a number of hours subject to possibly being caught by the roommate or his girlfriend.

Now, ask yourself this. At no time did the police ever go over there. You heard the detective say I talked to her one time, January 12. You've got five incidents of sex or five different occasions. During this time, you have got three on one date, three on another date, one or two on the other date, so somewhere around seven, eight times occasions of sex. Talks to the police one time, one time, January the 20th. And all this time, no other investigation has been done.

Supposedly she's in Cathy Vail's car, Adam's car, Mark's car. And you saw Mark's car. You saw the picture of it. I mean, you saw all of the -- look at

this.

But you saw Mark's car. It wasn't the cleanest car in the world. All this time and nobody ever checks his car. Nobody ever checks this house in all this time.

But, again, I come back to you, do the facts fit? Does it make sense? Otis Campbell (sic), why would he lie? His story sticks. The solicitor tries to say when were you next in town. He said I was in town on News Years Eve. What about the time before that? Well, we had gone down out of town and come back on the night of the 14th and were down there. Every single question she asked, he answered, every single question. He gave you absolutely no reason not to believe him.

Tommy Hotchkiss, college student. The last thing he needs is to be involved in any type of perjury. College student, baseball player, future. He says unequivocally they were up there. They came to my apartment on November 1st. Why do you remember that? I remember that because 9:00 a.m. Mark is banging on the door saying let's watch football.

Now, you think about it. College student, 9:00 a.m., that's not real early for a college student. Probably out the night before. It makes sense. Then he says then we went to Coach Rollinson's house and watched some football. Why bring in another person? Why

incorporate in another layer that is possibly subject to perjury? It doesn't make sense. And he never waivers on that. That day we did -- we watched football. We played games. We went to the mall. We ate at the food court, came back, played games. Amanda called at around 9:30. Mark said I'm going to have to go in a bit. He was gone around 10:00. He gave you no reason to not believe him on that.

Now, again, at this time, says he is sitting in a half built house talking to her in the dark in a room across from her window that he's never seen, never been into. At no time did she say that's my window. So ask yourself does it fit? Why would he do it? Why would he do it?

Amanda Mullins said I called him at 9:30 when I got off at the limited. He was at the house somewhere after 10:00. I don't remember the exact time, but he told me he would be there in a little while. It makes sense. He's going to finish his game or whatever he's doing hanging out with her the rest of the night. She gave you absolutely no reason, no reason not to believe her.

Anne Porcher says I talked with Coach Vail during school during that time. Never was there any inappropriate conversation, never was I concerned. In fact, I would still talk to him today. In fact, came in

here and testified. And you heard the solicitor bring up something about a girl named Erica something. Where is Erica? Why didn't they bring her in if this was said? Where is she?

A move to discredit her. Anne never wavered. She never wavered. If you are going to subject her to perjury and you're going to try to catch her for something she didn't say, bring that person in. Sit them up there. That's the way you do it. You've got the opportunity. The state has all the tools in the world. Do it. Bring her up there, but they didn't do that.

So we come down to Mark's witnesses, and they are pretty credible. Again, the phone records, _____'s testimony, what was on the other side?

Now, why do I say _____s testimony? Again, she's told her parents about this girl Melissa, never existed. On November 22nd, she says Mark slept with me. Mark didn't sleep with me. Now, her sister believed her at that time -- or didn't believe her at that time and now they do believe her. But, again, their belief is based on her testimony and these new allegations that has come out. It's not based on new facts. It's not based on forensic evidence that has come out and said we've found this, here. It's not based on any new facts a witness has came out and said we saw this. There wasn't a witness that saw

them get in the car. It's not based on that. What it is is it's based on new allegations.

Remember she said Mrs. Murray told her that she wouldn't tell anyone. After had told Mrs. Murray about the incident -- the alleged incident with Mark, she said Mrs. Murray told me she wouldn't tell anybody. You heard Mrs. Murray say when I asked her are you a mandatory -- I'm a mandatory reporter. The law says she has to report this. I asked Mrs. Murray did you say you wouldn't tell anybody. I did not, I can't say that.

Again, if we're going to invalidate the credibility of Mark Vail, do it across the board. And then let's look at the outstanding evidence that is left.

Again, the crush, everybody knew about it. Caroline O and Brittany B characterize it as an obsession. An obsession, that's beyond a crush. That is something else. That's another level.

Let's talk about the medical evidence. Now the only doctor who came in in this case was Dr. Gibbs, and she came in and she testified that she did an examination on [redacted] on January 12th, 2003. Her information was based on an incident of sex on November 4th and December 6th. One time each, a month in between.

Now, since that date, none of these new allegations were submitted to her for her to evaluate. I

mean, why wouldn't you do that? Why wouldn't the state think if we've got this stuff, let's send it over to her. Let her reevaluate this. Let her make a determination on this. Let's get to the truth. Why didn't that happen? Why didn't anybody ask that?

She wasn't updated. What did she say? She says either there is no evidence of trauma based on it healing or there was no trauma. And you heard the solicitor try and say, well, now, so an explanation can be that she has healed up. She says, yes, that's one explanation. The other explanation is that absolutely nothing happened. The other is that there was no trauma.

Again, it was based on the incident on the 4th and the 6th. It wasn't based on -- November 4th you have the one instance of intercourse. On November 28th, supposedly there was an incidence in the Durango. The first unknown date, three instances of intercourse. On the second unknown date, one incidence in his car. And on December 6th, three instances of intercourse.

I mean, it's like nine times and she's never told to reevaluate this. She says position makes a difference. The position makes a difference as to the insertion as to how much trauma and damage it can cause. Well, on two of these occasions, it's in a car, once while she's in a compact car. And you saw Mark Vail's car to

where it's -- she says it was kind of rushed. And it would be if you're sitting in I'On. No trauma occurs.

The second occasion -- and that's Mark's car. You just saw the backseat a minute ago.

The second occasion of, I would say, kind of abnormal sex is in the back of the Durango where she says he is on top and the doctor says it can cause trauma. Position is a factor that needs to be weighed in on this.

Then you have got sex on three different occasions. She's never had sex before. Starting November 4th and since that time on three different occasions, she has it. On two different occasions, she has it three times in one day. On the Durango time, she says it was very quick, very rushed, within 10 minutes, 10 to 15 minutes at the most. And the doctor talked about physical arousal which causes lubrication which will reduce the amount of trauma. She said it was very rushed. It was very quick.

On one of those occasions, she says it hurt all three times, especially the time that he was on top. And, again, there is absolutely no physical trauma, at all, none.

Maybe it happened like that. But shouldn't it have at least been submitted back to the doctor for her to review and be able to look at these again and evaluate

those before she walks into court that day? Shouldn't the question be asked why it wasn't?

Let's talk about Lindy Clifton's testimony, the therapist. She states that based on the factors of [redacted] is out of control, enraged with her father, wanting her cell phone, devastated, and the last one is fear of flight with the offender.

Now, here is the magic thing. The police can't determine there is an offender. The solicitor can't determine that there is an offender. Only you can determine if there is an offender, but a therapist can magically determine if there is an offender.

Now, let's pull that one out. Because that is your job to determine that, and you haven't made that determination yet. So let's slide that one out and let's look at all of the other factors: An out of control teen, enraged with her father, wanting her cell and devastated.

If any of you have kids, does that sound familiar? If any of you were kids, does that sound familiar? It sounds like we would have a lot of these disorders on our hands.

Now, the only medical doctor who comes in here says I can't tell anything happened. But a therapist who comes in, got a few degrees here and there, comes in and sits down and says, oh, something happened. And I can

tell you who an offender is and that there is an offender and that comes out of a diagnostic manual that she read up there proving these things together. Where is the medical doctor that made that diagnosis? Why wasn't that person brought in? Because the only medical doctor here said I can't tell you what happened. Interesting.

I mean, the testimony does appear to be a bit bias. I mean, she stated that any event outside the normal is a traumatic event. Well, what does that mean? It's a pretty vague description. If I trip waking back over, that's an event outside the norm. Is that a traumatic event? No. 911, traumatic event. Vietnam, traumatic event. Iraq, traumatic event. Most traumatic events are associated with acts of fear. She is still in love with him. There wasn't any fear.

Again, you have to ask yourself with this relationship was there a parallel relationship that was going on in her mind based on this friendship that he had.

Anne Porcher talked to him on the phone. She didn't develop this relationship. She didn't develop this crush.

Remember she stated that she still loved him, wished Amanda wasn't dating Mark. Kelsey stated that she was furious at Caroline when she found the note. What did the note say? That if I was your age and dating you I

wouldn't let you go. And she is furious, called hysterically numerous times. _____ says I was angry at her. I was mad. Caroline says she wasn't really mad at me. Kelsey said she is furious. What triggered that? Another girl.

Think about it. He's marrying Amanda Mullins. Again, obsessed. That's according to Caroline and Brittany. Again, she stated he picked me out of all of the girls. He didn't pick her out of all the girls. He picked Amanda out of all the girls. Thought it was a normal relationship. Where does that come from? How do you get this is a normal relationship? If it's happening -- if what she says is happening, where does she get the idea this is a normal relationship?

Lindy Clifton said -- and notice her phrase. Lindy Clifton says the symptoms began -- she says this twice. Both times when I asked her, now when did this begin, when did this begin. She says, well, somewhere around January 13th is when I first met her, that time frame. But listen to the words she said. Lindy Clifton said that the symptoms began when she was forced to tell her parents, the police and the forensic investigators about this, when she was forced to tell them.

Notice she didn't say the traumatic event began when she had a sexual relation with Mark Vail. You notice

it was when she was forced to tell these events to the police. It makes you wonder was she forced to tell the truth or was she forced to tell what the evidence could have been. Why didn't she use the phrase that when a sexual event occurred? Twice she said that, when she was forced to tell her parents, the police and the forensic investigators about this thing. She didn't say it began with a sexual act.

You know, she said _____ doesn't feel anger toward Mark Vail and that's a process that needs to happen. She said she feels it toward her father. Unfortunately, if _____ feels trapped and feels like I have got to say this, there is no other way, possibly she is feeling anger at the right person. And it's not Mark Vail and it is never going to be.

And what did the doctor say the other side of that would be? It would be shame would be why her demeanor was the way it was. What if this guilt was shame and an innocent man is sitting over here accused of an event that he didn't do? I mean, what if that's why these new allegations came out hoping that he didn't go to jail for something that she did and both of them have a way out? Nobody has asked that question. I mean, the doctor is convinced that he's guilty, but she hasn't heard what you have heard.

Remember that she was punished for being the victim. She said mom and dad were mad. They were screaming and yelling a lot. Kelsey says I came home. They asked me to leave the room. I went to my room. I shut the door. It started out kind of quiet, and then there was a lot of screaming and yelling. That's at the victim. And I kind of think back to the days at the Citadel. When a cadet didn't want to be there, they were a victim of hazing. It's a lot easier to walk out as a victim and to walk out for a reason than it is to say I don't want to do this, I don't want to be here.

Remember she's on restriction. She's punished, and this is based on her being the victim.

Now, let me talk about how the story evolved. The phone records are found. She is confronted by her parents. They say what's going on. She says Coach Vail is counseling me on some drug use or possibly drug involvement. Or maybe it's just that, you know, I know it's around a lot and every high school student has to deal with this. And maybe, you know, she didn't say use, maybe I just needed to talk to somebody about it because it's something that's going on and I don't know how to deal with it. People are approaching me, pressure or whatever it is.

Dr. R___ says my daughters have never been

involved in this. It is unbelievable. She doesn't know the details. She doesn't know the facts. On that basis, he discredits that story.

Now, let's look at the sexual acts. Just this week, you get facts that have come out. She doesn't have the details. She doesn't have the facts. Those are coming out still evolving. It's the same situation. His daughters have never been involved in any type of sexual abuse either. Why does that fit but not the possible talk about drugs?

I mean, it's easier for somebody else to be the perpetrator on your daughter than for your daughter that might be struggling with these issues. She didn't even -- I don't even know if she said she used them or anything. Every single kid every day is dealing with that. There are commercials on every day telling kids how to deal with peer pressure. Why wasn't that a reasonable answer?

Coach Vail certainly had the history to be able to deal with that, and you heard Tommy Mullins say that he had counseled kids with that. Why wasn't that? Didn't give him enough details? Then she says, well, his hands were on my knees and said gave him a kiss. The details still didn't come out at that time. That is what she revealed to him at that time.

Now, I'm not saying I blame Dr. R You know,

that's a natural parental reaction. And I guarantee you looking at the volume of the phone calls that that's the first thing and said to me, Craig, this happened to my daughter, that you're going to -- it's going to go in your head. I don't blame him. I don't have an issue with that, at least that being in his head. And you want to protect your kids and that's an easy assumption to make based on those phone calls.

But remember on December 6th, Mamie R found out that she had not been baby-sitting that morning, from 9:00 that morning until, what, 3:00 that afternoon -- 2:00 that afternoon before cheerleading, she's unaccounted for. Mamie says I called the lady. She wasn't baby-sitting. They don't ever follow up on that until after a month later. Six hours, what, 9:00 to 2:00 your daughter is unaccounted for and you never follow up on that?

At 8:40 at night supposedly she's walking around outside in this neighborhood on school nights. She has got the screen taken off of her window. She is being picked up supposedly by him and taken over to James Island to be in the apartment. It doesn't fit. It doesn't fit.

But it may be that she didn't have any other route to go. Before today, before this week, has anybody else tried to get to the truth? The police talked to her

one time January 12th. Susan Gibbs talked to her one time, January 12th. Lindy Clifton has already got her mind made up. The solicitor said some of the facts she got she got last week when she started preparing for trial. Nobody has tried to investigate this. Nobody has talked to her. Nobody has been over to the apartment. We don't know when Adam Larrick was talked to.

Why wouldn't you go and talk to the roommate to see if he saw any condoms or saw anybody coming in or saw any articles of clothing? Why wouldn't that happen? What kind of investigation is that when you have got nine acts of sex, and they talk to them one time on the first day? And then you have got seven more acts that come out and there is never any follow-up?

The girls say they found a condom box. January 6 was the last time of sex, and this is after everything has come out, so that's after at least January 12th. What do they do with the condom box? They pick it up and put it into a tree. It doesn't fit. It doesn't fit. Why would you do that? Why would the sister -- Kelsey says we're walking and she shows me a condom box. Why would you do that? Why would you not take that to your parents and say, look, this might be evidence? Why would you do that?

Nobody canvassed the neighborhood to talk to any

neighbors. Mark's car has lights under it, you heard. It is a distinct car. Nobody talked to the neighbors to see if anybody had seen him. You saw a house right there in the picture behind the parking lot. Did anybody go and ask them whether they saw a car out there? Did anybody check with Mt. Pleasant to see if any time they checked a suspicious vehicle? Did anybody see if a Dodge was parked on the street anywhere at any time? What kind of investigation is that?

You have got one person's facts and some phone records. One person's statement, and those statements are of two events. And you've got three more that come out and nobody follows up on them.

Now, what has been nagging at me is there are two unknown dates. There are two dates that we just can't seem to figure out what occurred, and we don't know what happened. You know, where were those -- you know, what were those unknown dates?

Let's just look real quick. Is there anyway to zoom that in so the page would fit on there? Well, I will have to move it around a little bit. On [redacted]'s cross-examination -- I have a little piece of the transcript. I asked her about those unknown dates and she said, all right, the next time -- and this is my question to her.

All right. The next time was -- again, there was another occasion. You don't remember the date of this next occasion. You're pretty sure it was after the 4th though?

Yes, sir.

And this was -- there are two times that you said you didn't recall the dates on?

Yes, sir.

But chronologically this being the incident of cutting sixth and seventh period, but chronologically this would be the next time after the 4th, November 4th, we were talking where you skipped sixth and seventh period?

Yes, sir.

So you were sure of the order that they came in?

Yes, sir.

And you had skipped sixth and seventh period?

Now, understand that means that the next time after the November 4th date, which I have up there first time of sex, the first time after that was this time she cut sixth and seventh period. Then after that time, at least, comes the time with the Durango which would have -- not the Durango but the second unknown date, which would have been possibly a Friday after a basketball game.

Now, we've got these unknown dates, and it's difficult for us to prepare a defense or even give you an

alibi because we don't know this.

Let's look real quick. I'm going to put this on the board just to make sure it doesn't bleed through. All right. And I wish I could get this down to where it would totally fit in there, but let's eliminate November the 4th because that's the date an act was alleged to have happened.

All right. Let's eliminate November the 22nd because that's the date they had the big fight and those allegations came out and nobody wanted to talk with anybody. As a matter of fact, Amanda and Mark got in a fight that night, so I don't think any sex occurred on that day.

Let's look at the 28th. That was the date of the Durango incident. That is when he was in his mom's car. And December 6th, right down here, would be the very last date that was said. She was sure of the dates, November 4th to December 6th.

So she said the next time after the 4th was the sixth and seventh period time that we skipped, and then after that was the basketball game time.

Now, last night I didn't think about it, but when Mr. Hill came in to testify, the assistant principal -- you might not even remember him, very nonscript. He came in and testified to a schedule real

briefly. But what did he say? He said Mark Vail had sixth and seventh period until the second trimester. When did the second trimester start? It started after Thanksgiving. So Mark Vail had a sixth period class. And I'm positive that if Mark Vail had cut out on a whole class, surely the solicitor's office, the police, school, 30 whatever -- 20 or 30 kids are going to notice. I can't imagine that would slip by for a whole year.

So that means that after the 28th is the only time he doesn't have a six period class. That is the only time this could have possibly have happened. So that means from November 4th we can eliminate everything up til Thanksgiving and that's the 28th. The 28th is right here where the Durango is marked.

Now, we know that the next incident happened during the sixth and seventh period class, so we can eliminate this following weekend also on the 29th. And we're not going to get into how the 28th fits in because that's actually the next date after the 4th incident. So now what does that leave us? That leaves us with the week of December 1 to December 6th that this incident could have happened in. And you have got to remember that what we are talking about then is November 4 she had one instance of sex. On November 28th, she had one instance of sex and that was in the Durango.

On the first unknown date, the sixth and seventh period, she had intercourse three times, oral sex one time, hurt all three times, him on top. And here's the key -- if can I find that picture. It will probably be in here. Guess what? This was taken on the day she says that is the top I was wearing. We were in a gym full of people. But we can't figure that date out. But we know it was after a class, but we can't pin that date down. There were people around. The date after that was after the basketball game. Well, she says she thinks maybe it was a Friday night. Well, the only Friday night left for the last incident is December 5th. Now, she can remember what she's wearing. She can remember all of these cars she's in. She can remember when and what times he came and picked her up. She can remember all of these things, but she can't remember whether she had sex two days in a row. As a matter of fact, she can't remember in one week whether she had sex seven times. And they took a picture.

She said after the basketball game my dad -- me and my friend Kimberly were waiting on our dads. Now, her friend Kimberly's dad was picking her up, Dr. R they were late. We were in the office with Coach Vail. Surely, surely, they could check the schedule between the 1st and the 5th and the two dads could get together and figure out what date they picked their daughters up

together. I mean, they've got a year to do that.

But somewhere in here we can't remember what happened. We can't remember what that is. We are talking about one, two, three, four, five days. And we have got a picture of one of the days.

We can put all of these other dates together. We can put all of this evidence together. We can bring in doctors. We have got a therapist who can declare an offender magically, but we can't figure out one out of five days and we've got a picture of the day. Wonder why that is? Because we might have an alibi, because it didn't happen. I can do this in three days with a marker and a calendar and a law student and put this together. In a year and a half, the state can't narrow it down to five days.

Now, what we do know is the only date that we can say they are together is November 4th. And why can we say that? Because Mark Vail told you that. Never denied it. Never denied it. All right. Let's set this up. This is our starting point, 2:40 on November 4th on that Tuesday. Now, we know that's the time roughly because of the phone calls. And [redacted] says, yeah, that's the phone call where he tells me where he was at. So 2:40, give or take a few minutes, maybe a little bit after that.

Now, the state says and says they left and they went to Mark's apartment from the school and they drive from the school through downtown. And they go right past Amanda's apartment, Sergeant Jasper, which is a couple of minutes from the school. And you saw that on the map. Here is the school right in here. Here is Sergeant Jasper. Amanda has no roommate. She has got a set schedule. You heard her talk up here about her schedule. She runs from one event to the next.

And my guess is -- and I think you could tell just from talking to her and the way she answered back to the solicitor -- her facts are on and there's not gaps between times. She said I go straight from class this day and my internship to the school. She has no roommate. Mark has got a key. That would be a pretty convenient location.

I mean one of 's complaint earlier was that we didn't have time to talk. But now he's going to ride to his apartment which is down past the Wal-Mart on Folly Road and go all the way down, which is down -- come out of the city. Go across. Come all of the way down here.

And we know he was back by, let's say -- Amanda says 3:30. Again, you have got no reason to doubt her testimony. She's given you absolutely none. Coach Ces

comes in. She says I remember that day. We had tryouts that day. We had tryouts that Monday and Tuesday. He was in the gym by 4:00, if not a little bit earlier. Amanda says I saw him around 3:30. Let's say -- let's split the baby and let's say it's 3:50 he's back in the gym.

And you've got to remember that he doesn't know whether his roommate says he's off that day. He doesn't know whether his roommate is home or not. He doesn't know whether his roommate's girlfriend is home or not.

But all that aside, he goes from here to his apartment. Let's say down [redacted] He gets there 3:00. He says they talk. She says they talk. She says he didn't make any phone calls. He says he doesn't make any phone calls. They talk. They get there at 3:00. [redacted] says we walked inside and we looked around the apartment.

Let's say 3:05 they talk, walk around the apartment, said one day he drank, whatever it is, said then we went upstairs. And this is where she says we laid on the bed looking at the ceiling, relaxing, not talking about sex. So they are not talking about sex at this time. They are just laying on the bed relaxing looking at the ceiling. She says they talked about shorts while on the bed. When we were laying down, within like ten minutes -- I don't know what that means. But let's say

3:10, 3:10, 3:15, somewhere around there they are laying on the bed. She then says they talk about the shorts and some writing on it, something like that. I took my skirt off and she rolls over. It would just make sense that probably there was some comment made on the shorts and all. But let's say we're talking about ten minutes all of this is happening. 3:15 is where we're at right now. Then they start kissing. And she says he's leaning over me holding his arms, holding himself over me kissing me.

Now, again, talking about this fantasy relationship, what does that sound like? It sounds like a romance novel. It doesn't sound like -- you saw Mark Vail walk up here and testify. He can't sit still five minutes. But he's going to suspend himself over her and kiss her, all the time not knowing if his roommate is going to come in, all the time knowing he's got to be back at the school? But he's suspended over her kissing?

So they kiss and they talk a little bit. Let's say we're looking at 3:20, five minutes of kissing. She then says, well, he gets down and he gives her oral sex at that time. Let's say ten minutes. We are now at, what, 3:30?

She then says he stands up and says close your eyes. Again, think, a romance novel. Does this sound like the guy who testified up there, or does it sound like

kind of a made up romance that it seems to fit. He says close your eyes, and then he walks over to the closet, and he gets a condom, puts this condom on. And they have sex. They have intercourse.

Now, what she says is it hurt at first but then it got easier. And I asked, you know, was he gentle, take your time. She says yeah.

So let's say that 3:40 is where we are at now. And then let's say that they take five minutes to clean up. I mean, either he's got to go and urinate or he's got to allow the pressure to just release naturally. So let's say we're talking about 3:45, somewhere around in there. Let's back this up to 4:00. Does it fit? I don't think it does.

But let's say at 2:40 he picks her up and he drives to Folly Beach. His roommate says roughly about 30 minutes. Their witness, not my witness, their witness is his roommate. That puts them at about 3:10 at the pier. He said they talked for -- Mark said they talked for about ten minutes, something like that. 3:20 they're back in the car. Their witness, his roommate says that. At 3:35, we're at the apartment. Mark says we are in the apartment, I don't know, maybe five minutes. She looks around, sees a picture, a nice place. Oh, there is a picture of Amanda. 3:40 they're back in the car.

4:00 Coach Ces says he's in the gym ready for practice.

Hum, wonder which one fits better?

And, again, that is in three days using their witnesses I can narrow down the two events to within five days, and probably with a little bit of time and just a little bit of work, I could probably find out the exact date she says these are happening on.

You know, the dates that we are given, we've got alibis for. The times and the dates they don't fit. Well, they fit one story.

So aside from believing Mark Vail, if you say he's a liar just for the basis of what he told his fiancee and the basis of what he told his students, does it fit? It does. Was it wrong? It was. Was it criminal sexual conduct? No. Was it lewd act with a minor? No. How do we even get there? Why can't the state do this a year ago and give us these dates? Why take a year of a man's life to do this, and I've got to do this in a day.

You know, the only investigation really done in this was the father and his brother-in-law. They went out with binoculars and radios. They didn't find anything. That's the only investigation really done in this thing.

Again, Mark Vail today doesn't have hard feelings toward _____. It just happens. It is a relationship based on a friendship. It is an obsession

and it's a crush. Other than phone records, which we have explained to you, that is it. That is it. Even taking her therapist's testimony, it fits what I'm telling you. Taking all of her witnesses' testimony it fits. Cut Mark Vail out of the picture totally. He told you he was with her on November 4th. He told you that from the first moment. Why even say that? Nobody can prove it but he and . Why even say that? That is the only time that you can put him with her. And it doesn't even fit and that's being generous.

But doesn't it sound like a romance novel he's suspended over her, says close your eyes? He walks over. He comes over, are you ready? Does that sound like the guy you heard on the stand?

Lewd act with a minor. The only time that that is a possibility would be the November 1st where she says he is sitting in a half built house. Tommy H says he was with me. Amanda says he was with me later that night. The facts don't fit. Kelsey says the police ride through regularly. What is he doing in a half built house?

And you notice that earlier that evening says we went into the half built house and we sat down on a stack of wood. Then she says we sat down on a stack of two-by-fours.

Now, I don't know her school schedule. But a 13-year-old girl, how does she know they weren't two-by-twos, two-by-sixes? Does she take shop class? It's probably not offered at First Baptist would be my guess. How did Mark know about these half built houses? How did he know about the vacant house next to her? _____ said he rode past. When he picked her up at the end of the street, they rode past Club Creek. And then he goes in and sits across from the window.

The only evidence of _____'s testimony, if one doesn't fit, you have got doubt for all of them. There is reasonable doubt built in just from their case from the very, very start. Take Mark Vail out of it. Take him out of it. But take his witnesses, take the events that we do know, plug _____'s story into it, plug Mark's story into this part. Caroline and Kelsey believed him at one time. What changed all that? More allegations. They believed him at one time over their sister.

Ladies and gentlemen, nothing occurred with Mark Vail. It never fits. You've got the calendar. They could have done this a long time ago. They got the picture. The only conclusion that you can come to is that nothing happened. And if that is the case, you need to acquit him. You need to find Mark Vail not guilty. None of the elements fit because nothing happened. Let Mark

Vail go home and get on with his life. I mean, he has lost enough for a year.

Thank you.

THE COURT: Ladies and gentlemen, I'm going to go ahead and give you a break before we get to the next set of arguments. Please do not discuss this case in any way. Thank you very much.

(WHEREUPON, a recess transpired.)

THE COURT: Bring the jury in, please.

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

THE COURT: Are you ready to proceed?

MRS. HERRING-LASH: Yes, Your Honor.

THE COURT: Go ahead.

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

Do these look like the statements of a child who just made this up to get Mark Vail? When you look at what said, look at both the emotional part of it, the details about what she said and the motive. As a matter of fact, look at the motive of all of the witnesses.

You are the judges of the facts in this case. And, as so, you need to judge the credibility of the witnesses. And the way that you do that is the way that

you do that every day in your life. The way someone acts when they are talking to you, their motives or their bias, what possible reasons could they have to slant their testimony in one way or the other. Motive.

Let's start, instead of emotion or detail, with motive of ____ because that's the easiest. Because the way this came out, there was no motive. She didn't sit in her room one night and say I'm going to make this up about Mark Vail. She was caught by her parents in the relationship and, as a child, was overwhelmed and had to tell.

Let's look at the emotions of it. She feels she betrayed him. She really wanted to please him. It's what she wanted. She wanted what he wanted. He was more mature than the other boys. She never felt this way before. Her biggest area of distress is his being in trouble. These are just not the statements of a child who is not telling the truth. These are the statements of a child who got involved in a sexual relationship with an adult and got caught.

The details of her history, there are so many and I will go over them. But I want to start by saying that, no, she doesn't have all of the exact dates or times. The times that she could figure out, some were based on the phone calls. We don't remember things by the

exact dates and times very often. We remember by the surroundings and what is going on around us when they happened.

She remembered the first time they kissed and the first time they had intercourse, those dates. She was able to guess at some of the others by a calendar of events that meant something in her life. That is how she came up with the dates that she had.

But look at the details. The victim received more attention from Mark Vail after he learned about her crush. Everybody kind of noticed that. He found out she had a crush. And all of a sudden, he paid more attention to her. Set a date when they could be together legally in public. Even he acknowledged this. He found out she had a date, so he wants to go take her out and say, now, we can't be together until you're 17 years old. So he was contemplating even at the very beginning -- and this happened when she was 12 when they set that date. He was contemplating, even then, being with her eventually.

Began to talk on the phone in late October. Victim knows where they met on the road even. You have that picture of the road, and she pointed out exactly where he was parked.

Parked in the lot and then moved from one place to another. Does that sound like something she would just

sit around and make up? I'm going to say we went there and then I'm going to say we parked there. He asked her for gum. Just a detail, but something that was happening while the moment was going on. Calls corroborate this meeting.

Mark Vail called her for directions to get out of I'On. What a detail? Why would you make that up if this is just one big story that he got lost on the way out and had to call me to get directions?

He said this should not have happened. He said to her we shouldn't have done this. This got out of hand. And what was _____ saying to you-all? We didn't think it was going to happen. He thought it, he planned it, and then he puts it back on her. We shouldn't have done this.

The victim paid her sister to do her baby-sitting on that occasion on that Saturday night. Why make that up? And Kelsey remembers that.

Mark, met him in a half built house. Why in the world would she come up with that detail that she met him in a half built house? And the details about the half built house, they went up a ramp to get into the house. And one of the most specific details that just came out in her testimony, there was no railing on the stairs as we walked up to that upstairs room. Does that sound like she is making it up or that she was there and experienced it?

Mark Vail sat down on a pile of wood, which would be in a half built house. By half built, she said that the siding wasn't up yet, but the wrapping was already up so it was enclosed. She stood between his legs. He asked her to bring Chapstick because his lips were dry. Phone calls to her sister corroborate this.

You will have, ladies and gentlemen, the chart that has been up, and you will also have the entire phone records of both the defendant and the victim with you.

And her sister is calling, get home, get home, our parents are going to be home soon, you need to get home. Kelsey saw a shadow in the house next door. Why he went in the house next door to sit down and talk to her, you will have -- who knows? But why make that up? It was no worse than sitting next door talking to her than in the car talking to her. She told you that happened because it happened.

He sat in the window of the house next door. She took the screen off the window because it was dark and she could see him. And Kelsey corroborated that the screen was off the window, we didn't know why.

Talked on 11/3 to plan the next meeting for 11/4 and you will see the phone calls. 11/4 cut seventh period class and met him in the alley. Victim knew the contents of Mr. Vail's meeting with Mr. Hill that day. Mr. Hill

explained he had to meet about Patrick W having -- or his mother having a problem with Mr. Vail. knew that. The only person that could have told her was Mr. Vail.

The victim can describe his car, the inside of his car. She can describe his apartment, the bedroom, the bed location, the hats on the wall. She took off her skirt so he could read her shorts. She said he didn't ask me to take off my skirt. But when I asked her did he ask you not to? No.

Second time of intercourse when she was on top it hurt. Does that sound like she is making it up or something she experienced?

Victim sat on the bed. He was standing up and unzipped his pants. That is when the incident of fellatio occurred.

Victim was wearing the same top as in the picture of she and Mark Vail. And, unfortunately, they were always hugging so much at school it would be really hard to find people, oh, I remember the one day that they hugged. As everybody has said, he was hugging her all the time. So the day he was hugging her on the steps is not exactly a day that would stand out in anybody's mind at the school.

Victim put on different clothes afterwards and

Caroline corroborated that with, yeah, one time she did come back to the gym and she had on different clothes, and I wondered where she had changed clothes, how she had gotten to change clothes.

Talked about meetings with Melissa in front of people. That was with Kimberly and that wasn't the night that she says -- that she skipped sixth period. That was when he drove his car over, and they had sex in a car, not on the 28th of November. But the other time, the date she does not remember that they had sex in the car that they had been late and had been talking about if Melissa could come and visit me tonight.

Victim had on her cheerleading outfit when they next met. That is when he drives up in the car. It was between games, and she had just got finished her game that she had to cheer in. And she says -- and this is just another detail. But if you haven't been there and experienced, you wouldn't be able to make it up. But every time she gives different details about what happened because she is remembering about everything. That she just took her bloomers off and left her cheerleading skirt on.

Mr. Vail was already sitting in the backseat when she got there. The backseat in the middle, she described, where you have that opening in the front to

give you more room. How much room does it take? You see the size of both of them, and she just sat on his lap.

Amanda called while they were there together. And the phone was in the front seat and she could see the number, and she knew the last four digits of Amanda's number were 2231. Mark Vail had to leave to go to another game so that was the time it was rushed.

Early a.m. calls on the 28th corroborate the meeting that they had early that morning. He was driving his mother's car that day. How in the world would _____ had known he was driving his mother's car on the day that he did nothing but go from his apartment to practice and back? How would she know that?

She knew that his mother's car was silver. Adam said, yes, his mother's car was silver. Only with him about ten minutes that day, ten to 15 minutes. He had to get to that 10:00 practice that he had told his mother and Amanda was at 9:00. The victim was wearing black sweatpants and a red sweater. She knew every time what she had on.

Went early on a Saturday morning to his house. The time -- the thing about her times, she had one incident when she told you it was on a Saturday night. And low and behold, that is the only Saturday night during this time frame that Amanda was still working at night.

The other times were either on Saturday morning, which low and behold, Amanda works on Saturday mornings. Or before school was actually out when she had to cut, and Amanda worked during those times. Or when he is in between games. Mark Vail was driving his roommate's car, the Silver Grand Prix, on that Saturday morning. How did she know what his roommate's car looks like? His roommate said, Mark Vail said, and she said he wasn't there on the 4th when they went to his apartment. And his roommate says that the defendant did borrow his car early one weekend morning from Snee Farm in Mt. Pleasant and brought it back before he got off work, and he testified that he worked on December 6th from 6:00 -- I think it was 6:14 to 2:48. You will have -- he testified about it. But he testified he worked that day.

And the other little detail we stopped at the Hess Station for milk on the way to his apartment and explained like it was down around going downtown where the fast food restaurants are. He sat on the couch and she straddled him. She didn't just say every time, oh, and then we had sex. She had the details about the different positions and the different ways that things happened.

She thinks they met on 12/6 due to that cheerleading practice that day with the younger girls and that's how she came up with that date. Two of the

victim's acquaintances saw passion marks on her neck, two that testified here. Now, John told you that that next Monday a lot of kids were talking about it, and who but Mr. Vail makes a comment, oh, well, I've done that too when I was young.

Talking about -- I think what John said said was somebody grabbed her from behind, still protecting him and not wanting to tell that he is the one that put those passion marks on her neck.

Christmas cards that the victim wrote Mr. Vail about kisses in a half built house. Again, she still thinks that that happened, and she's talking about it and was going to give the card to him but she wasn't -- she never got the chance to.

Birthday card that the victim wrote to him that said it has been a month. His birthday was 11/28. The first time they were together and kissed was 10/28. It had been a month. The first time the victim is with him on 10/28 and his birthday card was written on 11/28.

No outgoing calls on the 6th from Mark Vail's phone call between 7:51 and 1:44, a long time as you see these phone bills where a phone not -- where there was no use between these two or between anybody. On that day, there were none.

Victim says she was dropped off about 1:40.

Kelsey and Caroline both knew that she had skipped class that one day, corroborating again.

Kelsey remembers being paid the $25 when left the house on that Saturday night November 1st. Caroline saw the victim come back to the gym wearing just a tank top and shorts.

Victim was in her room all the time because she was talking on the phone so much and thinking about this and fixing up more.

Victim became more interested in her looks and more confident. I think Kelsey said that. After she started having this crush and he started paying so extraordinary much attention to her, she became more interested. On 11/28 she told her parents she was going out for a run. That's why she couldn't give him his gift on that day.

The victim's parents were having a discussion with her brother about grades on the night that she left and met him in the car, which is why she was able to get out that night as easily as she did.

Let's go over now the testimony of the other witnesses. First of all, Caroline and Kelsey. Caroline and Kelsey say that the hugging at school was often. Remember -- let's talk about the 22nd, November the 22nd. Caroline did most of the talking to that day

because Kelsey was so upset about what her sister had told her. Caroline was very emphatic with you that _____ was upset, not mad, but upset.

And so Caroline -- you can see her demeanor is very take charge when she was on the stand, you could tell -- said we're going to confront him. We are going to call him and confront him. Well, that really upset _____ please do not let him know I told anything, don't let him know please. So they decide to say that somebody just saw them in a car, just saw _____ and Mr. Vail in the car. That's what Caroline decides to confront him with.

Well, who thinks about did she say I had sex? Not Caroline. Caroline said I never mentioned sex. The did she say I had sex came from Mr. Vail, because he knew it, so Caroline says that it all came from him. _____ never took it back from her.

The next day -- and you will see the phone calls when you look at them between all of these people. The next afternoon Kelsey says that next Sunday afternoon _____ says we really didn't have sex. And what story did she come up with after being on the phone with Mark Vail so much that weekend? We went to Folly pier. Where else have you heard that story? And he calls Caroline to try to get her to come into court and talk about that.

Kelsey says that when -- now that she's heard the details, her opinion is very different. Both of them said we did not want to believe this. We didn't want to believe it because he was our teacher, and we didn't want to believe it because it was

Detective Crews explained to you very clearly that he made it clear to if there are any additional batteries, like fellatio or any of the other kind of batteries, there will be additional charges. If there are any additional times, there will be additional charges. He explained that to her not to -- because that is how he does his interviews.

Well, explained to you the reason she didn't talk about the other times is because she didn't want him to be in more trouble. And here the officer, not for that reason, but was telling her every time you tell me about it there will be another charge, because most of the time that is what he does.

He also said that the time frame he got was early November to late November. But he didn't have a calender to help him.

Mrs. Murray, which is where the actual history came out of having intercourse, says that when the child got to school that day she was hysterical because he was gone. And she tried to comfort her. It took her between

20 and 30 minutes to actually get her to the point where she could talk. And during that she blurted out he took my virginity so he can't be gone.

So then she said wait, this is important. You have to make sure this is really true. Did she say -- of course, Mrs. Murray had to tell as her job. But did she say -- from her testimony, did she say to _____ okay, now I'm going to tell right now. No, she spent time with her and told her about a prior incident that happened to her in her life, Mrs. Murray's life, not the details, but a prior incident and explained to _____ you need to talk about it now so you will feel better. That is how she got her to be able to tell and to talk about it and took her to Mr. Mullins. It wasn't easy. And I think a lot -- [redacted] spent a lot of time going to Mrs. Murray after that for comfort.

Dr. Gibbs, even when she saw Dr. Gibbs, _____ said that it was a gift I gave him, there was no force. She's still trying to make sure -- in her mind, it very well may have been if there is no force, maybe he won't be in trouble because a lot of people think rape is force. A lot of children don't know about statutory rape.

Dr. Gibbs had three different things she considered in what she looked at. The first was the time frame since the last occurrence. She was given the time

of December 6th by Mamie who had called and found out. But Mamie never said that she called on December 6th. She called when it all got together when they had the confrontation about it and that the reason the time frame is three weeks that she gave is because often when you have a child that does have some trauma and they come for their follow up three weeks later, the trauma has healed very often. So if you see them three weeks after the last event, it's very likely that even if there had been some trauma you would not be able to still see it.

Hence, I think she explained to you the old wives' tail doesn't mean much about you can examine a girl and tell if she has been sexually active.

She also said the other factor would be the condition of 's body. She's going -- or it's right through puberty, and she has a lot of estrogen and the estrogen makes the vaginal opening elastic so it stretches rather than tears.

She also said -- and this is not what -- it's not a big factor because you do have children that are violently assaulted and had no trauma. But when there is some consent, there may be more lubrication.

And when she talked about position, the position that she said on the stand -- and you can rehear her testimony -- that causes more trauma is when the person is

on their hands and knees or on their stomach and the entry is from the back. We don't have that position, at all, anywhere in _____'s history of what he did to her.

Her testimony basically is to explain to you the fact that there is no trauma does not rule out -- you can't say no trauma, no intercourse. That it does not rule it out as many people would think and that's the reason for the testimony to aid you with the information that she has. And as far as her knowing the additional information, which I guess means that it happened more than twice, she was told that. She responded to that on cross. No, it doesn't make a difference because it would have still been more than three weeks. _____ would have still had the same body, so it didn't make a difference.

She was asked, well, would it make a difference if it had happened nine times on cross. She said, no, not a bit. My opinion would not change. So she has that additional information.

She also explained to you that three weeks would have been too long to look for any kind of DNA because it would have been gone by then, washed off.

John and Mamie R_____ both testified this has obviously, obviously torn their family apart and has been really hard -- or actually not torn their family apart but torn them apart inside of each of them. And they were a

family that was very close and did things together, so close that they discovered this within a month and a half, which is pretty quick considering a couple times were from the school. They noticed the behavior changes immediately and were able to see those phone records and order them and really look into what was going on with their child.

And the horror of this has been there is no way to take that pain away from their child. And what makes it extremely distressing is that she is -- a part of her still wants to protect him.

Dr. R also explained to you how the Creek Club parking lot is because there was a lot of speculation that, oh, this area people are always around there. Well, it is only used when it is rented out. And you saw the parking lot. It's harder to see in the picture. There are only two lights, and they are on the outside before you go in and it spreads out. And there's shrubs between where said he was parked and the street. You could ride down the street and that car could be there and you would not see it in that parking lot, which is why he moved from one spot to the other.

Now, you are going -- that little 13-year-old would have to have been planning this big story a long time to get all of these details together. And how would she know what questions were going to come out? I mean

she would have had to have been one smart little cookie to have planned all of this stuff out.

Mr. Mullins and Mr. Hill, Mr. Mullins confronted Mark Vail about the phone calls only, because that is all he knew about. And what his response was, I was just counseling her. He had been told at the beginning of the year as a teacher and he had been told as a coach and he had been, according to Mr. Mullins, advised personally for other reasons to stay away from one-on-one contact with kids, but it continued. He was allowed to resign.

Later that day Mr. Mullins finds out the rest of the story when Mrs. Murray brings _____ to his office. Mr. Hill was there to explain. Sixth period happens at 1:30, seventh period at 2:30. School is out at 3:10. He wasn't exactly sure when the trimester switched, but it was roughly sometime the week of Thanksgiving or before.

Mark Vail never had a seventh period class. And from roughly around Thanksgiving did not have a sixth or seventh period class. He also explained to you that that conference about Patrick W__'s mother did happen.

Adam works in Mt. Pleasant. He described the apartment as _____ did, except maybe for the couch and he said, well, I am color blind. But he also told you -- and I have already gone over some of this that the car that he let the defendant drive his car early one weekend morning

and that the mother was there and that he worked on the 6th from 6:15 to 2:38 and that they very often knew each other's schedule. And, no, I agree you usually may not remember your roommate's schedule. But if you're planning on bringing somebody to the apartment the next day, you are going to especially try to remember it.

Brittany and John. Brittany noticed that there was something amiss and asked about it. And what happens right after that? That Mark Vail asked Brittany are you saying that me and are having sex? Did he go to anybody and complain about this? Did he go to Mr. Mullins? Did he do anything about it? No, he confronted a child about it. She saw the passion marks on s neck, and she doesn't say she ever told any teacher or anybody. She talked to about it.

After this all came out, talked to her and told her that it happened in the car and in the apartment.

John says that he saw the marks. He also says that in gym very often -- he doesn't say every day, but very often and Coach Vail would be sitting on the bleachers talking alone. Sometimes her friends would be there, but very often they would be alone. And when they went to the park, they would be sitting on the bleachers talking alone. What a perfect time for him to have had a

conversation with her if he wanted to get her alone rather than taking her off?

John also says that he was very shocked when Mr. Vail talked to a group of boys and said let's guess the color of _____'s underwear today. I will tell you what color they are.

Amanda, she testified her phone number was 478-2231 and Mark Vail's phone number is 478-9697. You will have with you in the jury room the whole phone records, as I said. But this is taken from that and this is Amanda's phone records. I will go over some of those in a moment.

But, first of all, she is totally in love with Mark Vail, believes everything he says. She waited five years to become engaged to him. And even according to Tommy Mullins, she is just so sweet she will do anything for anybody.

She gave him good advice on at least two occasions. But did he follow it? No. And what did she do about that? Nothing. She just left it in Mark's hand. If he is not concerned, I'm not concerned. Let Mark make all the decisions.

Even after this little girl who was one of her cheerleaders has said that her, being Amanda's boyfriend, had sex with her, she doesn't even talk to the child.

Surely she could have found a way to be alone with her. She said she didn't talk to her because she didn't want to embarrass her. She could have found a way to be alone with one of her cheerleaders. She didn't say a word to her because Mark had worked it out and had taken care of it.

And when asked, well, what about the fact that he continued to talk to her all the time on the phone after that day, the 22nd, Mark wasn't concerned, I wasn't concerned. She even believed his explanation for not being able to have time at school to talk to the child so that is why he had to take her away. He couldn't even explain it to you.

On 11/1 she says that she was gone from that morning until around 10:30 that night. So she has nothing to do with that day. 11/28 she says that they went to practice. Mark had to go to practice at 10:00. She had thought at 9:00 at one point but at 10:00 and that she went with him and went running. Well, we will see the phone records in a moment, and I will point out what her phone calls are on 11/1 to him and from him. 12/6 she says Mark was there when she left at 8:00. says that -- she is going on the phone records -- between sometime between 7:56 and 1:44 they were together. He could have easily gotten up and left that apartment as

soon as Amanda went to work.

Let's look at her phone records. The other thing she testified about is they spent every night together. When you go over her phone calls, look at them and see how many times he is calling her at night or early in the morning. We will just start not going over every day, we'll just start here in the middle. October 22nd, a 10:20 p.m. call. October 24, a 10:31 p.m. call. October 28, a 7:37 p.m. call that is when she was supposedly home and they were talking -- and he was talking to [redacted] cooking. October 30th, a 9:13 call, a 9:13 call, a 9:55 call, a 10:08 call, all from him to Amanda. You don't call somebody that you're sitting there in the apartment with.

On November 1st, a 10:05 phone call which fits with what everybody says. She didn't get off and she got home late that night. November the 2nd, a 9:54 p.m. call. November 3rd, a 7:39 p.m. call. November 6th, a 9:56. November 10th, an 8:09. November 11th, a 10:51. November 12th, a 9:06. November 17th at 8:46. November 24, 11:12 p.m. She wasn't exactly with him seven nights a week. And if she was, they were calling each other from inside the apartment.

Now, let's look on November the 28th when she says that they went there. He had to go to run -- I mean

to practice from 10:00 to 12:00. She met him at 12:00 and they were together the rest of the day. Well, she -- he calls her at 1:12 p.m. and talks to her for two minutes. He calls her again at 6:07 p.m. and talks to her for five minutes. That's his birthday, the day that they were together the entire day. I submit to you what happened that morning is that she stayed home with his mother and he went to what was a -- what he told them was a 9:00 practice, went by Mt. Pleasant and then went on to the 10:00 to 12:00 practice and called them later. Now you may have a reason to doubt what Amanda says, but she never doubted anything that Mr. Vail told her.

She testified that he and Mr. Mullins came up with a story about drug rehab, just like she knew it for a fact. I'm not submitting to you that she was lying. She's just believing. She thought that is what happened. She believed what Mark told her. She thought Mr. Mullins and Mark came up with a story. That's why you heard back from Mr. Mullins. That never happened, but Amanda believed it.

Tommy, first of all, he couldn't quite get the date right of when he started college. He thought it was '04, but I think it was '03. He sees Mark three or four times a week every week. He cannot remember anything that ever happened on any date except for November 1st and

December 6th. And then he remembers at 9:15 exactly he walked into my room. Well, you know, he may have walked in there at exactly 9:15 or 10:15 or 11:15 or 12:15. It doesn't matter anything to this case. When he was with _____ that night, it was at 8:00.

Tommy says they did -- they went around. They went to the mall, and then they sat around and played PlayStation, which they did all of the time, nothing very memorable. His memory is that he left at around 9:30 or so. He could have just as -- if Tommy is not exact, exact, exact on those days on those exact times -- and, after all, he is with him all the time. If Mark Vail left at 7:30 and the phone call he got that he told Tommy was from Amanda, there was a 7:30 call from _____. He got _____'s call and said I'm coming, I'll be right there. He left and got to Mt. Pleasant around 8:00 like she says.

And Tommy only knows what he was told by Mark. He could have been off a few hours on the exact times, since he couldn't remember anything else or any other times. And he remembers Otis. He remembers the 6th because he says Otis was there. They came. They did a few things that afternoon. But that is what he is basing it on is when Otis was there.

The other thing that is interesting about Tommy, and I will talk about Otis in a moment, is that Mark Vail

calls him after he is allowed to resign. He says either the day he is allowed to resign or within a few days and tells him he had to resign because of allegations of sexual relations. They hadn't been made yet, not to the police. She had just told Mrs. Murray and Mr. Mullins. Mr. Vail hadn't been contacted about those sexual allegations. He left town. But he told Tommy before the allegations, before the case began.

Tommy also says that it actually -- from First Baptist, and he goes a lot, to James Island is between 15 and 20 minutes to where Mark Vail lived, another 15 or 20 minutes to Folly Beach. Mark Vail testified it took 15 or 20 minutes to get to Folly Beach because he didn't go there. He went to his apartment. It takes 15 or 20 minutes to get to his apartment and that is the time frame he is giving you. And when you work out the time, that's how it works. It doesn't give you time to get to Folly Beach and turn around and get back. If you go by what Tommy's times are, he's lived here all his life, and he goes from First Baptist to there all the time.

Otis is a friend like a brother, but he also -- and he says he was there that day they were walking around and gave a description of Charleston. And I don't doubt for one minute that they walked around Charleston one day. But what date, I'm not convinced he knows because he

says -- well, first of all, he knew it was at 10:30 that they got up -- I mean, 10:30 that they went to McDonald's. A year ago, he remembers it was 10:30, over a year ago.

But the thing that is confusing about his testimony is he says he was only here a few times up until November and that's because he was moving. And between -- this was his testimony -- between November and February, he was here all the time visiting Mark Vail because he has a little car and it took him that long to move. Well, Mark left here in the beginning of January. He left Charleston. Where did he move to? Atlanta. Who lives in Atlanta? Otis was moving from Atlanta. So his times are really mixed up. He thought he was still coming here to see Mark Vail in February.

Ms. Vail, Mark's mother, treats him as her son. She did cook him a very good birthday breakfast. She doesn't remember a 13-year-old calling her son on his 26-year-old birthday breakfast. Between 8:46 and 9:48 that morning, there were five contacts between and Mark Vail. If he left for practice alone going to be there at 9:00, that would make sense why they didn't hear or know about all of those contacts that morning.

Coach Ces says that Mark showed up late, just a little bit late for that practice on the 4th.

Anne Porcher, he was written up for having

personal contact with her outside of -- outside of the school. If this case was about someone else and was up there, she would say he never touched me. You couldn't hear from Erica because Erica has to do with Anne P , not This case isn't about Anne P , so Erica legally couldn't come in here and talk to you.

Lindy Clifton, she spoke to you about the trauma that this child has experienced. And, just briefly, the demeanor, the anger and the cell phone and all that was her presenting demeanor, not the symptoms. The symptoms were hypervigilance, nightmares, depression, depression that caused a flat affect, which you saw on the stand when she talked about the sexual acts. It's like she wasn't talking about what -- you know, there was this veil up.

Lindy also explains -- explained the trauma was from the betrayal of her first love. That is traumatic. But she was also torn because she knew it was the right thing to do to tell the truth. That is a bind for a 13-year-old.

Now, to Mr. Vail. It wasn't a situation I thought was detrimental. is not malicious. She is not out to get me. won't say anything. I think that is what he told Amanda about don't worry I will shut her up. I felt connected. It felt good. It was a poignant and touching moment. I would not have done

anything different. Please a bee with honey, which is the advice he said his mother gave him. I did not have a student-teacher relationship with a lot of my students, any of them perhaps. There was no physical contact. No, none. Well, let me rephrase that. I did give her a hug.

Did these sound like the quotes of a man who cares what is inappropriate? But that is really not what we're here about. We're not here about anything inappropriate that he did. We are here about the crimes that he committed on [redacted] and those you can get from the details of her testimony, from the corroboration of her testimony.

But ask yourself does this sound like he cares about what happens to other people or about pleasing himself? What 26-year-old man talks to a 13-year-old for 30 hours on the phone without some ulterior motive, and I think you know what that motive is.

I won't attempt to go into all the inappropriate things he said, but you can use them in judging his credibility, his believability and his judgment.

Let's look at, first of all, his explanation for talking to her about as low as you can go. Using the death of her mother as an excuse to talk to her.

Then the drug rehab story. That makes absolutely no sense, except he knew that she was going to

drop. He knew this child would not withstand the pressure and he wanted to get out of town.

The 11/4 date he admitted; he had to. He had to come up with some way to get that child in his apartment because she knew exactly what it looked like. She knew everything about it. He had to come up with some way of innocently driving by the apartment. It makes no sense to take her all the way to Folly Beach to talk to her about it. I have already said that.

After this relationship talk that he had with her on the 4th to discourage her, everything was fine. But they continued to call and talk all the time. That doesn't sound like discouragement. Even after the 22nd, he could not stop. He thought he had sufficiently scared her into not talking again. He told Amanda she recanted the very day it happened. Well, that is not true; she didn't. He continued to see her after this.

And this is the last point I will make about his testimony, but it's the most telling and maybe confusing. On direct examination, he said that the day he got dismissed he went to Amanda and he told her there was some inappropriate -- there were some phone calls, phone records, the parent thought it was inappropriate and I was allowed to resign. That is all he said.

Under cross when I asked him about, well, what

about the story about the going to her neighborhood, picking her up in her neighborhood and taking her off? He said, you know, my girl had already told me some things to do, and I didn't want my girl to think that I was once again bullheaded and did the wrong thing. So I just told her that I did that, forgetting, I guess, what he had already said on direct. But that doesn't make any sense either because his girl had already gotten mad with him about taking her off in the car.

There is only one reasonable explanation for him saying he was in that neighborhood and in that car. One, what do you think the chances are that _____ got a way to talk to him? She believed, at that point and time, that her parents had a friend that had seen him in the neighborhood in the car, and she thought that story up because she knew they had been in the car in the neighborhood. So when her parents told her that, she bought it. He knew it, so he had to make up a way to explain it and that's why he said, yeah, I was in the neighborhood. Now, he is taking it back.

But never to worry, everything is fine. He would not change a thing. He is perfectly happy now going on with his life.

Ladies and gentlemen, the state must prove the elements that I mentioned to you before beyond a

reasonable doubt. That is not any doubt in the world. That is not every doubt, a reasonable doubt, a doubt for which a juror seeking to find the truth can express a reason.

There are a few things in this world, if any, that any of us will ever know with absolute certainty. Even when you see it, it's not always absolutely certain. If that were the standard, there would never be a conviction in a criminal case. The standard is reasonable, not certainty.

You came in here on Monday. You had never met any of these people. You had never heard anything about this. If you now believe that Mark Vail committed sexual intercourse upon and fellatio and lewd act upon a minor, the state has met its burden.

Do not let the quote that Mark Vail, according to Caroline and all his students, that he lived by work for him.

THE COURT: As you have heard, the State of South Carolina has charged the defendant with the offenses of lewd act upon a minor and criminal sexual conduct with a minor second degree, two counts, and you will have those indictments with you in the jury room.

You should distinctly understand that an indictment just contains allegations on the part of the

state and is in no way to be considered as evidence.

The only evidence in the case is the testimony from the witness stand and any exhibits or stipulations which have been introduced into evidence.

Please pay close attention because at times I'm asked if I can provide a written copy of instructions to you, which I do not provide to you. If you have taken notes, you should remember that your notes are only intended to aid or assist your memory. They should not take precedents over your own independent recollection and memory of the evidence. Moreover, those jurors who have not taken notes should not be influenced by the fact that another juror has taken notes since, as I indicated, the notes are only intended for the notetaker's personal use in refreshing his or her memory of the evidence.

Now, to the indictments, the defendant has pled not guilty. A person charged with committing a criminal offense in South Carolina is never required to prove innocence. A defendant does not have to produce any evidence or witnesses. The burden is always upon the state to prove a defendant guilty beyond a reasonable doubt. I charge you that it a vital important rule of law that a defendant in a criminal trial must always be presumed innocent until a defendant's guilt has been proven beyond a reasonable doubt.

This presumption of innocence remains with the defendant, at all times, throughout the trial and is only removed when and if the state has proven guilt beyond a reasonable doubt. For it is your solemn duty, ladies and gentlemen, if not convinced of guilt beyond a reasonable doubt to find the defendant not guilty.

What is a reason doubt in the law? A reasonable doubt is a doubt that would cause a reasonable person to hesitate to act. All reasonable doubts must be resolved in favor of the defendant. Suspicion, however strong, does not suffice to sustain a conviction. The burden of proof is always upon the state.

Now, ladies and gentlemen, under the constitution of this state, you are the finders of the facts in the case. I do not sit up here and pass upon the facts or express any opinion that I might have about the facts or as to this case. And you certainly should form no opinion in that regard from anything that I may have said or done throughout these proceedings. You are also the judges and the sole judges of the credibility or the believability of the witnesses who have testified in this case.

In passing upon their credibility, you may take into consideration many things such as the demeanor or manner of testifying, was the witness forthright or

hesitant, whether the witness had reason to be biased or prejudiced and whether a witness' testimony was contradicted on the one hand or whether it was supported and corroborated or consistent in the other, and what was the witness' opportunity for observation and knowledge of the matters about which the witness has testified.

You may believe a small portion of a witness' testimony and disregard the larger or vice versa. You may believe one witness against many or many against one. You may believe all, some or none of a witness' testimony.

Now, the rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call expert witnesses, witnesses who by education and experience have become expert in some art, science, profession or calling may state their opinions as to a relevant material matter in which they profess to be an expert and may also state the reasons for their opinion.

You must consider expert testimony as you would any other testimony and give it such weight as you may believe it to be entitled when considered with all of the other evidence in the case. Such testimony is given for the purpose of enlightening you and not for the purpose of controlling your judgment.

Now, there are two types of evidence which are

normally -- which is normally presented during the trial of the case, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence, on the other hand, is the proof of a chain of facts and circumstances indicating the existence or nonexistence of a fact.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case. After weighing all of the evidence if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Now, by the same constitution that makes you the finders of the facts, I am made the sole and only instructor in the law. You must accept as correct the law which I charge, apply to the law the facts as you find them to be and reach your verdict. Put aside any conceptions that you may have had as to the law before coming here today and accept the law as I instruct it to be. For purposes of your duty as jurors here today, you should not be concerned about what the law ought to be but rather what I charge you the law is at the present time in

this state.

In one of the indictments, the charge is for what is referred to as a lewd act upon a minor. South Carolina law provides that it shall be unlawful for any person over the age of 14 to willfully and lewdly commit or attempt any lewd or lascivious act upon or with the body or its parts of a child under the age of 16 years with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of the person or the child.

A person acts willfully when he acts voluntarily and intentionally with the specific intent to do something the law forbids. That is to say he acts with a bad purpose to either disobey or disregard the law.

A lewd act is one that is obscene, lustful, indecent, lecherous or wanton. A lascivious act is one which is lewd, indecent, obscene or tends to excite lust or deprave the morals in respect to sexual relations.

Now, in two other indictments, the defendant is charged with criminal sexual conduct with a minor second degree.

Now, the state must prove beyond a reasonable doubt insofar as these indictments are concerned that the defendant engaged in a sexual battery with the victim. A sexual battery includes sexual intercourse, cunnilingus,

fellatio, anal intercourse or any intrusion, however slight, of any part of the person's body or any object into the genital or anal openings of another person's body except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes.

The state must also prove beyond a reasonable doubt that the victim was at least 11 years old but not more than 14 years old at the time of the sexual battery.

Consent, willingness, indifference or ignorance or the part of the minor, if any, as to what was taking place does not, in any way, change the charge of criminal sexual conduct with a minor because a minor under the age of 16 cannot legally consent.

Now, I charge you that it is not necessary for the state to prove that the offense occurred on the precise date set forth in the indictment or the precise time alleged in the indictment. In order to find the defendant guilty, it is necessary for the prosecution to prove beyond a reasonable doubt the commission of a specific act or acts constituting the said crime within the period alleged. And in order to find the defendant guilty, you must unanimously agree upon the commission of the same specific act or acts constituting said crime within the period alleged.

It is not necessary that the particular act or

acts committed that you unanimously agree upon be stated in the verdict form.

Now, the state has the burden of proving identity beyond a reasonable doubt. That would be as to any and all indictments in this case. And the state must prove beyond a reasonable doubt that the defendant was at the scene of the crime at the time the crime was committed. The law places no burden on a defendant to prove the defendant was not at the scene of a crime, thus, there is no burden upon a defendant to prove alibi. The burden is upon the state to prove beyond a reasonable doubt that the defendant was actually present at the scene of the alleged crime along with all of the other elements of the offense as I have described to you.

Now, unless I specifically instruct you otherwise, criminal intent is a necessary element of each crime and must be proved by the state beyond a reasonable doubt. It is a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way medical science can dissect a person's brain or determine what that person had in mind so the law states that criminal intent may be inferred from the circumstances shown to have existed. It is a state of mind which operates jointly with an act in the commission of a crime. It is a mental state, a conscious wrongdoing,

so it is up to you, the jury, to determine what the defendant intended to do based on the circumstances shown to have existed.

I tell you that the state must prove criminal intent as it must prove every other element beyond a reasonable doubt.

And regarding intent in a case in which two or more criminal offenses arise out of a course of action, the state in order to establish guilt as to multiple offenses must prove beyond a reasonable doubt that the defendant had the requisite intent to commit each separate offense.

Now, you have been selected as fair and impartial jurors sworn to impartially try and determine the facts of this case. And when you comply with your oath to do so, then no one will have a right to criticize your verdict, and you will have fully discharged your duty as jurors. Listen to the views of each juror during your deliberations.

As to each indictment, if you have a reasonable doubt as to whether the defendant is guilty or not guilty, then find the defendant not guilty. If, however, the state has proven guilt beyond a reasonable doubt, then find the defendant guilty.

Those are your options as to each indictment,

ladies and gentlemen. Your two choices are either not guilty or guilty, and they will be reflected on this verdict form. There is no significance to the order that they are placed on the form. I just had to list one first.

But when you make your decision, if you will go through, Mr. Foreman, and mark the form according with the jury's determination and then sign the form. Once the jury has made its decision, knock on the door and notify the bailiff you've made your decision. Mr. Foreman, just hold on to the verdict form and just hold it up. It will be handed back up to me when y'all return to the courtroom.

Now, one thing I need to instruct you is that your verdict must be unanimous as to each indictment. Each and every one of you must agree on the verdict. It is not a majority verdict. All of you must agree. Each indictment charges a separate and distinct offense. You must consider each indictment on the evidence and the law applicable to it. The defendant may be convicted or acquitted on any or all of the offenses charged. Again, you will be asked to write a separate verdict for each indictment.

Now, at this time, I'm going to send you to the jury room. Do not begin any deliberations yet. I want to

do a couple of things. First, I have to go over with counsel any concluding matters to make sure there is nothing else that I need to bring up with you. If there is something I need to address or instruct you about further, I will bring you back out and we'll do that. Second, I need to check on the status of your lunch.

So if you will go back, do not discuss the case yet. We'll get all of the exhibits together and put them all in one stack, and then I will make a decision about whether or not you can start. Thank you very much.

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

THE COURT: Any matters pertaining to the charge, from the state?

MRS. HERRING-LASH: Not regarding charges.

THE COURT: From the defense?

MR. JONES: No, Your Honor.

THE COURT: If you will go through the exhibits to make sure they are all in one stack to make sure that nothing is being admitted that was not admitted into the trial, we will put that on the record.

MRS. HERRING-LASH: Your Honor, I apologize because your clerk did show us the verdict form which is for intercourse.

THE COURT: They will have the indictments back

there.

MRS. HERRING-LASH: Oh, they will?

THE COURT: Yes. Any objection to the indictments going back?

MR. JONES: No, Your Honor.

MRS. HERRING-LASH: I'm sorry, I didn't realize that. Okay.

THE COURT: All right. Each side has reviewed the -- where are the stack of exhibits? Okay.

Nothing is going back that was not entered; is that correct from the state?

MRS. HERRING-LASH: Right, Your Honor. Everything -- there is one, I think, that was never spoken about in court, but it was entered.

THE COURT: Is that correct?

MR. JONES: That is correct, Your Honor.

THE COURT: All right. Here you go. Don't take it yet. I'm going to find out about the status of the lunch.

(The court confers with the clerk regarding the jury's lunch.)

THE COURT: Go ahead and tell them to start deliberating -- wait a minute. Hold on a second. Ask the jury if anyone needs a smoke break before we start.

THE BAILIFF: No, sir.

THE COURT: Tell them they may begin their deliberations.

(WHEREUPON, the jury began its deliberations at 12:56. The court was in recess awaiting a verdict.)

THE COURT: Counsel approach.

(WHEREUPON, a bench conference was held outside the presence of the jury.)

THE COURT: Bring the jury in, please.

(WHEREUPON, the jury returned to open court to report its verdict at 4:31 p.m.)

THE COURT: I got your note, ladies and gentlemen. Thank you.

All right. Mr. Foreman, I understand that the jury has reached a unanimous verdict as to each indictment; is that correct?

THE FOREMAN: Yes, sir.

THE COURT: Can you pass those up to me, please? May I hold the indictment please?

THE FOREMAN: I left them.

THE COURT: Can you grab the indictments for me, please?

Did you transfer your decision on the back of those indictments?

THE FOREMAN: I didn't write it down.

THE COURT: Okay. You didn't see that note on

the bottom of the form?

THE FOREMAN: No, sir.

THE COURT: That's okay. We can attach this. That's fine.

You have no opposition to me noting the indictment number?

MRS. HERRING-LASH: None from the state.

MR. JONES: None, Your Honor.

THE COURT: Okay. Madam clerk, please publish the verdict and then attach a copy of this to each of the indictments. Please stand for the verdict to be published, sir.

THE CLERK: Verdict form State versus Mark Vail, January 14, 2004. As to the indictment for criminal sexual conduct with a minor second degree, Docket Number 2004-GS-10-2734, we the jury unanimously find the defendant not guilty.

As to the indictment of criminal sexual conduct with a minor second degree, Docket Number 2004-GS-10-8316, we the jury unanimously find the defendant guilty.

As to indictment for lewd act upon a minor, Docket Number 04-GS-10-2738, we the jury unanimously find the defendant guilty. Foreperson, John Ozmore.

THE DEFENDANT: I did nothing wrong. I did nothing wrong.

THE COURT: Sir, you will have an opportunity to address the court when it's appropriate. May I have the verdict form, Madam Clerk?

THE CLERK: Yes, sir.

THE COURT: Any request to poll the jury?

MR. JONES: Please, Your Honor.

THE COURT: Poll the jury, Madam Clerk.

THE CLERK: Yes, Your Honor. When I call your name, will you please stand. I will ask you two questions. The first will be is this your verdict. The second will be is it still your verdict.

John Ozmore, is this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Thank you. David Shorter, Junior, is this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, sir.

THE CLERK: Thank you. Roger Walker, is this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Thank you. Dan Wise, is this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Thank you. Jeffrey Collier, is this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Thank you. Lisa Brown, is this your verdict?

THE JUROR: Yes.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Thank you. Linda Yeager, is this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Thank you. Anthony Rivers, Senior, is this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Thank you. Gregory Pearce, is this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Thank you. Tracy Burgess, is this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Thank you. Roderick Smith, is this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Thank you. Thomas Duke, the Third, is this your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

THE JUROR: Yes, ma'am.

THE CLERK: Your Honor, the jurors have been polled and the verdict stands.

THE COURT: All right. Ladies and gentlemen, I want to thank you for your participation in this case on behalf of the state as well as the county. I'm satisfied

that you have given this case your complete and utmost attention. Everyone presented the case to you, and it appears to me that you have given it your complete and utmost deliberation.

Again, I want to thank you on behalf of the state. At this time, you will be excused. If you would like, the deputy can escort you to the parking garage if you would like to go as a group, or you are welcome to return to watch the sentencing if you so desire. It's up to you. At this time, you're excused to leave. Thank you very much. Have a good weekend.

(WHEREUPON, the jury was excused.)

THE COURT: Any posttrial motions?

MR. JONES: None at this time, Your Honor.

THE COURT: All right. I entertain all motions at this time rather than later. So if there are any, now is the time to make them. Any motions for a new trial or anything of that nature?

MR. JONES: Your Honor, I would make a motion for a new trial. Your Honor, I would like to preserve the right to --

THE COURT: I entertain all motions at this time, counsel. Are there any motions -- anything further other than a motion for new trial?

MR. JONES: Nothing at this time, Your Honor.

THE COURT: All right. Any specific basis for that motion?

MR. JONES: Your Honor, I...

THE COURT: Based on any of your objections or anything?

MR. JONES: Your Honor, I would make a motion based on the motion to continue that there were two new incidents that were alleged and we possibly could have provided an opportunity to provide an alibi for. I don't know -- we did show we were able to reduce the dates down to a possible time that would have been able to -- we possibly could have been able to ascertain an alibi. We got it down to five days by virtue of testimony.

THE COURT: And that was as to the act of?

MR. JONES: Well, there were two unknown acts of criminal sexual conduct on two different occasions.

THE COURT: And what was that specific act that was supposedly alleged?

MR. JONES: Criminal sexual conduct.

THE COURT: What was the specific sexual act?

MR. JONES: The specific sexual act was one occasion, right off hand, was after the school on a Tuesday or Thursday when they cut the sixth and seventh period and that would have been three occasions of intercourse on one of the dates. The second date would

have been after a basketball game in I'On subdivision. That would have been one act of intercourse at that time.

THE COURT: All right. Anything further?

MR. JONES: Nothing at this time.

THE COURT: I deny that motion. I will hear from the state now as to sentencing.

MRS. HERRING-LASH: Your Honor, I think that the victim's father would like to address the court.

THE COURT: Yes, ma'am.

MRS. HERRING-LASH: May he come forward?

THE COURT: Uh-huh.

DR. R Yes, sir. I would just like to stress to the judge, to the court, the unbelievable -- and to Mr. Vail -- impact this has had upon our family. We have suffered greatly at a rate that you will never know, and we are going to continue to suffer for untold years. My daughter did not deserve this from someone entrusted in a coach, from someone entrusted to be a teacher. We placed our faith in you. To put us through this trial, to make everyone relive these hideous events, these circumstances are just unbelievable. That is all I have to say, Your Honor.

THE COURT: Thank you.

MRS. HERRING-LASH: Your Honor, just on behalf of the state, it is a teacher and a coach. It is much

more serious than in another type of situation, and the state would just ask for a very severe punishment based on that.

THE COURT: All right. Anything further from the state? Does anyone else in the family wish to address the court?

MRS. HERRING-LASH: No, Your Honor.

THE COURT: Defense?

MR. JONES: Your Honor, I don't know if you want to hear -- I'm sure the family would have something to say. I would like to offer I did have an assessment done prior to this that does address the future reoffending and would like -- I don't know if the court would like to --

THE COURT: Have you shown that to the state?

MRS. HERRING-LASH: Yes, Your Honor.

MR. JONES: They do have a copy. May I approach?

THE COURT: Yes, sir.

MR. JONES: Your Honor, do you want to hear from the family or me first?

THE COURT: The family is fine. If you have someone in the family that would like to address the court, they can come forward and state your name.

MR. JONES: Your Honor, his fiancee, Amanda Mullins.

THE COURT: All right.

MISS MULLINS: Your Honor, they did not prove that this happened. I have known this man for five years. All he does is care about people and wants to help people. This little girl misinterpreted what he was trying to do for her. She had an obsession, and it was out of control. They did not prove that this happened. It never happened. It never ever happened. She lied. It has destroyed our lives more so than theirs. They get to walk out of here and all be together. It was going to be that way no matter what was found today, and now I'm going to lose my fiance. We are not going to be able to have our wedding that we planned.

THE COURT: Okay. Thank you. Anyone else from the defense?

I'm sorry. Did you wish to address the court, ma'am?

MRS. HERRING-LASH: No, Your Honor.

THE COURT: Okay. Anyone else from the defense?

MRS. HERRING-LASH: Your Honor, may I have one moment.

DR. R: May I speak with them, Your Honor?

THE COURT: Yes, sir.

(Dr. R. Mrs. Herring-Lash and Mrs. Clifton confer off the record.)

MRS. HERRING-LASH: The victim did want to say something, and I was trying to find out from her if she thought that would be a good idea.

THE COURT: You are saying she does wish to address the court?

MRS. HERRING-LASH: She does want to say something.

THE COURT: Come forward, please, ma'am.

MRS. HERRING-LASH: Can she just stand right here, Your Honor?

THE COURT: I would prefer her to come forward so it will be easier for her to understand.

State your name for the record, please.

MISS

THE COURT: Yes, ma'am.

MISS : Amanda, I'm sorry for ruining your wedding. I didn't mean to. I didn't mean to tell. I'm sorry.

THE COURT: I'm sorry, what did she say?

MRS. HERRING-LASH: She said she did not mean to tell. She was sorry that she told what happened.

THE COURT: All right. Mr. Jones.

MR. JONES: Your Honor, I would ask -- Mr. Vail, he has been assessed. He was deemed, if he were found guilty, to be a relatively low risk to reoffend. There is

really no prior history. There is no -- Your Honor, we would ask for leniency in this matter.

There are kids that came forward that testified on his behalf. The principal came forward, testified on his behalf he did care about the students. He counseled the students. He dealt with the students. There are some students in the courtroom now that were students under him, one of the students that testified in this matter. And I would ask that the court would take that into consideration with regard to his sentence.

THE COURT: Does the defendant wish to address the court?

THE DEFENDANT: Yes, he does, Your Honor.

THE COURT: Yes, sir.

THE DEFENDANT: Do you want me --

THE COURT: Right there is fine. Yes, sir.

THE DEFENDANT: Your Honor, I didn't mean to hurt anybody ever. I did nothing illegal. I did nothing, at all, to ever hurt anybody. All this pain and all of this thing that's happened after, after I resigned. Nothing that I did before did I cause anybody any pain. I did nothing illegal in any matter. I did nothing wrong. I never did anything to hurt anybody.

I'm in restaurant management. I will never be around anybody ever again. I don't care to be around

anybody ever again ever under the age of 18, under the age of anything. I want me and my woman and my life to go on. That's it. I will sign anything. I will do anything that I have to do. I did nothing illegal, Your Honor. Nothing.

THE COURT: Anything further?

MR. JONES: Nothing further, Your Honor.

THE COURT: Step back, please. Well, obviously, the jury has made a determination that a crime has been committed. It is the court's obligation as long as that jury's decision is supported by the evidence to support the decision of the jury. The jury has made its factual conclusions. That is why we have juries to decide who and what they want to believe. And the jury has rendered its decision and there was conflicting testimony on each side about the matters in the case, and the jury made its decision about the factual interpretations. And those factual interpretations are binding upon me when there is a basis in the record to support them.

Having said that, I do understand the pain that is being felt by the family involved. The jury has made a determination, sir, that you engaged in this sexual act with a minor which is a crime of this state.

It's my understanding that the lewd act charge carries a penalty up to 15 years and the criminal sexual

conduct charge carries a penalty up to 20. Is that your understanding, counsel?

MR. JONES: It is, Your Honor.

THE COURT: Is that your understanding?

MRS. HERRING-LASH: Yes, Your Honor.

THE COURT: All right. You may sit, counsel, unless there is something else you wish to do insofar as addressing the court.

MR. JONES: No, Your Honor.

THE COURT: Obviously, this is a situation where consent is not a defense. And the policy of this state renders any type of consent meaningless. We do have a situation where the victim is essentially crying out because the victim apparently did not want this situation to be the way it is.

Having said that, that is not necessarily the final analysis, because that is why people that are so young have other people that are responsible for their welfare and well-being and to make reasoned decisions on their behalf when they may not necessarily be doing so.

Please stand, sir.

On the lewd act with a minor charge, it is the judgment of the court you be committed for a period up to eight years.

On the criminal sexual conduct charge with a

minor, you be committed to the department of corrections for a period of ten years. Good luck to you, sir.

Counsel, sir, hold on please.

It's my policy to always advise everyone because cases come up later where someone says they were not given this advice and try to set aside decisions based upon it. You understand you have a right to appeal within ten days?

Do you understand that, sir?

THE DEFENDANT: Yeah.

THE COURT: All right. I just want to make sure that you understand that right. I will let you have a moment with your fiancee before you step out, sir.

(The defendant and Amanda Mullins confer off the record.)

THE DEFENDANT: You did this to your family. You did this to your family.

MISS I loved you and trusted you.

MISS MULLINS: You --

THE COURT: Ma'am, you need to restrain yourself or you might be there with him. Do you understand?

MISS MULLINS: Yes, sir.

THE COURT: Take your seat. All right, everyone that's on the defendant's side of the picture, if you would please leave at this time, the deputies will escort one family out at a time. Those of you here on behalf of

the victim, if you will please wait momentarily so we will have no altercations or anything, we can all leave in an organized and orderly manner. The deputy will let me know when it is appropriate for the family to leave the courtroom. Having said that, the deputy will escort everyone out at the appropriate time. Thank you very much. Court shall be adjourned.

--END OF TRANSCRIPT OF RECORD--

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

I, Holly Hiott O'Quinn, Official Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 10th, 11th, 12th, 13th and 14th days of January, 2005.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 3, 2005

Holly Hiott O'Quinn, RPR, Court Reporter

My Commission Expires: 1-12-06

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

06-CP-10-1652
IN THE COURT OF COMMON PLEAS

MARK EDWARD VAIL, 307052,
Applicant,

v.

THE STATE OF SOUTH CAROLINA,
Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

JULIE J. ARMSTRONG
CLERK OF COURT
2006 APR 25 AM 9:42
FILED

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention: Tyger River Correctional Institution, Enoree, SC

2. Name and location of Court which imposed sentence: Charleston County Court of General Sessions

3. Name(s) of co-defendant(s) (if any) None

4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 04-GS-10-2733 – Lewd Act Upon a Child

(b) 04-GS-10-8613 - Criminal Sexual Conduct with a Minor, 2nd

(c) ____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) January 14, 2005 - 8 years concurrent

(b) January 14, 2005 - 10 years concurrent

(c) ____

6. Check whether a finding of guilty was made

(a) after a plea of guilty ____

(b) after a plea of not guilty XX

(c) after a plea of nolo contendere ____

7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

8. If you answered "yes" to (7), list

(a) the name of each Court to which you appealed:

i. ____

ii. ____

iii. ____

(b) the result in each such Court to which you appealed:

i. Withdrawn by Appellant and Dismissed

ii. ____

iii. ____

(c) the date of each such result:

i. February 22, 2006

ii. ____

iii. ____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. None

ii. ____

iii. ____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) ____

(c) ____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) The Applicant received ineffective assistance of counsel prior to and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) ____

(c) ____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Trial counsel failed to adequately investigate the case prior to trial.

(b) Trial counsel failed to adequately prepare and present witnesses at trial.

(c) Trial counsel failed to recognize and present objections to errors which occurred during trial.

(d) Trial counsel failed to develop and present viable defenses to the charges against the Applicant prior to and during his trial.

12. Prior to this application, have you filed with respect to this conviction:

(a) any petitions in a State Court under South Carolina law? No

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. ____

iii ____

iv. ____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. ____

iii. ____

iv. ____

(c) the disposition thereof:

i. N/A

ii. ____

iii. ____

iv. ____

(d) the date of each such disposition:

i. N/A

ii. ____

iii. ____

iv. ____

(e) if know, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. ____

iii. ____

iv. ____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State of Federal, in any petition, motion or application which you have filed? No

15. If you answered "yes" to (14), identify:

(a) which grounds have been presented:

i. N/A

ii. ____

iii. ____

(b) the proceedings in which each ground was raised:

i. N/A

ii. ____

iii. ____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Collateral review through an Application for Post-Conviction Relief is the proper venue for raising the issues addressed herein. ____

(b) ____

(c) ____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? ____

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? Yes, current application.

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. V. Craig Jones, Jr., P.O. Box 31863, Charleston, SC 29417-1863

ii. Tara Dawn Shurling, 3614 Landmark Dr., Ste. D., Columbia, SC 29204

iii. Tara Dawn Shurling, 3614 Landmark Dr., Ste. D., Columbia, SC 29204

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing

ii. Appeal to Court of Appeals

iii. Application for Post-Conviction Relief

19. State clearly the relief you seek in filing this application. Reversal of convictions and sentences and a new trial.

20. Are you now under sentence from any other court that you have not challenged? No

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

VERIFICATION

I, TARA DAWN SHURLING, *retained* counsel for the Applicant, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 11th day of April, 2006.

Notary Public for South Carolina
My Commission Expires: 2/2/12

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS. Mark Vail)
AKA:)
Race: W Sex: M Age:)
DOB: 11-28-77 SS#:)
Address:)
City, State, Zip)
DL# SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2004 -GS- 10 - 0316
A/W#: JF
Date of Offense: 11-12-03
S.C. Code §: 16-3-655
CDR Code #: 01319 16
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: CSC w/ Mens Rea
in violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 01319 16.
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor _____ Defendant _____ Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms:
☐ set by SCDPPPS

Recipient:

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$128.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP Requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter: A. D'Orsini

PRESIDING JUDGE L. Richardson
Judge Code: 01215
Sentence Date: 1/14/05

e – Clerk Green – Corrections Canary – Probation Pink – Defendant SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF CHARLESTON) CRIMINAL SEXUAL CONDUCT WITH A MINOR, 2ND DEGREE

At a Court of General Sessions, convened on November 8, 2004 the Grand Jurors of Charleston County present upon their oath:

That Mark Vail, date of birth, [redacted] did in Charleston County between November 2003 and December 2003, engage in sexual battery upon one [redacted] date of birth [redacted] to wit: sexual intercourse. This is in violation of §16-3-655 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

HER 2004-01-00124

WITNESSES

KEITH HAIR AND/OR

MATT CASEY

LEGARE, C.

2004-000896-B

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

NOV 0 8 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-10- 8316

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

THE STATE

vs.

MARK VAIL

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR, 2ND DEGREE

000895

VERDICT FORM

State v. Mark Vail

January 14, 2005

As to the indictment for Criminal Sexual Conduct with a Minor, 2d Degree, Docket No. 2004-GS-10-2734, we the jury unanimously find the defendant:

✓ Not Guilty

____ Guilty

As to the indictment for Criminal Sexual Conduct with a Minor, 2d Degree, Docket No. 2004-GS-10-8316, we the jury unanimously find the defendant:

____ Not Guilty

✓ Guilty

As to the indictment for Lewd Act upon a Minor, Docket No. 04-GS-10-2738, we the jury unanimously find the defendant:

____ Not Guilty

✓ Guilty

Signature of Foreperson

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.S. & G.S.
By _____
DEPUTY CLERK

* Please also record your decision on the Back of each indictment (Bottom left)

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Mark Vick)
AKA:)
Race: W Sex: M Age:)
DOB: 11-26-77 SS#:)
Address:)
City, State, Zip)
DL# SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:
2004 -GS- 10 - 2733
A/W#: DI
Date of Offense: between 11/03 & 12/03
S.C. Code §: 16-15-140
CDR Code #: 2 1 4 1 6 1 8
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Unl Hab capon-Minor
in violation of §16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2 1 4 1 6 1 8
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor | Defendant | Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms:
☐ set by SCDPPPS

Recipient:

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$25.00
§33.7, 1B TP (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$3.00
TOTAL		$128.00

PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other:

☐ Appointed PD or appointed other counsel, §35.13 TP Requires $500 be paid to Clerk during probation.

M Cahill
Clerk of Court/ Deputy Clerk
Court Reporter: H. O'Quinn

PRESIDING JUDGE
Judge Code: 0 1 1 0 1 8
Sentence Date: 1/14/05

White – Clerk Green – Corrections Canary – Probation Pink – Defendant SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
LEWD ACT UPON A MINOR

At a Court of General Sessions, convened on May 10, 2004 the Grand Jurors of Charleston County present upon their oath:

That Mark Vail, being over the age of fourteen did in Charleston County between November 2003 and December 2003 lewdly commit or attempt a lewd and lascivious act upon or with the body [redacted], a child under the age of sixteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

HER 2004-01-00124

WITNESSES

JOHN BURNETT AND/OR

KEITH HAIR

CREWS, CCSO

2004-000896-B

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

Foreperson of Grand Jury

MAY 10 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-10-2733

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

vs.

MARK VAIL

Indictment for

LEWD ACT UPON A MINOR

000899

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF CHARLESTON) CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND

At a Court of General Sessions, convened on May 10, 2004 the Grand Jurors of Charleston County present upon their oath:

That Mark Vail DOB November 28, 1977 did in Charleston County between November 2003 and December 2003 engage in sexual battery upon one [redacted] date of birth May 16, 1990, to wit: fellatio. This is in violation of §16-3-655 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

HER 2004-01-00124

WITNESSES

JOHN BURNETT AND/OR

KEITH HAIR

CREWS, CCSO

2004-000896-B

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

Foreperson of Grand Jury

MAY 10 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-10-2734

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

vs.

MARK VAIL

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND

000901

ARREST WARRANT

H- 544094

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
CHARLESTON

THE STATE
against

MARK VAIL
Address: 1012 BARBADOS WAY
CHARLESTON SC 29412
Phone: 832-0702 SSN: [redacted]
Sex: M Race: W Height: 5'10 Weight: 175
D[redacted]ate: SC DL#: 0117.06266
D[redacted]: 11-28-77 Agency ORI#:
Prosecuting Agency: CCSO
Prosecuting Officer: DET CREWS
Offense: CRIMINAL SEXUAL CONDUCT W/A MINOR 2ND DEGREE Offense Code:
Code/Ordinance Sec. 16-3-655

This warrant is CERTIFIED FOR SERVICE in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date [redacted]

RETURN

A copy of this arrest warrant was delivered to defendant MARK VAIL
on 01-27-04

WB C
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
CHARLESTON

AFFIDAVIT

Form Approved by S.C. Attorney General July 29, 1980 SCCA 3.18

Personally appeared before me the affiant DET W CREWS who being duly sworn deposes and says that defendant MARK VAIL did within this county and state on BETWEEN 11/1/03 & 11/30/03 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHARLESTON) in the following particulars:

DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT W/A MINOR 2ND DEGREE
16-3-655

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Sworn to and subscribed before me on January 13, 2004

_____ (L.S.)
Signature of Issuing Judge

WB C
Signature of Affiant
Affiant's Address 3505 PINEHAVEN DRIVE
CHARLESTON, SC 29405
Affiant's Telephone 554-4700

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
CHARLESTON

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on BETWEEN 11/1/03 & 11/30/03 defendant MARK VAIL did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHARLESTON) as set forth below.

DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT W/A MINOR 2ND DEGREE
16-3-655

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

_____ (L.S.)
Signature of Issuing Judge
Judge Code: 5611/PAP

Judge's Address 3841 LEEDS AVENUE
CHARLESTON, SC 29405
Judge's Telephone 529-7482
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

000902

Bail: 2

JAN 2 2 2004

Bond Amount: 100,000

Bond Type: Surety

PRELIMINARY HEARING held by

Date:

Solicitor/Attorney:

Disposition:

By:

DISPOSITION held by

Judge:

Date:

(Indicate any held hearings, plea and pros., etc.)

Disposition:

Sentence:

JURORS

Case Call: 698

Jury Check: 43

Jury Sworn: 0316

Verdict:

WITNESSES

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

CODEFENDANTS

FILED
2004 JAN 26 PM 2:50
JULIE J. ARMSTRONG
CLERK
CHARLESTON, S.C.

NOTICE TO REPORT

YOU MUST REPORT FOR ARRAIGNMENT OR PLEA ON THE CHARGE HEREIN TO THE COURT OF GENERAL SESSIONS LOCATED IN THE CHARLESTON COUNTY JUDICIAL CENTER, 100 BROAD STREET, CHARLESTON AT 9 a.m. ON MAR 19 2004 IF YOU DO NOT REPORT, AN ARREST WARRANT WILL BE ISSUED FOR YOUR ARREST.

000903

Charleston County Sheriff's Office
Criminal Investigations Division
Phone (843) 554-2475

3505 Pinehaven Drive
Charleston Heights, SC 29405
FAX (843) 554-9744

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

OCA # 2004-000896B

Personally appeared before me, a magistrate of this County, on Detective W.B. Crews, who, first being duly sworn, deposes and says that

MARK VAIL

did within this County and State between the dates of November 1, 2003 and November 30, 2003, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE
16-3-655

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That between the aforementioned dates, while at [redacted], Charleston, in the County and State aforesaid, the above named defendant, MARK VAIL, did commit offense of violation section 16-3-655 of the South Carolina Code of Laws, 1976 as amended, CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE, in that he did wilfully, unlawfully, and feloniously commit a sexual battery on a (13) thirteen year old child victim, to wit: penile penetration of the vagina.

That on January 09, 2004, Frank McCann, attorney for the victims family, reported the aforementioned incident to members of the Charleston County Sheriff's Office.

That on January 12, 2004, Detective Crews met with and interviewed the child victim who gave a signed written statement. The child victim advised that between the aforementioned dates and on more than one occasion, the defendant took her in his vehicle back to his residence and engaged in sexual intercourse with her. The defendant was a teacher of the victim and she knows him by name and sight.

This information is known to Detective Crews through the investigation and the signed written statement of the victim and they are witnesses to prove the same against the form and dignity of the State.

Sworn to and Subscribed before me
this _____ day of JAN 13 2004

Signature of Judge

WBC

Detective W.B. Crews
Charleston County Sheriff's Office
3505 Pinehaven Drive
Charleston Heights, SC 29405
843-554-2475

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS 2006-CP-10-1652
Mark Edward Vail, 307052, Applicant, v. State of South Carolina, Respondent.	)	RETURN

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed April 25, 2006, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the May 2004 term of the Charleston County Grand Jury for lewd act upon a minor (04-GS-10-2733) and criminal sexual conduct with a minor 2nd degree (04-GS-10-2734) and indicated at the November 2004 term of the Charleston County Grand Jury for criminal sexual conduct with a minor 2nd degree (04-GS-10-8316). He was represented by V. Craig Jones, Esquire. On January 14, 2005, the Applicant proceeded to trial after which he was found guilty of lewd act upon a minor (2733) and one count of criminal sexual conduct 2nd degree (2734). He was sentenced by the Honorable Daniel F. Pieper to confinement for a period of eight (8) years

for lewd act upon a minor and ten (10) years for criminal sexual conduct with a minor 2nd degree, the sentences to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf. The Applicant chose to withdraw his appeal and the case was dismissed by the South Carolina Court of Appeals by order dated February 22, 2006.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that:

   a. "Trial counsel failed to adequately investigate the case prior to trial."

   b. "Trial counsel failed to adequately prepare and present witnesses at trial."

   c. "Trial counsel failed to recognize and present objections to errors which occurred during trial."

   d. "Trial counsel failed to develop and present viable defenses to the charges against the Applicant made prior to and during trial."

III.

The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. *See* Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Butler, Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. *See* Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that a hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

COLLEEN E. DIXON
Assistant Attorney General

By: Colleen E. Dixon
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

6/21, 2006.

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF CHARLESTON 2006-CP-10-1652

MARK EDWARD VAIL,
Appellant,
-vs-
STATE OF SOUTH CAROLINA,
Respondent.

Transcript of Record

January 23, 2008

Charleston, South Carolina

B E F O R E:

The Honorable Kenneth G. Goode, Judge.

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

Tara Dawn Shurling, Esquire
Attorney for the Appellant

Michelle Parsons, Esquire
Attorney for the State

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

INDEX

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Deborah Herring-Lash	8	13	14	15
Kimberly Haskins	16	--	--	--
Joseph Kemper-Galloway	21	--	--	--
Lauren Bee	23	--	--	--
Charles Frye	26	--	--	--
Tradd Shepard	30	--	--	--
Craig Jones, Esq.	32	107	116	--

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
Applicant's 1	Indictment	94	94
Applicant's 2	Indictment	94	94
Applicant's 3	Indictment	94	94

MS. PARSONS: Your Honor, this case is Mark Vail, docketed 2006-CP-10-1652, originally indicted for lewd act upon a minor, two acts of criminal sexual contact with a minor, second degree. He went to trial and was found guilty of lewd act on minor and one count criminal sexual conduct with a minor in the second degree.

He was sentenced to eight years for lewd contact and ten years for the criminal sexual conduct, and, for the Court's information, I would like to note members of the victim's family are with us today.

I'll turn it over to Ms. Shurling.

THE COURT: Okay. And I don't have the Court's file on that. On Mr. Lingard's file, I got both that file and the witnesses' file.

Thank you so much. Ms. Shurling?

MS. SHURLING: Good afternoon, Your Honor. For the record, I am Tara Shurling. I am retained counsel for Mark Vail.

We're here, Your Honor, on an application for post-conviction relief alleging generally that Mr. Vail's right to effective assistance of counsel prior to and during his post -- pardon me, his jury trial was violated. Specifically, he alleges that trial counsel committed certain errors and omissions under the

Strickland vs. Washington standard, which combined together to prejudice Mr. Vail's ability to receive a fair trail.

Under the Strickland versus Washington standard, Your Honor, we are required, as the Court knows, to demonstrate both omissions and errors by trial counsel, such that the net effect was to render counsel's performance short of the reasonable professional assistance of counsel standard set forth by the United States Supreme Court, and, of course, adopted by our Court in Butler versus State and its progeny.

We have alleged generally ineffective assistance of counsel, as I noted. I served last week counsel with a list of amendments.

Generally, we're specifically drawing the Court's attention to ccunsel's failure to do a number of things: One, his failure to investigate and present readily available character witnesses in this case; his failure to investigate and present readily available witnesses as to a reputation as a teacher with similar circumstances with other young people at this Christian school for having not done anything inappropriate.

We're additionally alleging trial counsel was ineffective for failing to obtain and present expert witness testimony, to rebut expert testimony presented by

the state concerning some specific forensic evidence and testimony addressed at trial.

Your Honor, I knew that the victim's family was present in the courtroom even before respondent was gracious enough to bring that to the attention of the Court, and I will apologize in advance. My job is to see to it that Mark Vail gets his fair day in court, and I have no desire to make either of the persons present who are immediate family members of the young lady in question in this case uncomfortable or to further extend the anguish they've already been through in this case.

So I will apologize in advance that some of the testimony we have no choice but to pursue today is indelicate in nature and will not be comfortable for any of us, but it's the nature of the case that we're required to examine these things closely.

It's our position, Your Honor, that trial counsel was ineffective for neglecting to object to what were literally references to hearsay testimony. As Your Honor knows, our rules of evidence specifically prohibit the introduction of hearsay testimony, even in criminal sexual conduct cases where we are guided by the Court's early decision in state versus Munn. We now have, of course, the Dawkins opinion and the Jolly opinion and numerous other cases on this subject, but the Court has

come down and said consistently that prior consistent statements may be introduced to show that the victim reported the time and place of an alleged assault. That's it, and that has been it in South Carolina for a long time.

In subsequent cases, the Supreme Court and the Court of Appeals have indeed said that where such error occurs, and it is continuing to occur, there is a reason the Court had to address it in a number of cases, that it was virtually always prejudicial, because it was just this kind of testimony that got people convicted, that where a victim's testimony was repeatedly corroborated by hearsay assertions that she had consistently said on previous occasions, things that would take place in her trial testimony, that that was precisely the kind of hearsay that had a high risk of resulting in conviction and was improper.

I will be covering in some detail a number of examples of this kind of hearsay that appears, as I've said, throughout this transcript; however, I think ultimately it is probably going to be advantageous to the Court to have either bench memos or proposed orders prepared, at which time I would be prepared to present Your Honor an extended list of the dozens of hearsay references in this trial that went unobjected to by trial

counsel.

I certainly freely acknowledge some of which were passing hearsay and not particularly harmful, but there are a large number of them that were clearly on all fours with what the Court has had to say in Dawkins and Jolly and Engle and Sanchez and other related cases on this subject.

At this time, I will pass up for the Court's convenience copies of some of these decisions that I will be referring to throughout the day today, specifically the Sanchez case, the Engle case, Your Honor, the Hugler case, and the Jolly and Dawkins cases. In addition, just merely for Your Honor's convenient reference, I will hand up a copy of Rule 801, just so you'll have it before you, Your Honor, at this time. Thank you.

Your Honor, as a threshold matter, I had one quick witness that I would like to call that was not subpoenaed by me, but I see that she's present, Ms. Debbie Herring-Lash.

DEBORAH HERRING-LASH

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SHURLING:

Q. And, Ms. Herring-Lash, you prosecuted this case?

A. Yes, I did.

Q. Very quickly -- Your Honor, if I can draw the Court's attention to page 18 and 19 of the transcript -- Debbie, do you have a copy?

A. No. I have never seen the transcript.

Q. There is a discussion about a motion in limine, pretrial, concerning another outstanding charge against Mark Vail.

A. Right.

Q. And at the bottom of 18, the top of 19, you say that that involved a different victim and the state is not going forward on that case; is that correct?

A. Where it says there will be no reference to any new pending charge, I say, Yes, Your Honor, that is a different victim. The state is not going forward on that case.

Q. Do you recall what that other case was?

A. It was another student who had made a statement that Mr. Vail sexually assaulted her.

Q. And were her allegations made before or after the allegations in the case you went to trial on?

A. I think they were made after.

Q. And why wasn't the state going forward?

A. Well, there are several reasons. The main one, at that particular time, is the -- they were not similar at

all, what the allegations were, so they could never have been tried together.

Q. Oh, pardon me. I was inarticulate. I did not mean to suggest they could have been tried together, but it's clear from this that at the time this case went to trial, a discretionary call had already been made that you were not going to try the other charge.

A. It was certainly made that we were not going forward together, and I was very close to making the decision that we were not going to go forward at all on that case as it was at the time.

Q. And you, in fact, informed the Court you were not going forward --

A. Right.

Q. -- on that?

A. I mean, from reading that, it's hard to tell what the question was -- are you going forward today or at all? I mean, I can explain to you what I'm talking about.

That allegation that child had made was that there was a forceable rape in the teacher's lounge after school. During the investigation, I went to the teacher's lounge after school and talked to several faculty. And I had, at that point in time, determined that it was very unlikely that what that young girl said

Personal investigation

happened could have happened in that matter.

And, as a matter of fact, Mr. Jones had given me -- in his preparation for this case, had talked with several students and gotten a tape, a transcript, of a conversation between two girls that helped also in understanding that it did not happen the way this young girl said. And he presented that with me in trying to get me to make that decision not to go forward.

The reason that I'm saying things could have changed is eventually they did, and she acknowledged that it was a consensual relationship and not a forceful rape. But by that time, the trial had been done. He had been convicted, and we never proposed to go forward, and I can't tell you honestly had he not been convicted if I would have pursued that, because she had given a false statement to start with.

Q. Didn't she ultimately admit that she had made the whole thing up to get attention?

A. No, not that I know of. The last that I spoke with Paul Schwartz, I think, which was her family's civil attorney -- and this was last year, probably in November, the middle to the end of November. I remember that 'cause I spoke with him, it was at a football game. We happened to speak, and he said that eventually she had acknowledged that there was a consensual relationship.

Now, no one officially ever called and told me that. Paul Schwartz told me that.

Q. So you have nothing other than hearsay for the fact that she claimed she even had a consensual sexual relationship with him?

A. Right. He was her family's attorney.

Q. Right. But you had a tape in which she is heard, basically, admitting it didn't happen the way she said it happened?

A. No. She was not on that tape. There were two other young girls, Lee -- I can't remember her last name. I can't remember their names. I never spoke with them. Mr. Jones gave me the tape that he had uncovered in his investigation, and there had been a party at Town & Country Motel or something that she had attended, and they -- I heard about this discussion, and I can't swear that it was on that tape, but it was in the context of that that something may have happened there.

Q. And we can explore that further with Mr. Jones in a little while, but, for the record, you went to the teacher's lounge yourself and, with your own firsthand investigation, pretty much concluded that the young lady couldn't be telling the truth.

A. About the way that it happened, certainly.

MS. SHURLING: Thank you. No further

questions.

THE COURT: Madame Attorney General?

CROSS-EXAMINATION

BY MS. PARSONS:

Q. Hello.

A. Hi.

Q. Just to recap, did you have evidence that it absolutely did not happen, or rather it did not happen in the way she initially stated?

A. Well, mainly evidence that it did not happen the way she initially stated, and, really, the decision to go forward or not forward -- I mean, my opinion as a prosecutor is you can never make a decision absolutely. What you have to make a decision is if you can prevail in trial and prove it, and it would be just to try that.

And based on that, I don't think that we would have ever been able to prevail. I mean, the traffic in and out of that teacher's lounge was quite hectic during the time frame.

Q. And as the solicitor, if the defense had put up character witnesses regarding his relationships with students, would you have used this to your advantage at trial?

A. I think if he had put up character witnesses saying that he had never touched another child, had any

kind of inappropriate activity with another child, that could have easily opened the door, because, in fact, there was this girl out there saying that he had had sexual relations with her, and we knew that he had been written up for meeting with other girls off campus.

There was a lot -- it was a sticky issue as to opening the door, putting his character at issue. There was just a lot there, but there was -- I think he could have been questioned about had he not been accused of having sexual relations with another student, had he called students, saying that had never been an issue for him.

MS. PARSONS: Thank you. No more questions.

REDIRECT EXAMINATION

BY MS. SHURLING:

Q. Ms. Herring-Lash, if you had called this young lady as a character rebuttal witness, you were aware that defense counsel was going to be in the position to strongly impeach her and make her out to be a liar in some regards in her own report, weren't you?

A. Right, and I don't know that the issue would have been calling her as much as questioning him about -- or questioning those -- if a witness got on the stand and said, I know Coach Vail. He would never do anything like this, to be able to ask that witness, Isn't it true that

there had been another student that has accused him? And I think I could have asked them that.

Q. Sure, and then defense counsel could have called her as their own witness, couldn't they?

A. They could have, right. I don't know how she would have come across in front of the jury. When you talk to her without an investigation, when you just sit down and talk to her, she was very believable.

Q. Thank you.

MS. SHURLING: No further questions.

THE COURT: Any recross?

MS. PARSONS: Just one more.

RECROSS-EXAMINATION

BY MS. PARSONS:

Q. Just to review, if that had opened the door, it wouldn't be limited solely to this one other girl's accusations, but you could also, perhaps, bring in the infractions regarding possible inappropriate --

A. Right. I think he had been written up regarding having met other girls off -- another girl off campus, and I can't remember --

MS. SHURLING: Your Honor, I have to object. A lot of this is extensive hearsay testimony of the very type that I am going to be raising objections to, having been brought out at trial. I called Ms. Herring-Lash for

a very specific reason as to the state's assertion that they were not going forward on that charge. I think this is beyond the scope of direct and is addressing a great deal of hearsay.

THE COURT: I think what it is -- I think you opened the door for it, and I'll allow it.

THE WITNESS: The reason I know about those, I met the principal, and he, in fact, is the person that wrote Mr. Vail up and documented that he had written him up about these activities, so it was -- and that principal did testify.

MS. PARSONS: Thank you. No more questions.

MS. SHURLING: Thank you. Nothing further. Thank you, Ms. Herring-Lash.

Your Honor, at this time I would call Kimberly H , please.

KIMBERLY H .

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SHURLING:

Q. Ms. H , thank you for being here. And let me clarify: I subpoenaed you to be here today, didn't I?

A. Yes, ma'am.

Q. You are compelled to present testimony by my

subpoena?

A. Yes, ma'am.

Q. You didn't call and volunteer to come to court today, did you?

A. No.

Q. Okay. And I understand that this puts you in a difficult position. You were friends with were you not?

A. Yes, I was.

Q. Let's just talk about how you know Mark Vail. How do you know Mark Vail?

A. He was my PE teacher and eighth grade math teacher.

Q. Now, you're 18 years old.

THE COURT: I'm sorry. I didn't hear that last --

THE WITNESS: He was my physical education teacher and eighth grade math teacher.

THE COURT: Math?

BY MS. SHURLING:

Q. And you're 18 now?

A. Yes, ma'am.

Q. Okay. Back when Mr. Vail taught you, did he at some juncture give you his cell phone number?

A. Yes, he did.

Q. And did he give it to you in private, or how did you happen to come to have his cell phone number?

A. Well, he wrote it on the white board for all of his students to have, just in case, you know.

Q. Okay. So this wasn't done in a secretive or sneaky way at all?

A. No, ma'am.

Q. It was public, in the classroom?

A. Yes.

Q. And all the students were given the phone number to write down if they wanted to?

A. Correct.

Q. Did Mr. Vail say why he was giving you a cell phone number, contact number, for him?

A. Basically, just for, you know, problems. I mean, that's what he explained to the class, you know, if we ever had a problem and needed to talk to him, or assignments or anything like that.

Q. Okay. So Mr. Vail essentially made the class feel welcome to call him if they ever needed an adult to discuss a problem with?

A. That's correct.

Q. Is that a fair characterization?

A. Yeah.

Q. And did you from time to time use that number and

call Coach Vail?

A. I did.

Q. And did you discuss personal problems with him with some degree of frequency on that phone?

A. Yes, I did.

Q. Was there a time when you called him as often as two or three times a week to discuss problems?

A. There would be some occasions when I would call him two or three times a week, I think.

Q. I'm not suggesting you called him two or three times a week every week, but if there were times when there were problems on your mind that you were taking advantage of his offer to talk to you and would have called that frequently. Okay.

And do you have any firsthand knowledge as to whether other students took Coach Vail up on his offer to call them and discuss problems?

A. Not off the top of my head, no.

Q. Okay. And have you ever had another teacher or any other teachers offer you access to them that way?

A. Yes.

Q. Okay. So you had at least one other teacher offer you a cell phone number?

A. Yes, ma'am.

Q. So that you could reach them?

A. Uh-huh.

Q. Okay. And those phone conversations concerning personal problems, would it be fair to characterize them as Coach Vail counselling you concerning personal things that were bothering you?

A. Yeah, because, you know, he would help me with, you know, certain problems that sometimes he's already been through.

Q. Sure. And did he ever instruct you to keep those conversations secret?

A. No.

Q. Did he ever tell you not to tell your parents that he was allowing you to call him?

A. No.

Q. Okay.

MS. SHURLING: Nothing further. Thank you.

THE COURT: Thank you. Cross, Madame Attorney General?

MS. PARSONS: No questions. Thank you.

THE COURT: Thank you. You may step down.

MS. SHURLING: A moment's indulgence, Your Honor.

THE COURT: Yes, ma'am.

MS. SHURLING: Joseph Kemper G

JOSEPH KEMPER G

having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SHURLING:

Q. How do you know Mark Vail?

A. He was a teacher at my high school, and he was my football and basketball coach.

Q. And did he teach you or was he just your coach?

A. I don't believe he taught me in any subject.

Q. At the time he was your coach, did he offer you and other ballplayers a cell phone number so that you could call him if you ever needed an adult to talk to?

A. Yes, he did.

Q. And did you on occasion take advantage of that offer and call him for advice and counsel?

A. I did. In fact --

Q. Do you have firsthand knowledge as to whether other students also took advantage of his offer to talk to them?

A. I'm not sure about that. I don't know about his phone conversations.

Q. You just know about yourself.

A. That's right.

Q. Did Coach Vail give you his cell phone number in any kind of a secretive way?

A. No, ma'am.

Q. And did he ever ask you not to tell a parent or any authority figure that he had given you a phone number?

A. No, ma'am.

Q. Did he ever ask you not to discuss with other adults any aspect of his relationship with you?

A. No, ma'am.

Q. Okay. And --

A. In fact, my parents were fully aware of it.

Q. Okay. And did you consider his advice and counsel to you to be valuable to you as a young person during the time he was your coach?

A. I did.

Q. Did you trust Coach Vail?

A. I did. I still value his opinion.

Q. Thank you.

MS. SHURLING: No further questions.

MS. PARSONS: No questions.

THE COURT: How old are you now, sir?

THE WITNESS: Nineteen.

THE COURT: Nineteen?

THE WITNESS: Yes, sir.

THE COURT: Any questions in response to the Court's question?

MS. SHURLING: I apologize for not getting that on the record.

THE COURT: Any question in light of the Courts questions?

MS. PARSONS: No, Your Honor.

MS. SHURLING: Lauren B .

LAUREN B

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SHURLING:

Q. How old are you?

A. Eighteen.

Q. Ms. B -- I'm sorry. Madame court reporter. I apologize, two or three people talking at one time.

Ms. B , you are very soft spoken, and I know I thunder like a trumpet, but you need to speak up a little bit, and try to remember that His Honor has to hear you, and His Honor and I are about the same age. Our ears aren't as good as they used to be. So if you need to get closer to the microphone, do, and remember that nice lady sitting next to you has to write down everything you say, and the judge and I have to be able to understand you. Okay?

A. Okay.

Q. How do you know Mark Vail?

A. He was my math teacher and PE teacher.

Q. And you've heard others here today testify to Coach Vail giving out his cell phone number to students and offering to be available to listen to problems, give advice if they needed an adult to talk to. Is that consistent with your experience with Coach Vail?

A. Yes, ma'am.

Q. Now, you too had his cell phone number?

A. Yes, ma'am.

Q. Did you ever use it?

A. Yes, ma'am.

Q. Okay. And in your contact with Coach Vail at the school, did you find him always willing to talk to students about their problems?

A. Yes, ma'am.

Q. Did you value his advice and counsel?

A. I did.

Q. Was there ever any situation where you were particularly emotionally distraught and something where you sought out Coach Vail's counsel?

A. Yes, ma'am.

Q. Can you describe that for us.

A. Yes, ma'am. My eighth and ninth grade year of school, my parents were getting divorced, and I found out

that my mom had an alcohol problem and a drug use problem, and I had a really hard time with that, going through that. And he was somebody that I could talk to about it, and he would give me his advice, if he had it. If not, he would just listen.

Q. And this time period of your life, during this time period, would you say that Coach Vail spent how much time listening to you talk about your problems, minutes, hours?

A. Probably minutes, but they could have added up to hours. I honestly can't tell you that.

Q. Added up to hours over a period of time?

A. Yes, ma'am.

Q. Okay. And your relationship with Coach Vail was one that you valued, you trusted him?

A. Yes, ma'am.

Q. Did he ever say or do anything in your presence that made you question whether he was acting appropriately as a teacher?

A. No, ma'am.

Q. Did your parents know about your relationship with Coach Vail?

A. Yes, ma'am, yes, ma'am.

Q. Did Coach Vail ever ask you to hide anything about his relationship with you as a teacher from your parents

or other adult authority figures?

A. No, ma'am.

Q. Was he ever secretive in any way about the manner in which he communicated with you or the subjects that he covered with you?

A. No, ma'am.

MS. SHURLING: No further questions.

THE COURT: Madame Attorney General?

MS. PARSONS: No questions.

THE COURT: You may step down. Thank you.

MS. SHURLING: Mack F , Your Honor.

THE COURT: Mr. F , will you come forward and be sworn, sir.

CHARLES F

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SHURLING:

Q. Mr. F how old are you?

A. Twenty-one.

Q. And how did you know the coach, Coach Vail?

A. He was my basketball coach and a teacher at the high school.

Q. Was he ever your teacher?

A. No, he was not.

Q. Okay. Did you have a similar experience with previous witnesses? Were you ever present when he gave out his phone number to a number of students?

A. Yes, I was. At basketball, preseason practice and such like that, he would always give out his number. If we were late for practice, let him know, or if we were going to miss practice, stuff like that.

Q. And did he indicate that he would be there and be a willing ear if you needed to discuss anything with him other than athletics?

A. Yes, ma'am.

Q. Did you ever take advantage of that offer?

A. No, I did not. I would speak to him occasionally after practice about school related stuff and sports and academics.

Q. You never had occasion to contact him using the cell phone we've been discussing here today?

A. No, I did not.

Q. When you talked to him at school and before, during, after school events, was Coach Vail always a good listener?

A. Yes, he was.

Q. Did he on occasion give you advice concerning matters that you needed an adult to talk to?

A. Yes, he would. He would give advice about

managing time and stuff like that.

Q. Did you trust Coach Vail?

A. Yes, I did. He would do anything for anybody as far as helping you out in any way he could.

Q. Did anyone ever contact you during the time period when Coach Vail was getting ready to go to trial?

A. No, they did not.

Q. Did you ever observe Coach Vail say or do anything that made you feel he was acting inappropriately as a teacher?

A. No.

Q. And were you around him a good bit in his capacity as coach?

A. Yes. Basketball practice I would see him periodically throughout the day at school and stuff like that. I would just see him at school events and such like that, not really outside of school.

Q. Did you see him a lot at school events that were not necessarily just practice related? That wasn't very articulate. Let me rephrase that.

I understand that you would see the coach during various sports practices, but did you see him at school, at other school events, in addition to athletic practices?

A. Yes, I did.

Q. And so you had a chance to see him interacting with people in the student body other than his athletes?

A. Yes.

Q. And, again, you never observed him behaving in a manner that you questioned in terms of being appropriate as a teacher?

A. No, I didn't.

Q. And, again, no one ever discussed this with you prior to my contacting you about being a witness?

A. No. I wasn't aware of anything.

Q. And you're here under subpoena as well?

A. Yes, ma'am.

MS. SHURLING: Okay. Thank you. No further questions.

THE COURT: Madame Attorney General?

MS. PARSONS: No questions.

THE COURT: You may step down, sir.

MS. SHURLING: Your Honor, at this time I would call Craig Jones, Esquire to the stand. Your Honor, I apologize. We have one more lay witness that will be very brief. I'm sorry. I forgot we had one more witness.

THE COURT: Will it be cumulative to what you're already presented?

MS. SHURLING: It is, essentially, Your

Honor. I can make it very brief.

THE COURT: Well, why don't we just stipulate that you have another witness that would testify consistent with the others.

MS. SHURLING: Certainly, Your Honor. One second, please.

Your Honor, if the record can reflect that the additional witness I would have called would have been Tradd S[redacted], and that Mr. S[redacted], like the others, would have testified to his relationship with Coach Vail, Coach Vail's appropriate and helpful relationship with him as a student at the time of these charges being raised.

THE COURT: We don't need that much of a stipulation. Go ahead and put him up.

TRADD S[redacted]

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SHURLING:

Q. How do you know Coach Vail?

A. He was a teacher and coach.

Q. And was Coach Vail someone you felt free to approach for personal advice when you needed to talk to an adult about something?

A. Yeah.

Q. Were you personally aware of other young people at the school that also took advantage of Coach Vail offering to counsel them about personal problems?

A. Yes, ma'am.

Q. Okay. Did you have an opportunity to observe Coach Vail among the students at the school on a regular basis?

A. From what I could see at school.

Q. Sure. And did you have any knowledge concerning _____'s relationship with Coach Vail?

A. No.

Q. Okay. Have you ever heard _____ discussing Coach Vail?

A. No, ma'am.

Q. Okay. And in your experience, did you ever observe Coach Vail acting inappropriately or saying anything that made you uncomfortable with him as a teacher?

A. Never.

MS. SHURLING: Thank you. Nothing further.

THE COURT: Madame Attorney General?

MS. PARSONS: No more questions.

THE COURT: Thank you. You may step down.

MS. SHURLING: And my apologies to the Court.

Now we'll call Mr. Craig Jones.

CRAIG JONES,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SHURLING:

Q. Mr. Jones, were you retained or Court appointed in this case?

A. I was retained.

Q. By whom?

A. Well, some collectively the -- there were some individuals in the school that retained me on behalf of Mr. Vail.

Q. And was there one primary contributor to your fees?

A. There was.

Q. And who might that have been?

A. It would have been the Deal family.

Q. The Deal family? And were the Deals members of First Baptist Church?

A. No. They were members of East Cooper Baptist Church.

Q. And the school that Mark taught at was affiliated with what church?

A. First Baptist.

Q. First Baptist?

A. Correct, correct.

Q. Okay. A moment's indulgence, Your Honor.

Were you aware that the Deals' children regularly attended First Baptist?

A. I was, sure.

Q. So although they were not members there, they had children who were actively involved in First Baptist?

A. Correct. That's how they knew Mark Vail.

Q. And they, in fact, attended that Christian school?

A. They did.

Q. Okay. Did you have discussions with Mark Vail and his wife concerning the impact of third party retention on this case?

A. I'm not sure -- with regard to -- you know, their position was we just want to make sure that he's got counsel on here. They didn't involve themselves in the case at all, other than to post the bond and pay the check. That was it.

Q. Okay.

A. And they didn't make any assertions one way or the other. He did understand to try to make it clear that he was my client and my duties extended to him. I never discussed the case with him, really. They weren't privy to our case preparation or anything of that sort, but,

you know, everything extended to him. I mean, they had no say in what we knew on the case one way or the other.

Q. Were the Deals -- was Mr. Deal specifically actively involved in the running of this small Christian school?

A. Honestly, I don't think he was. I don't know, though. I don't know anything about the connection other than the kids going there. They never really met with me on the case a whole lot. They just said, Craig, this is what we do.

I know them, and they said, Tell us how much and that's what we did, so I don't know the connection beyond that. I know the kids all went there, though.

Q. Sure. The kids all went there, and I'm not suggesting they were employed by the school, but do you have knowledge concerning anything beyond their kids going there? I mean, were they active with the PTA or any parent organizations or anything beyond simply having their children enrolled there?

A. I would guess. I don't know. I know them personally. I know they're fairly active in their kids' lives, but, honestly, that didn't ever come up, and they really didn't want to be on the forefront because they knew both parties, and, so they -- you know, and they just said, We just want to have representation for him

and that is it. So as far as what their involvement was, I don't know.

Q. So the Deals made it known to you that they were personally acquainted with the R family?

A. Correct.

Q. And, again, did you have any sort of discussion with Mark Vail about the fact that you were being retained by a family other than Mark's family?

A. Sure. Yeah, that was -- sure, but -- yeah, we did. I mean, that was known from the very, very beginning. I mean, they posted, again, the bond for him to stay out out of their pocket, so that was from the very beginning. We knew exactly where the money was, and, I mean, they just didn't -- you know, they basically said, you know, We know Mark. We don't know whether he did it or didn't. We haven't talked to him about it. We just want him to have a fair shake, and that was it.

I never really got in other than I guess Ms. Deal came and sat and watched a portion throughout, but as far as knowing where the money came from and everything and at all points --

Q. And they did indicate that they had some connection with the R family?

A. Sure, and they did, because it's a small school and everybody knows everybody.

Q. Did you as an attorney have any concerns that you might be called upon in this case to embarrass or otherwise bring negative attention to this family?

A. Which family?

Q. The R family.

A. Obviously, I knew I was going to have to cross-examine them and I was going to have to cross-examine . There was really no way around that, and just by virtue of the kind of case, whether embarrass is the right word, or traumatic, but, I mean, I knew, they knew, Mark knew they were going to have to get on the stand, and I was going to have to.

Certainly there is a way -- I hope I handled it in a tactful manner, but there were questions that I had to ask of them. I had to get into the relationships and those sort of things, and so that was all known.

Q. Did you have any concern that your performance in Court might bring negative attention or embarrassment to the R family when the people who had paid your fee had indicated they had some knowledge or relationship with the R ?

A. I mean, you know, really, once I was retained -- I mean, this is not unusual, that third parties retain attorneys and, really, everything stems from -- I can't discuss things with those parties without my client, and

I tell that to the people that pay me. I tell that to my client. If they give me permission, I'll discuss however, but, really and truly, once we were in this case, money---at that point, where it came from, they never called and said, Hey, what's going on with this? We're worried about this or that.

They just paid the check and were out, so we just -- I mean, from all practical purposes, Mark paid, it doesn't -- and, I mean, I knew I was going to have to cross-examine the R . I also know the dangers of getting up here and -- I mean, obviously, you can turn a jury against you in the way that you cross-examine a child or parents or parents of the victim, those sort of things.

So I think we effectively got to things that we needed to get to, but, you know, it never came into mind one way or the other about the connection, and I believe all the Deal kids were out of the school, so there was really no stigmatism one way or the other. And, again, nobody knew until today other than maybe Mark, and I'm sure he's conveyed that to you and all, but, I mean, other than that, no one knew at any point who retained me, so I really didn't have any real concerns over that, so if we want, it never would come up, so -- go ahead. I'm sorry.

THE COURT: No, you go ahead.

THE WITNESS: So I just never thought about that because, I mean, for all intents and purposes, our intent was to win, and so --

BY MS. SHURLING:

Q. And I apologize for speaking over you. Prior to this case going to trial, you obviously had filed standard Brady and discovery motions?

A. Correct.

Q. And in response to that, I assume you had gotten various materials, including medical reports concerning the victim's condition?

A. I had actually went and interviewed -- I actually met with Dr. Betsy Gibbs. Once she had already been to CMAT, which is Children's Medical Assessment Center. I met with Dr. Gibbs probably a couple hours. She went through the file.

They cannot give that out at that point in time. There were medical notes they could give out, but actually went through her procedure, went through everything with me, actually is a very, very -- you know, I felt very good about having her on the case, even as opposed to some others who were involved who were a little more -- she's straight up, and she was very positive, I think, for us in the case.

She actually testified in there that you could see in there that either there was the trauma -- if there had been any trauma, either it had healed or the other possibility was that there was no trauma. And the solicitor tried to pin her down on that, and both times she kept coming back and said either no trauma or the trauma may have healed.

Q. Let's explore that a little bit further.

A. Sure. Could I get the transcript? Could I bring this up here? Does it matter?

THE COURT: Maybe you could tell him what page. Maybe you could help him with page and line.

BY MS. SHURLING:

Q. Starting with a general discussion about Dr. Gibbs, I assumed that both from the discovery materials and your discussions with Dr. Gibbs you were aware that her finding was that the complaining witness in this case had a fully intact hymen.

A. Just a second. Yes, correct.

Q. You knew that before trial?

A. I did.

Q. Okay. And from your discussions with her, you say you knew that it was her position that there was no evidence of trauma and that if there had been any trauma that it had healed.

A. Well, not necessarily. I mean, again, this has a sensitive nature of it, but in every case, the hymen is not interrupted. There are times due to elasticity of the female victim at that age that the hymen basically heals up, and there is not interruption, and that is kind of -- clearly, that was important in our part, that it wasn't interrupted and there was no trauma that could be -- that could be attributed to this, but it doesn't necessarily -- that's one thing she testified to. I think she actually used the word of old wives tale, or something of that sort.

Q. Let's take this a little bit at a time.

THE COURT: Please find where you need to be in the transcript.

THE WITNESS: It might be just as easy to go with her points, and she can focus in on them.

THE COURT: At some point you need time to locate some particular place in the transcript.

BY MS. SHURLING:

Q. If you would go to page 339, lines 9 through 16 specifically. Dr. Gibbs states that -- and I'll start at line 13: So it's an old wive's tale that, you know, the first time every person, every female has sex, that they tear and bleed and all of that. That really only happens in, you know, a small percentage of cases.

Now, did you consult independently with any expert in the field of juvenile or adolescent gynecology to determine whether her position on this subject was standard in this field of medicine?

A. I met with Dr. Emily Farrow and her husband, and I cannot remember his name, both of them are -- actually, both of them medical doctors here and are friends of mine, so I met with both of them and I said, Let's go through the female anatomy.

And we met and went through Betsy Gibbs' report on there, and, basically, her husband had worked at LCC, Lowcountry Children's Center, and I can remember the doctor there, but, basically, that's where he did his residency.

We went through that first, and that's what they indicated also, that, I mean, clearly, it was beneficial to us, but what I really didn't want to do was put a ton of witnesses up there to say, Well, this could have happened, and it healed up.

I mean, I had their witness saying there is no trauma here, their witnesses saying it could have been one or two things, it healed up, or there was no trauma. You know, if I stick a bunch other doctors up and say the same thing, I mean, I've got their witness saying it.

Q. Well, up until the time of trial, you were under

the impression that the allegation was that actual intercourse had only taken place twice; is that correct?

A. Correct.

Q. And as of the time of trial, you suddenly were confronted with the allegation that it had happened upwards of six or seven times?

A. I think maybe even up to nine, if I remember, but I'm not positive.

Q. And as you -- I'm somewhat concerned about your suggestion that Dr. Gibbs was actually favorable to you. If you look at the top of page 340, in response to examination, Dr. Gibbs goes on to claim that they actually had cases where children are observed engaging in pornography and are found to still have normal vaginal exams. See those references?

A. I do.

Q. Okay. And when you then had an opportunity to cross-examine her, did you ask her whether -- or why didn't you ask her if by normal she meant that these children who had obviously been subjected to repeated acts of sexual intercourse had a fully intact hymen?

A. Well, I mean, I guess I could have gotten an expert up here to say kind of anything, I mean, in a sense, but, I mean, she was saying that -- there were two options here: Either there was no trauma, which is what

we were saying, or that it had healed up.

Then we come back with nine more, maybe six or whatever. Then, at that point in time after our motion -- we actually initially did a motion, I think, on three different occasions to actually continue to further investigate these, and Judge Pieper denied them on each occasion. Now I kind of had the position to be able to say, You know, had there been six or nine or whatever it was, why didn't the state submit that to you?

So, I mean, it kind of then became a strategy of now instead of two, where you got nothing, now you got -- and, like I said, I thought it was nine, and there is still no trauma or anything on there and no tearing. So, I mean, I could get more doctors up here that could say the same thing she did, but, again, I spoke around the defense bar also with regards to various experts and everything, and, of course, she was the one that came up as a defense expert and a prosecution expert.

And she has been on both sides. If you check the attorneys who handled these cases around here, she is very well respected. Every defense attorney I talked to said, You can trust her. She's straight up. We've hired her for our case. She's not pro prosecution, she's not pro defense, and she was straight up the day I went and met with her. She was straight up on the stand. I'm not

sure -- go ahead.

Q. Were you expecting her to say that a hymen being torn in some way during initial intercourse was an old wives' tale, that it was a rarity that seldom happened? You were expecting that when you went to trial?

A. I already knew what she was going to say. I already met with her. She already told what is here.

She said, Craig, I can't make a determination. If there was trauma, it healed up, or there wasn't trauma, and it didn't happen that way.

Q. I understood that. My question is, did you know she was going to take the position that the generally accepted notion that a virgin will bleed upon initial act of intercourse is an old wives' tale, that it's actually a very rare occurrence? Did you know she was going to take that position?

A. I don't know if I looked at that it was very rare -- I don't know if I was thinking in terms of -- I knew that the fact that the hymen wasn't interrupted, based on my meeting with the other doctors, was pretty common on there, so at that point in time, you know, we knew she was going to say -- we knew what she was going to say wasn't going to hurt us.

Q. Okay.

A. So I'm not sure what --

Q. I'm trying not to interrupt you, but I'm also having a hard time discerning when you're through answering my questions, so we'll work on that together.

When you were discussing this with your physician friends, you believed that there was an allegation of two acts of intercourse?

A. Correct.

Q. If I understand you correctly, if I misstate it, please correct me -- you were told that there are occasions when someone's tissue is sufficiently elastic that it can sustain an initial sex act without tearing or being obliterated?

A. Correct.

Q. Did you pick up a phone and call them or anyone else and ask if once the allegation was that intercourse, full blown intercourse had happened upwards of nine times I believe you said a moment ago, whether or not that didn't exponentially decrease the possibility that someone would still have an intact hymen?

A. No. And part of it is -- you know, until testified on there, we didn't know exactly how many times. Like I said, we tried a motion to continue, to get more detail. Then when I assumed and Ms. Herring-Lash was going to present these newer allegations, we did -- again, objective. We met at the

bench and the judge again overruled that, and then I did a motion, so I didn't know about the nine times at that point in time.

I think later on Dr. Gibbs did talk about -- we got into the positions that theoretically they were in in the car and that some positions could cause more trauma than others and the fact that there wasn't other trauma went to our favor, and the fact that, you know, she's in an odd position in a car, it could be more likely to cause trauma, and that, again, there was no trauma; again, they didn't submit any further stuff to do that, but, I mean, there wasn't -- no, I didn't call anybody right at that moment, once the judge had denied the motion, and said we were going forward.

Q. And was it your understanding from your discussion with Dr. Gibbs that you can grow a new hymen?

A. No. It's my understanding that it's not always interrupted, and, again, the hymen is not -- it is not a full membrane, and what happens is not always interrupted.

Q. Sure.

A. So no, I wasn't -- it wasn't my understanding it grew over, but, again, the issue wasn't the hymen wasn't interrupted. The issue is if the day after this act occurred and they had taken her to a doctor would there

have been trauma?

Obviously, the hymen wasn't interrupted then, but clearly a lot of times you find out there is trauma around the vaginal area and all. That would be indicative. We are weeks or months, however long later, and I would have to look back through the dates, so the only thing I could have, you know, 100 doctors look at her, but there was no trauma at the point they would have looked at her, at that point in time.

Q. Well, Dr. Gibbs did not describe observing any scarring in the hymen tissue or the labia region, did she?

A. I don't think she did.

Q. Okay.

A. Again, I have not read exactly back through all this.

Q. The record will speak for itself.

A. Sure.

Q. But assuming for the moment that she did not describe observing any scarring. When she was stating, as a medical expert, that her findings either meant there had never been any trauma --

A. Correct.

Q. -- or that there had been trauma and it had healed, did you consider questioning her as to whether

you would expect to find if there had been tears in a hymen that had healed, whether you would expect to see some scar tissue as evidence of the hymen having been partially perforated and healed over?

A. I don't know if I specifically went into that, because, I mean, basically, what we had was I did get her to say that, you know, nine times or five times or whatever versus two times significantly increased -- or not significantly, but do increase the chance. The more opportunities there are for trauma, the more probable the chances are.

So she did testify to that. There aren't a whole lot to me -- I mean, you can get in and ask questions, but if she starts getting into, well, no, there wouldn't be -- she said what we needed her to say. She said there was no trauma, and at some point, I mean, I don't want to get in and give her more opportunities to further explain why there wouldn't be trauma on there.

Q. Sure. Can you please help me out by pointing out to me where in her testimony she said the more times there were acts of intercourse the more likely there would be that there would be observable trauma? I don't seem to see that.

A. And, again, I have not looked back through this, but -- on page 343, I guess it would be line 15, I asked,

And what if the instances were hypothetically if the individual had sex in the car, straddled the individual, very rushed the first time, or, say, eight times, six times or seven times having sex, could that, would that change at all? Would that factor into the history?

And kind of went through and, again, the gist of it was we're not talking now about two times. Now we're talking about however many times there were.

Q. And what was her answer?

A. Her answer was she went into the different things that go into what -- the age of the child, where they are as far as puberty, which goes to elasticity, thickness; the second is physical arousal and the lubrication and those sort of things. Positions certainly mattered --

Q. Mr. Jones, didn't she specifically -- in response to your question that where intercourse had happened, you got eight times, six times, or seven times having sex, you were asking whether that would make a difference about the presence of trauma.

And she says, at page 343, lines 20 through 22, the factors that go into whether somebody with a normal exam can have had penetration without findings is not really related to that.

A. She did, and -- which is then when we went into positions and those sorts of things on there, but yes,

she did.

Q. So contrary to your testimony a few moments ago, she never acknowledged that the chances of someone presenting a normal gynecological profile, a normal gynecological profile would not exponentially decrease in her view; or at least in her view, it wasn't related to that, that the chances didn't go down depending on the number of sex acts alleged?

A. I guess that's what she is saying on there.

Q. Okay. And my question is, did you prepare in any way prior to trial to have testimony available that the number of times intercourse occurred would, in fact, decrease the likelihood that this would be one of those rare cases where a hymen would remain pristine?

A. No, I didn't. No, I did not.

Q. And did you ask anyone if her belief that the cultural practice of accepting the bleeding virgin was an old wives' tale or a myth? Did you consider presenting testimony to the contrary about that?

A. No, I didn't.

Q. Getting ready for trial, obviously there are a few things you expect to happen.

A. Sure.

Q. And I would assume you did research concerning the kinds of testimony the state could and couldn't introduce

at trial.

A. Yeah.

Q. And did you familiarize yourself with State vs. Munn and related cases concerning hearsay testimony at trial?

A. I did.

Q. And you were familiar, I assume, with the rule that introduction of hearsay to corroborate a complaining witness's testimony is limited to time and place --

A. Correct.

Q. -- of the incident? Was there any reason specifically why you did not object to numerous instances throughout this trial where and others were allowed to present hearsay assertions?

A. Well, you kind of have to back up with this case because it's a little bit unusual. What I've got -- I mean, from the very start, what you're starting with is -- at that point in time, a 25-year-old teacher taking a 13-year-old student off campus and setting it up to meet her off campus. The one instance that we couldn't really fight was that instance.

Now, I could have put Mark on the stand, but that was never an option, really. We talked about it and he wanted to get his side out, and I didn't disagree with that, but right off the bat, you've got 30 hours of phone

calls, many of those after hours, to a 13-year-old student. I mean, the other people that came up here and testified, none of the volume was near that.

Q. Okay. But you've got --

THE COURT: Why don't you allow him to finish his answer, please.

THE WITNESS: And I understand what you're saying, but everything centered around that November 4th date, and that's the one I couldn't really argue. He took a 13-year-old, arranged for her to leave campus, took her to his apartment. You know, there wasn't anything I could do around there.

So from that point forward, my strategy at that point forward was to attack all the other instances that occurred, and, hopefully, affect the credibility on behalf of that one. Every other instance, I had alibi witnesses. I had [redacted] who had made -- who had stated something had happened and then had recanted. Only way I could get that recantation in was through these other people.

You know, I felt like I had enough through alibi witnesses through those things to be able to attack all these collateral allegations, and hopefully by virtue of credibility get to that one on the 4th, because that's the one I was dead in the water on.

Q. But, Mr. Jones, you had a complaining witness who was an adolescent who, by all accounts, had a huge crush on Coach Vail.

A. Sure.

Q. You had an adolescent who was alleging not an isolated incident, but upwards of nine actual acts of full blown intercourse who presented a fully intact hymen with no evidence of scarring or tearing at all. Correct?

A. Correct.

Q. So it was clearly going to be a credibility contest on many levels; is that fair to say?

A. Correct, on every level, really.

Q. And do you agree that the more opportunities the state has to introduce testimony from other people purporting to corroborate the victim's testimony and the fact that she has consistently told the same story or that she's told it to multiple people tips the scales in the state's favor on the credibility issue?

A. It does, unless I can undermine those other instances. And, again, at our closing, we were able to narrow it down. We were able to eliminate a number of those dates. At least it worked on one level because they acquitted -- instead of believing everything she said, they did take and acquitted him on one count on there.

The only way some of those things -- I needed that, and, again, we discussed all this, but I needed that recantation from to come in. I needed her to have recanted that story. You know, I'm -- you know, in a vacuum, I'm dealing again with that November 4th court date. That was the one that everything hinged on.

Had the solicitor said, I'm not going to prosecute any of these other matters. I've got a 25-year-old teacher taking a 13-year-old student off campus, 30 hours of phone calls afterwards. I've got her up here testifying as to what occurred. There is not an alibi witness in the world I could bring in as to that instance.

The other one when she did the recantations, when we had to get in that crush that was part of it, we had to get into that obsession with Mark. Those were things we had to get in.

Q. The November 4th incident, what sex act allegedly occurred on that date?

A. That was the occasion where he took her back to the apartment, and she said that they laid on the bed, and I believe that was the one where he suspended himself over her, and at that point in time -- I want to see if I wrote down which one was that -- and, again, there were a number of them, so -- and, you know, I don't have it

right here in front of me, but it was one of the actual acts of sex. It was not one of the occasions of the kissing. It was an actual act of sex.

Q. Let's just look at some of the hearsay I'm talking about. Let's go to page 121 of the transcript where -- ----- is allowed to testify about a student observing something on her neck and telling her that those are hickeys. Okay?

A. Sure.

Q. So that was hearsay testimony that another student had identified marks on her neck and identified them as passion marks or hickeys or whatever. What advantage would there be to allowing that hearsay testimony in?

A. Well, because later on -- and, again, I don't have it right -- but that friend was the only one who saw this. Her mom didn't see it. Her dad didn't see it. Ms. Bonds at cheerleading practice, none of the other cheerleaders the next day ever saw it. The only person was Brittany that saw that.

Q. Wasn't there also someone named John who testified to observing marks on her neck?

A. I don't know. I just --

Q. We'll get to that in a moment.

A. There could be.

Q. In the beginning of the trial, you heard me

talking with Ms. Herring-Lash on the stand that there was a stipulation that they were not going to raise other pending charges.

A. Right.

Q. Was it your understanding when Ms. Herring-Lash said that she was not going forward on that charge or those charges that the decision not to prosecute those charges had been made?

A. You know, I don't know if they -- I don't know if they had decided that at that time. I mean, the tape that I had was not admissible. It was not the victim making that statement. It was a call from the victim to another friend who then called another friend, who said so and so told me what happened, but at least it went to talking with Debbie, to Ms. Herring-Lash. It at least raised some questions at that point in time.

I really don't know -- I really don't remember if there was anything that she said, you know -- quite often in these cases, if they lose one count, they may come forward on another count at a later time.

Q. But in any event, you do agree that in the transcript at page 18, at the bottom of the page and going over to the 19th, that there is an agreement, actually starting at 18, line 22, that that certainly is not going to be mentioned at trial?

A. Sure. I did know that at that point.

Q. So we've got the incident with the hickeys that we talked about briefly, and we move on at a later point in her testimony on page 126. She's talking about being confronted by her parents, and her parents saying that they had seen them in the car kissing. Do you recall that?

A. I think I do.

Q. And was that clarified at some point that they never actually saw them in the car kissing?

A. I guess. Honestly, I don't remember on that particular point. I haven't looked back through there.

Q. Okay. Moving along, let's go to page 130. Backing up to 16: Who is Mr. Mullins?

The principal, my old principal.

What did they do?

They've given him the phone records, and I'm guessing Mr. Mullins informed Coach Vail that he had been involved with students and they wouldn't let me go to school.

There again, all of that is getting into hearsay testimony that you didn't have any problem with any of that?

A. And, again, I'm not sure --

Q. Hearsay testimony concerning what her parents had

told Mullins and Mullins had told her parents.

A. I knew that we were going to get into the phone records through Mark.

Q. Let's move on to a few more examples, and eventually, Your Honor, I would ask permission to do a bench brief on this and get all the summaries of hearsay testimony, but, generally, are you familiar with Jolly v. State, Dawkins v. State, all of the post State v. Mullins cases that limit hearsay testimony?

A. Dawkins, I am, but I'm not familiar with Jolly right off the top of my head.

Q. And let's take a look at page 138, where she's saying, Ms. Murray advised me to tell, and then I told Mr. Mullins. Mr. Mullins told me that it had to come out. All of these instances that isolated very small tidbits, but they're throughout the transcript.

Did you consider at some point saying, Your Honor, I'm trying to be lenient, but there is a lot of leading going on, a lot of hearsay? Can --

A. I don't know if I did that at some point in here. Again, I haven't read through the whole transcript. If it was benign, there wasn't a whole lot of point in me jumping up and objecting at that point.

Again, you know, I knew we were coming up to the issue of the 4th. I also knew there were going to be --

so there were -- I didn't want the situation to be that I'm trying to cover up something for him. I knew we were coming up to this date on the 4th where he had gotten her off campus, and what I didn't want to do was look like we were covering something up. That's what was coming up. We were going to have to deal with it. We were going to have to address it, and if they were benign, there wasn't -- I didn't see where -- I didn't know.

Q. Sure, and I can certainly understand your not wanting to make that kind of an objection in the presence of the jury, necessarily, but you certainly could have taken it up with the judge out of the presence of the jury, couldn't you?

A. I'm sure I could have.

Q. I'm sure you could have said, Your Honor, they're repeatedly getting into hearsay, and I don't want to be forced to object in front of the jury repeatedly and look as though I'm trying to hide something, but I'd like them to be admonished to stay away from hearsay?

A. I'm sure I could have, but I'm assuming, you know, looking through that, I didn't. I haven't looked back through it again, but in this --

Q. Sure. Now, I understand that at some point during her testimony, specifically page 139 and the testimony leading up to that on page 137 and 8, she's at some point

talking about Coach Vail having been over in her neighborhood and her meeting him at a partially completed house or something to that effect. Do you recall that testimony?

A. I do recall the testimony to that effect, I do.

Q. And on page 139, lines 10 through 15, is allowed to testify that her sister said she thought she saw a shadow in -- looking out the window. Recall that testimony?

A. I'm looking at it now.

Q. Actually, you have to go back to line four, the night he was over at the house, -- I'm sorry. Going through there. She says that her sister is looking out and I was, like, did you see anything? And she was, like, well, I thought I saw a shadow, but I didn't see anybody.

Would you agree that that is hearsay testimony?

A. Sure.

Q. At least attempting to corroborate her position that he was in the neighborhood, over there at this house?

A. I would say so. Again, whether it has a bearing or not, as far as those instances -- I'm not sure that's one of the counts that they found on there. I don't

know, to be quite honest, but that would be hearsay on there.

Q. Looking at page 228, the testimony of the older sister at line 17 through 23, she's testifying as to inquiry about the whereabouts of her sister to a teacher and recalls that the teacher, quote, And he was, like, oh, she's getting tutored or has a doctor's appointment. You honestly didn't know?

Do you see that?

A. I do see it.

Q. Okay. And would that not be hearsay testimony that her teacher, who should have known her whereabouts at that time of day, thought she was away for some excusable reason, but didn't exactly know where?

A. It would be.

Q. Okay.

A. It would have been hearsay as to, you know, again, whether it had an effect on one thing or another. I just don't know the context of this specific period she's talking about.

Q. All right. Look at page 232. Again, the testimony of the older sister at line 21 through 23, and she admitted to us that she and Coach Vail had been having sex.

A. Well, and that's where I got into the recantation,

because she ultimately recanted this for a period, and then went back to it, but I needed to get that flip flopping in there.

Now, again, if I didn't, but that recantation -- again, going to the credibility overall, I mean, we had issues throughout on the days that they had -- we had a recantation from her, so, I mean, again, I can leave all that out, but I'm still stuck with the 4th then the day he gets her off campus and 30 hours of phone calls.

I've got testifying to this, so, you know, I've got her sisters and the friends who are closest to her with this recantation, so that means --

Q. And you've got her sister and friend corroborating 's claim that she reported this conduct to them.

A. Yeah, before the -- yes, yes.

Q. Okay. Now, going on still further on page 233, . did ask you to call him? She didn't. She told me not to and not to mention anything about this. Again, going on and on, that would technically be hearsay, would it not?

A. Sure, it would, yes.

Q. And it would be hearsay testimony that she had asked her sibling to keep this secret.

A. Yes, yes.

Q. Okay.

MS. SHURLING: A moment's indulgence.

THE COURT: Yes, ma'am.

MS. SHURLING: Thank you, sir.

BY MS. SHURLING:

Q. Looking at page 236, lines 15 through 23.

A. I'm sorry. Say that again, please.

Q. 236, lines 15 through 23, still more hearsay, this time about [redacted] offering her sister money to let her go hang out and be somewhere while mom and dad were away from home.

Moving on along -- and I'm only going to do a couple more of these, Your Honor, then I think with the Court's permission, I'd like to address this in a bench brief, but moving along throughout the balance of this trial, there are repeated instances where various people are allowed to introduce hearsay testimony.

Page 244, toward the end of the direct testimony of the older sister, she says that her sister told me -- she was asked, pardon me, did she tell you when and where they had had intercourse?

And she goes on to say, At his apartment, in his car, in the parking lot, and in some half built houses.

Now, when and where is, indeed, the standard of State vs. Munn, but not when and where naming your perpetrator, is it?

A. And, again -- no, that is not allowed in.

Q. Okay. Moving -- I'm sorry.

A. Go ahead.

THE COURT: You have --

THE WITNESS: I guess, you know, again, going back to the instance of which one they did the acquittal on, I mean, I would say that the strategy worked, so, again, the instances were coming in through . The instance of, again, taking her off campus is coming in through Mark, so -- and, again, I just say that to say there was a method to the madness. It may have been that somebody else would do different, but it also may be that then we could be having three counts here, so --

Q. Well, let's look at page 263 on redirect where she's once again recalling what said to her about the incident with the half built house in the neighborhood.

I want to -- starting at 123, I went up to her room and I was, like, you know, , I saw something upstairs.

She was, like, Don't worry about it. It could be a worker. It doesn't matter. Okay?

And, once again, that's corroborating an important segment of 's accusations and testimony with hearsay from her sister, correct?

A. Sure.

Q. Okay.

A. It was corroborating, yeah.

Q. Who was W. Cruz?

A. That was the detective.

Q. The detective? And the detective is allowed to testify on page 271 about her relating various incidents concerning the timing of the first episodes and the identity of Mark Vail. Again, we had similar reasons, I assume, for not objecting to that?

A. And, again, going to the detective, he only met with her on one occasion, so I think it was -- and I don't remember, but I think it was January 20th, which is one -- and a date may be off, but there was only -- if I remember correctly, there is only one occasion that he met with her which I think was the same day she was with -- that she also met with Dr. Gibbs.

So my point in there was we were able -- again, in my closing, we were able to slash away at a number of dates and get it down to, I think, a five-day period of when a number of these acts could have occurred. And my point was that there wasn't much investigation done here and, you know, we were able to narrow it down to five days, and, again, that was kind of -- I was hoping to somewhat set things up for appeal for the purposes of if

we were able to get it down to a five-day window, then if the judge might would have granted us more time to explore these allegations, we might would have been able to further narrow it down or find other alibi witness which would have gone to that five-day period.

And so, again, at that point in time, I felt like we were able to attack the case. As if we could do this with the limited resources that we had, why couldn't the state do this with all their resources?

Q. Why didn't you argue that at your motion for continuance?

A. I'm not sure that I didn't, but, again, at the closing, I may have argued it at closing until things -- again, we didn't know about these new allegations until we were in here. So --

Q. Well, you knew -- I'm sorry. You knew prior to the initiation of the trial, you knew prior to 's testimony, because you made the motion for continuance before --

A. Sure.

Q. -- that got underway.

A. Sure. But I didn't know that we were going to be able to get information that would allow us to narrow down these days to the way it was. Typically in these cases, there is no way to narrow down the dates. I mean,

it wasn't until we began to get into the case and get the testimony and we had to figure out what so and so's dad picked them up on this day and they had cheerleading on this day and Mark on this semester ran through here, so he wouldn't have been available for seventh period.

So it wasn't until all that began to come in, like I said, these new allegations, or we didn't narrow them down before. I didn't know about them.

Q. Those were all matters that you were either prepared to either present testimony concerning or elicit testimony from state's witnesses concerning going into the trial, correct?

A. I mean, we were only -- when we walked in here, I believe there were only two instances that we were dealing with at that point in time.

Q. I understand. But the information that you're saying you were able to develop at trial --

A. Right.

Q. -- that narrowed it down to a five-day window, that came out during cross-examination and later some of your on witnesses at trial.

A. Correct.

Q. But you knew the information that was the subject of that line of inquiry, you knew going into trial. I mean, you may have put all the pieces together at the

trial and ended up with a five-day window, but all the individual pieces of the puzzle were things known to you going into the trial, were they not?

A. I'm not sure, because, I mean, again, there were more days into there by these new allegations. I'm not sure -- I mean, I had what I had, and there were certain things I could plug into once we begin to see how the story unfolded.

Q. I understand. My --

A. But there wasn't any way I could foresee -- there wasn't any way I could foresee that.

Q. My point --

A. Go ahead.

Q. I apologize. I don't know when you're through.

THE COURT: If you have additional comments, if you need to pause, reflect, and then continue, that's fine. Miss Shurling will be happy to wait.

MS. SHURLING: Absolutely happy.

THE WITNESS: I'm done. Go ahead.

BY MS. SHURLING:

Q. Thank you. You knew the broad window that you were dealing with in terms of the indictment.

A. Correct. I think it was a two-month period away or something like that.

Q. And you knew immediately before trial, but

certainly before [redacted]'s testimony, that they were upping the ante from two counts to approximately nine?

A. Right, right. They were alleging nine incidents. They weren't upping counts. There were three indictments. We were -- but they didn't -- we weren't fighting nine, but yes, yes, they were upping the number of instances.

Q. They were upping the number of times they were claiming this conduct occurred.

A. Correct, correct.

Q. And you knew, based on your trial preparation, that you had various pieces of information that you could bring in through different sources that eliminated a number of days during the window listed in the indictment.

A. Correct.

Q. And my question to you is, when you made your motion for a continuance, why didn't you make a proffer at that time to the judge that, Your Honor, we can take a calendar. I can tell Your Honor that we have testimony eliminating this day, this day, that day. It gets us down to a very small window, and that's why I need more time?

A. I didn't get that until the night I was doing my closing, when I was putting all the pieces back together.

Actually, I think I had called Mark that night, but I didn't do that calendar. That night I was sitting there doing my closing and began to see, Wait a minute. It couldn't have been on this date, it couldn't have been on this date, and I probably went through that calendar probably six times to see if I was right, that I could really eliminate all these.

It wasn't until the night before that all the pieces -- I mean, there's seven legal pads right there, a trial notebook. There are two more big manilla binders in there. I also was trying to -- so, I mean, I had just tons of stuff that we're trying to sort through.

So when I started sitting down that night, I began to go through and the dates began to tick off in my head, and as I sat down with a marker, which is exactly what I did at my closing, I began to go through and strike through the dates that it possibly couldn't have been. But it wasn't until that night that I was putting my closing together that all those pieces came together.

I didn't anticipate I would narrow down those dates in that fashion. I mean, I didn't figure that was going to be, and then when I saw that, I was, Like, Wait a minute. I can eliminate a good bit of this and narrow down this window.

Q. Okay. You knew the time period in question before

trial.

A. Right.

Q. You knew in your trial preparation what witnesses you could use to eliminate certain dates in this time period. If I understand you correctly, what you're saying is that you had never in your trial preparation sat down and said, Well, if I have this witness to eliminate this day and this witness to eliminate this day and gradually taken a calendar and figured out how many days that left --

A. And, again, it wasn't until got on the stand and began to talk. I mean, these new instances were out of the blue. There hadn't been any allegations of these other instances. When we got in here, our fight was for, I think, the November 4th, and I can't remember the other date, but we had specific dates when we walked in here.

Then, as those other instances came out, again, as we tried to narrow things down, those pieces began to come together, and it wasn't, like -- you know, it wasn't like we can take, you know -- we could eliminate the piece because of the way the schedule and the school semester went.

Well, Mark had certain classes that he taught that went later than others, which left us the ability to

eliminate a certain time period, but, again, we didn't know about how all these things fit in until they got up here. And, again, sitting down, there was no way before they got up here and testified I would have been able to put all that together. We just didn't have the information.

We could go through and we could eliminate, but there were big pockets that these then could have occurred on any time, and there still wasn't any way to narrow it down. My argument was that I think I got it down to a five-day window. Now, clearly, Ms. Herring-Lash argued that it might not have been that five-day window, but I think that it was.

I'm pretty certain that I'm able to eliminate all the other dates, and possibly -- but, again, that all came together after all this testimony came out and came through we began to look at all that stuff.

Now, would I have been able to put it together before? No, because it was all too unrelated. There wasn't anything -- until I started doing my closing and I sat down on my closing and began to go through there, this is kind of where all of a sudden it sort of fits together in that way.

Q. You say you think it was. You think what was?

A. I'm sorry? I'm not sure --

Q. You said Ms. Herring-Lash said that it may not have been during that window.

A. We got it down -- right. We got it down to where I think if something had happened, it would have had to happen within a certain five-day period. Now, again, their time period was -- and, again, I don't have the exact days, but was at least a month. It may have stretched a little bit beyond a month. I think November the 4th is when one of the first dates would have occurred, and December the 6th, I think, was when the last allegation was. So, roughly, a 33-day period, and I think that I was able to eliminate it down to five days.

Q. My point was, when you just said, I think it was, to be very clear, your client consistently said there was no if.

A. Sure, and our deal was that if we could eliminate these days that they said it could have happened on and if we could figure this out, I mean, sure, he said it wasn't, but, again, you got to come back to that November the 4th date.

It's not in a vacuum. The November 4th date is the one where I don't have an alibi. I don't have anything. All I've got is a teacher arranging for a 13-year-old student to meet him a block off campus and go down -- take her by his apartment and come back.

There's flags -- even my own staff is going, Something is not right with this, and that is a huge mountain to overcome, and then 30 hours of phone calls, a lot of those late at night, for long periods of time.

Q. For whatever reason, the jury didn't believe this young lady about everything she said, did they?

A. Correct.

Q. And let's pick up again and look at another piece of hearsay on page 288, line 25. Caroline O[redacted] is testifying and says -- she was talking to [redacted] about the incident, and she says, I think more hurt by the fact that Mr. Vail was carrying on relationships with other students when she had just lost her virginity to him.

A. I'm sorry. What line?

Q. Page 288, line 25, going over to 289, line 3.

A. And I'm not sure, again --

Q. Well, she's relaying -- I would submit, one of those hearsays doesn't necessarily sound like direct hearsay, but she's relating the conversation with [redacted] and saying that [redacted] is upset because Coach Vail was having relationships with other students.

Correct? Top of page 289.

A. Yeah, and I'm not sure that -- I'm not sure that -- I mean, I'm not sure -- as far as are you talking about sexual relations?

Q. My question is, what evidence was there that Coach Vail had inappropriate relationships with other students that was introduced at trial?

A. That had -- say that again.

Q. Was there any evidence introduced that Mark Vail had inappropriate sexual relations with other students?

A. No, no.

Q. Did you consider objecting to this testimony?

A. You know, I don't know -- I'm not sure what I considered at that point, but it doesn't say inappropriate. Relationships with -- I mean, again, the other part that we were doing was trying to create this fantasy, and I kind of went through my closing, talking about the Harlequin romance, because, again, the instances on there were sort of storybook fashion of how the sex occurred; he laid me down, you know, he talked to me, suspended himself over me, all these things.

So the other part of if is Caroline was talking about, well, _____ was obsessed and what I was trying to do was draw -- get to an obsession versus a crush.

There are numerous students that have crushes, but in my closing I talked about, you know, the way that everything unfolded was kind of like a romance novel, so I was trying to get into that there was sort of this parallel relationship _____ is carrying on in her mind

with Mark Vail that really wasn't happening, and, again, if we could disprove these other instances, then we could hopefully disprove the 4th by virtue of credibility.

I don't know that I considered -- my thought on here was that _____ was mad that he had any other type of relationships with students, not sexual, but that the trigger for these allegations was his engagement to Amanda. And at that point in time, she thought that he wasn't going to be hers, and that is the way our story kind of flowed.

I don't know in here that we were talking about sexual relationships. My deal is any type of relationships triggered in _____ this desire to fabricate these facts and that I had sex and sort of her mind versus were they really having it?

And, again, I felt like through all this and through the witnesses we had and the other instances I could attack the credibility of that and hopefully by extension the 4th because the 4th was the one place.

Q. _____ wasn't claiming she had sex with your client seven to nine times on the 4th, was she?

A. No, no, no, no, but all they need is one. The battle was not in a vacuum. The battle was overall. And, again, if Ms. Herring-Lash had just gone forward on just the instance on the 4th, I think these collateral

allegations actually helped us. If she had just gone forward with that instance on the 4th, all I've got, again, is him taking her off campus, and I have nothing to attack on there.

Q. Well, there again, him taking her off campus may have been in violation of school policy. It may have been stupid, but it isn't in and of itself concrete evidence that he had a sexual relationship with the young lady, is it?

A. It definitely isn't, but there's not a whole lot of other -- I mean, those are the flags that are going to go up, and we knew that from the very beginning, 30 hours of phone calls, many late at night, and taking her off campus.

Again, in my mind, the 4th was the key, and the only way to get to the 4th -- if we lost everything -- I mean, if we win everything else and we lose on the 4th, you know, he's still gone, and the 4th, the only way to attack the 4th was to attack credibility, and, like I said, my hope was to build up this fantasy relationship and be able to show that was carrying, in her mind, a different type of relationship than she really was.

And, you know, I think Caroline talks about the obsession in there, and that was one word I tried to keep

using in my closing was to get to obsession as opposed to just crush.

Q. Going back for a moment to [redacted]'s testimony -- moment's indulgence, Your Honor -- let's go back to Caroline O[redacted]'s testimony on page 196. She claims that she talked to the defendant later in the day when he resigned, and he said he resigned for drug reasons and that he was headed to rehab to get better.

Did you know that this witness was going to claim that that statement had been made by your client before trial?

A. I was trying to think of that. There were two occasions when I was somewhat surprised with the way they came out, because one was -- I mean, the instance where he had said he had taken -- and the thing is, I don't remember when I found that out, whether it was initially -- I just don't remember whether that came out on here or whether he had told me, like, right before.

I just don't remember when that came out. There were two instances, I believe, I was surprised to where one is he had told Amanda that he had taken [redacted] to Patriot's Point and he didn't, but that one -- because all along I was thinking that had occurred and it hadn't, which did affect, so I just don't remember when I found that out, to be quite honest.

Q. Well, you knew, did you not, that the principal, Mr. Murray, I believe, was going to take the position that at some point Mark called and said he was going to go to rehab?

A. I might look in my initial notes and see what I wrote down about that. I probably did. I don't remember on that circumstance about what the -- the particulars of that. I do remember that -- I just don't remember what I initially thought had happened and then what ultimately came out. I just don't remember.

Q. So if --

A. Go ahead. I'm sorry.

Q. I keep thinking you're through. I apologize.

The record shows Caroline O and Mr. Murray both are relaying comments allegedly made by your client about the fact that he was going to rehab. Ultimately, your client would testify that that was the story he wanted to put out there as opposed to the real story.

A. Right.

Q. That he had been charged with sexual abuse?

A. Right.

Q. And that he thought that was preferable because they thought it was something the kids could get a lesson from?

A. And at the time if I remember correctly, and,

again, I scan through this, but at the time that he resigned it was only because I was thinking it was only because of phone numbers at that time. I don't think any allegations had been made of any -- in -- and, like I said, I briefly went through this, but I don't think at that time the allegations had come out.

He was -- I don't think the allegations had come out of any type of sexual abuse or anything of that. I think that came out after that. I think he resigned initially because of the volume of phone calls.

Q. And I apologize. I said Murray. Mullins was the principal's name, but did you interview him before trial?

A. I spoke to -- and I spoke to so many people throughout this thing. I can't remember whether I spoke to Mullins or whether I spoke to -- there was another principal involved. I can't remember whether I spoke to one or both of them. I know I spoke to a couple people, and I just -- and it may be in my notes, but I don't remember whether or not -- I don't remember when I spoke to him or if I -- I just don't remember offhand. There were so many people involved in this.

Q. Do you remember whether you knew before trial that these two individuals were going to claim that Mark said he was going to rehab?

A. Can I look at my notes real quick and just see?

Initially when they came in, I take notes. It still doesn't tell me when I figured out one way or the other.

THE COURT: I'll give you an opportunity to properly examine your notes. Let's take about a five or ten-minute break.

MS. SHURLING: Thank you, Your Honor.

(Recess taken.)

BY MS. SHURLING:

Q. We were looking at some testimony on page 234 where Principal Mullins was talking about seeking out Coach Vail from one point. Do you recall that?

A. I was thinking. I don't have something one way or the other to tell me when all that came to light or what the reasoning was. I just don't know.

Q. Would the reason he chose to put out there as the reason for his resignation have any logical relevance to _____'s accusations?

A. As far as Mullins or Mark?

Q. Either one.

A. Well, an again, I didn't know what the thought was. I didn't know if Mark was going to take the stand. Really, I'm not sure if they were asking whether or not -- and I don't even know whether it came out with Mullins or it came out with Mark. I don't remember.

Q. I'm sorry. You were saying with Mullins or Mark.