

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

SCOTT RICHARD ROWAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000449

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2016-GS-26-00861, 00862

STATE OF SOUTH CAROLINA,)

Plaintiff,) **Transcript of Record**

vs.)

December 11, 2017

SCOTT RICHARD ROWAN,)

Defendant.)

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

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E X H I B I T SNo.IDEV

(No exhibits were marked or admitted.)

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1 (DECEMBER 11, 2017)

2 MOTIONS:

3 THE COURT: All right. I have a -- the state's motion to
4 join the case. Ms. Walter, as a preliminary matter, why don't
5 you tell me something about the case.

6 MS. WALTER: I will, Your Honor. I would like to make
7 one correction in the opening paragraph of the facts, the
8 indictment numbers are correct in the parentheticals; however,
9 the charge of second degree criminal sexual conduct relates to
10 J.H. and the third degree relates to A.R. So, the
11 indictment numbers are correct, but the charges got switched.

12 THE COURT: Just the names are changed, right?

13 MS. WALTER: No, the charge. So, J.H., the charge
14 where J.H. is the victim, is in fact indictment ending 861.

15 THE COURT: Is it third degree criminal ---

16 MS. WALTER: It's second degree for J.H., and third
17 degree for A.R.

18 THE COURT: Okay.

19 MS. WALTER: So, Your Honor, what the state alleges in
20 this matter is that the defendant was the stepfather to both
21 victims. J.H. and A.R. They're
22 separated by approximately two years each.

23 THE COURT: How old are they?

24 MS. WALTER: Now, they are 18 and 20.

25 THE COURT: Okay.

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1 MS. WALTER: Their dates of birth were '97 and '99.

2 THE COURT: Okay.

3 MS. WALTER: The defendant met and moved in with the
4 victims' mother when they were seven and nine, approximately,
5 respectively. And he began grooming them by giving them
6 marijuana. He would also give them Southern Comfort and Coca-
7 Cola. And as this progressed in -- as to [A.R.], the oldest
8 stepdaughter it got to the point where, in exchange for the
9 marijuana, he would stick his hand down her shirt and fondle
10 her breasts. For unknown reasons, after one or two months of
11 molesting [REDACTED] -- [A.R.], excuse me, he stopped, but he ---

12 THE COURT: She's the older?

13 MS. WALTER: She's the older one.

14 THE COURT: Okay. And how old was she at the time of the
15 alleged incident?

16 MS. WALTER: Thirteen-to-fourteen years old.

17 THE COURT: Okay. All right.

18 MS. WALTER: As to [J.H.], he began plying her with
19 marijuana when she was approximately nine years old. It again
20 progressed to include alcohol and with [J.H.] even pain pills.
21 Although, he began by simply fondling her, he also forced her
22 to perform oral sex on him and raped her any number of times.
23 All beginning -- I mean, it kind of carried throughout the
24 number of years but definitely between the ages of 14 and 16,
25 he raped her multiple times and forced her to perform oral sex

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1 on him.

2 [J.H.], the older sister, was able to escape eventually
3 because she was moving out to live with her finance and then
4 the defendant and her mother actually kicked her out.

5 MR. HILLIARD: That's [A.R.] .

6 MS. WALTER: [A.R.], thank you.

7 [J.H.] ran away and that's where the date in the
8 indictment comes in, September 15th, 2015 is the date that
9 [J.H.] ran away. And when [J.H.] ran away, she left two ---

10 THE COURT: Now, [J.H.] was the younger one?

11 MS. WALTER: [J.H.] is the younger one, correct. She
12 left two notes for her mother detailing the abuse that had
13 occurred essentially saying you think you're such a great
14 mother but this is what's happened to me and this is what
15 happened to [A.R.] . When, when [J.H.]'s mother was finally
16 able to speak with her and find out what happened, the mother
17 had a conversation with the defendant wherein he admitted to
18 touching [A.R.], the older stepdaughter, and to having sexual
19 intercourse with [J.H.], the younger daughter. He originally,
20 I believe, admitted two different instances of intercourse,
21 but then said three, one with a condom, two without or -- I
22 might have that reversed. But sort of in a nutshell, that's
23 the case.

24 So, our request in the first instance is to be able to
25 try the indictments together. They in fact have been joined

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1 from the moment that the defendant was under arrest and the
2 defense has never filed a motion to sever but just to sort of
3 cover all of our bases, the state filed this motion for
4 joinder. If the Court declines to join the indictments for
5 trial, we are asking that the testimony of each girl be
6 admitted in the trial ---

7 THE COURT: Let's talk about the joinder.

8 MS. WALTER: Okay.

9 THE COURT: Let's talk about the *Sullivan* and the *Jones*
10 factors, character, time, place.

11 MS. WALTER: Right.

12 THE COURT: What common characteristics are there there?

13 MS. WALTER: Well, Your Honor, it starts off with the
14 relationship of the defendant to both victims. Again, he was
15 the stepfather of both victims. The abuse always occurred in
16 the family home. Certain instances in the victims' separate
17 bedroom. The victims had ---

18 THE COURT: In the same house?

19 MS. WALTER: In the same house but also within the
20 victims' separate bedrooms. He plied both girls with
21 marijuana and with alcohol to groom them for their abuse. He
22 threatened both girls not to tell. So, there are a number of
23 similarities. The dissimilarities, we would state essentially
24 are that the abuse against [J.H.] was much more egregious
25 because he physically raped her, like vaginal penetration with

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1 force raped her, whereas [REDACTED] A.R. was lucky to escape with only
2 being fondled.

3 THE COURT: All right. Well, tell me, Mr. -- it would
4 certainly appear to me, Mr. Hilliard, that there are many
5 similarities which -- by which we could make finding that
6 these were certainly connected transactions taking place in
7 the home, the same time, the same M.O. if you will,
8 relationship, the same relationship that he had with each
9 child. I think the state can clearly, can clearly overcome
10 that threshold of showing that these are connected
11 transactions that would allow me to order that the cases be
12 tried together. Now, the caveat there is whether or not there
13 -- you can show a violation of the defendant's substantive
14 rights by my joining these cases. Now, I look at this case
15 and it's sort of a backup position the state has made
16 essentially what we used to refer as a *Lyle* motion. I think
17 it's now 407 ---

18 MS. WALTER: 404(b), I believe.

19 THE COURT: 404(b), I'm sorry, common scheme, absence of
20 mistake, that sort of thing. Okay?

21 MR. HILLIARD: Yes, sir.

22 THE COURT: If such evidence, the evidence of there being
23 another person in the same family who is undergoing the same
24 treatment or abuse, I think that that would certainly be
25 admissible to show common scheme, design, absence a mistake.

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1 I think it comes under -- we come under 404(b) subject to a
2 403 analysis, that being whether or not it's the, the
3 evidentiary value is outweighed by the -- substantially
4 outweighed, I think, by the prejudicial value. So, I think it
5 would probably come in there. But, how, how -- if that's the
6 case where there's a chance that this evidence may come in
7 anyway, how would your Defendant's substantive rights be
8 violated by trying these cases together? Help me out here.

9 MR. HILLIARD: Thank you, Judge. As a threshold matter,
10 Judge, if we could go backwards a little bit. Our belief and
11 we've had -- we've had two pre-trials in this case prior to
12 today and our belief up until last Friday, I think it was or
13 up until last Friday is that the only case we were coming here
14 to try today was the criminal sexual conduct in the second
15 degree. I had no notion that we were here to try a criminal
16 sexual conduct in the third degree. We have motions to quash
17 the ---

18 THE COURT: So, you were gonna try the more serious one,
19 right?

20 MS. WALTER: If we are forced to do separate trials, we
21 would do the ---

22 THE COURT: You put him on notice that you were gonna try
23 the child who had been ---

24 MS. WALTER: Both cases are on the roster.

25 THE COURT: Okay.

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1 MS. WALTER: Both cases are listed on the roster. My
2 recollection is I never said we would not -- I think my
3 recollection of what I said was that if forced to try them
4 separately, we would do the more serious one first.

5 THE COURT: Okay.

6 MS. WALTER: But both cases are on the roster.

7 THE COURT: And that is the one that involved actual
8 intercourse?

9 MS. WALTER: Yes.

10 THE COURT: All right. Mr. Hilliard, go ahead.

11 MR. HILLIARD: Thank you, Judge. Well, and the joinder
12 motion, Judge, that you have was made -- you got it the same
13 time I got it. And that was the reason that you -- that we
14 have the motion, I believe, Judge, bears out what I said
15 before and that is we have the two -- we had the two meetings
16 about it, we came here today, up until last Friday, to try the
17 CSC second case. We have motions to quash the indictments
18 based on information that's in the indictments and we provided
19 those to you electronically, Judge, I have a hard copies here.
20 But, the motions to quash come in in the same way as the
21 things that you're talking about here now. Number one, to
22 answer the question more specifically, we don't know whether
23 that information is coming in or not. The prosecution has
24 made statements about what she thinks the evidence will be,
25 but we don't know that to be true. And certainly, there is

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1 debate about whether that information as relayed by the
2 prosecutor is actually what's gonna come from the witness
3 stand.

4 THE COURT: Well, surely the prosecutor has talked to her
5 witnesses. I mean, she can't say whether it's true or not ---

6 MR. HILLIARD: Yes, sir.

7 THE COURT: --- but she can certainly it's coming.

8 MR. HILLIARD: Well, if there will be ---

9 MS. WALTER: Yes, Your Honor, I did speak with both
10 victims.

11 MR. HILLIARD: But then information that will be provided
12 to the Court regarding the elder, the CSC third, the elder of
13 the two victims will be that over a period of perhaps 30 or 60
14 days that she was fondled on perhaps one or two occasions and
15 that when she told the defendant to stop, he quit. The
16 information that will come from the younger of the two
17 victims, J.H. , J.H. 's information will be that she was
18 sexually assaulted some 10 or 12 times and it's just a
19 completely different sort of situation, Judge. The evidence
20 of one is a fondling which was stopped, and the evidence of
21 the other is a full-blown criminal sexual conduct.

22 THE COURT: And certainly that would go to the
23 credibility of the testimony. I mean, you know, something I'm
24 sure you're going to explore in trial.

25 MR. HILLIARD: Yes, sir.

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1 THE COURT: There's no question about it.

2 MR. HILLIARD: Yes, sir. No question.

3 THE COURT: I mean, you know, we know that. And I'm sure
4 that Ms. Walter knows that whenever she calls this case that
5 you were going to examine these witnesses in that regard. I
6 mean, that's not a surprise to anyone.

7 MR. HILLIARD: And we challenge whether or not the
8 evidence from the elder sister would be admissible, it being
9 dissimilar in our view from the [J.H.], because it doesn't
10 involved criminal sexual conduct through full penetration or
11 oral sex or anything like that.

12 THE COURT: But doesn't it follow -- if we take it for
13 the truth ---

14 MR. HILLIARD: Yes, sir.

15 THE COURT: --- if we take it for the truth that it
16 followed the same pattern, it just stopped short of the
17 intercourse. I mean, I mean, it's similar in the other
18 context; is it not?

19 MR. HILLIARD: Yes, sir. But that is part of the
20 pattern. The pattern is all of the events. The pattern isn't
21 -- you know, the pattern is the whole of the events.

22 THE COURT: Uh-huh, (affirmative response).

23 MR. HILLIARD: Which is -- is the fondling of the one
24 girl and the -- [J.H.] says she was fondled. The younger --
25 I'm sorry -- the older the daughter says she was fondled.

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1 However, the older daughter says that when she told him to
2 stop, he stopped. The younger daughter ---

3 THE COURT: They're kind of going parallel are they not
4 at the same time. And then he breaks off one short of --
5 according to the witnesses ---

6 MR. HILLIARD: Yes, sir.

7 THE COURT: --- breaks off one short of having the actual
8 intercourse and does with the other one. You know, I think
9 it's a pretty -- according to that testimony, if Ms. Walter
10 can get that testimony in, that's what they testify to. I
11 think it certainly establishes a pattern.

12 MR. HILLIARD: But we won't know till we get there.
13 That's what I'm saying.

14 THE COURT: Well, if they don't testify to that, where's
15 the harm? She's saying they're gonna testify to that. You're
16 saying if they testify to that it harms my client. If they
17 don't testify to that, what are you talking about?

18 MR. HILLIARD: Well, the harm -- certainly, the harm to
19 my client is that he's being charged with two crimes instead
20 of one. And, up until Friday, we thought we were here for one
21 crime instead of two. We were gonna argue about whether the
22 evidence came in or not. The difference in that is
23 substantial if the evidence -- the question of whether the
24 evidence comes in or not is certainly an important question
25 and we're here to argue about that as well, but ---

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1 THE COURT: But don't you reference them on both of these
2 offenses?

3 MR. HILLIARD: Yes, sir.

4 THE COURT: And don't they involve the same witnesses,
5 the same circumstances, the same time, the same place? I
6 mean, would it be a -- was it really a surprise to you to have
7 her say, I'm gonna try them together? I mean ---

8 MR. HILLIARD: Yes, sir. Absolutely, that was a
9 surprise.

10 THE COURT: That was a surprise. Well, tell me how it
11 would violate your defendant's or your client's substantive
12 rights. I mean, how will it be any less fair to him than to
13 try then separately, in light of the fact that this evidence
14 of another girl being involved -- I'm not saying it would, but
15 I'm saying it very possibly could come in in both cases.

16 MR. HILLIARD: Yes, sir.

17 THE COURT: I mean, if she tries the more serious case,
18 the one involving intercourse, and we have corroborating
19 testimony by the other sister, and I hate to even call it
20 corroborating testimony, it's testimony of a common scheme and
21 plan is what it is. It's 403(b) testimony. If that is likely
22 to come in anyway, where are we with that? I mean, it's not
23 the usual case where you have someone -- just for instance,
24 who commits CSC first with one person and goes to the next
25 town and commits CSC first with another person, well, he may

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1 have followed the same M.O. and there may be common factors,
2 they may show some connectivity but that case, in my view,
3 would be quite different from this case, because there would
4 be nothing really evidentiary that these people who don't even
5 know each other, who were not even in the same town, would
6 have to add as far as having evidentiary value to the case.

7 MR. HILLIARD: Yes, sir.

8 THE COURT: In the present case, we have two sisters who
9 apparently had knowledge or knew what was going on or at least
10 they do now, they know that during the same period and the
11 same place similar acts were going on. I think that type of
12 testimony is quite different from where you have totally
13 separate acts. These acts are really together. I mean, how
14 more closely would they have to -- could you imagine a case to
15 be to pass a 403(b) test? I mean, how could you craft facts,
16 just make them up that -- where you would have a situation
17 where the evidence would be -- would fit 403(b) better than we
18 have now?

19 MR. HILLIARD: Had the older sister been sexually
20 assaulted as well.

21 THE COURT: Well, I guess that's the only other thing we
22 could add, but ---

23 MR. HILLIARD: Yes, sir.

24 THE COURT: But, I don't think we have to that far.

25 MR. HILLIARD: Yes, sir.

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1 THE COURT: You know, I am of the position -- I mean, I
2 believe that these cases have such transactional similarities.
3 They are so connected that they can be tried together under
4 the circumstances without violating the defendant's
5 substantive rights and I would allow it.

6 Okay. Now you have two motions as well; is that right?

7 MR. HILLIARD: Yes, sir, Judge. We have motions to quash
8 the indictments.

9 THE COURT: Okay.

10 MR. HILLIARD: And I have hard copies, Judge, you want me
11 to just go ahead and pass up this?

12 THE COURT: Yeah, if you would, please. I'd appreciate
13 that. Thank you.

14 MR. HILLIARD: Yes, sir. Thank you.

15 THE COURT: Okay. Mr. Hilliard, let me hear from you
16 now.

17 MR. HILLIARD: As to the criminal sexual conduct in the
18 second degree ---

19 THE COURT: All right. That would be [J.H.]; is that
20 right?

21 MR. HILLIARD: Yes, sir, that's [J.H.], Judge.

22 THE COURT: Okay.

23 MR. HILLIARD: And [J.H.]'s indictment alleges a sequence
24 of events that occurred between April the 15th of 2013 and
25 September the 8th of 2015.

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1 THE COURT: Right.

2 MR. HILLIARD: We believe that to be and we submit to the
3 Court, Judge, that that is overbroad in the amount of time
4 that is involved in the case. And in talking to the
5 prosecutor, they've agreed to limit as to September the 18th
6 and move it back to April the 15th of 2015. But, at the same
7 time, we believe that that's still overbroad. And the reason
8 ---

9 THE COURT: Wasn't it an ongoing thing? I mean, isn't
10 that the allegation that there were many instances?

11 MR. HILLIARD: Yes, sir.

12 THE COURT: I mean, it's not like a specific instance
13 occurred and we think it occurred within a two-year period.
14 The allegation of the state as I understand it, Ms. Walter, is
15 it was an ongoing process involving multiple acts?

16 MS. WALTER: Instances, correct.

17 THE COURT: --- for a two-year period.

18 MS. WALTER: It actually went on for more than two years
19 but we are confining it to -- per the statute between the ages
20 of 14 and 16.

21 THE COURT: Okay. So, the April has to do with her
22 birthdate?

23 MS. WALTER: That's correct.

24 THE COURT: Okay. Well, I think Mr. Hilliard would've
25 been right there. You know, it couldn't have been after

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1 April.

2 MS. WALTER: Correct.

3 THE COURT: Okay.

4 MS. WALTER: And that's why we agreed to that amendment
5 on the indictment ending in 61.

6 THE COURT: And that's an agreed amendment; is that
7 right? Something y'all agreed on?

8 MS. WALTER: Yes.

9 THE COURT: Okay. Well ---

10 MR. HILLIARD: So, the indictment as we're asking it be
11 quashed would be from April the 15th of 2013 to April the 15th
12 of 2015, recognizing that there's a lot of activity which is
13 alleged to have occurred but those dates are selected based on
14 her age and not based on allegations of what actually
15 occurred.

16 THE COURT: How about that? I mean --

17 MS. WALTER: The state does not have to allege a specific
18 date, especially whereas here there was a course of conduct
19 and the case law is ---

20 THE COURT: And I understand that. I understand that.
21 But you're saying that it occurred all during that period?

22 MS. WALTER: Correct.

23 THE COURT: All right, Mr. Hilliard. I mean, I think
24 she's correct in that. I don't think it -- that the
25 indictment is subject to quash as being overly broad when

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1 they're alleging a pattern of conduct that continued during
2 the entire process. Of course, it -- it you had to be
3 specific you could've charged him with each, each event.

4 MS. WALTER: He would've had probably about 20 additional
5 indictments, conservatively speaking.

6 THE COURT: So, I -- she's going forward as one count and
7 I think that it's sufficient -- the indictment is sufficient.
8 Okay?

9 MR. HILLIARD: Thank you, Your Honor.

10 THE COURT: What else do we have?

11 MR. HILLIARD: We have also the other indictment, Judge,
12 which alleges the same April the 15th, 2013 through September
13 the 18th of 2015, as to the elder sister and also -- now,
14 that's criminal sexual conduct in the third degree. The
15 fondling, as the information has been indicated to the Court
16 at this point on that sister was for only a couple of months,
17 or for -- right, a couple months -- a couple of times, a
18 couple of months, and we would ask that that be quashed as
19 being over broad because in fact it relates to the birthdate
20 of the younger sister and in no way relates to when the crime
21 has alleged to have occurred.

22 THE COURT: Ms. Walter, Mr. Hilliard, I thought I heard
23 him say earlier that this involved with the older girl one or
24 two instances?

25 MR. HILLIARD: Yes, sir.

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1 THE COURT: All right. What's your position on that?

2 MS. WALTER: Well, my position is that I don't think it
3 was ever limited to one or two instances for reasons known
4 only to the defendant, at some point he stopped fondling
5 A.R. . No one knows why other than the defendant. We would
6 -- I agree that the dates on the indictment would need to be
7 amended based on my conversations with A.R. . Her memory is
8 that this fondling occurred when she was 13 or 14. And so to
9 contain it to that time period, the dates on the indictment
10 would actually be May 9th, 2010 to May 9th, 2012. But, again,
11 it's a course of conduct. We can't point to one specific
12 instance or, again, he could be charged with multiple
13 indictments.

14 THE COURT: All right. So, as it stands now, it's April
15 the 15th ---

16 MS. WALTER: 2013.

17 THE COURT: --- 2013 through September the 18th of 2015;
18 is that correct?

19 MS. WALTER: That's how it is written now, yes, Your
20 Honor. We believe that the amendment is permissible at this
21 stage because it doesn't change the nature of the offense.
22 The offense charged is still the same that the defendant
23 fondled his oldest stepdaughter and I think that's supported
24 by the warrant which was provided to defense. We're simply
25 amending the dates.

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1 THE COURT: All right. Mr. Hilliard, what ---

2 MR. HILLIARD: Judge, they're picking dates based on --
3 as I understand it they're picking dates based on information
4 that they got over the weekend and they're moving the dates to
5 an earlier date than it is alleged in the indictment. It's
6 not inclusive in the two parameters of the indictment. It is
7 -- it goes earlier than the indictment. So, on the -- on the
8 one hand, we'd ask that it be quashed and on the other hand,
9 we'd ask for a continuance as to that case, again, because we
10 didn't know when -- you know, we had no notice at all of
11 anything that occurred before April the 15th of 2013 until
12 today.

13 MS. WALTER: Your Honor, to believe that, then Mr.
14 Hilliard is saying that he did not read one lick of the
15 discovery, didn't listen to any of the victim interviews,
16 because this information has been at his disposal for well
17 over two years.

18 THE COURT: All right. Let me just get things clear in
19 my mind here. The indictment ending in 861 ---

20 MS. WALTER: That relates to the ---

21 THE COURT: --- is the indictment that involved the older
22 daughter, right?

23 MS. WALTER: Younger daughter, Your Honor.

24 THE COURT: The younger daughter, okay. That's second
25 degree?

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1 MS. WALTER: Correct.

2 THE COURT: And by agreement, the amendment is that the
3 dates will be April 15, 2013 to April 15, 2015; is that
4 correct?

5 MS. WALTER: Correct.

6 THE COURT: Is that right?

7 MR. HILLIARD: Yes, sir.

8 THE COURT: Okay. All right.

9 MR. HILLIARD: And so that would limit the testimony ---

10 THE COURT: I am going to amend the indictment right
11 here. Okay. That one is taken care of. Okay.

12 Now, sexual conduct in the third degree, criminal sexual
13 conduct in the third degree, you move to amend, Ms. Walter, to
14 change the date from April the 15th of 2012?

15 MS. WALTER: It's the same date, so 2013 to September
16 15th, 2015.

17 THE COURT: Okay.

18 MS. WALTER: And we're moving to amend it to May 9th,
19 2010 to May 9th of 2012 based off of the oldest stepdaughter's
20 birthday, which was when she was 13 and 14 years old.

21 THE COURT: Okay. And that's a two-year period.

22 MS. WALTER: That's correct.

23 THE COURT: Okay. And it changes it to May 2012 to May
24 2014?

25 MS. WALTER: No, May 2010 ---

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1 THE COURT: Okay.

2 MS. WALTER: --- to May 2012.

3 THE COURT: Okay.

4 MR. HILLIARD: Let me be sure I got that right, Judge.
5 So, that's May of 2 -- May of 2010 until May of 2012?

6 THE COURT: Right. And that gives me some concern, Ms.
7 Walter. The reason it gives me concern is that it is a time
8 period that's outside, totally outside of the original
9 indictment. We have narrowed it as to the criminal sexual
10 conduct in the second degree, we have narrowed the timeframe,
11 but still in the same timeframe, it's just narrower. Which if
12 anything is to the benefit of Mr. Hilliard's client, it
13 narrows it down.

14 This second indictment, the indictment where we take it
15 totally outside of the expressed timeframe gives me some
16 problems. Talk to me about that, Ms. Walter.

17 MS. WALTER: Your Honor, it's ---

18 THE COURT: I mean, what happens when you're saying this
19 happened in 2017 and then when we go to trial and we show it
20 happened in 2015? You know, I know we've got a lot of stuff
21 here in the discovery and all where the defendant is put on
22 notice, he knows exactly who the victims are, he knows exactly
23 where this is supposed have alleged to've occurred, and again
24 these are allegations, but he knows exactly. We're ready for
25 trial now and it would appear that what we're doing is moving

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1 it back two years and saying but this occurred two years
2 earlier. Talk to me about that.

3 MS. WALTER: I will, Your Honor. And if this were
4 something where the state were seeking to add a completely
5 different victim who is not similarly situated, if this is
6 something where no information had ever been disclosed to the
7 defense that forms the basis of the charges, I would agree
8 with Your Honor and I would not have moved to amend the
9 indictment, I would've simply had him direct indicted. But
10 here, rather than focusing on the fact that we are shifting
11 the timeframe backwards, what I would ask this Court to focus
12 on is what information has been available to the defense since
13 his arrest in September 2015, well over two years ago. And
14 again, that includes not only the interview with the younger
15 stepsister, but also the interview with the older stepdaughter
16 and the -- still, I think, wife. And all of those interviews
17 cover an extended period of time. And again, the state could
18 very well have alleged from the first day that the defendant
19 met his stepdaughters until the day that they were both able
20 to escape his abuse. We could have done that broad of a
21 timeframe. And the evidence that we have turned over the
22 discovery that we have disclosed to the defense would support
23 that. So, it's not that this is something that they've never
24 heard of before. It is simply almost a scrivener's error on
25 the indictment and my understanding of the case law is that as

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1 long as it doesn't change the nature of the charge against the
2 defendant it can be permitted before trial. The victim is the
3 same, the conduct alleged is the same. Everything is the same
4 but we're just shifting that timeframe.

5 THE COURT: Well, I think in -- from your point of view,
6 the best that we can point to is the fact that he lived with
7 these girls, he was their step ---

8 MS. WALTER: Stepfather.

9 THE COURT: --- stepfather, whatever, but he should've
10 been on notice as to what their ages were. And the indictment
11 says, and as part of the charge, that the child must be less
12 than 16 years of age. And Mr. Hilliard, what do you say about
13 that? The dates don't make any difference really, it's how
14 old the child was is what's the key here.

15 MR. HILLIARD: Well ---

16 THE COURT: Shouldn't he be on notice that when she
17 would've been 16 and when, you know, if this act occurred it
18 had to have occurred before she was 16?

19 MR. HILLIARD: Well, there's no question all of it is
20 before she was 16, the whole thing. But -- and let me say one
21 other, Judge, if I could answer the point. This case has been
22 pending for two years for both sides. They indicted him. And
23 again, we've had two pre-trial -- we've had two pre-trial
24 opportunities to make motions and to modify these cases. And
25 this part of it, I didn't learn about until we walked in the

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1 courtroom today. In fact, I didn't know about those two dates
2 until today. So, that modification and -- that's not in the
3 discovery. Everybody you see, these two young ladies, this
4 young lady and two more people downstairs, and me, have poured
5 over this discovery for all this past week until today. We
6 started last Friday before going through this discovery and
7 that information is not in the discovery.

8 MS. WALTER: But, Your Honor, I would disagree because,
9 A, certainly, the stepdaughter's birthday is in the discovery;
10 B, I would hope that Mr. Hilliard is not saying that they
11 haven't looked at the discovery until last week.

12 THE COURT: This indictment is almost two years old. It
13 would returned in February '16, right?

14 MR. HILLIARD: Yes, sir. And they're asking to modify it
15 today. They could've modified it at any point in time over
16 the past two years and sent it to umpteen grand juries, but if
17 -- you know, I'm not sure exactly how it's incumbent upon me
18 to know what they're doing when they don't have to know what
19 they're doing. They didn't have to -- you know, they didn't
20 have to tell us a week ago, a month ago, a year ago that this
21 is what they're gonna say today because we should've known it,
22 so they didn't have to tell us. The indictment -- the point
23 of the indictment is to tell us what it is that they're gonna
24 do when we get here and what they're gonna put in front of the
25 jury.

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1 MS. WALTER: And, Your Honor ---

2 MR. HILLIARD: So, from our point of view, they're not
3 putting anything in front of the jury that happened before
4 April the 15th, 2013. We can here today prepared ---

5 THE COURT: I know what the issue is.

6 Do you have another motion? I mean, I'm just taking that
7 under advisement for right now.

8 MR. HILLIARD: Yes, sir. I understand they're not
9 attempting to have any testimony from the forensic
10 interviewer. Is that -- am I correct about that?

11 MS. WALTER: Your Honor, perhaps he misread my witness
12 list. When the state proposes a witness list, I include not
13 only names of people who I intend to call as a witness but
14 also names that might come up in testimony.

15 THE COURT: These are grown women, you don't need a
16 forensic interviewer in this, do you?

17 MS. WALTER: She -- I wouldn't be able to call the
18 forensic interviewer in my case in chief because [J.H.] was
19 over the age of 12 when she was interviewed.

20 THE COURT: Exactly.

21 MS. WALTER: If, however, it is permissible at some
22 point, as a prior consistent statement ---

23 THE COURT: If she's challenged, you might bring her back
24 as prior consistent statement.

25 MS. WALTER: Right, and that's why I put that name on the

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1 witness list in an abundance of caution.

2 THE COURT: All right.

3 MR. HILLIARD: So, we're in agreement on that. And as to
4 Dr. Rahter, we would ask that she not be allowed to testify to
5 anything other than her examination.

6 MS. WALTER: Dr. Rahter is a well-recognized expert in
7 the evaluation of child sexual, physical, and emotional abuse.
8 She performed a medical exam on the younger stepdaughter,
9 found that her hymen was completely transected. She also
10 ordered lab tests and found that the youngest stepdaughter had
11 chlamydia. She is permitted to testify to that. She is also
12 permitted to ---

13 THE COURT: Medical findings.

14 MS. WALTER: Yes. She is also ---

15 MR. HILLIARD: I'm not objecting to that.

16 THE COURT: Subjective -- I mean, objective medical
17 findings.

18 MR. HILLIARD: Yes, sir.

19 MS. WALTER: She is also permitted to testify to what
20 J.H. said to her in the process of the examination.

21 THE COURT: History.

22 MS. WALTER: So, I'm not sure what he's saying she can't
23 testify to.

24 MR. HILLIARD: I'm asking that she not be allowed to
25 testify to whether or not she believes ---

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1 THE COURT: She cannot testify to that.

2 MS. WALTER: She can't.

3 THE COURT: She cannot bolster -- that's clear. She
4 cannot do that.

5 MR. HILLIARD: I know it's clear, Judge. You know it's
6 clear; I just want to be sure everybody knew it was clear.

7 THE COURT: I mean, Ms. Walter knows that. But, she can
8 testify as to objective medical findings and, as I understand
9 it, the history that was taken at the time of the examination.

10 MS. WALTER: Correct.

11 THE COURT: She cannot comment on whether it's true, not
12 true, anything like that.

13 MR. HILLIARD: And history, and history of the
14 examination, Judge, whether or not the person has had sexual
15 activity without identifying the person who engaged in the
16 sexual activity.

17 MS. WALTER: I don't even understand that.

18 THE COURT: Say it again, Mr. Hilliard.

19 MR. HILLIARD: Yes, sir, Your Honor. The medical history
20 is for the purpose of deciding what it is that you want to do,
21 what medical exam you want to do on the individual. So, the
22 medical history would be that she has in fact been penetrated.
23 We're asking Your Honor to limit her and not allow her to say
24 that the ---

25 THE COURT: Who did it.

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1 MR. HILLIARD: Who did it.

2 MS. WALTER: That's clear, I think.

3 MR. HILLIARD: Okay.

4 THE COURT: I mean, I mean, I would grant his motion on
5 that as -- you know, it may come in later. Mr. Hilliard, you
6 challenge her on the stand, you meet the criteria, and she's
7 gonna be able to come back with a prior consistent statement.

8 MR. HILLIARD: Got you.

9 THE COURT: I mean, you understand that?

10 MR. HILLIARD: I do, yes, sir.

11 THE COURT: And that would've been something she may've
12 told Dr. Rahter, she may've told the investigating officer,
13 whatever.

14 MS. WALTER: The forensic interviewer or the
15 investigating officer, her mother, her sister ---

16 THE COURT: Any number of people. But, you know, that's
17 just a double-edged sword that we have here. And we all know
18 the rule on prior consistency.

19 MR. HILLIARD: Got you.

20 THE COURT: Okay.

21 MS. WALTER: Your Honor, I did provide to the defense
22 last week -- you may recall from my factual summary that
23 **J.H.**, the younger stepdaughter left her mother two notes.
24 She had -- also, there was a third note that she had written.
25 The state provided redacted copies of that to the defense.

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1 They've had the originals since the case was opened. I
2 haven't been told of any objections to the redactions. So, it
3 is the state's intention to introduce the redacted versions at
4 trial.

5 THE COURT: I don't even know what we're talking about as
6 far as redactions.

7 MS. WALTER: And I have copies -- the redacted versions
8 that I can show Your Honor. But, essentially, when she wrote
9 these letters, what the state did was take out where she said,
10 Scott has been doing this and there was one statement where
11 she said to her mother, you married a pedophile, we redacted
12 that. So, it's more just her telling why she ran away, what
13 had been happening to her without identifying who did it.

14 MR. HILLIARD: If they're admissible, they're admissible.
15 If they're not, they're not. The redactions, I don't see that
16 they help anything at all, but I -- I don't see that the
17 redactions make them admissible. If they're admissible,
18 they're admissible. If they're not, they're not. But, like
19 what you said earlier, Judge, you know, if the jury gets the
20 statements, they're not gonna have much trouble figuring out
21 who they're talking about.

22 THE COURT: Well, let me just ask you, how do you get
23 those in? I mean, how do you propose to introduce those
24 letters?

25 MS. WALTER: There alre a number of ways that we would be

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1 able to get it in, Your Honor. Number one, they are certainly
2 admissible under the South Carolina rules that there can be
3 statements by a victim that they have been sexually assaulted
4 as long as it doesn't include who did the actual assault. So,
5 they would come in under that rationale. They would come in
6 under they're not offered for the truth of the matter
7 asserted. Obviously, that's dependent on whether or not the
8 jury believes [J.H.] as to what happened. They are admissible
9 to show why she ran away, why the mother confronted the
10 defendant, any number of reasons why they would be admissible.
11 What the state was concerned with was that they named the
12 defendant. So, that's why we redacted anything that would be
13 directly tied to him such as his name or the fact that [J.H.]
14 said to her mother, you married a pedophile. If it's -- if
15 Defense doesn't want them redacted, I'm happy to unredact
16 them.

17 THE COURT: Well, we'll see if they're gonna come in.

18 MR. HILLIARD: Yes, sir, exactly.

19 THE COURT: And there all subject to 403 scrutiny anyway.

20 MR. HILLIARD: Yes, sir.

21 THE COURT: We'll look at them in that context.

22 MR. HILLIARD: Yes, sir.

23 THE COURT: We'll just see what comes up. Okay?

24 MS. WALTER: Would Your Honor like me to make copies for
25 you?

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1 THE COURT: Yes.

2 MS. WALTER: Okay.

3 MR. HILLIARD: And sequestering the witnesses, Judge, is
4 another ---

5 THE COURT: You know, we grant that pretty much as a
6 matter of course.

7 MS. WALTER: Your Honor, I will have the lead
8 investigator here and I will also have ---

9 THE COURT: The victims.

10 MS. WALTER: I don't expect him to -- well, actually,
11 with the victims, what -- and I guess some of this will depend
12 on Your Honor's ruling, but I've agreed with the victims that
13 neither one of them will be present for the other victim's
14 testimony.

15 THE COURT: There you go. Okay. That should take care
16 of it.

17 MS. WALTER: The state is asking that the courtroom be
18 closed. The only person other than our case investigator who
19 will be here will be a -- someone from DSS who is not expected
20 to testify, but we would ask that the courtroom be closed
21 based on the nature of the victims' testimony.

22 THE COURT: You know, ---

23 MR. HILLIARD: I don't have any problem ---

24 THE COURT: That's very difficult to do to keep the
25 public out of a courtroom. That -- what are we supposed to do

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1 when someone shows up and demands to be allowed to enter the
2 courtroom? I mean, under what authority do I close off the
3 courtroom?

4 MS. WALTER: I believe that's within Your Honor's
5 discretion at any time.

6 THE COURT: And its discretion that is very rarely
7 exercised. We'll try it. Okay?

8 MS. WALTER: Okay.

9 THE COURT: All right.

10 MR. HILLIARD: And Your Honor has under advisement the
11 ---

12 THE COURT: Yes.

13 MR. HILLIARD: Thanks.

14 THE COURT: Let's take a quick break.

15 (RECESS.)

16 *****OFF THE RECORD*****

17 (On the Record.)

18 BY THE COURT:

19 THE COURT: Let's talk about the voir dire. Okay?

20 MS. WALTER: I'm sorry, Your Honor. At some point, I'd
21 also like to address scheduling. Dr. Rahter works overnight.
22 So, she would be getting off at 7 o'clock on Tuesday. She
23 would prefer to testify on Wednesday, but I told her if that's
24 possible, she would just come here right from work and testify
25 first thing Tuesday.

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1 THE COURT: Well, it depends on how long the case may go.
2 We may go into Wednesday, we may not. It depends on if we get
3 started, but we'll work around Dr. Rahter as best we can.
4 Okay?

5 MS. WALTER: Okay.

6 THE COURT: Now, the voir dire.

7 MS. WALTER: Yes, sir. And I'm not sure if you were able
8 to print off a copy of the state's, but if not I do have that.

9 THE COURT: Elizabeth said she was not.

10 MS. WALTER: Okay. I have a copy of it.

11 John, were you able to print it off?

12 MR. HILLIARD: Do you have an extra? Thank you.

13 I've passed mine up, also, Judge, as part of that ---

14 THE COURT: John, I don't have yours. I don't see it.

15 MR. HILLIARD: It had a black clip on it. I think it's
16 right over there.

17 THE COURT: There we go.

18 MR. HILLIARD: Thank you. And then you should have one
19 as well. It was attached to ---

20 MS. WALTER: I have one.

21 MR. HILLIARD: Okay. Good. Thanks.

22 THE COURT: Let's look at the defendant's first.

23 MS. WALTER: Would Your Honor like me to address the
24 Defense suggestions in turn?

25 THE COURT: All right. Let me just look at them here.

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1 MS. WALTER: Absolutely.

2 THE COURT: All right. I'll hear from you, Ms. Walter.

3 MS. WALTER: Your Honor, ---

4 THE COURT: Let's look at Number 1.

5 MS. WALTER: Right. The state does not have any
6 objection to that question.

7 THE COURT: Okay.

8 MS. WALTER: Or to Number 2.

9 THE COURT: All right.

10 MS. WALTER: Number 3, my one concern would be addressing
11 that matter in open court. I think that that would make our
12 jury panel kind of somewhat uncomfortable so that two sort of
13 alternate suggestions I have are, one, the state is happy to
14 prepare a written questionnaire that the panel can fill out or
15 if we somehow do it so that it's in private.

16 THE COURT: No. This is what I will ask. I will ask if
17 you or any members of your family or close personal friends
18 that you know of ever been the victim of a sexually-oriented
19 offense.

20 MS. WALTER: That's fine.

21 THE COURT: Okay.

22 MS. WALTER: And I believe that dovetails with ---

23 THE COURT: What don't we ---

24 MS. WALTER: Your Honor, the way I had phrased it in mine
25 was has any member of the jury panel or a close family member

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1 or friend ever ---

2 THE COURT: Been sexually assaulted. How about we just
3 leave it at that.

4 MS. WALTER: That's fine.

5 MR. HILLIARD: And what number was that for the state's
6 voir dire?

7 MS. WALTER: No, it's -- we're on yours, Number 3.

8 MR. HILLIARD: Oh, you're still -- okay.

9 THE COURT: Okay. Number 4, have you ever suspected that
10 someone you know has been or is being -- wouldn't that be sort
11 of taken up in Number 3, if I changed 3 to have you or any
12 member of your family or friends ever been sexually assaulted?

13 MS. WALTER: Your Honor, the state's objection to Number
14 4 is just that it's, quite frankly, too vague, and I'm not
15 sure how that points to whether or not the jury would be
16 impartial.

17 THE COURT: I am a little concerned with suspected that
18 someone you know had been sexually assaulted. You know, in
19 Number 3, we're asking, do you know anybody that's been
20 sexually assaulted.

21 MR. HILLIARD: Yes, sir.

22 THE COURT: And then in Number 4, we're saying, do you
23 know anybody that you suspect might have been sexually
24 assaulted. I mean, isn't Number 3 ---

25 MS. WALTER: The state thinks Number 3 is sufficient. We

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1 object to Number 4.

2 THE COURT: What do you say about that, Mr. Hilliard?

3 MR. HILLIARD: I understand your position, Judge. We're
4 trying to get as much information as ---

5 THE COURT: I understand.

6 MR. HILLIARD: Yes, sir.

7 THE COURT: But when you start letting -- emphasizing the
8 fact that the juror might have suspected someone may have, I
9 -- as opposed to knowing a situation where someone was, I just
10 am not comfortable with Number 4.

11 Okay, let's look at ---

12 MR. HILLIARD: In that regard, Judge, if I could -- and
13 I'm not -- well, I'm certainly -- I understand your ruling as
14 Number 4. I'm just wondering in light of what you just said,
15 when you say knowing, whether Number 3 -- on Number 3 ---

16 THE COURT: Number 3, this is how I'm gonna do it -- I
17 was gonna ask it. I didn't even put knowing in it. Number 3,
18 this is what I was gonna ask, have you, any family members or
19 friends ever been sexually assaulted, period. Not that they
20 know it or anything else, just that ---

21 MR. HILLIARD: I'd ask you to go ahead and on that one,
22 Judge, sexually assaulted without defining the sexual assault,
23 if you could go ahead and add unwanted sexual contact. Would
24 you be willing to -- in other words, that just modifies the
25 sexual assault so that we have unwanted sexual contact,

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1 because that's what this -- that's at least part of what this
2 case is about is unwanted sexual contact.

3 THE COURT: All right. Why don't we say this, have --
4 ever been sexually assaulted or the victim of unwanted sexual
5 behavior?

6 MR. HILLIARD: Yes, sir. Perfect, Judge, thank you.

7 THE COURT: Okay. All right. Number 4, I'm not going to
8 do. Number 5 ---

9 MS. WALTER: Your Honor, 5 and 6, the state has the same
10 objection to both of them and we believe that Your Honor's
11 regular jury questions would cover both of those questions
12 without having to emphasize the nature of the case. I think
13 ---

14 THE COURT: Well, what I'm gonna ask them, I'm gonna tell
15 them about the case, Mr. Hilliard. I'm gonna ask them if
16 there's any reason that they could not be fair and unbiased in
17 this type of case.

18 MR. HILLIARD: Yes, sir. And that ---

19 THE COURT: I mean, that's, that's my general voir dire
20 question. I say can you tell me -- I end my usual by saying,
21 is there any reason -- now, of course, I've covered it
22 earlier, but I also finish up by saying, is there any reason
23 in the world why you could not be fair and impartial in this
24 case.

25 MR. HILLIARD: Yes, sir. And, Judge, I understand that

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1 part. What I'm wondering if you would -- if you would
2 consider asking just the last sentence in Number 5, is there
3 anything about a case involving sexual abuse of a child that
4 would affect your ability to serve as a juror. That at least
5 points out -- I know that you're gonna talk about sexual abuse
6 of a child being a part of the case that we have here. At the
7 same time, that would, that would at least bring it to the
8 jury's attention that those two things could be connected that
9 they could have some concerns about that, the last sentence in
10 Number 5.

11 THE COURT: What if I do, instead of 5 and 6, I said, is
12 there any reason why any potential juror cannot honor the
13 presumption of innocence in a case like this one.

14 MR. HILLIARD: Yes, sir. Yes, sir. Perfect, Judge,
15 thank you.

16 THE COURT: And I think that will cover 5 and -- I don't
17 like to talk about the offense specifically in jury voir dire.
18 I think it just emphasizes is, you know. It seems to give
19 credibility to the state's case, you know. It seems to be
20 bolstering the state's case. I just don't like to talk about
21 the offense or emphasize the nature of the offense. It's like
22 telling the jury, this is a more important case than the usual
23 case, you know.

24 MR. HILLIARD: Yes, sir.

25 THE COURT: And I don't want to do that. But, I would do

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1 what I just said I would do.

2 MR. HILLIARD: Thank you, Your Honor.

3 MS. WALTER: I think we're up to Number 7, which the
4 state doesn't have any objection to.

5 THE COURT: Aren't Number 7 and Number 8 about the same
6 thing?

7 MS. WALTER: Well, Number 8, Your Honor, I believe would
8 be covered, I think one of the standard questions is whether
9 or not any member of the jury panel works for an organization
10 that advocates for victim's rights.

11 THE COURT: I do ask that.

12 MS. WALTER: So, the state's position was that that would
13 certainly cover Number 8.

14 THE COURT: Well, I think it does, but I think 8 is also
15 pretty much covered with Number 7, and I do have a general
16 thing that is anyone a member of any group or contributes to
17 any group such as MADD, SADD, CAV, Citizens Against Violence,
18 that sort of thing ---

19 MR. HILLIARD: Yes, sir.

20 THE COURT: --- that a primary function is support of law
21 enforcement, victims' rights. I already ask them that.

22 MR. HILLIARD: Yes.

23 THE COURT: So, I'll give you Number 7.

24 MR. HILLIARD: Thank you, Your Honor.

25 THE COURT: I think Number 7 pretty much covers it.

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1 MR. HILLIARD: Yes, sir.

2 THE COURT: All right. And these are in addition to my
3 normal charges. Okay.

4 Let's look at the state's proposed voir dire. Mr.
5 Hilliard let's look at -- let's number them -- Number 1 will
6 be, does any member of the jury panel believe that all sexual
7 assaults are reported.

8 MR. HILLIARD: My general objection to all of these,
9 Judge, is that they're ---

10 THE COURT: They're pretty specific.

11 MR. HILLIARD: Well, it's a question of philosophy and
12 sociology and doesn't relate to the law.

13 THE COURT: Well, what ---

14 MS. WALTER: Actually, most of Mr. Hilliard's questions
15 didn't relate to the law either and the jury questions do not
16 have to relate to the law.

17 THE COURT: What if I did this, does any member of the
18 jury panel believe that if a sexual -- that if a sexual
19 assault is not immediately reported, it did not occur?

20 MS. WALTER: Yes, Your Honor. Thank you.

21 MR. HILLIARD: Judge, in that regard, what I meant to say
22 by that and perhaps I ---

23 THE COURT: And I was going to do that in place of 2 and
24 3, Mr. Hilliard.

25 MR. HILLIARD: Yes, sir.

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1 THE COURT: Okay? Fair enough?

2 MR. HILLIARD: Well, I still object to them, Judge, and I
3 understand what you're saying, they're conditioning the
4 questions. They are -- they're designed to imply that that's
5 not the case, that is the way that I read them and perhaps I'm
6 mistaken. But the way that I read them, these questions are
7 designed to condition the jury to ---

8 THE COURT: And, you know, I agree with you to some
9 extent. That's why I wanted to eliminate reference to
10 children and things of that nature. I am inclined to give her
11 a voir dire that says that if any member -- does any member of
12 the jury panel believe that if a sexual assault is not
13 immediately reported, it did not occur. I would give her
14 that, but I don't want to go into 2 and 3, where we're talking
15 about children and children being sexually assaulted. I think
16 those do emphasize the offense and could lead a juror into
17 thinking, well, it did occur or it did not. I'm just not sure
18 about that. I'm not gonna ask 2 and 3.

19 Let's look at 4. Has any member of the jury panel or
20 close family member been accused of a sexually related
21 offense? I think if I give you your -- which one is it?

22 MS. WALTER: 3, Your Honor.

23 THE COURT: If I give you ---

24 MS. WALTER: Number 3 on the defense, I believe.

25 THE COURT: Yeah, Number 1, 2, or 3, that in fairness

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BY THE COURT

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1 that would ---

2 MR. HILLIARD: Yes, sir, Judge.

3 THE COURT: She'd be entitled to that.

4 MR. HILLIARD: I understand.

5 THE COURT: Okay. Number 5, does any member of the jury
6 panel believe that they would be able to tell someone is a
7 sexual predator just by looking at them. I don't think so.
8 I'm not gonna do that one.

9 Does any member of the jury panel believe they know how a
10 rape victim should -- how about, does any member of the jury
11 panel harbor any preconceived notion of how a rape victim
12 should or will react. Okay?

13 MS. WALTER: Thank you, Your Honor. Yes, that's fine.

14 THE COURT: Okay.

15 MS. WALTER: And then the next page just has a follow-up
16 to that question in the event that anyone responds in the
17 affirmative.

18 THE COURT: What I would do is I would ask them if that
19 would affect their ability to be fair and impartial if they
20 responded to that. And I'll ask each one of them.

21 MS. WALTER: That's perfect. Thank you, Your Honor.

22 MR. HILLIARD: Yes. Thank you, Your Honor.

23 THE COURT: All right. Well, let's be back here at 1:30
24 and I'm going to talk to you about the amendment. Okay?

25 MR. HILLIARD: At 1:30?

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BY THE COURT

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1 THE COURT: Yeah. Okay?

2 MR. HILLIARD: Yes, sir.

3 MS. WALTER: Your Honor, just as a matter of scheduling,
4 does Your Honor want us to start today or start fresh in the
5 morning?

6 THE COURT: Well, I've got -- I really don't have -- this
7 is the only case we've got to try this week. Next -- how long
8 do you think this case will take? I mean, Mr. Hilliard,
9 what's your maximum number of witnesses?

10 MR. HILLIARD: Maximum number of witnesses?

11 THE COURT: The maximum. You don't have to tell me how
12 many you're gonna call.

13 MR. HILLIARD: Three.

14 THE COURT: Maximum would be three?

15 MR. HILLIARD: Yes, sir.

16 THE COURT: Okay.

17 MR. HILLIARD: Well, three and three-and-a-half.

18 THE COURT: Well, do you have any experts or anything
19 like that? Do you have any forensics or anything like that,
20 any lengthy ---

21 MR. HILLIARD: No, sir, Judge. It'd be one piece of
22 paper that would might be ---

23 THE COURT: No lengthy witnesses?

24 MR. HILLIARD: I don't have -- the defendant would be the
25 only lengthy witness I'd have.

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BY THE COURT

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1 THE COURT: Okay. All right.

2 MS. WALTER: Your Honor, if the defense is planning on
3 introducing any evidence, we would just ask the opportunity to
4 see it. They've seen all of our ---

5 THE COURT: Discovery under Rule 5, let's get it to them.
6 Okay?

7 MR. HILLIARD: Yes, sir.

8 THE COURT: All right. How many do you think the state's
9 is gonna have?

10 MS. WALTER: It'll be four in our case in chief, and then
11 the only additional witnesses would again be if it comes in
12 ---

13 THE COURT: You have the two victims.

14 MS. WALTER: Two victims, the mother, and Dr. Rahter.

15 THE COURT: Okay. So, that's it for you?

16 MS. WALTER: Unless a prior consistent statement would
17 get to come in and then that could extend it just a bit.

18 THE COURT: All right. Well, let's, let's select a jury
19 this afternoon. We've got the jury coming in.

20 MS. WALTER: Right.

21 THE COURT: Okay. Let's talk about strikes. How many do
22 you think you're entitled to Mr. Hilliard?

23 MR. HILLIARD: I'd like to have 10, Judge.

24 THE COURT: Okay. Is he entitled 10?

25 MS. WALTER: It would -- it depends in part on Your

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BY THE COURT

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1 Honor's ruling on the amendment and ---

2 THE COURT: If I allow you to proceed with both charges,
3 I think he's entitled to 10, isn't he?

4 MS. WALTER: Right. I agree.

5 THE COURT: Okay? He's entitled to 10.

6 MR. HILLIARD: Yes, I agree.

7 MS. WALTER: And if you -- correct, if it's just on one
8 charge at a time ---

9 THE COURT: He gets five.

10 MS. WALTER: Five, correct.

11 THE COURT: Okay. Right?

12 MR. HILLIARD: Yes, sir; yes, sir.

13 THE COURT: All right. So, it'd be five and ten or five
14 and five.

15 MS. WALTER: Yes.

16 THE COURT: All right. Okay.

17 MS. WALTER: I just -- I know I'm being a pest. So, then
18 -- and I'm happy to do whatever Your Honor wants. If Your
19 Honor -- the issue with the ---

20 THE COURT: Let's pull the jury -- we got plenty of time
21 this week. Let's pull the jury and if you want to start fresh
22 on Tuesday morning, that's fine with me. But, I would prefer
23 that if that's the case, you do openings in the morning.

24 MS. WALTER: Yes. And then would Your Honor be amenable
25 to if we -- so we open and we could put on our three

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BY THE COURT

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1 witnesses, the two victims and the mother on Tuesday and break
2 and have Dr. Rahter on Wednesday or I'll just have her here
3 first thing Tuesday -- tomorrow morning and we'll start with
4 her to get her out.

5 THE COURT: That would probably be better because I,
6 quite frankly, don't think that your witnesses are going to
7 take up -- those four witnesses will take up a whole day. I
8 know Mr. Hilliard's gonna be cross examining them but
9 sometimes you, you know, less is more.

10 MR. HILLIARD: Definitely, Your Honor.

11 THE COURT: You know, but it's your case -- do you
12 anticipate doing more than those four witnesses or three
13 witnesses tomorrow?

14 MR. HILLIARD: Maybe, Judge, but at the same time I don't
15 know that I would object to having Dr. Rahter called out of
16 order. I don't know that ---

17 MS. WALTER: Well, it's not something that the defense
18 can object to. It's a matter of what I'm trying to do and ---

19 THE COURT: You can call her anytime you want.

20 MS. WALTER: Right. So, it's -- I'll just call her first
21 and that's -- we'll make it easy.

22 THE COURT: It'd probably be better if we could just get
23 that of the way, that way we don't end up with a delay.

24 MS. WALTER: Right. I'll notify her.

25 THE COURT: I do anticipate us going over into Wednesday,

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BY THE COURT

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1 most assuredly but -- okay, well, I'll ---

2 MR. HILLIARD: I guess the point of that was I'm
3 confident that we'll, that we'll go into ---

4 THE COURT: Wednesday.

5 MR. HILLIARD: --- Wednesday. And so when I said out of
6 order, I didn't mean in the order of her witnesses. What I
7 meant was that I'd start my case and then ---

8 THE COURT: Okay. Well, let me just tell you how I do
9 it.

10 MR. HILLIARD: Yes, sir.

11 THE COURT: I don't break arguments away from charge.
12 Whatever happens, I always charge -- I mean, let you argue and
13 charge immediately. I don't do this business of you argue in
14 the afternoon and then I bring them back and charge. I don't
15 think that's fair ---

16 MR. HILLIARD: Yes, sir.

17 THE COURT: --- to either side. I don't do it that way.
18 So, however it works out, we may break early on Tuesday or
19 Wednesday or whenever we get to it, but arguments and charge
20 will be together. And y'all know my policy on charge, I will
21 be charging and giving them a copy of it.

22 MS. WALTER: Yes, Your Honor. And I submitted proposed
23 final jury instructions.

24 THE COURT: Yeah, if you have anything you can hand up,
25 that's good. We will be as accommodating as possible as far

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BY THE COURT

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1 as any specific charges, but get them up, that's good. Liz is
2 working on it already.

3 MR. HILLIARD: Thank you, Judge.

4 THE COURT: All right. Thank you.

5 MS. WALTER: Thank you, Judge.

6 THE COURT: 1:30.

7 (RECESS.)

8 *****OFF THE RECORD*****

9 (On the Record.)

10 THE COURT: Let the record reflect that I have not at
11 this point ruled or have not at this point ruled on the matter
12 of the indictment, as to whether or not an amendment should be
13 permitted. I will, for the record, say that I have researched
14 this over lunch. I also discussed with the Chief Admin Judge,
15 Judge John. I have informed the attorneys about that
16 conversation and our joint feeling concerning this matter,
17 it's my feeling that while the indictment in question does
18 sufficiently state the nature of the offense and put the
19 defendant on notice, it does establish jurisdiction. However,
20 the amendment, the proposed amendment is significant in that
21 it changes the dates set forth in the indictments to a time in
22 which the victim, as I understand it, would be less than 16
23 years of age. As it sits now, it alleges a timeframe where
24 she would over 16, making the offense as pled in the
25 indictment impossible.

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BY THE COURT

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1 So, I am of the opinion that amendment is appropriate and
2 -- in this matter. However, if or upon my granting of this
3 amendment, I will offer or entertain from the defense a motion
4 to continue that particular case, leaving as an option for the
5 state to either go forward on the unaffected indictment or at
6 their choice a continuance if I have not granted the defense a
7 continuance, or if I have granted the defense a continuance on
8 the affected indictment.

9 What's your position, Mr. Hilliard? And let me ask you,
10 does that reflect our conversations in chambers?

11 MR. HILLIARD: Absolutely. Yes, sir, Your Honor.

12 THE COURT: All right.

13 MR. HILLIARD: We're seeking the continuance, Your Honor.

14 THE COURT: All right. Now, again, I have granted the
15 amendment of the indictment. Let me go back to the state and
16 ask Ms. Walter, could you tell me specifically how that
17 indictment will be amended. And it is the indictment for
18 sexual conduct in the third degree?

19 MS. WALTER: Yes, Your Honor.

20 THE COURT: Okay. And that would be indictment number --
21 that would be indictment number ---

22 MS. WALTER: I believe it ends in 862.

23 THE COURT: 00862.

24 MS. WALTER: Yes, Your Honor.

25 THE COURT: All right. And the date -- the changes would

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BY THE COURT

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1 be ---

2 MS. WALTER: From May 9th of 2010 ---

3 THE COURT: All right. Let me make that change. May 9,
4 2010. Okay.

5 MS. WALTER: To May 9, 2012.

6 THE COURT: All right. I'm gonna initial that on the
7 indictment.

8 Mr. Hilliard, will you require re-service of this
9 indictment?

10 MR. HILLIARD: No, sir.

11 THE COURT: Okay. All right. That is taken care of.
12 Now, let me hear from the state.

13 MS. WALTER: Your Honor, the state opts to try both
14 charges together.

15 THE COURT: Okay.

16 MS. WALTER: In a joint trial and it's my understanding,
17 I believe you said you would retain jurisdiction?

18 THE COURT: I will retain jurisdiction.

19 MS. WALTER: Your Honor, given that both victims and
20 their mother are coming from three different states, I was
21 hoping that we could get a date certain set.

22 THE COURT: All right. And I would grant that if you
23 would -- first of all, I will grant it with the caveat, I
24 don't know what date certains Judge John may have granted. He
25 is the Admin Judge, of course. And if he has granted a date

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BY THE COURT

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1 certain, there's nothing I can do about that.

2 MS. WALTER: Right.

3 THE COURT: And we don't know right now. I would be
4 willing to entertain a motion for a date certain. Does anyone
5 happen to have ---

6 MS. WALTER: I know when you're sitting for trials, Your
7 Honor.

8 THE COURT: Okay. When am I sitting?

9 MS. WALTER: You're -- the first week that you're sitting
10 is February 12th, then again March 12th, and April 9th.

11 THE COURT: I'm pretty sure that March 12th I have a
12 murder case that has been set by Judge John for that week.
13 So, I know that week is out.

14 MS. WALTER: Okay. So, then it would be February 12th is
15 the first available, then skipping March it would be ---

16 THE COURT: What's wrong with February 12th?

17 MS. WALTER: Nothing. I just -- I was trying to give you
18 all the dates.

19 THE COURT: Is there any problem with February 12th?

20 MR. HILLIARD: We're looking right now, Judge. I don't
21 think so, and I can't imagine that there is, but I ---

22 THE COURT: Okay. I'm setting a date certain now, with
23 the caveat that Judge John may have done otherwise. Okay?

24 MS. WALTER: Yes. So, February 12th.

25 MR. HILLIARD: Let me look and -- give us just a minute,

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BY THE COURT

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1 Judge. I didn't anticipate ---

2 THE COURT: Okay. All right.

3 If you don't have another date certain that some other
4 judge has claimed you, I don't see a problem with that. Okay?
5 Unless you're gonna be made to report to the Supreme Court?

6 MR. HILLIARD: No, sir. If I'm before the Supreme Court,
7 I don't know about it yet and I don't want to find out, so --
8 February the 12th, Your Honor.

9 THE COURT: February 12th.

10 MS. WALTER: Thank you, Your Honor.

11 THE COURT: Okay. Is that a full week?

12 MS. WALTER: Yes, Your Honor.

13 THE COURT: All right.

14 MS. WALTER: It's the week before President's Day.

15 THE COURT: All right. If you would, make sure that the
16 scheduling clerk who prepares the dockets is aware of this.
17 Okay?

18 MS. WALTER: Yes, Your Honor.

19 THE COURT: All right. Thank you.

20 MS. WALTER: Thank you, Your Honor.

21 MR. HILLIARD: Thank you, Your Honor.

22 THE COURT: All right.

23 (ADJOURNED.)

24

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C E R T I F I C A T E

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I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. Scott Richard Rowan, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on December 11, 2017, as reported by Dixie C. Eubank.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Kay H. Richardson

Official Court Reporter

July 5, 2018.

1

2 State of South Carolina) Court of General Sessions
3 County of Horry) 2016-GS-26-00861
4) 2016-GS-26-00862

4

5

6 State of South Carolina)
7 vs.) Transcript of Record
8 Scott R. Rowan)

8

9

10 April 9 - 12, 2018
11 Conway, South Carolina

11

12 BEFORE:

13 Honorable Larry B. Hyman, Jr., Judge.

14

15 APPEARANCES:

15

16 Mary Ellen Walter, Esq.
17 George Henry Martin, Esq.
18 Attorneys for the State

17

18 John M. Hilliard, Esq.
19 Sara Brinson, Esq.
20 Attorneys for the Defendant

20

21

22

23 Teresa J. F. Bautz, RPR
24 Official Court Reporter

24

25

I N D E X

WITNESS

DIR

CROSS

RED

REC

Tuesday, April 10, 2018

Robert Bennett

Mr. Hilliard

107

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Ms. Walter

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122

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J. H.

Ms. Walter

176

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249

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Mr. Hilliard

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207

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Carol A. Rahter

Ms. Walter

252

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Mr. Hilliard

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261

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Wednesday, April 11, 2018

Anatasya K. Herron

Mr. Martin

281

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333

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Mr. Hilliard

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308

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334

A.R.

Ms. Walter

337

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407

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Mr. Hilliard

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370

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413

Raymond Olszewski

Mr. Martin

416,463

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Mr. Hilliard

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422,476

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1 **Thursday, April 12, 2018**

2 Sabrina Houser

3 Mr. Hilliard 520 -- 524 --

4 Ms. Walter -- 521 -- --

5 Rebecca Rowan

6 Mr. Hilliard 525 -- 542 --

7 Ms. Walter -- 532 -- --

8 Scott R. Rowan

9 Mr. Hilliard 544 -- 565 --

10 Ms. Walter -- 558 -- --

11 Vega Smallin

12 Ms. Walter 570 -- -- --

13 Mr. Hilliard -- 574 -- --

14

15 Opening Statement by Mr. Martin 162

16 Opening Statement by Mr. Hilliard 169

17 Closing Argument by Ms. Walter 595

18 Closing Argument by Mr. Hilliard 606

19 Rebuttal Argument by Ms. Walter 632

20 Charge of the Court 636

21 Verdict of the Jury 659

22 Sentence of the Court 669

23 Certificate of Reporter 673

24

25

E X H I B I T S				
NO.	DESCRIPTION	ID	EV	
State's-1	Handwritten Letter	202	203	
State's-2	Handwritten Letter	202	203	
State's-3	Handwritten Letter	202	203	
State's-4	Public Index	540	--	
Defense-1	Motion	61	--	
Defense-2	Motion	61	--	
Defense-3	Voir Dire	61	--	
Defense-4	MLS Listing	209	210	
Defense-5	Photograph	210	--	
Defense-6	Photograph	211	--	
Defense-7	Photograph	211	231	
Defense-8	Photograph	211	--	
Defense-9	Photograph	211	231	
Defense-10	Large Diagram	212	--	
Defense-11	Large Diagram	213	--	
Defense-12	E-mail from Lori Jones	311	--	
Court's-1	CV Dr. Bennett	127	--	
Court's-2	Jury Charge	648	--	
Court's-3	Indictment 861	653	--	
Court's-4	Indictment 862	653	--	
Court's-5	Note from jury	655	--	
Court's-6	Note from jury	658	--	
Exhibits retained by Clerk of Court.				

1 (WHEREUPON, the hearing commenced at approximately
2 1:13 p.m.)

3 THE COURT: Thank you, thank you. Just please be
4 seated. I think we're scheduled to do the pretrial
5 matters this morning -- or this afternoon. And it's my
6 understanding the jury will be coming in. I have to
7 report that we lost a juror after the 45 had been
8 selected and the other jurors excused. A little lady,
9 and that was juror number -- do you know? I'm sorry.

10 THE CLERK: 228.

11 THE COURT: A lady that is of Hispanic heritage
12 reported that she couldn't speak English and was able
13 to convey to the clerk that she didn't understand what
14 I was asking. At any rate, that juror, I told the
15 clerk just to excuse her. You know, that's one of the
16 problems we run into when jurors don't understand what
17 we're asking during qualifications and just comes up
18 later. But we have 44, and I hope that will be enough.
19 All right. I think Mr. Hilliard has a number of
20 motions.

21 Terri, you do have the caption; right?

22 COURT REPORTER: Yes, judge.

23 MR. HILLIARD: I need another indictment number, I
24 apologize. I talked to her earlier. There were two
25 indictments, 2016-GS-26-00861 and 2016-GS-26-00862.

1 861 is criminal sexual conduct with a minor second
2 degree, and 862 is criminal sexual conduct with a minor
3 third degree.

4 THE COURT: All right. And have you had an
5 opportunity -- I know there was an amendment that I
6 granted earlier, Mr. Hilliard. And we discussed that
7 in the pretrial conference. Have you had an
8 opportunity to see it?

9 MR. HILLIARD: I have, judge. The clerk was kind
10 enough to provide those to me before you got here.

11 THE COURT: All right.

12 MR. HILLIARD: And we looked at them, and we're
13 all set.

14 THE COURT: Okay. I just wanted to make sure that
15 you did have -- you had something printed so you could
16 see what the actual amendment was. All right.

17 Well, first, Ms. Walter, do you have any matter
18 for me from the State?

19 MS. WALTER: Well, Your Honor, it's tied to the
20 State's motion for compliance with the rape shield
21 statute. We discussed it briefly in chambers.
22 Essentially, the younger victim at the time of the CRC
23 medical exam, which was a month after disclosure,
24 tested positive for chlamydia. We have absolutely no
25 intention of bringing that forward. I believe it's

1 clear from the statute and the case law that that should
2 preclude the Defense from introducing evidence of it
3 because --

4 THE COURT: And I understand the issue is that the
5 Defendant was at or around the time --

6 MS. WALTER: December 2015.

7 THE COURT: -- checked or tested by someone. And
8 I don't know what that was about or who did it, but
9 there was some testing. And the Defendant was found to
10 be negative for any sexually transmitted diseases
11 including chlamydia; is that right, Mr. Hilliard?

12 MR. HILLIARD: Yes, sir. Not only that, judge,
13 but further, we have an expert who will be qualified
14 and will testify to the effect that he has never had
15 chlamydia. Chlamydia, as I understand it from talking
16 to our expert, is something that, once you have it, you
17 have antibodies in your --

18 THE COURT: And I understand that.

19 MR. HILLIARD: Yes, sir.

20 THE COURT: And that's what you tell me your
21 expert is going to testify to?

22 MR. HILLIARD: Yes, sir.

23 THE COURT: Okay.

24 MS. WALTER: Your Honor, if I may just correct
25 something.

1 THE COURT: Yes.

2 MS. WALTER: The test of the Defendant, according
3 to the only piece of paper that I received from
4 Defense, was in December of 2015, which is a full three
5 months after disclosure. And it doesn't have anything
6 about antibodies. So if there is something else that
7 their expert is going to be relying on, we would ask
8 for a copy of that.

9 THE COURT: Well, the rule requires you to turn
10 over any opinions, as I understand it, if you have
11 filed a Rule 5 motion --

12 MR. HILLIARD: Yes, sir.

13 THE COURT: -- requiring the State to produce --
14 and I'm sorry, I don't have it right before me, but my
15 understanding is that the rule requires you, then, if
16 you have any scientific expert witness testimony,
17 anything like that, to reciprocally provide that. Am I
18 correct in that?

19 MR. HILLIARD: Yes, sir. And, in fact, we got it
20 today. We will send it on over.

21 THE COURT: Okay, good.

22 MS. WALTER: Your Honor, and one other note on
23 this before we get to the actual substance of the
24 argument. If Your Honor decides to let it in, we
25 haven't been notified of any witnesses that would

1 actually be able to establish the authenticity of the
2 paper that we got.

3 THE COURT: And, there again, that would be up to
4 Mr. Hilliard to be able to produce it. You know, he
5 still must comply with the foundational rules and the
6 other rules of evidence in producing it. What we're
7 talking about here is the general --

8 MS. WALTER: Right.

9 THE COURT: -- admissibility of that sort of
10 testimony. Now, I'm fully aware of the rape shield.
11 And correct me if I'm wrong, but Mr. Hilliard -- first
12 of all, you don't intend to offer that she at some time
13 tested positive for chlamydia, okay.

14 MS. WALTER: The only way I'm offering it is if
15 Your Honor makes a ruling.

16 THE COURT: You don't intend to?

17 MS. WALTER: But we do not intend to as it stands
18 right now.

19 THE COURT: Okay. Now, then, that comes back to
20 Mr. Hilliard. And Mr. Hilliard wants to offer it for
21 the purpose of establishing that it was not his client;
22 right?

23 MR. HILLIARD: Yes, sir, exactly.

24 THE COURT: Now, let me hear on you that,
25 Mr. Hilliard, how does that -- you know, on the one

1 hand, I understand the rape shield. But the State's
2 proof will be proof, as I understand it from what I've
3 heard during our pretrial, was that she does have
4 physical -- there is present physical evidence
5 determined in an examination, a medical examination,
6 that she has endured some sort of penetration; is that
7 correct?

8 MS. WALTER: A complete transection of her hymen,
9 yes, Your Honor.

10 THE COURT: Okay. There we are. So, now the
11 question is -- of course, you're going to put in, as I
12 understand it, her testimony that it was at the hands
13 of the Defendant; right?

14 MS. WALTER: We are putting in testimony from the
15 victim that the Defendant raped her on multiple
16 occasions.

17 THE COURT: Okay, all right. And then the purpose
18 that you intend to offer this, Mr. Hilliard, is to show
19 that it was not the Defendant; is that correct?

20 MR. HILLIARD: Yes, sir, that's correct.

21 MS. WALTER: Your Honor, if I may, though, there
22 are two different issues.

23 THE COURT: And that's what I'm trying to deal
24 with right here.

25 MS. WALTER: There are two different issues,

1 because one can certainly have a transection of the
2 hymen without chlamydia and can, potentially, I would
3 imagine, have chlamydia without a complete transection
4 of the hymen. So it's two completely different issues.

5 And the State's position is we're putting in the
6 evidence of the transection of the hymen. We are not
7 entering any evidence about the chlamydia. We're not
8 going to suggest that the Defendant was the source of
9 that disease. And that would be the only way they
10 would be able to then counter that to offer an
11 alternate source of the disease. And I believe that
12 that's fairly clear in the statute and the --

13 THE COURT: This is the problem I have. You're
14 offering evidence of transection of the hymen --

15 MS. WALTER: Yes.

16 THE COURT: -- as part of your case, your proof
17 that she engaged -- or that there was sexual
18 penetration. And she is going to testify that it was
19 the result of force upon her by the Defendant; right?

20 MS. WALTER: And I think this is where maybe I'm
21 just not making myself clear. The victim would have no
22 way of knowing how her hymen was transected. So she is
23 not going to get up there and say --

24 THE COURT: But you're offering it as proof of
25 penetration; are you not?

1 MS. WALTER: Penetration at some point, yes.

2 THE COURT: I understand.

3 MS. WALTER: She will testify separately that the
4 Defendant raped her on multiple occasions, but she
5 would not been be in any position -- I don't think any
6 woman would be in any position -- to testify, my hymen
7 was injured as a result of this sexual act. They
8 simply couldn't.

9 THE COURT: It's one of two things. You're
10 offering it to bolster testimony or to confirm her
11 testimony, or on the other hand, it has no relevance.
12 Which is it; does it have no relevance to this case or
13 does it?

14 MS. WALTER: It has relevance because it does
15 establish that at some point there was a penetrating
16 injury. The argument then becomes for the Defense to
17 say, well, there is no evidence that it was from my
18 client, and the State to say, there was an inference
19 that she is saying that she was raped. There is
20 evidence that at some point -- and, quite frankly, I
21 think even Dr. Rahter will testify that there is no way
22 to tell when that injury occurred. So it's not --
23 we're not making --

24 THE COURT: Well, how, then, is it relevant?

25 MS. WALTER: Because it does corroborate that at

1 some point she had a penetrating injury to her vagina.

2 THE COURT: Okay. And she is going to testify
3 that it was the Defendant; right?

4 MS. WALTER: That the Defendant raped her.

5 THE COURT: Okay. Mr. Hilliard, talk to me.

6 MR. HILLIARD: Thank you, judge. There is another
7 part to this, judge. Not only does the complaining
8 witness in this case say that the Defendant raped her,
9 she says he gave her chlamydia. That's prior when she
10 discovered that she had chlamydia, she has said on
11 multiple occasions that he gave her the chlamydia.

12 MS. WALTER: I have never seen that in any of the
13 discovery.

14 THE COURT: What she said and what's admissible
15 here in this court are entirely different. Now, if she
16 says, yes, he gave me chlamydia, then no question about
17 it, it becomes admissible.

18 MS. WALTER: I have never seen that in any of my
19 discovery. So if Mr. Hilliard wants to point out where
20 that is, I'm happy to look at it. But I have never
21 heard her say those words.

22 MR. HILLIARD: If you give me a second, judge.

23 THE COURT: Certainly, certainly. We got all
24 afternoon.

25 MR. HILLIARD: Of course, I wouldn't have any way

1 to know that if they didn't give it to me. I've never
2 talked to her.

3 THE COURT: I mean, you know, we have time.

4 MR. HILLIARD: Okay. And I am in some ways
5 telegraphing my cross-examination.

6 THE COURT: Okay.

7 MR. HILLIARD: There is a report of Mr. Jack
8 Johnson provided to us, Horry County Police Department
9 report of investigation, wherein Mr. Johnson -- this is
10 dated October the 1st of 2015, where Mr. Johnson, in
11 speaking -- Officer Johnson, in speaking to Sabrina
12 Houser, who is a contemporary and friend of the
13 complaining witness, in speaking to Sabrina Houser, she
14 indicated that [REDACTED] J.H. [REDACTED], the complaining
15 witness in this case, disclosed to her that her
16 stepfather had given her an STD.

17 THE COURT: Well, let me just ask you this,
18 Mr. Hilliard, how is this any different than if we
19 absolutely knew, if this young woman had told the
20 investigating officers, if she without a question had a
21 boyfriend that she was engaging in sexual relations
22 with; okay?

23 MR. HILLIARD: Yes.

24 THE COURT: Could you then, under the rape shield,
25 explore that fact?

1 MR. HILLIARD: I believe, judge, without directly
2 answering your question, but I believe that the rape
3 shield statute is designed to prevent the Defense from
4 shaming the witness about sexual activity.

5 THE COURT: Right.

6 MR. HILLIARD: And we're not -- that's not -- the
7 point of this is that she has chlamydia, a sexually
8 transmitted disease, at a point in time when she claims
9 my client was having sex with her, and he doesn't have
10 the sexually transmitted disease, and our expert will
11 say that he never had it. I don't care if she had sex
12 with somebody, I don't care if she had sex with nobody.
13 In fact, there are ways to get chlamydia without having
14 sex with anybody.

15 THE COURT: Okay, wait a minute. Now, we're
16 looking at it from a different angle.

17 MR. HILLIARD: Yes, sir.

18 THE COURT: Now we're looking at it from a
19 different angle. My understanding of the case law is
20 that things that might be objectionable under the rape
21 shield may be admissible for other purposes; okay?

22 Now, what you've just told me is that if you have
23 an expert that would say that if your client had had
24 sexual relations with the complainant or the victim in
25 this case, if you will, whatever, he would have had a

1 sexually transmitted disease; is that where you're
2 going with this?

3 MR. HILLIARD: It's actually going the other way.
4 But, yes, sir, that part is true, too, that he would
5 have caught it from her.

6 THE COURT: That's where I'm going.

7 MR. HILLIARD: Yes, sir.

8 THE COURT: You're saying that the proof that she
9 has an STD --

10 MR. HILLIARD: Yes, sir.

11 THE COURT: -- from whatever source, whatever
12 circumstances, whether it be by sexual intercourse or
13 otherwise --

14 MR. HILLIARD: Yes, sir.

15 THE COURT: -- you have an expert that will say if
16 that was her condition, through whatever reason, if
17 your client had engaged with her, that he would have it
18 now or there is a way that you could tell if he ever
19 had it; is that right?

20 MR. HILLIARD: That's right, yes, sir. That is
21 exactly correct.

22 THE COURT: Well, now, how about that?

23 MS. WALTER: Well, let's start with the fact that
24 the expert that's been disclosed to me is not a medical
25 doctor, is not, according to his website where he lists

1 everything else that he's an expert in, is not an
2 expert in infectious diseases, there is no medical
3 literature --

4 THE COURT: Well, they got to get over that part.

5 MS. WALTER: Right, I understand that.

6 THE COURT: They got to get over that.

7 MS. WALTER: I understand that. There is no
8 medical literature that I have ever seen that says that
9 it is a 100 percent guarantee that if someone with
10 chlamydia has -- and I'm going to use the right word --
11 rapes a victim that has chlamydia, whichever way it
12 goes, there is not a 100 percent guarantee that the
13 chlamydia is going to pass.

14 Additionally, the Defendant told the victim's
15 mother that on at least one or two occasions he had
16 used a condom. So that could also explain -- I also
17 don't think there is any test that says, you have never
18 had chlamydia in your life. It either shows presence
19 or absence at the time.

20 THE COURT: Well, I mean, suppose he can do that.
21 Suppose he does do that, suppose he does establish
22 expertise, suppose he does, and the witness is going to
23 testify to that.

24 MS. WALTER: It still doesn't matter. If we're
25 not arguing that he's the source of the chlamydia?

1 THE COURT: No, no. The argument is the reverse,
2 the argument is reversed. Not that he was the source
3 of the chlamydia, the argument is that if I had engaged
4 with her, we know that she has chlamydia from whatever
5 source -- it may be through her fault or not -- she may
6 have chlamydia. But if he had engaged with her, he
7 would either have chlamydia, or there is some testing
8 that would show that he had chlamydia.

9 MS. WALTER: So their expert is going to testify
10 that regardless of whether there was a condom used --

11 THE COURT: I don't know.

12 MS. WALTER: Well, no. But, I mean, if this is a
13 basis for admitting the evidence in violation of the
14 rape shield law, I think we need to get this straight.
15 So if their expert is going to say that even if there
16 was a condom used, if one party has chlamydia, it is a
17 forgone conclusion that the other party will have it;
18 is that what their expert is testifying to? Because
19 that's what would be necessary for this logic to work.

20 THE COURT: And I don't know, I don't know. And I
21 agree with you, I agree with you. That's what I'm
22 looking at. Mr. Hilliard says that's what he's got.
23 And what I'm saying is -- I'm saying, Mr. Hilliard, if
24 that's what you got, then I think this particular piece
25 of evidence then becomes admissible in spite of the

1 rape shield.

2 Because from what Mr. Hilliard's telling me, that
3 it is not necessarily the source of chlamydia, improper
4 sexual conduct or anything else. If his witness says
5 you can get it all kinds of ways, but if you get it and
6 someone engages with you, they are going to get it.

7 MS. WALTER: And I'm just trying to clarify
8 because I didn't hear Mr. Hilliard say those exact
9 words, but if the expert -- if he is proffering that
10 the expert is going to say that it is a forgone
11 conclusion that sexual intercourse between two people,
12 however it occurs, if one of them has chlamydia, it is
13 a forgone conclusion, without exception, that the other
14 person gets it regardless of whether they use a condom.

15 THE COURT: Well, I don't think he's got to do
16 that. I think he's got to get medical testimony. I
17 think what he has to do --

18 MS. WALTER: He's not a doctor, though.

19 THE COURT: -- he's going to have to show it,
20 that -- what's the standard -- most probable, in his
21 opinion, most probable.

22 MR. HILLIARD: The reason -- and maybe their
23 witness can testify as to that. And let me say that
24 we're --

25 THE COURT: I mean, there's nothing that's

1 absolute, we would never have medical testimony that
2 had to be 100 percent absolute certain. That's not how
3 it works.

4 MR. HILLIARD: Yes, sir.

5 THE COURT: To a reasonable degree of medical
6 certainty. Now, I don't know what credentials your
7 client has, but we'll have to see. You know,
8 regardless of my ruling, you still got a high standard.
9 I mean, you still got to meet the standard to have your
10 witness qualified to give an opinion, and then we got
11 to look at the science that he has.

12 MR. HILLIARD: Yes, sir.

13 THE COURT: There's a lot to do. I'm -- for the
14 purpose of your argument, I'm willing to say, okay, we
15 assume that you can do that. Now, let's get to the
16 point of whether or not, if you can assume that -- I
17 mean if you can do that, if you can meet the standards,
18 would the testimony be admissible?

19 MR. HILLIARD: If we go back to and -- if we go
20 back to the rape shield statute itself, it talks about
21 that we can't -- it's designed to shield -- the two
22 things that are happening in this discussion that we're
23 having is the prosecution is trying to use the rape
24 shield statute to keep out admissible evidence --

25 THE COURT: I understand --

1 MR. HILLIARD: -- because it's connected
2 potentially to a sexual act.

3 THE COURT: -- that your witness is going to say
4 that the presence of chlamydia does not necessarily
5 mean that this Defendant -- I mean, this victim has
6 engaged in any sexual activity.

7 MR. HILLIARD: I believe that's what --

8 THE COURT: That it could be the result of many
9 different ways you can contract chlamydia; is that
10 right?

11 MR. HILLIARD: Well, I don't know that my witness
12 is going to say that, but I do believe that to be true.
13 And I am confident that, based on my understanding of
14 the way things work, that Dr. Rahter would testify to
15 that, that there are ways to get -- the Department of
16 Justice has a...

17 THE COURT: All right. What about the Finley
18 case? And this is what it says: Specific instances of
19 sexual activity on the part of the victim with persons
20 other than the Defendant may be introduced to show the
21 origin of semen, pregnancy, or disease about which
22 evidence has previously been introduced and proffered,
23 provided that its probative value is not outweighed by
24 its prejudicial effect. There in Finley it says it may
25 be introduced.

1 What about that, Ms. Walter?

2 MS. WALTER: It says it may be introduced if
3 evidence has previously been introduced about it. So,
4 essentially, the State would have to introduce evidence
5 of the semen, pregnancy, or disease.

6 THE COURT: It doesn't say who introduces it.

7 MR. HILLIARD: Right.

8 THE COURT: It just says it's introduced.

9 MS. WALTER: Right. But if it's -- the idea is
10 that they are piercing the rape shield law, the State,
11 in essence, decides whether or not a piercing is
12 appropriate in its case in chief. If the State decides
13 that the piercing is not appropriate, then we file the
14 motion like we did, and then it's up to Your Honor to
15 determine whether or not that shield can be pierced.

16 It's our position that the way the case law reads
17 is, unless the State puts forth evidence of semen,
18 pregnancy, or disease, that any other evidence about
19 semen, pregnancy, or disease would be irrelevant.

20 MR. HILLIARD: There is nothing that says that,
21 unless the State puts it up. Just says if it's up.

22 THE COURT: Well, if we look at the statute,
23 doesn't it require an offer of proof?

24 MS. WALTER: It requires ten days notice and an
25 offer of proof and an in-camera hearing with Your

1 Honor.

2 THE COURT: That's what I'm talking about.

3 MS. WALTER: Yes. None of which has been complied
4 with.

5 THE COURT: So, I mean, when can we do that? When
6 do you got your expert here?

7 MR. HILLIARD: Well, we can have him under
8 whatever circumstances Your Honor calls.

9 THE COURT: Let me ask you this. How do you
10 propose to admit the evidence of the chlamydia?

11 MR. HILLIARD: Through Dr. Rahter, their witness.

12 THE COURT: Okay.

13 MR. HILLIARD: And let me say, judge, exactly what
14 you just said is the reason that I don't think the rape
15 shield statute is involved in this situation at all.
16 Because I'm not intending to -- the very first words
17 out of the rape shield statute are, specific instances
18 of sexual conduct.

19 If I was trying to show that she had sex with
20 Mr. Jones or Mr. Smith, then I would have to bring
21 Mr. Smith and give him ten days notice. And we would
22 talk about Mr. Smith and make a proffer, and then we'd
23 argue about whether that was admissible.

24 I'm not showing anything about any specific act of
25 sexual conduct at all. So there is no Mr. Smith or

1 Mr. Jones that I can bring.

2 I'm going to show that she has a sexually -- an
3 ordinarily sexually transmitted disease, it's part of
4 their standard protocol. The rape crisis -- you asked
5 me the question about how to prove it, but the rape
6 crisis center does a standard protocol where they check
7 for sexually transmitted diseases every time Dr. Rahter
8 does an examination.

9 She does the examination, she checks the physical
10 stuff, she sends it off, she gets it back. In this
11 case she gets it back, she has it, and she prescribes
12 medicine for treatment of the sexually transmitted
13 disease.

14 THE COURT: Wouldn't it be relevant and
15 admissible, Ms. Walter, if he did have chlamydia? I
16 mean, wouldn't you be trying to introduce that now?

17 MS. WALTER: Well, but the issue is, Your Honor,
18 that chlamydia can be cured with -- and I have my notes
19 someplace -- like two pills or four pills, and it will
20 be gone in a week. So -- and --

21 THE COURT: But he's saying you can still test for
22 it.

23 MR. HILLIARD: Yes.

24 MS. WALTER: I know what his expert is saying.
25 That doesn't mean I agree with it. And I've spoken

1 with an actual medical doctor about this. And the
2 whole issue is, he had three months from the time of
3 disclosure until the time that he was tested where he
4 could have treated for that. Or maybe it wasn't from
5 him. That's why if he had chlamydia, yes, we probably
6 would introduce it. But, still, the --

7 THE COURT: Well, I'm going to hear the evidence
8 before I make a ruling on this. You know, if you've
9 got an expert and the expert can meet the standards and
10 the expert can tell me that if he had engaged with her
11 and she had chlamydia, that he could tell it now, and
12 he doesn't have it, you know, that makes a lot of
13 difference to me.

14 MR. HILLIARD: Yes, sir.

15 THE COURT: But I don't know that that's what this
16 expert is going to testify to, I don't know.

17 MR. HILLIARD: Right.

18 THE COURT: Until I hear it, you know, we can sit
19 here and go back and forth and hypothesize about what
20 he may say or what he may not say, I don't know. I
21 think I'm going to have to hear it. Now, when you
22 going to have him here for me to hear it?

23 I would imagine Ms. Walter is going to put
24 Ms. Rahter up fairly quick.

25 MS. WALTER: Yes, Your Honor. But I would

1 actually like this issue resolved before openings.
2 Because, again, if Your Honor is going to rule that
3 this evidence is admissible --

4 THE COURT: Well, when am I supposed to -- I want
5 to hear what the witness is going to say.

6 MS. WALTER: I understand that, Your Honor.
7 Defense is the one that had the ten-day -- was supposed
8 to give us ten days notice, written notice. And it
9 wasn't until last week after three e-mails that I
10 face-to-face confronted Mr. Hilliard and said, what is
11 your expert an expert in? Because, again, on his
12 website, nowhere does it say infectious diseases or
13 chlamydia.

14 THE COURT: Well, doesn't it say that he's
15 supposed to give you ten days notice of...

16 MS. WALTER: Ten days notice of the evidence that
17 he intends to introduce.

18 THE COURT: No. It says: Specific instances or
19 opinion or reputation evidence of a victim's sexual
20 conduct are generally not admissible. Defendant must
21 give the State ten days notice that he intends to
22 present such evidence and make an offer of proof before
23 the trial, the judge may admit it.

24 Now, I don't know if he's offering --

25 MR. HILLIARD: I'm not.

1 THE COURT: -- specific instances or opinions or
2 reputation evidence of the victim's sexual conduct. I
3 don't know if he's doing that, I really don't.

4 MR. HILLIARD: I'm not.

5 MS. WALTER: I think Your Honor is reading
6 specific instances far too narrowly. Because then,
7 essentially, Defense would have to say, on April 9th,
8 2018, the victim had sex with someone else. It can be
9 just generally, she slept with ten -- and this is not
10 my victim, I'm just hyperbolizing here -- it could be
11 that she is a prostitute, she's been a prostitute for
12 ten years and she's slept with hundreds of men.

13 THE COURT: And the rape shield doesn't allow
14 that.

15 MS. WALTER: Right. But that's not specific
16 instances. That is general testimony about prior
17 sexual activity.

18 THE COURT: That's reputation, goes to her
19 reputation.

20 MR. HILLIARD: Yes, sir.

21 THE COURT: Which is protected. Here we have --
22 I'm not at this -- you know, whenever y'all want to do
23 it is fine with me. But I want to hear what this
24 expert's got to say. If the expert says what you tell
25 me he's going to say, Mr. Hilliard, I'm probably going

1 to let it in. But if you fail in that, I'm not. I
2 mean, there is no need to put it in unless the evidence
3 goes to specifically exclude any activity by this
4 Defendant.

5 Now, if this Defendant's contact with the victim
6 is excluded by that evidence and it meets the standard,
7 I'm going to let it in. But if it's just general,
8 maybe, maybe not, I-don't-know-type evidence, I'm
9 probably not going to let it in. I want to know what
10 he's going to say. Do you have a report from him?

11 MR. HILLIARD: We have -- the report that we have
12 from -- well, let me tell you how this developed,
13 judge, and I get -- let me tell you how it developed so
14 it makes some sense to you, perhaps.

15 When we found out that the complaining witness in
16 this case had chlamydia, my client went down and took a
17 test for chlamydia. And he didn't have it. But the
18 fact that he didn't have chlamydia at the time that he
19 took the test is exactly like the prosecution says, and
20 that is, well, maybe he got treated for it and didn't
21 have it at the time.

22 But still, at the time that he found out, took the
23 test, didn't have it. And I'm thinking, all right,
24 well, he doesn't have it, but that doesn't really mean
25 anything. What can we do with that? So we tried to

1 figure out how to put that whole thing together, and we
2 found out there is this antibodies thing where you can
3 show whether a person has ever had chlamydia or not.

4 And so we sent him again for another test to see
5 whether he had these antibodies. He went down, he took
6 the test, he doesn't have the antibodies, and so we had
7 that information.

8 THE COURT: Well, who gave him the test, and who's
9 going to testify concerning that?

10 MR. HILLIARD: Well, the problem with that is --

11 MS. WALTER: And we don't have a copy of that
12 second report.

13 MR. HILLIARD: I think you do. The second one is,
14 I think, the one they do have. They don't have the
15 third.

16 MS. WALTER: Okay. So I have one report out of
17 the three that we're now discussing.

18 THE COURT: Okay. Well, let's go on, okay.

19 MR. HILLIARD: So exactly the problem we said,
20 that is, that we sent him down to do the test, but they
21 sent it off to New York or New Jersey or North Carolina
22 or somewhere. We can't get those people as witness.
23 We're dealing with a limited budget.

24 So what I did at that point was said, all right,
25 well, who can I get to do the test that is a witness

1 that will come and testify? And this is
2 extraordinarily expensive, which doesn't matter to
3 them. I get that. But in any event, it is.

4 So we sent him again for a test to test for the
5 antibodies, got a better test, talked to the witness.
6 And we can have him here to testify, again, at an
7 extraordinary \$300 an hour, door to door, to come here
8 and to testify. My guy ran out of money, house burned
9 down, doesn't matter.

10 But the point of it is, he will come and he will
11 testify to the fact that he has -- that the antibodies
12 show that he has never had chlamydia.

13 Now, the testimony from the State's point of view
14 is, he was -- and we don't know exactly. They said a
15 whole bunch of different things. And when I say they,
16 I'm talking about the victim in this case, which their
17 witness will say doesn't have to remember anything,
18 doesn't have to get it right twice in a row, will
19 testify that she's had sex willy-nilly with this guy
20 like 12 times sometime in between the big time in the
21 report that they have and the indictment that they
22 have.

23 But she's right, there's nobody that can say that
24 because he's never had chlamydia, that he's never had
25 sex with her. Because we don't know when she got

1 chlamydia. We know when she had it, and we know when
2 she said she had sex with him, sort of. But he's not
3 going to be able to come in here and say that the fact
4 that she had chlamydia at some point in time and he's
5 never had chlamydia means that he's never had sex with
6 her. Nobody can say that, you're right.

7 MS. WALTER: Right. But I'm going to object. The
8 victim is never going to come in and say she had sex
9 with him willy-nilly. She'll say he raped her, not
10 that she had sex with him willy-nilly.

11 MR. HILLIARD: Subject to debate.

12 THE COURT: Well, then, Mr. Hilliard, how does
13 this doctor's testimony, then, become relevant if he is
14 going to say -- whether he has it or not doesn't
15 establish anything from a probative standpoint. He
16 could have still had sex with her and she contracted it
17 later. I.

18 Mean, if this doctor is going to testify that,
19 there's no way that I can look at this and say whether
20 he did or he didn't, then what's the probative value of
21 his testimony?

22 MR. HILLIARD: Well, it's a combination of things.
23 Part of it is that if, in fact -- as I say, depends in
24 some part on what the complaining witness says.
25 Because we don't know what she says. She said a number

1 of different things, which they can explain. But she
2 said a number of different things. We don't know
3 exactly what she's going to say. But one thing that we
4 do know that she has said on one occasion is that my
5 client gave her a sexually transmitted disease, as
6 reported to the police officer.

7 MS. WALTER: That's not accurate. That was a
8 summary of another witness's testimony.

9 THE COURT: I understand, I understand. But the
10 officer wasn't talking to the victim.

11 MS. WALTER: That is correct.

12 THE COURT: I understand that, I understand that.
13 But according to the officer's report, and if the
14 witness or whoever he was talking to is truthfully
15 reporting to him her conversations with the victim, if
16 that is true, it leads us to the conclusion that that
17 may, in fact, be the testimony of the victim.

18 MS. WALTER: You're allowing the witness to be
19 impeached by something that someone else said she said.

20 THE COURT: No, no.

21 MS. WALTER: Because that's essentially what's
22 happening here.

23 THE COURT: I don't know what the victim is going
24 to say, I don't know. But what I'm saying is I have no
25 doubt that Mr. Johnson has accurately written down what

1 was relayed to him. I have no idea who this third
2 party is. I have no idea. But it was obviously
3 someone who he felt knew something about the case or
4 was in a position to know something about the case.
5 And it is reported to him, and it was significant
6 enough that he wrote it down.

7 Now, your witness, your victim, may never have
8 said that. Your victim may deny ever having said that.
9 But on the other hand, there is a good chance that your
10 witness may take that exact position. Now, whether she
11 says it on the stand, you elicit it, or anything like
12 that is another question. But what I'm saying is
13 there's a possibility, there's a good possibility based
14 on Detective Johnson's investigation, that that is her
15 position.

16 MS. WALTER: I have spoken with the victim prior
17 to coming over here at 1 o'clock. The victim is not
18 going to say that the Defendant gave her chlamydia.

19 MR. HILLIARD: But will she say she ever said
20 the --

21 MS. WALTER: No.

22 MR. HILLIARD: Well, how do we know what she's
23 going -- how do we know everything she's going to say
24 if you haven't told her what to say?

25 MS. WALTER: Well, I don't really need those

1 baseless accusations. I have specifically spoken with
2 the victim about this portion of her testimony in
3 nonleading questions and asked her about this issue.

4 She is not going to claim that the Defendant gave
5 her chlamydia. If the chlamydia is excluded, then
6 there's no reason for anyone to ever say, well, I deny
7 telling that to anyone else. She is not going to claim
8 that.

9 THE COURT: Well, you know, we're going in
10 circles. It all comes back to one thing, to one thing
11 and one thing only. And there are two issues that I
12 want to hear from this expert. Number one, I want to
13 hear this expert say whether there's any probative
14 value at all to his testimony, whether any conclusion
15 he reaches would be something that would determine or
16 help to determine -- the jury determine whether or not
17 the Defendant engaged in sexual activity with the
18 victim.

19 You're telling me he's going to say now, you're
20 telling me he's going to say, you know, she may have
21 gotten it later, she may have, you know, not had
22 chlamydia when he had it. All I'm saying is that if
23 she had it when he had sex with her, it would probably
24 show up, or it would show up now on some sort of
25 testing, and that's another issue.

1 Now, if that's all he's going to say, if that's
2 all he's going to say, and he's going to say, I don't
3 know if she had it then or not, I couldn't tell you,
4 then, Mr. Hilliard, it has no probative value. There
5 is no probative value to it, by his own admission.

6 But on the other hand, if he's -- if he can say
7 she had it at a particular time and, yes, if he had had
8 sex with her, it would show up, I think that it becomes
9 a very important issue, and I think it's probative and
10 would probably be admissible, if you can establish that
11 through your expert.

12 But I'm real concerned now about your saying your
13 expert says, well, you know, all I can say is if she
14 did have it when he allegedly had sex with her, then it
15 would show up, but you know, we don't know; you know,
16 then it just has no probative value to it because
17 there's no basis for the opinion. He can't say.

18 MR. HILLIARD: Yes, sir. We won't know the answer
19 to that question until after Dr. Rahter and the
20 complaining witness testify. Because, although I
21 understand what the prosecutor says the witness is
22 going to say, I don't know that that's --

23 THE COURT: Okay. This is the way I'll do it,
24 then.

25 MR. HILLIARD: Yes, sir.

1 THE COURT: I will exclude it from Dr. Rahter's
2 cross-examination and the witness's examination and
3 give you an opportunity then to put up your expert and
4 recall them.

5 MR. HILLIARD: But it won't -- unless I'm able
6 to --

7 THE COURT: You can recall them if your expert is
8 able, in an in-camera hearing, to establish the
9 admissibility, the relevance, and the probative value
10 of it, if he can do that, then I will let you recall
11 him.

12 MS. WALTER: Your Honor, my only issue is that if
13 this evidence is going to come in, the State should
14 have the opportunity to bring it out in our own direct
15 of our own witnesses. I have no problem, I encourage
16 the in-camera hearing. But my suggestion would be to
17 have that in-camera hearing prior to trial, as I think
18 the statute envisions. And that way both parties know
19 going forward, for instance, for their openings, what
20 evidence they expect to come in.

21 THE COURT: Well, I don't know how to accommodate
22 everyone. Mr. Hilliard says he's got to hear their
23 testimony.

24 MR. HILLIARD: I agree with that, judge --

25 MS. WALTER: Well, the expert shouldn't have to

1 hear their testimony to be able to testify to medical
2 facts.

3 THE COURT: The expert's not going to hear their
4 testimony, I'll sequester him.

5 MS. WALTER: Right. So then --

6 MR. HILLIARD: I want the Court to hear it. What
7 I would propose is this, judge, because I agree with
8 it. I agree that in order for there to be a context
9 for Your Honor to make a decision about this -- this is
10 the part that I think is important -- I think the Court
11 has to hear, at least on this issue, from Dr. Rahter,
12 from the mom of the complaining witness, and from the
13 complaining witness. Those three people are necessary
14 for Your Honor to hear in order to make a decision, I
15 submit to the Court, on this issue and its
16 admissibility.

17 THE COURT: So you're contemplating having them
18 heard all in an in-camera hearing?

19 MR. HILLIARD. Sure, just on this one issue.

20 MS. WALTER: So, in other words, let's just offer
21 up all of the State's witnesses for direct and
22 cross-examination so that he can put on an expert that
23 he still has not said can say what he is claiming he
24 will say, and then put the victim through it again in
25 front of the jury. So subject a rape victim to two

1 sets of cross-examination.

2 THE COURT: We're talking about a nonjury hearing
3 in camera, and we're talking about for a limited
4 purpose.

5 What do you need to hear -- Mr. Hilliard, what do
6 you need to hear the witnesses say? Now, we're not
7 going to preview the whole case.

8 MR. HILLIARD: No, sir.

9 THE COURT: Mr. Hilliard, tell me what you need to
10 know.

11 MR. HILLIARD: All right, sir. What I would like
12 to do is I would like the opportunity to cross-examine
13 the -- but again, judge, I'm telegraphing the questions
14 that I'm going to ask.

15 THE COURT: Not to me because I don't know where
16 any of you are going with this.

17 MR. HILLIARD: Right. Once I say it, it's said.

18 THE COURT: I mean, I would like to get a clear
19 perception of where this is going. It keeps changing.
20 It's so fluid.

21 MR. HILLIARD: All right, sir. Yes, sir. I want
22 to be able to cross-examine the complaining witness
23 about whether or not she told her friend that her
24 father or her stepfather had given her an STD. I want
25 to be able to cross-examine the witness and have her on

1 the record one way or the other as to whether she said
2 that to her or didn't say that to her.

3 I want to be able to cross-examine the mom on the
4 issue of whether she has claimed that the Defendant in
5 this case gave her and her daughter an STD. I want to
6 be able to ask them those questions about the STD
7 aspect of it.

8 I want to be able to ask Dr. Rahter, who, as a
9 medical doctor, can talk about the things that they are
10 talking about in connection with how these diseases are
11 transferred and how -- I mean, Dr. Rahter is a medical
12 doctor. She can talk about those things, she's an
13 expert in that area. And I certainly believe that she
14 will be honest in that, I don't have any question about
15 that.

16 So she -- my anticipation was that I would have
17 used her as an expert witness in the area of sexually
18 transmitted diseases, and if the -- in fact, the
19 complaining witness had a sexually transmitted disease
20 at the point in time that she was having sex with the
21 Defendant, that it would have been transferred. That's
22 part of it.

23 So those are the limited things that I want to ask
24 these witnesses about, and that will set up my expert
25 for the purpose of saying that my client has never

1 had --

2 THE COURT: But we're still left with the time
3 issue.

4 MR. HILLIARD: Right.

5 THE COURT: When is your expert going to say, you
6 know, now that I've said all that, it really doesn't
7 make any difference because we don't know when she got
8 chlamydia, we don't know how she got chlamydia, and we
9 don't know when that is in reference to the contact
10 with the Defendant.

11 MR. HILLIARD: Right.

12 MS. WALTER: Correct.

13 THE COURT: There are several acts here, and we
14 don't know if any of them were during the period that
15 she had chlamydia.

16 MR. HILLIARD: If, in fact, she said that the
17 Defendant gave me chlamydia, he can say with certainty
18 the Defendant did not give her chlamydia. If she says
19 that he did, and my witness will say that he didn't,
20 that's important. And that's what we have.

21 MS. WALTER: I am telling you, she will not
22 testify to that. And Dr. Rahter will testify that it
23 is imminently possible to have sex with someone with
24 chlamydia and not pass it.

25 THE COURT: Okay, okay. Well, I think then what

1 we're getting into is into the area of impeachment. So
2 I would let you put her on the stand and ask her that
3 question.

4 MS. WALTER: Ask who which question?

5 THE COURT: Ask the victim that question. That
6 question meaning, did your stepfather give you
7 chlamydia; is that what you have said and is that your
8 position?

9 MR. HILLIARD: Well, and let me ask specifically,
10 did you tell this person who says that she told her
11 that, that your stepfather had given you an STD?
12 That's in the report. I have a transcript of the
13 police report where this police officer was
14 interviewing the witness --

15 THE COURT: Yeah, but she's not testifying to
16 that. I think the issue is whether or not she would
17 say under oath that he did it, and then you impeach her
18 on that.

19 MR. HILLIARD: Well, yes, sir. But if she said it
20 before, the question of whether she said it --

21 THE COURT: Good Lord, Mr. Hilliard, if we were
22 all impeached by anything we've ever said, we would be
23 in trouble, you know, if you looked at everything we
24 said to friends and confidantes and everything else.
25 I'm interested in whether or not you can impeach her

1 for what she says in this courtroom and under oath.

2 MR. HILLIARD: Well, at this point she knows he
3 didn't give her chlamydia because she knows he never
4 had it.

5 MS. WALTER: That's -- I have not discussed it
6 with her. And it still doesn't matter because the
7 State does not agree that there is any way to tell that
8 you never had it. It can be cured with -- I just put
9 my notes away -- I think it was --

10 THE COURT: And I understand that. We all
11 understand, we've beaten it to death, we understand
12 that it can be cured. You can -- it's a virus or
13 whatever, you can take antibiotics and it goes away;
14 okay?

15 MR. HILLIARD: Yes, sir.

16 THE COURT: The issue is whether there is
17 scientific evidence to support his expert's position
18 that it is still detectible. Now, I know that there
19 are tests similar for other conditions. I don't know
20 anything about chlamydia or whether it's detectible. I
21 don't know.

22 I do know if you've had a heart attack, they can
23 draw blood and tell you if you've ever had a heart
24 attack just based on proteins or whatever, the way they
25 do it. I mean, that is within the realm of science.

1 It's done every day in the medical setting. It's done.
2 Now, whether or not that is true about chlamydia, I
3 have to see it.

4 Now, Mr. Hilliard, you know, I don't know what to
5 tell you other than this. Your client -- I mean your
6 witness has formed an opinion.

7 MR. HILLIARD: Yes, sir.

8 THE COURT: And he may use anything that is
9 normally used in the field to formulate his opinion.
10 And if we're talking about some sort of forensic
11 expertise he might have, I would say, yeah, you can
12 rely on police reports or whatever. I want to hear
13 what he's got to say.

14 I want to find out what the -- if he's got an
15 opinion, he's already formed it, and he's formed it on
16 information already available to him. He doesn't need
17 to talk to the victim, he doesn't need to talk to her
18 mother. He has formed his opinion. If he has one,
19 he's got it now. So let's hear what it is, and let's
20 hear what it is in the morning.

21 MS. WALTER: And, Your Honor, I would also request
22 the other test results that, apparently, he's relying
23 on.

24 THE COURT: Yeah. And they are entitled to that.

25 MR. HILLIARD: Sure. We'll give them that, judge.

1 That's not a problem.

2 MS. WALTER: If they actually give it to me now,
3 I'll have my assistant go and make a copy of it.

4 THE COURT: Well, 9 o'clock in the morning, I want
5 to hear from this expert witness.

6 MR. HILLIARD: I don't know that I can get him,
7 judge.

8 THE COURT: Well, what time can you get him?

9 MR. HILLIARD: I don't know. I have to call him
10 and ask him.

11 THE COURT: Where is he?

12 MR. HILLIARD: He's in Charleston.

13 THE COURT: Well, my God, it's an hour and a half
14 drive. Just tell him to get on his horse and come.

15 MR. HILLIARD: He's a medical doctor, judge. He's
16 got --

17 MS. WALTER: He's not. Dr. Bennett is not a
18 medical doctor.

19 THE COURT: He's not a medical doctor? Is he a
20 medical doctor or not?

21 MS. WALTER: No.

22 THE COURT: Where is he, what does he do?

23 MR. HILLIARD: What he does, he does testing. He
24 does testing. He testifies in family court, he
25 testifies in criminal court. He does blood testing,

1 urine testing, hair testing.

2 THE COURT: Wonderful. I mean --

3 MS. WALTER: He is not a medical doctor. He had a
4 degree in pharmacology.

5 THE COURT: And I have doctors who testify all the
6 time that are not medical doctors, they have PhD's. We
7 qualify them as experts, and we qualify them with far
8 less than a PhD.

9 MS. WALTER: Right. But there is a difference
10 between a PhD and Mr. Hilliard's statement that he is a
11 medical doctor.

12 MR. HILLIARD: I misspoke. Thank you.

13 MS. WALTER: He is absolutely not a medical
14 doctor.

15 THE COURT: And we are beginning to call
16 pharmacists now doctors.

17 MS. WALTER: Except he is not a practicing
18 pharmacist. And he is under a cease and desist order.

19 THE COURT: Well, whatever he is, let's see if we
20 can qualify him. Now, I don't understand. We're
21 talking about 18 hours lead time. Why can't -- I mean,
22 why can't he drive up here in 18 hours?

23 MR. HILLIARD: I'm not saying he can't. I just
24 haven't talked to him. What I envisioned was that he
25 would testify at the end of their case. So the only

1 thing he knows from me is --

2 THE COURT: That's not what the statute says. It
3 says that we will have a hearing on it, okay.

4 MR. HILLIARD: Well, that's if I am -- and I know
5 we've been down this circle. Let me not even try to go
6 past that. The thing is, in order, I believe, judge,
7 for Your Honor to make an informed decision about this,
8 I need to ask Dr. Rahter like three questions.

9 THE COURT: No, I'm not going to go there.
10 Your -- if your guy has an opinion, he has formulated
11 it based on a report you've already been given. He
12 doesn't need to go any further than that. And the
13 reason I say that the rape shield requires a hearing,
14 that hearing is required to determine whether or not
15 the rape shield is even applicable, in my view.

16 MR. HILLIARD: And it's just not.

17 THE COURT: And then the secondary question is if
18 it is applicable, is this an exception to it.

19 MR. HILLIARD: The expert doesn't have anything to
20 say about that, truthfully.

21 THE COURT: About what?

22 MR. HILLIARD: About whether the rape shield is
23 applicable or not.

24 THE COURT: No, he's not -- that's my decision.

25 MR. HILLIARD: Yes, sir.

1 THE COURT: That's mine.

2 MR. HILLIARD: Right, exactly.

3 THE COURT: What I want to do is hear what he's
4 got to say.

5 MR. HILLIARD: All right.

6 THE COURT: I want to hear him.

7 MS. WALTER: Your Honor, could I get copies of
8 those reports and I'll have Magdalena make copies now?

9 THE COURT: Well, before we leave. But I want to
10 move on to the next motion, I want to get the next
11 thing in line, okay. What's next?

12 MR. HILLIARD: Well, if we could start out, judge,
13 as I understand it, the representation made to the
14 Court by the prosecutor, and I ask her to confirm this,
15 that they have run national criminal information
16 computer printouts --

17 THE COURT: The NCIC's on the victim and all the
18 State's witnesses. And I was informed in chambers that
19 none of them have any convictions; is that correct,
20 Ms. Walter?

21 MS. WALTER: That is correct. And I would be
22 happy to show Your Honor.

23 THE COURT: Don't need to.

24 MS. WALTER: There are no convictions.

25 THE COURT: You are telling me that there are

1 none, and Mr. Hilliard has expressed to me that that's
2 good enough for him as long as he can rely on it and
3 it's part of the record. Right, Mr. Hilliard?

4 MR. HILLIARD: That is correct, Your Honor.

5 THE COURT: Okay.

6 MR. HILLIARD: That is correct. And then we also
7 had, judge, the body cam that we talked about in
8 chambers.

9 THE COURT: Yeah. There was a cutoff of the body
10 cam. The State says that was the end of the video or
11 audio, whatever it was. The body cam ended when the
12 one that you've been provided ends; right?

13 MS. WALTER: The body cam -- what I did was I
14 talked to Detective Johnson. The original, for lack of
15 a better word, has been purged off their system for
16 quite some time. Detective Johnson makes copies of the
17 body cams that he provides to the solicitors. His copy
18 is exactly what we have. So beyond what we have,
19 nothing exists.

20 THE COURT: There is nothing else?

21 MS. WALTER: There is nothing else to give.

22 THE COURT: Okay, all right.

23 MR. HILLIARD: Thank you, Your Honor. We renew,
24 judge, our motion about joinder of the cases. You've
25 already ruled on that.

1 THE COURT: Right.

2 MR. HILLIARD: But just for the purposes of this
3 record, we renew that motion, and we'd ask you to
4 separate the cases.

5 THE COURT: The two charges?

6 MR. HILLIARD: The two charges, yes, sir, on the
7 two victims. Our motion to limit the testimony to the
8 timeframe of the indictments. We have a written motion
9 to that effect, which we passed up to the Court. Will
10 you make that part of the record?

11 THE COURT: Yes. Was it not filed?

12 MR. HILLIARD: No, sir, we haven't filed it. We
13 brought it today.

14 THE COURT: Let me find that one, and I'll
15 certainly make it part of the record.

16 MR. HILLIARD: Shall I pass it to the court
17 reporter, judge?

18 THE COURT: This is the one limiting their
19 testimony to events that occurred within the timeframe
20 presented by the State's amended indictments; is that
21 correct?

22 MR. HILLIARD: Yes, sir.

23 THE COURT: Okay, all right. Let me hear you on
24 it.

25 MR. HILLIARD: Well, I think you've already ruled,

1 judge, that they are going to -- my position is that
2 the State's testimony or what we've been shown by --
3 tomorrow at 9:00, judge, he'll be here.

4 THE COURT: Good. See how easy that was?

5 MR. HILLIARD: Didn't know. I don't want to
6 promise something I can't deliver. That would be bad.

7 So, motion to limit testimony to the timeframe of
8 the indictment. Based on the fact that, according to
9 the information that we have, the prosecuting witness
10 in this case will say that her stepfather, the
11 Defendant, started giving her beer and marijuana when
12 she was ten years old and started rubbing on her and
13 that sort of thing. And those activities are not
14 contained, that timeframe, is not within the
15 indictment.

16 THE COURT: Yeah, but that doesn't curiate the
17 offense either. That goes to a Lyle-type analysis,
18 it's other bad acts. I think it comes in under the res
19 gestae. I think it's admissible.

20 MR. HILLIARD: Thank you, judge.

21 THE COURT: Now, is there any evidence of
22 penetration, anything of that nature, outside of the
23 indictment period?

24 MS. WALTER: I don't believe so, Your Honor.

25 THE COURT: Okay, all right. What we're talking

1 about is kind of warm-up activity, for lack of a better
2 phrase, would you say grooming?

3 MS. WALTER: Yes.

4 THE COURT: That sort of testimony?

5 MS. WALTER: Yes, Your Honor.

6 THE COURT: And I would allow it as -- well, I'll
7 hear from you, Ms. Walter.

8 MS. WALTER: Well, you anticipated my argument. I
9 do believe that it is part of the grooming behavior
10 because, essentially, it's let me give you beer, let me
11 give you marijuana, I'm going to earn this trust, and
12 it builds from there. I do not believe that there will
13 be any testimony regarding penetration outside of the
14 indictment period. But, certainly, what happened
15 leading up to the actual crime is very probative and
16 relevant and not unduly prejudicial.

17 THE COURT: Okay. Well, I think it comes under
18 the res gestae. And if I look at it from a 403
19 analysis, I think that its probative value, that is, it
20 goes to show his intent, his -- it supports the
21 repeated nature of this. It goes to the fact that he
22 was in a position of a parent over this child and
23 control over the child. It perhaps might even suggest
24 why there was a delay in reporting and that sort of
25 thing.

1 I think that it has probative value, and
2 considering the overall nature of this thing, its
3 probative value substantially outweighs the prejudicial
4 effect that it might have. The actual allegations are
5 much greater than this giving someone beer or giving
6 someone marijuana when they are a minor. I think it
7 goes way beyond that. Okay, all right. Thank you.

8 MR. HILLIARD: Thank you, Your Honor. We have a
9 motion for the Government to refrain from using the
10 term victim in talking about the --

11 THE COURT: You know, Mr. Hilliard, as best I can,
12 I will refer to them as the alleged victim. You can
13 refer to them as alleged victim. You know, victims,
14 defendants, I don't think it prejudices anyone. I am
15 very careful about explaining to the jury that what an
16 indictment is and how nothing -- no presumptions or
17 prejudice should arise from that.

18 I try my best to protect the Defendant in every
19 case. And I will make sure that I tell the jury that
20 that is just a term of art used in the Court, it means
21 an accused person and nothing more, and that the State
22 still has the burden of proof beyond a reasonable doubt
23 because he has a presumption of innocence. I will tell
24 them all of that. But I'm not going to bog down the
25 Court with semantics when these words are used every

1 day in court. Okay. Thank you.

2 MR. HILLIARD: Thank you, Your Honor. Also,
3 judge, the motion, our motion to exclude their expert
4 testimony, I think, is at this point premature. We're
5 not really able to do that until we find out what he's
6 going to say, much in the way that Your Honor has
7 talked about our expert from today.

8 THE COURT: Okay.

9 MR. HILLIARD: So we're -- we would hold that
10 motion until such time as the expert's here and we
11 can --

12 THE COURT: All right.

13 MR. HILLIARD: -- do an in-camera hearing on it.

14 MS. WALTER: I don't believe I got that one, Your
15 Honor. I don't believe I have that motion. I'm sorry,
16 I do. It was in the file from this morning.

17 MR. HILLIARD: And then we have the voir dire to
18 talk about. There's one other thing, judge, that I
19 wanted to -- and I was -- I was holding this piece of
20 evidence because I did not want to, again, telegraph to
21 the opposition connected to...

22 THE COURT: Yes, sir, Mr. Hilliard.

23 MR. HILLIARD: Thank you, Your Honor. Judge, I
24 didn't want to go into this today, but I don't think I
25 have really any choice at this point. It's where the

1 mom and daughter allege that the STD that they say they
2 both have came from my client. It's an e-mail from the
3 mom's lawyer in a domestic case to me that existed
4 prior to this.

5 At the very bottom of it, judge, and it's not -- I
6 should have marked it then, I didn't. But, anyway, it
7 is to the effect that they both allege that they have
8 STDs which came from my client, and therefore we should
9 stay out of court. So that's another cross-examination
10 question which I would ask the mom who will know at
11 this point that I'm going to ask her the question about
12 whether or not she told her lawyer who thereafter told
13 me that my client gave her the STDs.

14 This all happened, to put it into context, she
15 goes to the rape crisis center, to the Children's
16 Recovery Center, she gets diagnosed with an STD. She
17 tells her lawyer and tells her lawyer that my client
18 gave them the STDs. And then whether she actually had
19 it or not, the mom, I don't know. But I do know that
20 at least she has told her lawyer that they both say
21 that my client gave them the STD.

22 And so I recognize that letter in and of itself
23 may not be admissible unless, again, on
24 cross-examination I'm entitled to ask her that
25 question, I think, whether or not she said, the mom

1 said, or mom talked to her daughter who said that my
2 client gave them the STD. So that --

3 THE COURT: So you're anticipating the State's
4 objection to a question that you may ask on
5 cross-examination?

6 MR. HILLIARD: No, sir. That's the reason that I
7 think -- that's the reason that I believe that it's
8 admissible to talk about whether or not my client had
9 the STD because that's them saying --

10 THE COURT: Are we going back to that now?

11 MR. HILLIARD: Well, I didn't put that piece of
12 evidence in, judge, because I wanted to save it to ask
13 that on cross-examination. But I'm afraid that I'm not
14 going to get to that if I don't go ahead and reveal it
15 now. I think by revealing it, I take away the value
16 that it has. But I don't have a choice.

17 THE COURT: Which motion are we on now? I mean,
18 I'm totally lost. Where are we back now? Have we
19 digressed?

20 MR. HILLIARD: Yes, sir. We're back to the spot
21 where I am trying to have the opportunity to
22 cross-examine on a limited basis Dr. Rahter, the mom --

23 THE COURT: Well, you do that. Your witness -- I
24 mean, your expert has a letter from her attorney. And
25 he says, I'm basing my opinion on this letter, her

1 statement that she says that he gave her chlamydia.

2 MR. HILLIARD: Yes, sir.

3 THE COURT: What's wrong with an expert basing an
4 opinion on that, a letter from her attorney?

5 MR. HILLIARD: Nothing. All right. Now --

6 MS. WALTER: I will just note that the State has
7 some concerns as to how I think it's a little ethically
8 murky how this letter comes in. Because my
9 understanding is that Mr. Hilliard represented the
10 Defendant in his divorce from the victim's mother.

11 THE COURT: Another proceeding between those
12 parties.

13 MS. WALTER: Pardon me?

14 THE COURT: Yes, it was another proceeding in
15 which she was a party.

16 MS. WALTER: Right. But this appears to go to a
17 conversation --

18 THE COURT: And she's not protected by the rape
19 shield.

20 MS. WALTER: I'm not talking about rape shield,
21 Your Honor. I believe that this would be a
22 communication that she had with her attorney. So
23 that's just our concern there.

24 THE COURT: He, the attorney, waived it if there
25 was because he sent it to Mr. Hilliard.

1 MR. HILLIARD: Yes, sir.

2 MS. WALTER: I'm not sure that the attorney can
3 waive the attorney/client privilege for the client.

4 THE COURT: Well, it would be up to her to raise
5 that. And I don't think that would work here because
6 he did it on her behalf, and apparently she told him,
7 gave him that as ammunition for a bargaining position
8 in a domestic case. So let's see what happens.

9 What are we on now, Mr. Hilliard?

10 MR. HILLIARD: Thank you, Your Honor. Voir dire,
11 I believe, judge. We both have voir dire.

12 THE COURT: Okay. I've got voir dire for you.

13 MS. WALTER: This was ruled on already, Your
14 Honor.

15 THE COURT: I still have the voir dire once we --
16 we went through this voir dire. I said, this is the
17 voir dire I'm going to do. Elizabeth saved it for me.
18 Do you want to look at it?

19 MR. HILLIARD: Yes, sir.

20 THE COURT: I mean, we did that before, and I
21 think we got to that point and everybody was satisfied
22 with it.

23 MR. HILLIARD: I'm guessing the "ours" means
24 yours.

25 THE COURT: Yeah.

1 MR. HILLIARD: Very good. Thank you, judge.

2 THE COURT: Well, mine and Ms. Smith's.

3 MR. HILLIARD: Yes, sir, as it should be. Thank
4 you, Your Honor. We have nothing additional connected
5 to do that. Do we have the...

6 (Discussion off the record.)

7 THE COURT: I mean, isn't that -- isn't this the
8 same voir dire that I looked at earlier and we talked
9 about, and we had a full voir dire hearing and this is
10 what we came up with?

11 MR. HILLIARD: Yes, sir.

12 THE COURT: Okay.

13 MR. HILLIARD: That's correct, judge. If I could
14 just mark my request for voir dire in the record.

15 THE COURT: All right. Very well.

16 MR. HILLIARD: Thank you, Your Honor. And we had
17 a motion or we have a motion, judge, to sequester the
18 witnesses. We'll do that --

19 THE COURT: Granted.

20 MR. HILLIARD: Thank you. Okay.

21 MS. WALTER: And this is just more for the
22 logistics, Your Honor. We're going to have Detective
23 Johnson, who is my --

24 THE COURT: He is your lead.

25 MS. WALTER: Right. And there are two victims in

1 this case.

2 THE COURT: Right. But they are all adults now.

3 MS. WALTER: Yes.

4 THE COURT: Okay.

5 MS. WALTER: So are you ordering that they be
6 sequestered during each other's testimony because --

7 THE COURT: No, I'll allow the victims to be here.

8 MS. WALTER: Right, okay. And everyone else, I
9 have no problem with that. We'd have a reciprocal
10 motion for sequestration.

11 THE COURT: All right, very well. And I'm pretty
12 sure we already discussed that, but that's fine.

13 MR. HILLIARD: Yes, sir.

14 THE COURT: It's almost typical now. Okay. What
15 else do we have?

16 MR. HILLIARD: That's all I can think of right
17 now, judge.

18 THE COURT: Okay.

19 MS. WALTER: Well, there was his motion to
20 preclude the forensic interviewer, and as I advised in
21 the back --

22 THE COURT: You're not going to put that up --

23 MS. WALTER: -- I have no intention of calling
24 her because --

25 THE COURT: She's over 12.

1 MS. WALTER: Exactly. It's not permitted.

2 MR. HILLIARD: Thank you. That's correct.

3 THE COURT: So that's not even an issue.

4 MR. HILLIARD: Right.

5 THE COURT: Okay, all right.

6 MR. HILLIARD: So as I understand it, they are not
7 going to call her at all.

8 THE COURT: Yes, sir.

9 MS. WALTER: Unless, as Your Honor said, it comes
10 in as a prior consistent statement based on
11 cross-examination.

12 THE COURT: Yes. And that could be an issue for
13 you, Mr. Hilliard. I'm telling you, I don't think I
14 have to rule on it because Ms. Walter says she's not
15 putting it in. But I told you that I didn't think
16 that it was admissible because, under this statute,
17 it's limited to children under 12, and she was 14 at
18 the time, so it would not be admissible to begin with.

19 However, if on cross you challenge her statement
20 or her testimony alleging that it's a recent
21 fabrication and what the rule says, it may be
22 admissible, or parts of it, as a prior consistent
23 statement; okay?

24 MR. HILLIARD: Got it.

25 THE COURT: If it complies with the rules. All

1 right. Okay. Right, everybody understand?

2 MS. WALTER: Yes. Yes.

3 MR. HILLIARD: Yes, sir.

4 THE COURT: Okay, fine, good.

5 MS. WALTER: The State's still waiting for the
6 other two reports.

7 (WHEREUPON, Defendant's Exhibit Nos. 1 through 3
8 were marked for identification only.)

9 MR. HILLIARD: We can e-mail them, judge. We
10 don't have the physical copies with us.

11 THE COURT: Okay, well, can we do it by --

12 MR. HILLIARD: We'll do it right now, judge.
13 Let's make sure it works and we got it.

14 THE COURT: All right. Did Mr. Martin have
15 several motions? Is that it? Are we done?

16 MS. WALTER: I believe that is it, Your Honor.

17 THE COURT: Is that it, okay. Someone had a
18 motion -- I mean a plea for me?

19 (Discussion off the record.)

20 THE COURT: See you in the morning.

21 MS. WALTER: So tomorrow morning at 9:00 for their
22 expert.

23 THE COURT: Right. Okay.

24 Bobby, now, we're going to be probably delayed,
25 then, in the morning, so how about get something for

1 the jury; okay?

2 BAILIFF: Okay.

3 THE COURT: All right. Thank you.

4 (Discussion off the record.)

5 THE COURT: You know, one thing that we might want
6 to do in the morning is -- we got 44 jurors coming
7 in -- is if we could go ahead and pull the jury and
8 then release the excess jurors. Because I don't know
9 how much time this is going to take in the morning.
10 But I want to go ahead and let's pull a jury first
11 thing; okay?

12 And then we'll give --

13 BAILIFF: Let them go to lunch while you're doing
14 that?

15 THE COURT: We'll let them just give them the
16 morning off or whatever they need. And at least we
17 don't have 44 tied up instead of 14, okay. All right,
18 so that's how we'll do it.

19 MS. WALTER: And then, Your Honor, just for
20 scheduling purposes, because I had asked Dr. Rahter to
21 be here tomorrow afternoon, but I don't want to have
22 her sitting around. So at this point, if we're
23 selecting the jury and doing the in-camera hearing
24 tomorrow morning, I'm thinking we wouldn't get to
25 Dr. Rahter until Wednesday, because we have two victims

1 and the mother.

2 THE COURT: Well, you know, any way you want to
3 schedule it, however you want to get to it. But we
4 want to have the in-camera hearing in the morning.

5 MS. WALTER: Right.

6 THE COURT: Okay, we're going to have it. But I
7 don't want 45 jurors sitting downstairs, or 44 jurors
8 sitting downstairs, waiting for us at 2 or 3 o'clock in
9 the afternoon to finally get around to picking a jury.

10 MS. WALTER: Right. I agree.

11 THE COURT: So I want to pick the jury first.
12 Okay? All right, thank you.

13 MR. HILLIARD: Could I bring my guy at 10:00,
14 then, if we're not going to talk to him until 10:00?

15 THE COURT: Yeah.

16 MR. HILLIARD: Thank you.

17 THE COURT: Yes. That would be fine.

18 MR. HILLIARD: Thank you, judge.

19 (WHEREUPON, the hearing adjourned at approximately
20 2:32 p.m.)

21 (WHEREUPON, the hearing resumed on Tuesday,
22 April 10, 2018, at approximately 10:36 a.m.)

23 THE COURT: Good morning. Keep your seats. Mr.
24 Bobby, we have our jury downstairs?

25 BAILIFF: Yes, sir.

1 MS. WALTER: Your Honor, I left our witness list
2 on top of your book; okay?

3 THE COURT: Okay. Have you seen this,
4 Mr. Hilliard?

5 MR. HILLIARD: Yes, sir, I have a copy of it.

6 THE COURT: Do you have someone to add to that? I
7 think you had an expert; right?

8 MR. HILLIARD: Yes, sir. I do. And, judge, in
9 regard to witnesses, before we start, I ask the Court's
10 assistance in serving a subpoena on Sabrina Houser.

11 THE COURT: Well --

12 MR. HILLIARD: And I could --

13 THE COURT: -- how would you need my assistance
14 rather than the clerk's?

15 MR. HILLIARD: Well, we can have the -- obviously,
16 the subpoena can be countersigned. Sabrina Houser,
17 judge, is the young lady that we spoke about on
18 yesterday where the complaining witness in this case
19 has told Ms. Houser --

20 THE COURT: Okay.

21 MR. HILLIARD: -- or that Ms. Houser has told the
22 police officer that the complaining witness has told
23 her.

24 THE COURT: Okay, all right.

25 MR. HILLIARD: So yesterday after court, we went

1 over to Ms. Houser's house in an attempt to talk to
2 her, knocked on the door. And someone -- don't know
3 exactly who it was -- came to the door with a baseball
4 bat and said, you better get out of here because we're
5 going to whack you with this bat.

6 THE COURT: Okay. Well, that's a clear message;
7 isn't it?

8 MR. HILLIARD: Yes, sir. I was fairly -- we left.
9 It was me and Jonathan. Jonathan is not here right
10 now, but we were dressed from court and went over there
11 directly from court, and they --

12 THE COURT: Okay. Well, you know, prepare a
13 subpoena.

14 MR. HILLIARD: Yes, sir. We've done that. It's
15 being countersigned now, and I'll bring it up.

16 THE COURT: All right. I'll be happy to assist
17 you in that, okay.

18 MR. HILLIARD: Thank you, Your Honor.

19 THE COURT: He has a right to have -- for me to
20 compel attendance of any witness, all right. I'll be
21 happy to do so.

22 MR. HILLIARD: And then, if I could make a copy of
23 this, look at it as the Defendant and his mom and
24 Defendant and Houser. I'll pass this up, judge. Oh,
25 yeah, and your sister.

1 THE COURT: Okay. Do you have a witness list,
2 Mr. Hilliard?

3 MR. HILLIARD: Yes, sir.

4 THE COURT: Okay. Let me just add those to the
5 one that the State has. Who do you have?

6 MR. HILLIARD: Scott Rowan, Jr --

7 THE COURT: Okay.

8 MR. HILLIARD: -- the Defendant; Rebecca Rowan,
9 his mother; Robert Bennett, the expert.

10 THE COURT: Wait a minute.

11 MR. HILLIARD: I'm sorry.

12 THE COURT: Rebecca?

13 MR. HILLIARD: Rebecca Rowan, yes, sir.

14 THE COURT: Okay. Who else?

15 MR. HILLIARD: Robert Bennett, the expert.

16 THE COURT: Is that Dr. Robert Bennett?

17 MR. HILLIARD: PhD, judge. Yes, sir. Thank you.

18 THE COURT: Okay.

19 MR. HILLIARD: Sabrina Houser.

20 THE COURT: Houser?

21 MR. HILLIARD: Yes, sir.

22 THE COURT: Okay.

23 MR. HILLIARD: And Sandra Reid. And Sandra is a
24 sister of the Defendant.

25 THE COURT: Okay. Ms. Walter, is it Haydee

1 Sencion?

2 MS. WALTER: Pardon me? Oh, Haydee Sencion.

3 THE COURT: Sencion, okay.

4 MS. WALTER: And it's Raymond Olszewski.

5 THE COURT: Olszewski.

6 MS. WALTER: Olszewski.

7 THE COURT: Good old Horry County name.

8 MS. WALTER: And the victim's mother pronounces
9 her first name Anatasya.

10 THE COURT: Okay, Anatasya Herron. Okay, I think
11 I can -- and [REDACTED] O.E. [REDACTED]; right?

12 MS. WALTER: Yes.

13 THE COURT: Okay. I think I can get those down,
14 all right. Why don't we get Chris. All right. Is he
15 getting the jury out? Chris.

16 THE DEPUTY: You ready for him?

17 THE COURT: Do I have the indictments, please.

18 All right, we're going forward on two indictments;
19 right?

20 MS. WALTER: Yes, Your Honor.

21 THE COURT: Criminal sexual conduct with a minor
22 in the second degree and criminal sexual conduct with a
23 minor in the third degree.

24 (WHEREUPON, the jury came into open court at
25 approximately 9:31 a.m.)

1 (Discussion off the record.)

2 THE COURT: All right. Mr. Ropp, is that
3 everyone? We got one more? Okay. Now, remember,
4 there is 44, Mr. Ropp. There you go. Well, I hope you
5 miscounted because we got two more. Thank you, thank
6 you.

7 And it's good to see you all again. Everybody got
8 a seat there? There you go. Ladies and gentlemen, you
9 know, on yesterday, I told you that the jury selection
10 or qualification process was sort of like in two
11 phases, and yesterday we talked about whether or not
12 you would be a qualified juror in this state. And we
13 made the determination that all of you are qualified
14 jurors. This part of the process that we're about to
15 engage in is where we determine whether or not you have
16 any interest, prejudice, bias concerning this
17 particular case.

18 And in that regard, we're going to talk a little
19 bit about the case. This is the case of the State of
20 South Carolina versus Scott Richard Rowan. Mr. Rowan
21 is seated here at the Defense table with his attorney,
22 Mr. Hilliard. I'll introduce Mr. Hilliard to you in
23 just a short while.

24 Let me tell you that, in this particular case, two
25 indictments have been handed down. The indictments

1 allege the following: First, one indictment alleges
2 that he committed the offense of criminal sexual
3 conduct with a minor in the second degree. And that
4 indictment says that Scott Richard Rowan did, in Horry
5 County, State of South Carolina, on or about or between
6 the dates of April 15, 2013, and April 15, 2015,
7 willfully and unlawfully commit the crime of criminal
8 sexual conduct with a minor in the second degree by
9 engaging in sexual battery with a minor, who is at
10 least 14 years of age but who is less than 16 years of
11 age, to wit, [REDACTED] J.H. [REDACTED], whose birthday is April
12 the 15th, 1999.

13 And the Defendant was in a position of familial,
14 custodial, or official authority to coerce the victim
15 to submit or was older than the victim in violation of
16 the statutory laws of this state.

17 There is a second indictment which alleges that
18 Mr. Rowan committed the offense of criminal sexual
19 conduct with a minor in the third degree. And that
20 indictment alleges that Mr. Rowan, being approximately
21 30 years of age, did, in Horry County, on or about or
22 between the dates of May the 9th, 2010, and May 9,
23 2012, willfully and literally commit or attempt to
24 commit a lewd or lascivious act upon the body or its
25 parts of a child less than 16 years of age with the

1 intent of arousing, appealing to, or gratifying the
2 lust or passions or sexual desires of said Defendant or
3 of the victim in violation of the statutory laws of
4 this state.

5 Now, let me tell you a little bit about how the
6 process works. You're probably all familiar with the
7 process where someone is arrested and you've heard the
8 term arrest warrant used. That is nothing more than a
9 document issued by a magistrate judge, in most cases,
10 allowing the arrest of a person.

11 A case is not brought before this Court unless
12 there is an indictment. And the indictment is nothing,
13 nothing but a document that describes the offense and
14 puts the Defendant on notice of the offense that he is
15 charged with. It is not evidentiary in any form or
16 fashion, and you are to place no significance
17 whatsoever, if you're seated on this jury, upon the
18 fact that this Defendant may have been indicted for any
19 offense.

20 Because this Defendant, like every defendant,
21 enters this court with a presumption of innocence. It
22 is presumed that he is innocent, and that presumption
23 remains with the Defendant until such time as the State
24 meets its burden. And that burden is to convince a
25 jury unanimously that the Defendant has committed the

1 offense beyond a reasonable doubt.

2 And if you sit on this jury, I will tell you much
3 more about that in the charge on the law that I will
4 give you in the case. But I tell you from the outset
5 that those are basic principles of protection for
6 people who appear before this Court, things that you
7 should, in fact, be aware of.

8 Also, during this trial, you will hear the accused
9 referred to as Defendant. That is a term of art that,
10 by tradition, has been used in this Court. It doesn't
11 mean anything. It is simply the way we refer to the
12 person who has been accused. It does not create any
13 inference of guilt, should not be considered by you as
14 such.

15 Likewise, in many cases, there is what we refer to
16 as a victim. Again, the Court is not making any
17 determination, the attorneys are not making any
18 determination or suggesting by use of that term that
19 you should attach any significance to it. It's just
20 that we have to refer to them in some fashion. And the
21 traditions of the Court are that those terms have been
22 used.

23 Now, we're about to embark on the jury selection
24 process. And let me tell you a little bit about how it
25 works. It depends on what kind of case we have. If

1 this were a civil case, say, this week I was assigned
2 to civil court, and we had an automobile accident case
3 or something of that nature. We have a very kind and
4 gentle way that we use to select a jury. Your names
5 would be shuffled around, you'd be given anonymous
6 numbers that you would not know about, the attorneys
7 would be provided with a list just like this list, and
8 the attorneys would just, when it comes time to select
9 a jury, would exercise their strikes using these
10 anonymous numbers, and you would not even know if any
11 attorney had struck you. Now, isn't that a kind and
12 gentle way of doing it?

13 Criminal court, it is quite different. On the
14 criminal side, your names will be called. Again,
15 you're placed in random order. You're called as we go
16 down the list. But you have to come forward, right
17 around here, turn around and face the attorneys and
18 your fellow jurors, and it will go something like this:
19 The State first will say either, Your Honor, excuse
20 this juror. And that means that the State has
21 exercised a strike. Or the State may say, Your Honor,
22 present the juror. And if that's the case, then the
23 juror is presented to the Defense.

24 The Defendant's attorney then would say either,
25 Your Honor, excuse this juror, and in that case the

1 Defense has exercised a strike. And if that's the
2 case, you would return to your seat. If the Defense
3 says, seat or swear the juror, then you would come
4 around and you'd be placed in the jury box, and you
5 would serve on the jury.

6 Now, let me tell you a little bit about that
7 process. As you can tell by my appearance, I've been
8 at this a long, long time. I've been on the bench over
9 ten years, and I've practiced law for 32. And I can
10 say this with some assurance, during that process these
11 lawyers are going to be making faces, they are going to
12 be scratching their heads, they are going to be
13 whispering back and forth, they are going to be giving
14 you the appearance of knowing what they are doing. But
15 I can tell you they do not. They don't have a clue.

16 Would you agree with that, Ms. Walter?

17 MS. WALTER: I would, Your Honor.

18 THE COURT: Mr. Hilliard?

19 MR. HILLIARD: Yes, sir, judge. I would like to
20 think I do, but I don't.

21 THE COURT: That is the most difficult thing.
22 That's absolutely no reflection on these fine,
23 experienced lawyers. It's just the most difficult
24 thing that a lawyer has to do because that lawyer has
25 to make almost a snap judgment. Of course, each lawyer

1 wants to select jurors that they feel will be
2 receptive, sympathetic to their position in the case.
3 They want fair jurors. But they don't know you.

4 So if you are struck, I hope that you're not
5 embarrassed by that fact. I hope that you don't feel
6 hurt by the fact that either side may have struck you.
7 On the next case, they may be happy to have you. As my
8 mentor, Judge Floyd, used to say, they may strike you
9 because you part your hair on the left or you part your
10 hair on the right or you got no hair to part. It's
11 just a gut reaction, and they are doing the very best
12 that they can for their clients and their position in
13 the case.

14 Now, I tell you that, and you're probably all
15 standing out there thinking, I hope I get struck so I
16 can go home. But let me say this, I've talked to many,
17 many jurors over the years. And most jurors who end up
18 trying a case, particularly a serious case like this,
19 of course they are all serious, but when it's done,
20 they have a greater appreciation for the protections
21 provided to them and the system that we have in this
22 country.

23 Do you know that 95 percent of all jury trials in
24 the world are tried in the United States? This is
25 something we take for granted, but it's not the rule in

1 so many other places. And I hope that you will come to
2 appreciate that, if you do serve. You should
3 understand that while you may look at this as an
4 obligation and an inconvenience, you have the right as
5 jurors or qualified jurors to decide some of the most
6 important decisions in this country.

7 When the courts can't resolve it, when the
8 attorneys can't resolve it, we call a jury. And that
9 jury comes in, and you become kings and queens for a
10 day because what you say is what happens. If I make a
11 mistake in a ruling, it can always go up to the Supreme
12 Court, and the Supreme Court can tell me I did it
13 wrong. They have before. But nobody invades the
14 province of the jury. That's how important it is.

15 You know, you've already taken one oath, and in a
16 moment you're going to take another oath to answer some
17 questions for me truthfully. And if you get on the
18 jury, you're going to take another oath. That's three
19 times you have to take an oath to act reasonably,
20 ethically, and responsibly in your service as a juror.
21 If this were a death penalty case, the State's most
22 important witness would only have to take an oath once.
23 I think that's indicative of how smart -- I mean, how
24 important a jury is.

25 Okay. Deputy, just lock up the next person that

1 walks in, please. Thank you.

2 Now, I'm going to ask the clerk to place you under
3 oath because there are some questions I have to ask you
4 about any interest you might have in this case.

5 Would you place them under oath, Madam Clerk.

6 THE CLERK: Please stand and raise your right
7 hand.

8 (WHEREUPON, all jurors were duly sworn.)

9 THE COURT: All right. Now, was there anyone who
10 refused to take that oath?

11 Let the record reflect there was no response.
12 You'll hear me throughout the trial say that
13 occasionally where I ask you to nonverbally respond to
14 something. As I told you on yesterday, everything in a
15 trial in the Court of General Sessions or Common Pleas
16 has to be recorded. So that's why I often turn to
17 Ms. Bautz and say, there was no response to that,
18 because she has to record there was no verbal response
19 to that.

20 Now, listen very carefully, if you would, to the
21 questions I have again. As I told you, this is the
22 case of the State of South Carolina versus Scott
23 Richard Rowan.

24 Now, is anyone on this jury panel related by blood
25 or marriage, are you close personal friends of, do you

1 have any social contacts with, you attend church with,
2 are you in a civic club with, do you know the Defendant
3 in this case, Scott Richard Rowan? And there is no
4 response.

5 I would ask you the same question about the
6 alleged victims in this case, J.H. [REDACTED]
7 and -- was it A.R. ?

8 MR. HILLIARD: Yes, Your Honor.

9 THE COURT: -- A.R. [REDACTED].

10 Anybody related by blood or marriage, or are you
11 friends with, do you know anything about either of
12 these people? And there was no response to that.

13 I want to ask you the same thing about potential
14 witnesses in this case. And let me tell you about the
15 potential witness list. I asked the attorneys to give
16 me the names of anybody who might possibly try -- or
17 testify in this case. If you hear a name during this
18 voir dire and you're on the jury and that person
19 doesn't testify, don't attach any significance at all
20 to that fact. It's just that I want to know who might
21 possibly be a witness.

22 Now, the potential witnesses in this case are:
23 Detective Jack Johnson, Dr. Carol Rahter, Haydee
24 Sencion, J.H. [REDACTED], A.R. [sic] [REDACTED]
25 [REDACTED], Anatasya Catheryn Herron, O.E. [REDACTED],

1 Raymond Olszewski -- and I believe he is a PhD or a
2 doctor?

3 MS. WALTER: No, Your Honor.

4 THE COURT: Okay, all right. Scott Rowan, Rebecca
5 Rowan, Dr. Robert Bennett, Sabrina Houser, and Sandra
6 Reid. Anybody related by blood or marriage, do you
7 know these people, do you have any sort of connection
8 whatsoever with any of these potential witnesses?

9 Yes, ma'am, right there in the black. Would you
10 stand and give us your name and number.

11 JUROR #269: My name is Margaret Parker, my juror
12 number is 269. And about 10, 12 years ago, I worked at
13 the same facility as Dr. Rahter.

14 THE COURT: All right. Well, let me ask you this.
15 Would the fact that you, ten or so years ago, worked
16 with Dr. Rahter in any way affect your ability to be a
17 fair and impartial juror?

18 JUROR #269: Absolutely not.

19 THE COURT: Could you be fair to both the State
20 and the Defense?

21 JUROR #269: Absolutely.

22 THE COURT: Thank you very much for your response.

23 All right. Anyone else? And there is no further
24 response.

25 Now, let me tell you about the attorneys in this

1 case. Seated here to my left, your right, is Mary
2 Ellen -- Ms. Mary Ellen Walter, and with her is
3 Mr. George Henry Martin. Ms. Walter and Mr. Martin are
4 attorneys. They are -- they work for the Solicitor's
5 Office for the Fifteenth Circuit.

6 That would be Mr. Jimmy Richardson. He's our
7 elected solicitor. They have both been practicing here
8 in that capacity for some while. I don't think they
9 have ever practiced in the private sector, have you, in
10 Horry County?

11 MS. WALTER: No, Your Honor.

12 THE COURT: All right, very well. Thank you very
13 much.

14 Over to my right, and again to your left -- or
15 right, the gray-haired man, that is Mr. John Hilliard.
16 Mr. Hilliard is a senior member of our bar. He
17 practices over primarily in Georgetown County, but he's
18 back and forth in the circuit, Horry and Georgetown
19 Counties, been with us for quite some time. And he is
20 representing the Defendant, Mr. Rowan.

21 Has anyone ever been represented in the past or
22 are you presently represented by Mr. Hilliard, are you
23 close personal friends of Mr. Hilliard, do you have any
24 social contact with Mr. Hilliard, do you know
25 Mr. Hilliard? And there was no response to that.

1 MR. HILLIARD: 37 years, judge. You said 32, but
2 I remember when you started. It's 37.

3 THE COURT: I was trying to slip a little bit.

4 MR. HILLIARD: Well, you called me out for being
5 old, so...

6 THE COURT: And I didn't ask, but does anyone have
7 any kind of relationship by blood or marriage, or do
8 you have any social relationship, are you friends with
9 Mr. Martin or Ms. Walter?

10 (No response.)

11 THE COURT: All right, okay. Has any member of
12 the jury panel formed any opinion, bias, prejudice
13 about this particular case? When I ask you that, I
14 want to know if, perhaps, you -- I don't know if there
15 was ever anything in the newspaper or the media about
16 it, but if there was, do you recall ever reading
17 anything about it?

18 Have you discussed the case with anyone? Do you
19 have any prejudice or bias against either the State or
20 the Defendant in a case like this? Is there any reason
21 that you feel that you shouldn't serve as a juror on
22 this case? And there was no response to that.

23 The indictments in this particular case were
24 issued in 2016. And I think my voir dire yesterday or
25 my qualification yesterday would cover this, but was

1 anyone a member of the Horry County Grand Jury in 2016?

2 And there is no response to that.

3 Is any member of this jury panel a member of, a
4 contributor to, a part of any group whose primary
5 concern is law enforcement or victims' rights? And
6 that could be anything from MADD, SADD, CAV, which is
7 Citizens Against Violent crime, things of that nature.
8 And there is no response to that.

9 Now, specifically, let me ask you this. Is there
10 any reason why any potential juror cannot honor the
11 presumption of innocence? And I talked to you about
12 that a moment ago. Everyone who comes in this court
13 comes in with a presumption of innocence that protects
14 them throughout the trial. Is there anyone who cannot
15 honor that? And there was no response.

16 Is there any member of the jury panel or a family
17 member or a close friend who has worked or volunteered
18 at a job or activity which involved working with a
19 battered woman's shelter, a rape crisis center, or
20 anything like that? And there is no response to that.

21 Does any member of the jury panel believe that if
22 a sexual assault is not immediately reported, it did
23 not occur? And there is no response to that.

24 Has any member of the jury panel or members of
25 your family or a close friend been sexually assaulted

1 or the victim of unwanted sexual behavior?

2 Okay. Now, we have a few hands up. Add let's
3 start with the lady right here on the front to my
4 right. Yes, ma'am. Would you give us your name and
5 number, please.

6 JUROR #278: Paula Phillips. I think it was 278.

7 THE COURT: 278, all right. Ms. Phillips, were
8 you the victim or a family member or friend?

9 JUROR #278: I was.

10 THE COURT: Pardon?

11 JUROR #278: I was.

12 THE COURT: All right. And would that affect your
13 ability to be a fair and impartial juror in this case?

14 JUROR #278: I don't think so.

15 THE COURT: Could you set that aside and give both
16 the State and the Defense a fair trial?

17 JUROR #278: Yes, sir.

18 THE COURT: Very well. Thank you.

19 Gentlemen with the red cape on his jacket, yes,
20 sir.

21 JUROR #114: 114.

22 THE COURT: 114. And your name?

23 JUROR #114: Vernie Fowler.

24 THE COURT: All right. Was it you or a family
25 member?

1 JUROR #114: It was a family member.

2 THE COURT: A family member, okay. And how long
3 ago was that?

4 JUROR #114: It's about six years.

5 THE COURT: Okay. Would that affect your ability
6 to be a fair and impartial juror in this case?

7 JUROR #114: Unfortunately, yes, sir.

8 THE COURT: It would? Then I will set you aside.
9 Thank you, sir.

10 Yes, ma'am. Your name?

11 JUROR #290: Casandra Ray.

12 THE COURT: Ms. Ray. And what is your number?

13 JUROR #290: 290.

14 THE COURT: 290, all right. Ms. Ray, was it a
15 family member, or a friend, or was it you?

16 JUROR #290: Family member.

17 THE COURT: A family member. And how long ago was
18 that?

19 JUROR #290: Probably been like 20 years now.

20 THE COURT: Okay. And would it affect your
21 ability to be fair in this case?

22 JUROR #290: No.

23 THE COURT: Could you give both sides a fair
24 trial?

25 JUROR #290: Yes, sir.

1 THE COURT: You could. Thank you, Ms. Ray.

2 All right. Anyone else? Yes, sir -- yes, ma'am.

3 Back in the back, I didn't see you.

4 JUROR #170: Gertrude Hynes, Number 170.

5 THE COURT: And were you the victim or a family
6 member?

7 JUROR #170: I was the victim.

8 THE COURT: You were, okay. And how long ago was
9 that?

10 JUROR #170: 50 years.

11 THE COURT: 50 years ago. And could you set that
12 aside and be fair and impartial in this trial?

13 JUROR #170: I believe I could, yes.

14 THE COURT: And could you give both sides a fair
15 trial?

16 JUROR #170: Definitely.

17 THE COURT: Definitely, okay. Thank you ma'am.

18 Anyone else? All right. Yes, there is another
19 back there. I'm sorry, I didn't see those hands. Yes,
20 ma'am, your name?

21 JUROR #388: Michelle White.

22 THE COURT: And Ms. White, your number?

23 JUROR #388: 388.

24 THE COURT: All right. And were you a victim, a
25 family member, a friend?

1 JUROR #388: I was.

2 THE COURT: You were. And how long ago was that?

3 JUROR #388: About 39 years.

4 THE COURT: Okay. And could you set that aside
5 and be fair and impartial in this trial?

6 JUROR #388: Yes, Your Honor.

7 THE COURT: Could you give both parties a fair
8 trial?

9 JUROR #388: Yes, sir.

10 THE COURT: All right. Thank you so much.

11 Anyone else? All right. Has any member of the
12 jury panel or a close family member or friend ever been
13 accused of a sexually related offense? And there is no
14 response to that.

15 Does any member of the jury panel harbor any
16 preconceived notions of how a rape victim or sexual
17 abuse victim should or will react? And there is no
18 response to that.

19 Okay. Any additional -- well, let me ask this.
20 Does any member of this jury panel know of any reason
21 whatsoever why you should not serve as a juror in this
22 case with particular emphasis being placed upon your
23 ability to be fair and impartial to both the State and
24 the Defendant? And there is no response to that.

25 Anything further from the State?

1 MS. WALTER: No, Your Honor.

2 THE COURT: Mr. Hilliard?

3 MR. HILLIARD: No, sir. Thank you very much.

4 THE COURT: Thank you. All right.

5 Madam clerk, could you give us a jury.

6 And again, if your name is called and you come
7 forward and you have some personal things with you, a
8 purse or whatever, you may be placed on the jury. So I
9 would ask that you bring it with you, just in case.
10 That way you don't have to go back to your seat; all
11 right?

12 THE CLERK: Number 30, Steven Blake. What say the
13 State?

14 MS. WALTER: Present this juror.

15 THE CLERK: Defense?

16 MR. HILLIARD: Please seat Mr. Blake.

17 THE CLERK: Please be seated in the jury box.

18 Number 388, Michelle White. What say the State?

19 MS. WALTER: Please present this juror.

20 THE CLERK: Defense?

21 MR. HILLIARD: Please excuse Ms. White from the
22 trial of this particular case. Thank you, Ms. White.

23 THE CLERK: You're excused from this particular
24 case. Number 255, Cathy Myers. What say the State?

25 MS. WALTER: Please present this juror.

1 THE CLERK: Defense?

2 MR. HILLIARD: Please seat Ms. Myers.

3 THE CLERK: Please be seated in the jury box.

4 Number 395, Jonathon Witherspoon. What say the State?

5 MS. WALTER: Please present this juror.

6 THE CLERK: Defense?

7 MR. HILLIARD: Please seat Mr. Witherspoon.

8 THE CLERK: Please be seated in the jury box.

9 Number 284, Gerald Powers. What say the State?

10 MS. WALTER: Please present this juror.

11 THE CLERK: Defense?

12 MR. HILLIARD: Excuse me just one second.

13 THE COURT: Certainly. Take all the time you
14 need.

15 MR. HILLIARD: Please seat Mr. Powers.

16 THE CLERK: Please be seated in the jury box.

17 Number 314, Robert Sauls. What say the State?

18 MS. WALTER: Please present this juror.

19 THE CLERK: Defense?

20 MR. HILLIARD: Please seat Mr. Sauls.

21 THE CLERK: Please be seated in the jury box.

22 Number 307, William Rodenmacher. What say the State?

23 MS. WALTER: One moment. Please present this
24 juror.

25 THE CLERK: Defense?

1 MS. WALTER: Present this juror. So just wait for
2 the Defense.

3 MR. HILLIARD: Please excuse Mr. Rodenmacher from
4 this case. Thank you, Mr. Rodenmacher.

5 THE CLERK: Number 11, Kailey Archibald. What say
6 the State?

7 MS. WALTER: Please present this juror.

8 THE CLERK: Defense?

9 MR. HILLIARD: Please excuse Ms. Archibald from
10 this case.

11 THE CLERK: You have been excused from this
12 particular case. Number 290, Casandra Ray. What say
13 the State?

14 MS. WALTER: Please present this juror.

15 THE CLERK: Defense?

16 MR. HILLIARD: Please excuse Ms. Ray from this
17 particular case. Thank you, ma'am.

18 THE CLERK: You're excused from this particular
19 case. Number 167, Alexis Hughes. What say the State?

20 MS. WALTER: Please present this juror.

21 THE CLERK: Defense?

22 MR. HILLIARD: Please excuse Ms. Hughes from this
23 particular case. Thank you.

24 THE CLERK: You're excused from this particular
25 case. Number 239, Gerard McMullin. What say the

1 State?

2 MS. WALTER: Please present this juror.

3 THE CLERK: Defense?

4 MR. HILLIARD: Please excuse Mr. McMullin from
5 this particular case. Thank you, sir.

6 THE CLERK: You're excused from this particular
7 case. Number 143, Myranda Richardson. What say the
8 State?

9 MS. WALTER: Please present this juror.

10 THE CLERK: Defense?

11 MR. HILLIARD: Please seat Ms. Richardson.

12 THE CLERK: Please be seated in the jury box.
13 Number 329, Sarah Smith. What say the State?

14 MS. WALTER: Please present this juror.

15 THE CLERK: Defense?

16 MR. HILLIARD: Please excuse Ms. Smith from this
17 particular case.

18 THE CLERK: You're excused from this particular
19 case. Number 144, William Hampton. What say the
20 State?

21 MS. WALTER: Please present this juror.

22 THE CLERK: Defense?

23 MR. HILLIARD: Please seat Mr. Hampton.

24 THE CLERK: Please be seated in the jury box.
25 Number 26, Jeffrey Bienick. What say the State?

1 MS. WALTER: Please present this juror.

2 THE CLERK: Defense?

3 MR. HILLIARD: Mr. Bienick?

4 JUROR #26: Bienick.

5 MR. HILLIARD: Bienick. Please seat Mr. Bienick.

6 THE CLERK: Please have a seat in the jury box.

7 Number 203, Sheila Lee. What say the State?

8 MS. WALTER: With the Court's indulgence, one
9 moment.

10 (Discussion off the record.)

11 MS. WALTER: Please present this juror.

12 THE CLERK: Defense?

13 MR. HILLIARD: Please seat Ms. Lee.

14 THE CLERK: Please be seated in the jury box.

15 Number 170, Gertrude Hynes. What say the State?

16 MS. WALTER: Please present this juror.

17 THE CLERK: Defense?

18 MR. HILLIARD: Please excuse Ms. Hynes from this
19 particular case.

20 THE CLERK: You're excused from this particular
21 case. Number 250, Mary Mimms. What say the State?

22 MS. WALTER: Please present this juror.

23 THE CLERK: Defense?

24 MR. HILLIARD: Please seat Ms. Mimms.

25 THE CLERK: Please be seated in the jury box.

1 Number 330, Heather Snyder. What say the State?

2 MS. WALTER: Please present this juror.

3 THE CLERK: Defense?

4 MR. HILLIARD: Please seat Ms. Snyder.

5 THE CLERK: Please be seated in the jury box.

6 Number 216, Dale MacNeill. What say the State?

7 MS. WALTER: Please present this juror.

8 THE CLERK: Defense?

9 MR. HILLIARD: Please seat Mr. MacNeill.

10 THE CLERK: Please be seated in the jury box.

11 THE COURT: Two alternates, one strike each. The
12 alternates will be from 21 to 23 for the first
13 alternate and then 24 to 26 for the second. Okay, do
14 you follow that?

15 MR. HILLIARD: No, sir.

16 THE COURT: Okay. On your list, we're down to
17 number 21, I believe.

18 MR. HILLIARD: Yes, sir.

19 THE COURT: First alternate will be drawn from 21,
20 22, and 23. Each of you will have one strike out of
21 those three. The second alternate will be the next
22 three, 24, 25 and 26. And you'll each have one strike.

23 MS. WALTER: May we approach just for a moment?

24 THE COURT: Yes.

25 (WHEREUPON, a bench conference was held off the

1 record in the presence of the jury panel but out
2 of the hearing of the jury panel.)

3 THE COURT: Okay.

4 THE CLERK: Number 251, Shanta Mines. What say
5 the State?

6 MS. WALTER: Please present this juror.

7 THE CLERK: Defense?

8 MR. HILLIARD: Please seat Ms. Mines.

9 THE CLERK: Please have a seat in the jury box.
10 Number 278, Paula Phillips. What say the State?

11 MS. WALTER: Please present this juror.

12 THE CLERK: Defense?

13 MR. HILLIARD: Please excuse Ms. Phillips from
14 this particular case.

15 THE CLERK: You're excused from this particular
16 case. Number 188, Lisa Kitzmiller. What say the
17 State?

18 MS. WALTER: Please excuse this juror.

19 THE CLERK: You're excused from this particular
20 case. Number 128, Andrew Godfrey. What say the State?

21 MS. WALTER: Please present this juror.

22 THE COURT: Defense?

23 MR. HILLIARD: Please seat Mr. Godfrey.

24 THE COURT: Please be seated in the jury box.

25 All right. Ms. Walter, will there be challenges

1 to the panel?

2 MS. WALTER: No, Your Honor.

3 THE COURT: Mr. Hilliard?

4 MS. WALTER: No, sir, Your Honor. Thank you.

5 THE COURT: All right. Ladies and gentlemen, that
6 is our jury for this particular case. The balance of
7 this jury panel is excused. You're probably excused
8 for the week, but I would ask you to please call back
9 after 6:00 today to make certain that we will not be
10 needing you.

11 And I will tell you, this does count as a full
12 week of jury service, and you may use it to be excused
13 in the future if you are called. Thank you again for
14 your attendance. We appreciate it. You're welcome to
15 stay, of course, if you would like. Just like any
16 other citizen, you have the right to observe what goes
17 on in court. I don't usually have many people who take
18 me up on that. I just want you to know that you are
19 welcome to stay if you wish. Thank you very much.

20 (WHEREUPON, the remainder of the jury panel exited
21 the courtroom at 10:20 a.m.)

22 (Discussion off the record.)

23 THE COURT: All right, ladies and gentlemen, let
24 me tell you where we are in this case. Ms. Mines, is
25 Ms. Mines back there? And Mr. Godfrey?

1 JUROR #128: Yes, sir.

2 THE COURT: Mr. Godfrey and Ms. Mines, I would ask
3 you to always occupy those seats when we come back in
4 the courtroom. You are our alternates, and we need to
5 be able to always identify our alternates.

6 Mr. MacNeill, you got the magic seat. You, I'm
7 going to ask to serve as the foreperson of our jury.
8 In that regard, you will essentially be the liaison
9 between this jury and the Court. Should you need
10 anything, send a note to me.

11 Mr. Ropp, if you need me, just knock on the door
12 and have Mr. Ropp come and take your note. If he
13 doesn't respond, open the door and shake him, he wakes
14 up pretty easily. Okay? Get a note to Mr. Ropp, and I
15 will certainly do it. It's also your job to preside
16 over the actual deliberations at the end of the trial
17 and to make sure that the jury follows my instructions
18 during the trial.

19 On yesterday, as is often the case, in fact,
20 almost always the case, when a case is coming for
21 trial, there are issues that need to be resolved by the
22 Court. And that's what we did yesterday afternoon.
23 There was one issue that we could not get to because it
24 required some testimony, and that witness was not
25 available so we had to delay it.

1 I had already told you to be here early in the
2 morning, and I didn't want you sitting downstairs in
3 the jury room forever. So what I did was bring you up
4 so we could select a jury, and I can just give you a
5 break and let you leave the courthouse until we need
6 you.

7 I'm going to get back to that right now. And I
8 anticipate we will be done -- I certainly hope so -- by
9 1 o'clock. Even if we have to work through lunch,
10 we're going to do it. So I'd ask you to come back,
11 have a nice leisurely lunch, and come back at
12 1 o'clock. And Mr. Ropp will be showing you how to
13 come directly to the jury room or how to assemble. He
14 will help you with that.

15 In the meantime, I'm going to ask that you not
16 discuss the case even among yourselves. Don't allow
17 anyone to discuss it in your presence or approach you
18 about the case. And, you know, it's so easy now with
19 these smart phones where we're all geniuses now to --
20 almost any incident that you could imagine, you can
21 look it up. Don't do that.

22 This case must be decided solely on what comes
23 from this witness stand. Don't do any extraneous
24 research, don't try to look up the names of the
25 attorneys, you know. What might be on Ms. Walter's

1 Facebook or Mr. Hilliard's is of no interest to you
2 whatsoever. Look them up later. Mine would bore you
3 to death unless you like my grandchildren. But don't
4 do any of that. You don't need to, and it's highly
5 improper for you to do that.

6 I'm going to place you under oath. And that means
7 our jury would be sworn and the case would essentially
8 have begun.

9 Madam clerk, will you place them under oath.

10 THE CLERK: Yes, Your Honor.

11 THE COURT: And this is your final oath, now.

12 (WHEREUPON, all jurors were duly sworn.)

13 THE COURT: And, again, was there anyone who did
14 not take that oath? And there's no response there.

15 Mr. Ropp, would you take them, familiarize them
16 with their jury room, make sure they know how to get
17 back in, and just take care of them; okay?

18 MR. ROPP: All right.

19 THE COURT: Attorneys, we're going to take five,
20 ten minutes; okay?

21 MR. HILLIARD: Thank you very much, Your Honor.

22 THE COURT: All right.

23 (WHEREUPON, the jury exited the courtroom at
24 10:25 a.m.)

25 (WHEREUPON, a brief recess was taken at

1 approximately 10:25 a.m.)

2 THE COURT: Thank you. Please just be seated.

3 All right. Yes, ma'am.

4 MS. WALTER: Your Honor, two things. Number one,
5 now that the jury has been sworn, the State would ask
6 that the Defendant be remanded into custody.

7 THE COURT: He is.

8 MS. WALTER: Okay. And number two, I just want to
9 reiterate my stance from yesterday that the State
10 believes --

11 THE COURT: Wait, wait, wait, wait. Mr. Hilliard
12 is not here. I'm sorry, there are just so many people
13 here, I didn't realize Mr. Hilliard was absent.

14 Yes, ma'am, okay.

15 MS. WALTER: I'm waiting for Mr. Hilliard. I'm
16 just going to stand here.

17 THE COURT: Okay.

18 (Pause in proceedings.)

19 THE COURT: Okay, now we have Mr. Hilliard back.

20 MR. HILLIARD: Thank you, Your Honor. I'm sorry,
21 I was in the restroom.

22 THE COURT: That's all right. That's why we took
23 a break. Yes.

24 MS. WALTER: I'm sorry, Your Honor. Refill my
25 water. So, Your Honor, now that Mr. Hilliard is here,

1 we will renew our request that the Defendant be
2 remanded into custody now that the trial has begun.

3 THE COURT: Yes, ma'am.

4 MS. WALTER: And then, the second issue is I
5 wanted to restate our position from yesterday that the
6 State asserts that [REDACTED] contracted chlamydia
7 after she left the home. We have never asserted that
8 she --

9 THE COURT: Well, that's the first time I've heard
10 that, now.

11 MR. HILLIARD: Well, could we go with one at a
12 time? We jumped right over the whole remanded to --

13 THE COURT: I'm -- let me just hear what she says.

14 MR. HILLIARD: Yes, sir.

15 THE COURT: Okay. Go on.

16 MS. WALTER: The State's position is that
17 J. H. [REDACTED] contracted chlamydia after the assaults
18 ended. And, therefore, the fact that the Defendant had
19 it or didn't have it would not be relevant.

20 THE COURT: Well, let me tell you, I thought about
21 this quite a bit over the evening. And there may be
22 evidence -- I don't know if there is, that's why I want
23 this hearing -- there may be evidence that she made the
24 statement that she contracted chlamydia as a result of
25 the assault by the Defendant.

1 Now, there is -- it's out there. It was in one of
2 the detective's report. I don't know whether that can
3 be established or not, but it's out there. And that's
4 why I want to have this hearing to explore that.

5 Because I think it is significant in determining,
6 number one, whether or not this is protected by the
7 rape shield; number two, whether there is an exception
8 to the rape shield, whether or not it meets the 403
9 test. And let me say this, I have ruled already on
10 some evidentiary matters. I want the record to be
11 absolutely clear that part of my analysis, whether I
12 put it on the record -- I think I have -- we discussed
13 these matters extensively in pretrial conferences.

14 In each case I have performed a 403 analysis, and
15 that's been part of my decision. If anyone doubts
16 that, would like my analysis placed on the record as to
17 any issue, please tell me. I think it's clear, but I
18 want the record to reflect very clearly that in each
19 case, I have conducted a 403 analysis; understand?

20 MS. WALTER: Yes.

21 THE COURT: Mr. Hilliard?

22 MR. HILLIARD: Yes.

23 THE COURT: Okay, all right, all right. Go ahead.

24 MS. WALTER: And then my last thing would be is
25 sequestration in effect now, Your Honor?

1 THE COURT: Um-hum.

2 MS. WALTER: Yes? Okay.

3 THE COURT: Well, it does when we begin any
4 testimony; okay?

5 MS. WALTER: Okay. I'll have her step out anyway.

6 THE COURT: All right.

7 MR. HILLIARD: I'm sorry, I didn't hear what they
8 said.

9 MS. WALTER: Sequestration is in effect as soon as
10 we start testimony.

11 MR. HILLIARD: The issue as to the subpoena,
12 judge, so that we can get started with that, we have a
13 subpoena here for Sabrina Houser. As I indicated
14 yesterday, we went there, and so we --

15 THE COURT: And I've already said that I would
16 countersign any subpoena.

17 MR. HILLIARD: Well, it's signed and ready to go.
18 Just if you could direct someone from the sheriff's
19 office to handle that while we're --

20 THE COURT: Jade, can you handle that for me?

21 THE DEPUTY: Yes, sir.

22 THE COURT: Make sure that it's -- Mr. Palmer,
23 someone is passed to them and that subpoena is served.

24 THE DEPUTY: I'll take care of it.

25 THE COURT: Do not take the witness into custody.

1 But if it's necessary, I will do that; okay?

2 MR. HILLIARD: It's for tomorrow, judge.

3 THE COURT: All right.

4 MR. HILLIARD: Thank you. Thank you very much,
5 Your Honor. And so the issue of taking the Defendant
6 into custody, because the jury's been sworn at this
7 point.

8 THE COURT: Yes, sir.

9 MR. HILLIARD: Do you intend to do that, or
10 what's --

11 THE COURT: Well, the bondsman is released of his
12 obligation once the jury is sworn.

13 MR. HILLIARD: Yes, sir.

14 THE COURT: Okay. I mean, that's the rule. Now,
15 do you want to be heard on that or --

16 MR. HILLIARD: Well, it has been my experience in
17 the past that that's not necessarily -- that the
18 Defendant is not necessarily taken into custody at the
19 point in time that the trial commenced.

20 THE COURT: Well, I've tried it both ways, and
21 I've had some very unfortunate results, I think, in one
22 of your cases.

23 MR. HILLIARD: One of my cases?

24 THE COURT: Where he just didn't show back up;
25 what was it? Didn't we try a drug case a year or so

1 ago, or maybe he just didn't show up at all.

2 MR. HILLIARD: Right, that guy never came.

3 THE COURT: Right, okay.

4 MR. HILLIARD: So it was unfortunate, but he
5 wasn't here for the trial. My client's been here for
6 every opportunity to be at the courthouse.

7 THE COURT: And, you know, I can't release him
8 with no bond.

9 MR. HILLIARD: We can bring a bondsman.

10 THE COURT: He has no bond on him now.

11 MR. HILLIARD: All right. If we bring the
12 bondsman back after --

13 THE COURT: I would consider it then --

14 MR. HILLIARD: Got you.

15 THE COURT: -- but at this point there is no bond.

16 MR. HILLIARD: Yes, sir.

17 THE COURT: And if there is no bond, he must
18 remain in custody.

19 MR. HILLIARD: Yes, sir.

20 THE COURT: Okay. All right. Now, Ms. Walter,
21 did you have something else we needed to...

22 MS. WALTER: No, Your Honor.

23 THE COURT: All right. Mr. Hilliard, then I'll
24 hear from you.

25 MR. HILLIARD: Well, judge, I think our situation

1 is different than it was yesterday because, as the
2 Court indicated, today is the first time that anybody
3 said anything about the prospect that the chlamydia was
4 contracted at some time after the Defendant and the
5 complaining witness were no longer interacting. That's
6 not been said.

7 In fact, we have the -- so I'm back to my spot
8 from yesterday where I would submit to the Court that
9 it's important, rather than just hearing what the
10 prosecutor has to say about what the witness is going
11 to say --

12 THE COURT: Well, let me say this.

13 MR. HILLIARD: Okay.

14 THE COURT: And I think that it becomes
15 significant. What does 703 say about the basis for an
16 expert's opinion? 703 allows him to even consider
17 evidence that might not otherwise have been admissible
18 in making his -- or reaching his conclusion or his
19 opinion.

20 MR. HILLIARD: Yes, sir.

21 THE COURT: Okay. If that is the case and I hear
22 testimony that he bases it upon police reports and
23 things or that, if I hear that -- I don't know if I'm
24 going to hear that.

25 MR. HILLIARD: Yes.

1 THE COURT: I don't know if that's customary in
2 the field, I don't know. But it's out there or you
3 have indicated to me that Detective Johnson -- was it
4 Johnson or Jackson?

5 MS. WALTER: Johnson.

6 THE COURT: Johnson, Detective Johnson, took a
7 witness statement, and the witness said that she had
8 been told by the alleged victim that, in fact, she was
9 assaulted, and as a result of the assault, contracted
10 chlamydia.

11 Let me put the analysis perhaps in another context
12 and tell you why it gives me concern. Suppose it was
13 alleged that some defendant, some person, the victim
14 says, I was sexually assaulted by this person, and as a
15 result of that assault, I was impregnated, okay. Nine
16 months down the road, the child is born, okay. DNA
17 testing establishes -- paternity testing establishes
18 that the accused could not have been the father. Would
19 that not be admissible?

20 MR. HILLIARD: Yes, sir, absolutely.

21 THE COURT: And here, Ms. Walter says her victim
22 will say that she contracted chlamydia after leaving
23 the home and not as a result of any contact with the
24 Defendant, okay. Certainly she may testify to that,
25 and that may be absolutely correct, absolutely

1 truthful. However, if we have a prior inconsistent
2 statement, that prior inconsistent statement becomes
3 admissible for impeachment purposes; does it not?

4 MR. HILLIARD: Yes, sir, absolutely.

5 THE COURT: Okay. So that creates a jury issue as
6 to whether or not that is the case. I had sexual
7 contact with the -- the jury could conclude, a
8 reasonable inference, conclude -- I was sexually
9 assaulted and contracted chlamydia from the Defendant.

10 That's a possible -- that's a reasonable inference
11 that the jury may draw. However -- and I don't know
12 what your expert's going to say, I haven't heard it
13 yet. That's why I want to hear it.

14 MR. HILLIARD: Yes, sir.

15 THE COURT: Your expert may say, the science
16 establishes a procedure by which I can determine
17 whether or not this Defendant ever, ever had chlamydia.
18 It's undisputed that the victim did contract chlamydia.
19 And that could have been from any number of sources, I
20 understand. I don't know, I haven't heard that. But
21 generally speaking, I understand that that's a
22 possibility.

23 But she does have it and that she contracted it
24 from some source. But if you can exclude the Defendant
25 from being the source of her contracting or getting

1 chlamydia, you know, that's an issue for me. And I
2 think it becomes relevant. Then we have to look at
3 from 403, as to whether or not the probative value of
4 that is significantly outweighed by any prejudice.

5 Well, that may not be the case. But 403 also has
6 an additional element, and that is if the evidence
7 results in confusion of the jury.

8 Now, if your expert says it may or may not do it,
9 I don't know, if he can't say definitively whether or
10 not the Defendant ever had chlamydia, I mean, I don't
11 know what he's going to say.

12 MR. HILLIARD: Yes, sir.

13 THE COURT: The probative value of that testimony
14 goes down and the confusion created by it could go up.
15 Those are all things we have to consider. I need to
16 hear what your witness is going to say. You know, we
17 have talked ad infinitum about what the witness may say
18 or may not say. I don't know until I hear definitively
19 what the testimony is going to be.

20 And his testimony will determine whether or not
21 the fact that this witness at some time from some
22 source contracted chlamydia is admissible or not.

23 MR. HILLIARD: Yes, sir.

24 THE COURT: And that's where I am. Now, I want to
25 hear from him on that.

1 MR. HILLIARD: I'm prepared to call a witness,
2 judge.

3 THE COURT: That's what I'm here for.

4 MR. HILLIARD: Yes, sir. We call Dr. Bennett.

5 MS. WALTER: Your Honor, is this just on this
6 discrete issue --

7 THE COURT: Yes.

8 MS. WALTER: -- or is it on qualifications and
9 everything?

10 THE COURT: Well, I would like to have him
11 qualified, too, if he's going to call him as an expert.
12 Let's go through that. I mean, I'm going to let you go
13 ahead and voir dire him, and we'll see; okay?

14 MS. WALTER: Thank you.

15 ROBERT BENNETT, after being duly sworn, testified
16 as follows:

17 THE CLERK: All right. Please be seated and state
18 your name and spell it for the Court, please.

19 THE WITNESS: Robert Bennett, B-E-N-N-E-T-T.

20 DIRECT EXAMINATION

21 BY MR. HILLIARD:

22 Q Dr. Bennett, if your ears weren't burning on
23 yesterday, they should have been. Would you please
24 give the judge the benefit of your credentials. Let's
25 run through your CV.

1 A Sure. Education-wise, I attended the Medical
2 University of South Carolina and obtained a pharmacy
3 degree in 1980 and became a board certified pharmacist.
4 I went back to school and got my doctorate degree, PhD,
5 in the field of drug science. It's actually called
6 pharmaceutical sciences, and it includes toxicology.

7 And after graduating, then I established a
8 business doing drug and alcohol testing for workplaces
9 as well as other avenues such as for the courts. And I
10 started doing that in 1991 and have been providing that
11 service since then. So many years.

12 Q All right, sir. And do you own your own business
13 in that regard?

14 A Correct, yes.

15 Q Do you -- it started in 1991, you said?

16 A Correct.

17 Q How many times have you been qualified as an
18 expert witness for the purpose of your testimony in
19 courts in South Carolina?

20 A Many, many times in federal court, state court,
21 family court, military court. Just about every court
22 that exists, I've been qualified as an expert in
23 various fields.

24 Q Got you. And specifically today, we are looking
25 to qualify you in the field of -- as an expert in

1 clinical laboratory testing, analysis, and
2 interpretation.

3 MS. WALTER: Can you repeat that, please.

4 MR. HILLIARD: Certainly. Clinical laboratory
5 testing, analysis, and interpretation.

6 Q In that regard, what work do you do that would
7 cause the Court to believe that you are an expert in
8 this area?

9 A Well, in schooling, we took courses in clinical
10 pharmacology and the understanding of how sexually
11 transmissible diseases can occur and how to treat those
12 diseases. Because as a pharmacist, I counsel patients
13 on the treatment of their STDs with various
14 medications.

15 As far as the work I do now, I do a lot of work
16 for family court in which adultery is a component of
17 that family court proceeding. And the transmission of
18 an STD is commonly included in that claimed adultery.
19 So I'll do STD testing for that situation to determine
20 if adultery had occurred. I've also done some work in
21 criminal cases where STDs were included in the criminal
22 sexual conduct of a man with a younger underage person
23 and provided that to the Defense attorney.

24 Providing clinical laboratory testing focused on
25 STDs is a standard service that I offered. I advertise

1 it on my website. I advertise it to attorneys as a
2 standard service that I provide for the forensic
3 community.

4 THE COURT: Have you been qualified as an expert
5 in this particular field?

6 THE WITNESS: I have.

7 THE COURT: And that was again?

8 MR. HILLIARD: As an expert in clinical laboratory
9 testing, analysis, and interpretation.

10 THE WITNESS: Although I have provided many
11 reports that have been used in both family court and
12 criminal cases, it's never gotten to the point where I
13 actually needed to testify on that issue.

14 THE COURT: All right, tell me about your training
15 in that particular field.

16 THE WITNESS: Sure. In pharmacy school, we are
17 constantly dealing with people who have sexually
18 transmittable diseases. And so we're trained to
19 determine how to counsel the patient on the treatment
20 of that disease. In other words, the clinical
21 laboratory tests confirming that the disease exists,
22 the symptoms of that disease, discussing that with the
23 patient --

24 THE COURT: So diagnosis is part of it.

25 THE WITNESS: Absolutely, yes.

1 THE COURT: Okay, all right.

2 THE WITNESS: And then treatment of that to both
3 short and long term.

4 THE COURT: Okay.

5 Mr. Hilliard.

6 MR. HILLIARD: Thank you, Your Honor.

7 Q And, more specifically, in the situation that we
8 have here, when I contacted you about your ability to
9 do testing in this particular case, I provided you with
10 tests that had already been done; is that correct?

11 A Correct.

12 Q And I asked you whether or not you could duplicate
13 that test for the purpose of coming to court and
14 testifying; is that correct?

15 A Correct. I duplicated that test and then some. I
16 did some additional expanded testing.

17 Q All right, sir. And the -- how often have you
18 done the kind of testing that you did for this -- or
19 the -- how often have you interpreted the results in
20 the kind of testing that you did in this case?

21 A I don't know the exact number, it's certainly not
22 in the hundreds, but it's part of my routine service
23 that I provide. I don't know the exact count, I
24 apologize.

25 Q All right, sir. And -- but you have been

1 qualified as an expert in what areas to testify
2 previously?

3 A I have been qualified as an expert in various
4 fields and forensic sciences many times before in a
5 variety of courts.

6 Q And, sir, and at my request, did you do testing in
7 this case?

8 A Yes.

9 Q What kind of testing did you do?

10 A I did testing for the detection of antibodies for
11 all of the known types of chlamydia that exist and to
12 determine if that chlamydia infection was either
13 current or had ever occurred in the past.

14 Q Explain that for the Court, please, what that --
15 what that test does and how it's interpreted. What
16 does it mean?

17 A Well, there are a variety -- well, chlamydia is a
18 bacteria that can live and grow in the human body. And
19 that bacteria can be transmitted from one human to the
20 next as a tangent. There is even a form of chlamydia
21 that is in birds called chlamydia psittaci. But that
22 usually doesn't involve humans, but it potentially can.

23 The two common types of chlamydia that occur in
24 humans are chlamydia trachomatis and chlamydia
25 pneumoniae. The chlamydia trachomatis is typically

1 associated with the genital area, and chlamydia
2 pneumoniae is associated with the lungs. But they can
3 be transmitted to either area. For example, if someone
4 has chlamydia pneumoniae and they cough or have oral
5 sex with someone, that could be transferred to the
6 genitalia and now you have chlamydia that could be
7 associated with a sexual activity.

8 As far as what happens when someone contracts
9 chlamydia, they can either have symptoms or not. The
10 disease is asymptomatic in many people, but the immune
11 system will start to attack the bacteria to try to
12 fight it off. And in the process of the immune system
13 fighting the chlamydia, the immune system will form
14 antibodies to chlamydia. And we can measure that with
15 a clinical laboratory test. And there are basically --

16 Q Is that what you did here?

17 A Yes.

18 Q Okay.

19 A And there are basically two types of immune tests
20 that we can do. And when we do a clinical test for
21 antibodies, we measure proteins in the blood called
22 immunoglobulins. And there are two common types of
23 immunoglobulins that can be analyzed to determine if
24 someone was exposed to a disease or had been --
25 currently or had been exposed to disease in the past.

1 And for this particular case, I tested for both,
2 to see if there was any current or recent infection as
3 well as to determine if there had been any past
4 infection.

5 Q And when you say you did tests, who did you do
6 testing on?

7 A On Mr. Scott Rowan, which I identified by his
8 photo ID and by photograph.

9 Q All right, sir. And so what were the results of
10 your tests?

11 A They were negative for all forms of chlamydia,
12 both short term and long term.

13 Q And what does -- you and I have had the
14 opportunity to discuss what long term means. But it's
15 a five-year window; is that what you said?

16 A That's correct. The type of antibodies that are
17 formed with this particular type of organism is not a
18 lifetime immunity. It's -- the research has shown that
19 the antibodies formed to chlamydia can last, on
20 average, about five years. In other words, if there is
21 no reinfection, then the level of antibody goes down to
22 the point where it's no longer detected after
23 approximately five years.

24 Q So within a reasonable degree of scientific
25 certainty, you could tell the judge today that Scott

1 Rowan has not had chlamydia within the past five years?

2 A From the day I collected the sample --

3 THE COURT: And when was that?

4 THE WITNESS: -- yes. April 2nd of this year.

5 THE COURT: '18?

6 THE WITNESS: Yes, 2018. April 2nd, 2018, I
7 collected the blood sample personally from Mr. Rowan.

8 THE COURT: Okay.

9 THE WITNESS: And the results of that analysis of
10 that blood was negative for all forms of chlamydia,
11 both short and long term.

12 THE COURT: Okay.

13 Q All right, sir. And also, did you have the
14 opportunity -- I think you already testified to this --
15 but did you have the opportunity to review the other
16 testing that Mr. Rowan had had done?

17 A Correct.

18 Q Do you remember the date or do you have the
19 information there about his first antibody test?

20 A Yes, both. On December 3rd, 2015, I received a
21 report from your office of a test that was performed at
22 Crest Laboratories in which he was tested for chlamydia
23 trachomatis -- trachomatis, whether or not he had a
24 current infection.

25 Q Yes, sir. And what was the date of that test, the

1 test was --

2 A December 3rd, 2015.

3 Q So December 3rd, 2015, the result of that test as
4 to current chlamydia was?

5 A Was negative, nothing detected.

6 Q He didn't have it?

7 A Correct.

8 Q But that's not the antibody test?

9 A That's not. There was another test performed on
10 December 8th, 2017, performed at LabCorp in which the
11 chlamydia antibodies were tested.

12 Q That is a similar test to the one you did?

13 A Correct.

14 Q And you can interpret that result as well?

15 A Correct. That was negative, indicating that there
16 was no evidence that chlamydia occurred within the past
17 approximately five years from the date of collection of
18 December the 8th, 2017.

19 Q All right, sir. I may be repeating myself, but is
20 it fair to say, based on what you've said, that Scott
21 Rowan didn't give anybody chlamydia for five years
22 prior to the first antibody test that you've --

23 MS. WALTER: Your Honor, I understand that we're
24 in front of Your Honor and not the jury, I'm just
25 hoping that this direct questioning will not occur in

1 front of the jury because it's certainly inappropriate.

2 THE COURT: He understands the rules. And, again,
3 they are more relaxed when they are before me. I'm
4 going to let him continue for the sake of judicial
5 economy, if nothing else.

6 MR. HILLIARD: Thank you, Your Honor.

7 THE WITNESS: Well, the extent of what I can say
8 is that there is no evidence to indicate that he had
9 chlamydia at any time. Therefore, there is no evidence
10 to indicate that he gave or received chlamydia.

11 Q Right. So you can't give it to somebody if you
12 don't have it?

13 A Logically, that's correct.

14 Q Okay. Thank you, sir. And let's talk about
15 how -- you've reviewed some other documents that we've
16 provided to you about the facts and circumstance or
17 allegations involved in this case. If, in fact,
18 Mr. Rowan was having sex with some female who had
19 chlamydia, can you talk about whether he would have
20 contracted it and the likelihood of how that would have
21 happened?

22 A I can.

23 Q All right, sir.

24 A Yes. Although there are many variables that can
25 determine whether or not someone contracts the disease,

1 in an effort to try to more solidly answer that
2 question, I did some research, and there is a
3 publication in a peer-reviewed journal entitled,
4 Sexually Transmissible Diseases, of a study published
5 in 1980 which was titled, The Risk of Transmission of
6 Genital Chlamydia Trachomatis Infection is Less Than
7 That of Genital Neisseria Gonorrhoeae Infection.

8 Now, the importance of the study is they actually
9 took several hundred male and female partners and
10 determined the rate of contraction of those two STDs to
11 try to determine exactly what is the extent of the
12 ability to contract chlamydia if you have a single
13 sexual encounter with someone who does.

14 Now, this is from the published study directly,
15 and I'll read you the sentence and explain what it
16 means. It says, When index patients had single
17 infections with chlamydia trachomatis, chlamydia
18 infections were observed in consorts of 28 percent of
19 the men.

20 Now, what that means is if a woman had chlamydia
21 and had sex with a man one time, that the chance of
22 contracting that chlamydia, according to the study, was
23 28 percent. Now, that's on one encounter.

24 Q All right, sir.

25 A If someone has multiple encounters, that number

1 goes up. And I can -- if you want to go into a
2 discussion of how much it goes up with the number of
3 encounters, we can do that as well.

4 Q Let's save that for the time being and talk about
5 condoms.

6 A Okay.

7 Q Tell me about how that would impact...

8 A Well, condoms are designed to reduce the
9 transmission of STDs that occur based on the way the
10 condom is worn and fitted. That's transfer of STDs
11 that occur from the penis or the penile discharge into
12 the female and vice versa from the female genital tract
13 into the surface of the skin or to the urethral opening
14 of the penis. The condom does not cover and,
15 therefore, does not protect the rest of the genital
16 area.

17 So being that the chlamydia bacteria can live on
18 the surface of the skin, for example, in a woman, not
19 only can it be intravaginal, but it can be on the
20 outside of the vagina and even in the genital area. So
21 it can be transmitted from skin-to-skin contact of the
22 general genital area. So condoms aren't a hundred
23 percent. And that's well documented with many studies
24 that condoms, although they increase protection from
25 STDs, they are not 100 percent.

1 Q All right. Now, when you say not 100 percent, in
2 the area of chlamydia on a female transferred to a
3 male, does a condom afford any real protection to that
4 transfer of bacteria from the outside of the female sex
5 organ to the male and the surrounding area beyond the
6 penis?

7 A It does not.

8 Q So there is no protection in that regard?

9 A In my opinion, it doesn't offer any substantial
10 protection as compared to not wearing a condom. There
11 is a slight improvement because of the reduction of
12 contact with the actual penile skin itself. But if a
13 female has chlamydia, then there is significant contact
14 with the male area, the total genital area, not just
15 the penis.

16 Q All right, sir. And back again to the logic. But
17 if the complaining witness in this case were to say
18 that she had gotten chlamydia from Scott Rowan at some
19 point in time within that five years, that would not be
20 possible; is that true?

21 A Based on the testing that's been performed showing
22 that he did not have chlamydia antibodies in this
23 blood, I would say the likelihood of that is very, very
24 low.

25 Q All right, sir.

1 MR. HILLIARD: Give me just one second.

2 Q And, Doctor, you mentioned something about being
3 asymptomatic. That is, the person who has chlamydia,
4 for the purposes of our discussion a female person who
5 has chlamydia, and the chlamydia being asymptomatic.
6 Tell us more about that, please.

7 A Well, some STDs do not have symptoms. A person
8 could have an infection and not know it. They are not
9 exhibiting any symptoms, and, therefore, that infection
10 just continues. And it could continue for an extended
11 period of time, sometimes years. If the person is
12 asymptomatic, they are not going to know they have an
13 infection, therefore -- because they have no symptoms;
14 therefore, they are not going to seek treatment. And,
15 therefore, that STD infection, whether it be a bacteria
16 or virus, will just continue to grow and survive and
17 live.

18 Q And based on what you're saying, are you saying
19 that the person, female, could have chlamydia for years
20 and never know they had it until they got tested?

21 A That potentially exists, yes.

22 Q All right, sir. And what's the likelihood of
23 that, asymptomatic?

24 A It's quite common. It's well reported in the
25 scientific and medical literature that chlamydia quite

1 commonly can be asymptomatic.

2 Q All right, sir.

3 A And that's one of the problems of the transmission
4 is because if someone is asymptomatic, then they are
5 going to transmit it and keep transmitting it to all of
6 their partners without knowing it.

7 Q Yeah.

8 MR. HILLIARD: We would offer him at this time,
9 Your Honor, as an expert in the area of clinical
10 laboratory testing, analysis, and interpretation for
11 the purposes of the testimony that he's just given.

12 THE COURT: All right. Let's give counsel an
13 opportunity to cross-examine.

14 MS. WALTER: Thank you, Your Honor.

15 MR. HILLIARD: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. WALTER:

18 Q Dr. Bennett, you provided a current curriculum
19 vitae to the Defense; correct?

20 A Yes.

21 Q And it's quite lengthy. And in that CV, did you
22 list the fields that you consider yourself an expert
23 in?

24 A Some of them but not all of them. The CV just
25 gets too voluminous if I start listing everything that

1 I've done.

2 Q Well, you include at least seven pages of cases
3 that you've testified in?

4 A Correct.

5 Q Of those seven pages of cases that you've
6 testified in, none of them show you as an expert in --
7 let me get this right again -- clinical laboratory
8 testing, analysis, and interpretation; correct?

9 A Correct. As mentioned, it never got to the point
10 where I actually testified, correct.

11 Q And nowhere on these seven pages does it have you
12 as an expert in the field of infectious diseases?

13 A Correct.

14 Q You are not a medically trained doctor?

15 A I am not a physician, but I am a medically trained
16 doctor.

17 Q Well, you are a -- were a pharmacist; correct?

18 A I still have a pharmacy degree with a license that
19 is in good standing.

20 Q It's inactive; correct?

21 A It's inactive because I don't fill prescriptions
22 anymore.

23 (Emergency alarm went off.)

24 (WHEREUPON, a brief recess was taken at
25 approximately 11:19 a.m.)

1 MR. HILLIARD: I had not remembered this, but the
2 mom put up 10 percent cash bond. She's here. The cash
3 is still with the Clerk of Court. That's our bond
4 situation, 10 percent cash with the Clerk of Court.

5 THE COURT: Of what?

6 MR. HILLIARD: \$20,000. It's \$2,000 owed. So
7 he's got \$2,000 cash.

8 THE COURT: I'm not inclined to, under those
9 circumstances, to waive the rule. I'm just not -- you
10 know, \$2,000 in a case like this where there's extreme
11 jeopardy, I'm not inclined to do that.

12 MR. HILLIARD: All right, sir. What about if we
13 secure a bondsman with a \$20,000 surety bond?

14 THE COURT: I'll hear from the State.

15 MS. WALTER: Your Honor, we would oppose that at
16 this time. Certainly now that the trial has begun, the
17 stakes are certainly higher. I have a note on the file
18 before I handled the case, that on February 10th of
19 2017 the Defendant failed to appear and a bench warrant
20 was issued. It looks like it was lifted on March 14th.
21 I don't know the reason for that, as I said, because I
22 was not the prosecutor at that time, but the State
23 would certainly oppose the Defendant being released.

24 THE COURT: All right, I'll consider it. Let's --
25 I see our doctor is back.

1 MR. HILLIARD: Yes. Thank you, judge.

2 THE COURT: All right, Dr. Bennett. You remain
3 under oath.

4 Let's just let the record, so that we have a
5 complete record, indicate that the doctor's testimony,
6 his cross-examination, was interrupted for a half hour
7 or so by the fire alarm going off. But now we're back
8 on the record, okay.

9 MS. WALTER: Thank you, Your Honor.

10 Q I'll rephrase my last question to you. You are
11 not a medical doctor; correct?

12 A Correct.

13 Q You are not licensed or certified to see patients?

14 A Correct.

15 Q You are not licensed or certified to write a
16 prescription?

17 A Correct.

18 Q You are not licensed or certified to dispense a
19 prescription currently?

20 A Currently.

21 Q Right? Because you've been inactive for so long.

22 A Currently, correct.

23 Q And I believe you talked about that you help
24 people that you see with the treatment of sexually
25 transmitted diseases?

1 A As far as providing them the information they need
2 to use their medication effectively, yes.

3 Q Well, you're not dispensing that medication;
4 correct?

5 A Not dispensing it, no.

6 Q And so does someone just come up to you and say,
7 hey, how do I use this medicine?

8 A No. They end up in my office. I see people on an
9 almost daily basis that come into my office. And so if
10 they are diagnosed with an STD through testing that
11 I've done, then they, many times, will receive some
12 sort of treatment for that.

13 Q From a doctor, from a medical doctor?

14 A Well, depends on what the treatment is. If it's
15 medication, they would have to get a prescription from
16 a doctor. But the treatment maybe is not always
17 medicine.

18 Q And in the treatment of chlamydia, how often would
19 you say it is treated with medicine versus no treatment
20 at all?

21 A Well, the best course of action is to treat it
22 with antibiotics.

23 Q And you cannot prescribe antibiotics?

24 A Correct.

25 Q So if you perform a test that indicates someone

1 might have chlamydia, you can't do anything further for
2 them?

3 A Oh, absolutely I can.

4 Q They would have to see a medical doctor for
5 treatment?

6 A For a prescription, yes.

7 Q Right. You said you were trained to counsel
8 regarding treatment, that's what you had said.
9 Where -- can you show me --

10 MS. WALTER: Your Honor, can I approach?

11 THE COURT: Yes.

12 MS. WALTER: Do you want this marked for the
13 purposes of this, Your Honor?

14 THE COURT: That's his CV?

15 MS. WALTER: Yes.

16 (WHEREUPON, Court's Exhibit No. 1 was marked for
17 identification only.)

18 Q Showing you Court's Exhibit 1, do you recognize
19 that?

20 A Yes.

21 Q Do you want to take a minute to look at it and
22 make sure that it's recent?

23 A It's recent.

24 Q How recent?

25 A Within the past 30 days.

1 Q And so within the past 30 days, in the seven pages
2 of sample case listings, you could not find a single
3 case where you were an expert in clinical laboratory
4 testing, analysis, and interpretation?

5 A I'm not sure the nature of your question.

6 Q Is there anything in your CV, in your sample
7 cases, where you were used as an expert in clinical lab
8 testing, analysis, and interpretation as an expert
9 witness in any court?

10 A Well, that's just a sample case listing. It's not
11 all case listings.

12 Q Right. But these are the ones that you included
13 on your CV, highlighting them by inclusion, and it's
14 actually a yes or no question. Is there anything in
15 this sample case listing that you prepared that shows
16 that you have been qualified in any court in the land
17 as a expert in clinical laboratory testing, analysis,
18 and interpretation?

19 A That current CV does not have that, correct.

20 Q Does a prior CV have it?

21 A I think it may. I just don't recall at the
22 moment.

23 Q Well, that's interesting, because on direct
24 examination --

25 MR. HILLIARD: Objection, judge --

1 Q -- you said that you had never --

2 MR. HILLIARD: Objection.

3 THE COURT: Wait a minute, wait a minute. Let me
4 hear his objection, Ms. Walter.

5 MR. HILLIARD: Objection. She is arguing with
6 him, judge. She asked a question, and he can answer,
7 and he can explain his answer. But, you know, she is
8 arguing with him by saying that's interesting, implying
9 that she doesn't believe him. I get all that. But
10 there is nobody here but us.

11 THE COURT: I understand, all right.

12 Go ahead, Ms. Walter.

13 Q On direct examination, you testified that you had
14 never been qualified as an expert in this field because
15 it had never gotten that far; do you recall that?

16 A Yes. But as far as being qualified as an expert,
17 I testified that I had never testified as an expert.

18 Q Right.

19 A But I performed services in this area of
20 discussion many times for forensic cases.

21 Q Okay. So, let me -- perhaps my question isn't
22 clear. My question was, have you ever been -- we've
23 established that you have never been qualified in any
24 court anywhere as an expert in clinical laboratory
25 testing, analysis, and interpretation; correct?

1 A I've never testified in that field.

2 Q So that would be a yes, you have never been
3 qualified. And in the sample cases, again, that you
4 pulled to highlight the different areas of your
5 expertise, there are no cases that you pulled where you
6 are identified, self-identified, as an expert in
7 clinical laboratory testing, analysis, and
8 interpretation; is that correct?

9 MR. HILLIARD: He's already answered that
10 question, judge.

11 THE COURT: I understand. Let's just move on. Go
12 ahead. There's no jury here. Go ahead, Ms. Walter.

13 MS. WALTER: I know, but --

14 THE COURT: Continue.

15 MS. WALTER: Thank you.

16 Q I'm waiting for the answer?

17 A That's correct, because it's not a primary
18 function of my services provided. It's secondary.

19 Q So it's your testimony that all of the sample case
20 listings on these seven pages are things that you do as
21 a primary responsibility?

22 A For the most part, yes.

23 THE COURT: Let me ask you, Doctor, have you ever
24 been denied expert qualification in that field?

25 THE WITNESS: I have not.

1 Q Have you ever been offered as an expert in that
2 field?

3 A Not in a courtroom.

4 Q Now, you cited -- actually, let me back up. The
5 test that you did, did you perform the test yourself?

6 A The actual analytical portion is a technical
7 function that technicians perform. I don't actually
8 inject a serum on the analyzer. That's a technical
9 function that's performed routinely by technicians.

10 Q And did you -- well, actually, I'll come back to
11 that. I'll stick with your qualifications for right
12 now. Now, in order to actually testify today, you had
13 to look up a research article from 1980; correct?

14 A Yes, I routinely do research on every case I work
15 on.

16 Q And, in fact, that's actually how you describe
17 yourself, as an expert; correct, if you read sufficient
18 articles, you're an expert?

19 A That's the way, in my opinion, any expert is
20 required to perform to be an expert. You have to
21 continually do research and reading and stay up on all
22 of the scientific and forensic knowledge that's out
23 there.

24 Q So other than this article from 1980, what is the
25 last piece of literature that you read on sexually

1 transmitted diseases?

2 A It's something that I read on a continuous basis.
3 For example, I'll subscribe to many journals that
4 routinely have articles on STDs in them, and I'll read
5 those. As far as recalling which one that I read the
6 most recent, I read so many, I just can't recall.

7 Q Well, let's go to the article that you mentioned
8 on your direct examination. First of all, I'm not sure
9 that you told us, in the test subjects that they looked
10 at, did those test subjects use condoms or no?

11 A As I skim through it, I didn't see -- do you have
12 one statement in particular that you want me to answer
13 to?

14 Q No. I'm asking you, since you reviewed this
15 article in preparation for testifying today, did that
16 study indicate whether or not the subjects used condoms
17 or not?

18 A In reviewing the abstract of the study, I don't
19 see where it mentions that or not.

20 Q Well, wouldn't that be an important factor to
21 consider when looking at rates of transmission?

22 A Absolutely.

23 Q So this article that you relied on, you don't know
24 whether condoms were accounted for or not?

25 A At this point, we do not.

1 Q Well, did you read the entire article or just the
2 abstract?

3 A Just the abstract.

4 Q You didn't think it important to read the entire
5 research article?

6 A I didn't have time.

7 Q You were hired -- at least you were disclosed to
8 the State on March 30th?

9 A Correct.

10 Q You didn't have time between March 30th and today
11 to read that article?

12 A I do research on a particular case all the way up
13 until the time I walk in that door.

14 Q Well, now you're in the door.

15 A Yes.

16 Q So are you telling me that in that time period you
17 did not have the time to read the article upon which
18 you are basing your opinion today?

19 A That's correct.

20 Q And then, even just reading the abstract, I
21 believe you said that 28 percent of men who had sexual
22 intercourse with an infected partner would contract
23 chlamydia?

24 A Correct.

25 Q Well, that means that 72 percent of men that have

1 sexual contact with a woman with chlamydia don't get
2 chlamydia; correct?

3 A That is correct.

4 Q So those are pretty good odds. That's almost
5 three quarters of the men who have sex, unprotected or
6 not since we don't know, with an infected partner don't
7 get chlamydia?

8 A With a one-time exposure, that's what the
9 conclusion of the study reports.

10 Q Right. Did you, as you were conducting your
11 testing or preparing for today, did you ever ask the
12 Defendant how many times he had had sexual contact with
13 the victims in this case?

14 A I did not.

15 Q So, then, that would mean that you didn't ask him
16 if he had ever used a condom when he had sexual contact
17 with the victims in this case?

18 A That's correct.

19 Q So you would -- let's go back to those
20 statistics -- you would agree with me, then, that it is
21 actually more likely than not, 72 percent versus
22 28 percent, that a man could have sex with an infected
23 female and not get chlamydia?

24 A With a one-time event, the article that we're
25 discussing reports that, yes.

1 Q And so it would be important for this to have any
2 relevance to know when the infected partner was
3 infected?

4 A Yes.

5 Q It would be important to know when the last
6 contact was between the uninfected and infected
7 partners; right?

8 A Yes.

9 Q Do you know any of that? For this case, this case
10 specifically, do you know any of that information?

11 A Not definitively.

12 Q Okay. Now, let's go back. Also you're saying
13 that you read up on sexually transmitted diseases. How
14 many articles have you written that have been published
15 in peer-reviewed journals on sexually transmitted
16 diseases?

17 A I'll give a generic statement and say I just don't
18 have time to write articles at all on any subject.

19 Q Okay.

20 A Just not enough time.

21 MS. WALTER: Court's indulgence for a moment.

22 Q Oh. You were testifying about condoms not being
23 foolproof because maybe the chlamydia is on the
24 external genitalia?

25 A Correct.

1 Q Do you have any information in this case --
2 reliable, definitive information in this case -- of
3 where the chlamydia was located in the victim?

4 A Your question insinuates that the chlamydia could
5 be in an abnormal place, and that confuses me.

6 Q Well, the chlamydia could be in the internal
7 portion of the genitalia; correct?

8 A You mean in the vagina?

9 Q Yes.

10 A Yes.

11 Q That would not be the same as it being on the
12 outside of the genitalia, say, the labia or the
13 surrounding tissue; correct?

14 A Correct.

15 Q Okay.

16 THE COURT: Let me just ask you this, Doctor. Is
17 your opinion limited to your opinion that the Defendant
18 in this case, within the past five years, has not been
19 infected with chlamydia bacteria?

20 THE WITNESS: Yes.

21 THE COURT: Is that the extent of your opinion?

22 THE WITNESS: Yes.

23 THE COURT: You never considered the victim?

24 THE WITNESS: No.

25 THE COURT: Know nothing about the victim?

1 THE WITNESS: Nothing.

2 THE COURT: All right. That's where we are.

3 MS. WALTER: Okay. Well, then, the State is
4 renewing its objection as this is completely irrelevant
5 because, even according to their own expert's
6 testimony, which we would certainly dispute the fact
7 that he's an expert, but 72 percent of men who have sex
8 with an infected partner don't get chlamydia. So that
9 makes it more likely than not that the Defendant could
10 have had -- and this is even --

11 THE COURT: That's not where we're going. I think
12 where the Defense is going is, if you look at the rape
13 shield statute, the victim was infected with chlamydia,
14 no question about it, okay. The Defendant was not
15 within the period that this was supposed to have taken
16 place or did take place -- I don't know. I haven't
17 heard the evidence, and the jury would make that
18 determination -- but the Defendant could not have been.

19 And if you look at the rape shield statute, if the
20 Defendant has said, I was infected -- or the
21 plaintiff -- the victim has said, I was infected by the
22 Defendant, it becomes an issue and is admissible even
23 under the rape shield statute if it passes the 403
24 test, which is different when considering the rape
25 shield statute.

1 It is more liberal under a 403-type analysis.
2 Under rape shield, under State versus Chase, says that
3 evidence is only excluded if the danger of unfair
4 prejudice substantially outweighs the probative value.
5 I mean, that's where we are here.

6 You know, it's a matter for the jury to determine
7 whether or not his opinion that this Defendant was
8 never infected, for whatever good that is to them or
9 whatever importance they put on that particular piece
10 of evidence, whether or not to believe him. And if
11 they believe him, what's to be drawn from that? It's
12 up to the jury. I mean, these are jury questions as I
13 see them.

14 MR. HILLIARD: Yes, sir.

15 MS. WALTER: Well, Your Honor, perhaps I
16 misunderstood where we were going yesterday because
17 if -- the State is not making a claim that the
18 Defendant infected --

19 THE COURT: The State may not. But it's my
20 understanding -- and again, I haven't heard it, I don't
21 know if it comes in, the rape shield statute requires
22 that there be evidence of the existence of a sexually
23 transmitted disease -- or a disease, I think is what it
24 says, origin of semen.

25 This is what it says, evidence of the victim's

1 sexual conduct with the Defendant or evidence of
2 specific instance of sexual activity with persons other
3 than Defendant introduced to show the source or origin
4 of semen, pregnancy, or disease about which evidence
5 has been introduced previously at trial -- it's got to
6 be introduced.

7 MR. HILLIARD: Yes, sir.

8 THE COURT: -- is admissible if the judge finds
9 that such evidence is relevant to a material fact and
10 issue in the case and its inflammatory or prejudicial
11 nature does not outweigh its probative value. And case
12 law says that it must substantially outweigh its
13 probative value.

14 Now, it all goes back to the weight the jury
15 places on his testimony as to whether or not this
16 Defendant was ever infected during the time in question
17 with chlamydia. That's a question of weight. Whether
18 or not it's admissible would be determined first
19 whether or not there is any evidence that this victim
20 said that she was infected by an assault by the
21 Defendant.

22 If that's not in, I don't think any of it is
23 relevant. But if that comes in, and Mr. Hilliard,
24 you're going to have to establish that, evidence of
25 that, prior to even putting his testimony in, I

1 believe.

2 MR. HILLIARD: Yes, sir, absolutely.

3 THE COURT: And if you can do that, or if you
4 can't, I don't know. You have to meet the test. And
5 you know the test for prior inconsistent statements.

6 I assume, from what Ms. Walter is telling me, that
7 she will deny making that statement. You seem to
8 indicate that you can show that she did make the
9 statement. That's yet to be seen. I don't know what
10 the result will be. Right now I'm just trying to sort
11 this out and decide how we should proceed. And I think
12 I've got a pretty good idea.

13 First, you're going to have to establish that. If
14 you do that, then we hear Dr. Bennett's testimony
15 concerning whether or not it could have come from this
16 Defendant. If he never had it, and the jury believes
17 that, then the source of the disease becomes an issue.

18 And that's admissible under the rape shield
19 statute if I make a determination that its probative
20 value outweighs substantially its prejudice -- excuse
21 me, its prejudice substantially outweighs the probative
22 value. And let me tell you, I don't think the
23 existence of the disease in and of itself is that
24 probative here. But what it does go to, it goes to
25 credibility.

1 MR. HILLIARD: Yes, sir.

2 THE COURT: And that's where it becomes probative.

3 MR. HILLIARD: Yes, sir.

4 THE COURT: So, you know, I believe that that's
5 the proper analysis here. Now, what else do we have in
6 regard to -- I'm sure Ms. Walter is not done, but we'll
7 go on with that, okay.

8 MS. WALTER: No, I mean, I think that Your Honor
9 has made it clear. So if -- I just want to make sure
10 that I understand Your Honor's ruling. The State's
11 position would still be that Mr. Hilliard cannot
12 question the victim or Dr. Rahter about the chlamydia.
13 My understanding is that at this point --

14 THE COURT: No, I haven't made that determination.
15 My determination is this. I think Mr. Hilliard can ask
16 her if she made that statement.

17 MS. WALTER: Right.

18 THE COURT: If she made the statement that she
19 contracted chlamydia, whatever. If she says no, then I
20 think Mr. Hilliard may be, under 801, entitled to
21 provide extrinsic evidence of that statement as a prior
22 inconsistent statement. But he's got to follow the
23 rules, and the rule is very specific.

24 But if he can do that -- I mean, Mr. Hilliard,
25 let's look at this. It says, a declarant witness'

1 prior statement -- I'm looking at 801(d)(1). The
2 declarant testifies and is subject to cross-examination
3 about a prior statement and the statement is, A,
4 inconsistent with the declarant's statement and was
5 given under penalty of perjury at a trial, hearing, or
6 other proceeding or in a deposition.

7 Now, even at best, Mr. Hilliard, how do you get
8 over the requirement that it must have been a prior
9 statement under oath? Is there a rule, is there an
10 exception that would allow you, even at best, if you
11 can bring in the lady, Ms. Houser, would that statement
12 allegedly made to Ms. Houser be admissible as a prior
13 inconsistent statement, would it be admissible, under
14 what rule? How do we get past the requirement of
15 801(d)(1)(A)?

16 MR. HILLIARD: It has to do with the credibility
17 of the witness making -- I don't believe, judge, and
18 subject to correction, but I don't know that 801(a) --
19 I'm sorry, 801 (d)(1) --

20 THE COURT: (A) is applicable? Okay. Tell me
21 which one is, then. Would you say (d)(2)?

22 MR. HILLIARD: Yes, sir. And why, judge, the
23 thing is that any time you have a situation where a
24 person is testifying in court and they have two
25 separate stories about what happened, the two separate

1 stories are admissible to show that they are
2 inconsistent statements --

3 THE COURT: Okay. Well, what I'm getting at is,
4 Mr. Hilliard --

5 MR. HILLIARD: Yes, sir.

6 THE COURT: -- if she made the statement, okay.
7 If she admits it, okay.

8 MR. HILLIARD: Yes, sir.

9 THE COURT: If she denies it, you're going to have
10 to come back to a third party who says, I heard her say
11 this hearsay, you got to come under an exception to
12 that hearsay in order to put her statement in.

13 Now, an exception to that would be allowed, an
14 exception to hearsay would be under 801(d)(1)(A). Now,
15 show me, you know, point me to another rule that would
16 allow you to do that. Clearly hearsay. Clearly meets
17 the definition of hearsay, an out-of-court statement.
18 You got a third party coming in and saying, I heard her
19 say that. That would clearly be, under normal
20 circumstances, a hearsay statement. But, it could be
21 an exception under 801(d)(1)(A) as a prior inconsistent
22 statement.

23 Now, tell me how you get to that point because
24 that statement is required to have been made under
25 penalty of perjury at a trial, hearing or other

1 proceeding or in a deposition. Now, that's a
2 requirement of 801(d)(1)(A). Now, show me an exception
3 that would allow you to introduce it other than under
4 801(d)(1)(A).

5 MR. HILLIARD: Part of my response to that, judge,
6 is that -- and I recognize I'm not answering your
7 question, I understand that part -- the thing is that
8 if the -- I'm suggesting that it's not hearsay at all.
9 Because if I ask her the question and she says, I never
10 said that, and I have another witness who says, Yes,
11 she said it, the question is did she say it or didn't
12 she say it. I'm not offering that to show that either
13 one -- that it's true that she had the disease or not
14 true that she had the disease, only whether she said it
15 or didn't say it.

16 So that's the -- that's direct evidence of whether
17 she said or she didn't. She says, I didn't say it, and
18 we offer proof that she did say it, that's not hearsay.
19 That is --

20 THE COURT: But if you're not offering it for the
21 truth of the matter asserted --

22 MR. HILLIARD: Yes, sir.

23 THE COURT: -- if you're not offering it for that,
24 does it then meet the requirement of the rape shield
25 statute, the exception of the rape shield statute that

1 says evidence of it must have been introduced? On the
2 one hand, you're saying it's not evidence of whether
3 she had it, it's evidence -- it's not offered for the
4 truth of that, so there's nothing offered to the truth
5 of whether or not she contracted chlamydia from the
6 Defendant.

7 That is a requirement under the rape shield
8 statute. It must have been introduced prior -- prior
9 to the doctor's testimony in the proceeding, okay.
10 Now, if it's not, how you going to get that in, the
11 doctor's testimony?

12 MR. HILLIARD: The doctor's testimony is she has
13 chlamydia, there is no question. Dr. Rahter tested her
14 for chlamydia, she has chlamydia, Dr. Rahter prescribed
15 and treated her for chlamydia. Those things all
16 happened. That's all part of Dr. Rahter's notes.
17 Those things are all true. So she had chlamydia. We
18 have a police officer who took a statement --

19 THE COURT: But does that have anything to do with
20 the chlamydia? I mean, I've heard both of you say that
21 chlamydia can be contracted in many different ways. I
22 think it becomes an issue where she says, I contracted
23 chlamydia as a result of a sexual encounter with this
24 Defendant.

25 MR. HILLIARD: Yes, sir.

1 THE COURT: And if that is not true, then that
2 becomes an issue, and it has probative value as to her
3 credibility. That's the probative issue here. Now, if
4 in fact, that never comes in, it never comes in that
5 she said, I contracted it from this Defendant, the
6 probative value of that goes down because it's not a
7 matter of her credibility anymore. I just simply have
8 chlamydia. And the fact that she just has chlamydia,
9 how is that probative of anything in this case to get
10 past the rape shield statute?

11 MR. HILLIARD: Well, how would it be prejudicial
12 if it's not -- if she could contract it from any set of
13 circumstances, and she never says she got it from the
14 Defendant, how would it even be prejudicial? We have
15 two -- we have two shots at -- number one, we don't
16 know what she's going to say. So until she says it one
17 way or the other when I ask her the question, then we
18 don't know what she is going to say. She may say yes,
19 she may say no.

20 We don't know what the witness is going to say
21 because we don't have the witness. We know what the
22 witness has said before, that part's without question.
23 But we also have the letter from the lawyer to me to
24 the effect that they had said -- it says they, the
25 letter says they, have said that they contracted the

1 disease from the Defendant. So we have two different
2 circumstances where the witness --

3 THE COURT: And I had forgotten about the letter.

4 MR. HILLIARD: Yes, there is a letter to the
5 effect that they have contracted chlamydia from the
6 Defendant.

7 MS. WALTER: That is not what it says.

8 MR. HILLIARD: Okay.

9 MS. WALTER: That's not what it says.

10 THE COURT: What does it say?

11 MS. WALTER: It says --

12 MR. HILLIARD: Let me pass it up.

13 MS. WALTER: My client and her daughter were both
14 recently diagnosed with STDs which they allege came
15 from your client. STDs, not chlamydia, because the
16 mother actually contracted a different sexually
17 transmitted disease from the Defendant.

18 But I, again, raise my issues with the e-mail
19 that, number one, it's my understanding that the
20 attorney never spoke with J.H. . So that clearly
21 could not be correct. If she didn't talk to her, then
22 this is wrong.

23 Furthermore, we've spoken with J.H. , and she
24 never, as this e-mail claims, never waived privilege,
25 never approved the divulging of this information to

1 Mr. Hilliard.

2 THE COURT: Well, then that would be a matter she
3 needs to take up with her attorney.

4 MS. WALTER: But it's also hearsay at that point.

5 THE COURT: Well, I'm going to -- this is my
6 ruling. I'm going to allow him to ask the question.
7 If he can establish that, first, that chlamydia exists,
8 and secondly, that the victim says that she contracted
9 it from the Defendant, I will allow this doctor to
10 testify.

11 MS. WALTER: Your Honor, if I may make a
12 suggestion. I don't think we need to establish that
13 chlamydia exists to get to that point. I think, as
14 Your Honor has said, for her credibility, I think we
15 can limit it to, did you say that you contracted
16 chlamydia from the Defendant? If she says, no, I never
17 said that --

18 THE COURT: No. I'm going to allow him to ask
19 Dr. Rahter that. I'm going to allow him to ask the
20 victim that. If she denies it, then you're going to
21 have to show that she did say it. I don't know how
22 you're going to do that.

23 MS. WALTER: That's where I'm confused --

24 MR. HILLIARD: Thank you, Your Honor.

25 MS. WALTER: That's where I'm confused, Your

1 Honor, because if she denies that she had chlamydia,
2 that's not -- I don't think that was the issue. The
3 issue is --

4 THE COURT: No, she's not going to -- I mean,
5 that's not what I said.

6 MS. WALTER: Right, but if you're --

7 THE COURT: I'm going to allow him to establish
8 that she did through Dr. Rahter if that's --

9 MS. WALTER: That she has chlamydia?

10 THE COURT: Yes.

11 MS. WALTER: How does that go to her credibility?
12 How that is not directly --

13 THE COURT: Well, I'm going to allow it. Now,
14 I've heard this for two hours. I think in fairness to
15 this Defendant, it's an issue that goes to her
16 credibility and it's necessary to establish it. If you
17 can establish, number one, that she has it, it means
18 nothing. It's not prejudicial to anyone. We can all
19 attack it. It could have been contracted in any way.

20 But -- and I'll allow you to ask her if she, in
21 fact, said that she contracted it from the Defendant.
22 If she -- if you can get that in, that she says that's
23 where it came from, and she has said that, I will allow
24 you to put up Dr. Bennett's testimony that he was not
25 infected at any time with chlamydia. Okay?

1 MR. HILLIARD: Thank you, Your Honor, yes, sir.

2 THE COURT: If she attributes it to this
3 Defendant, I'm going to allow you to do it, okay?

4 MR. HILLIARD: Yes, sir.

5 THE COURT: All right, thank you. That's my
6 ruling on it.

7 MR. HILLIARD: Thank you, Your Honor.

8 THE COURT: All right.

9 MR. HILLIARD: Does that mean Dr. Bennett's an
10 expert.

11 THE COURT: Yes, I qualify him as an expert. Of
12 course, I'll do it on the record. But subject to my
13 charge to a jury, they have the right to determine
14 whether or not they will accept his opinion based on
15 his expertise; okay?

16 MR. HILLIARD: Yes, sir.

17 THE COURT: They are the ultimate decision --
18 judge of whether or not he has met the standard.

19 MR. HILLIARD: Thank you very much, Your Honor.

20 THE COURT: All right, thank you.

21 MR. HILLIARD: Thank you, Your Honor.

22 THE COURT: All right, we're at ease for 30
23 minutes because the jury is coming back, okay.

24 (WHEREUPON, a luncheon recess was taken at
25 approximately 12:27 p.m.)

1 THE COURT: Good afternoon. Chris, if you would
2 bring the jury in.

3 (WHEREUPON, the jury came into open court at
4 approximately 1:06 p.m.)

5 THE COURT: All right. We have all of our jurors
6 back in the courtroom as well as our alternates, the
7 Defendant is here, and all counsel. Before we begin,
8 let me talk with you just a minute about how this trial
9 might progress.

10 You know, it seems that it's been fashionable over
11 the past, I guess, 20 years to have many programs on TV
12 about trials and in movies and things like that. And
13 it just seems that everyone is just a thrill a minute,
14 they are action-packed, and that's the way they are
15 portrayed. And I think some people probably have that
16 perception of how trials proceed. But I will tell you
17 that, in reality, that's not necessarily the case.

18 A trial is nothing more than a search for the
19 truth. It is often slow and repetitive, and that's the
20 nature of it. But, then again, trials are not for our
21 entertainment. Trials are important proceedings to
22 seek a final resolution of some type of dispute,
23 whether it be between the State and a person accused of
24 a crime, or whether it be between individuals. A trial
25 is nothing more than a formal presentation of evidence

1 to a jury whereby the jury will then make a
2 determination of what actually transpired, what the
3 facts of the case are.

4 You know, these attorneys, these fine attorneys
5 that we have in the courtroom today, and I know them
6 all, and they are great attorneys, and I'm lucky in
7 that regard. There is nothing worse than having an
8 attorney who might not be very experienced in a trial,
9 at least from a judge's standpoint. So we're fortunate
10 to have good attorneys in this trial.

11 But the attorneys have taken an oath to conduct
12 themselves ethically and professionally, and I,
13 likewise, am under an oath to do so. But you jurors
14 are also under an oath. Do you remember the oath?
15 It's an oath to well and truly try the case. You will
16 make a final determination of how this matter should be
17 resolved. In doing so at the end of this trial, you're
18 going to be asked to deliberate. That's one of those
19 terms of art that we use in the law. It has a special
20 meaning. It's sort of a three-part process.

21 As jurors, you will hear evidence. That's the
22 attorneys' job, it's their job to present evidence to
23 you. And from that evidence, you will determine what
24 the facts are. And there is quite a difference between
25 facts and evidence. You, as a jury, are the ultimate

1 judge of the weight and value and credibility of the
2 evidence that you will receive. There is always
3 conflicting evidence in cases, otherwise, we would not
4 even need a jury if everybody agreed what occurred.
5 You have to sift through it, you have to determine what
6 actually occurred. That is exclusively your job.

7 You know, if I say or do anything in the trial
8 that suggests to you that I have an opinion about a
9 piece of evidence, please disregard that. That was
10 unintentional. The law doesn't even allow me to have
11 an opinion about the evidence. That's solely your
12 business.

13 The other part or another part of the deliberation
14 process is determination of what the facts -- I mean
15 what the law is in a case. And that's a pretty easy
16 part for you, because just like you are the sole judges
17 of the facts, what occurred, you'll make that
18 determination, I determine what the law is. You might
19 not agree with it, you might think it ought to be
20 something else. It might be something else, I don't
21 know. But your oath requires you to follow the law
22 exactly as I give it to you and be guided by the law.
23 So that part is going to be fairly easy to you.

24 And I will tell you right now that I do something
25 that I'm not sure any other judge does, but I've done

1 it for ten years, and that is I actually do a
2 transcript in advance, and I read you my charge
3 directly from the transcript. And I give it to you in
4 writing so you'll have it with you in the jury room
5 because, oftentimes, it can be very complex. And I
6 want you to be able to have it with you.

7 The final part of that deliberation process is
8 where you actually take the facts as you have found
9 them and the law as I gave it to you, and if you would,
10 imagine a mill with two great, big gears. One gear
11 represents the facts, and you built that gear. The
12 other gear is the law, and I built that gear. In that
13 final part of the deliberations when you bring them
14 together and you see how they fit, and that's how you,
15 as a jury, will reach a verdict.

16 Now, you probably say, you know, that all sounds
17 good, judge, but how are we to determine what the facts
18 are? There are going to be people, I'm sure, that are
19 going to be testifying, and we don't know those people.
20 How do we know who's telling the truth and who's not
21 telling the truth?

22 I will tell you this. You can apply any test that
23 you, in your experience, have determined to lead you to
24 the truth. The truth here is no different than the
25 truth out there on Second Avenue. You can consider a

1 witness' education, you can consider a witness'
2 intelligence, you can consider whether a witness has
3 any interest, prejudice, any bias, anything to gain by
4 the outcome of the case. You can consider those
5 things. You can consider whether a witness who
6 testifies that he or she has seen or heard something
7 was actually in a place to hear or see what transpired.

8 You can even consider how a witness looks or
9 appears on the witness stand. We call that a witness's
10 demeanor. You can consider that. Consider all the
11 things that you rely on on a daily basis to determine
12 whether someone is telling you the truth or not telling
13 the truth. And from that you will decide whether or
14 not to believe that witness.

15 Now, I will tell you right up front that during
16 the course of this presentation of evidence, there is
17 going to come a time when you're going to want to hop
18 right over that rail and choke the living daylights out
19 of one of these lawyers because you're going to be
20 sitting there thinking, why doesn't he or she get to
21 the point? We know where they're going. They are
22 asking ten questions when they only have to ask one.

23 They do that because they are trained to do it.
24 They do it because they understand the rules that they
25 are required to follow before certain evidence can be

1 introduced. That's the sign of a good lawyer, a lawyer
2 who knows how to present -- we often call them
3 foundational questions. To ask the final question,
4 you've got to lay the foundation so the jury will
5 understand how the particular witness knows what the
6 witness is saying. Those are all important things
7 these lawyers have been trained to do and they know to
8 do them.

9 Sometimes during the trial of the case, you might
10 hear one of these lawyers stand up and say, I object,
11 Your Honor, or, we've got something we need to take up
12 outside the jury, and I'll probably send you into your
13 jury room. And when you got out there, the natural
14 thing for you to do is think, hey, they are trying to
15 keep something from us.

16 That's not the case at all. It's just that that
17 usually involves the procedure by which a piece of
18 evidence may be produced. And in ruling on that,
19 oftentimes I have to actually express an opinion or
20 make a comment about the relevancy or importance of a
21 particular piece of evidence, and it would be highly
22 improper for you to hear me do that because it might
23 influence the way you look at it. And that's why
24 that's done, it's not that these lawyers are trying to
25 keep a thing from you. It's just that they are

1 following the rules of court.

2 You know, as I mentioned to you earlier, I
3 actually tried cases for 32 years, and I've been on the
4 bench for ten. And I look at some of these rules, and
5 these are rules that we've had for hundreds of years.
6 And I look at them and I say, well, why in the world do
7 we have that silly rule? That's so antiquated, we
8 don't need that rule anymore.

9 And then I'll try a case and the rule will come
10 up, and it will be crystal clear all of a sudden, oh,
11 that's why we have it. I can promise you, these are
12 tested by time, they are relevant, and they are
13 important rules, and these lawyers know what they have
14 to do to follow them. So, please, don't hold it
15 against them if they make an objection or if they
16 invoke the rules. They are supposed to do that.

17 Now, let me tell you about how we're going to
18 proceed. The case will begin with what we call opening
19 statements, opening arguments, if you will. It begins
20 with the State. And Ms. Walter or Mr. Martin, one,
21 will tell you about the case, much more than what you
22 have heard from me. I gave you a very sketchy, brief
23 description of the case. She is going to explain what
24 the State intends to show, how they intend to show it,
25 and why the State takes the position that the Defendant

1 is guilty of this particular -- or these offenses.

2 What she says is not evidence. It's merely laying
3 the case out for you so you will understand evidence as
4 it's produced. The only evidence you will consider is
5 what actually comes from the witness stand.

6 Then Mr. Hilliard will have an opportunity, if he
7 chooses to do so, and he doesn't have to, but if he
8 chooses to do so, he can also make an opening remark.
9 And again, he will lay out the defense for you. He
10 will explain what the problems are with the case. And
11 each attorney is supposed to explain it to you from
12 their perspective. You can expect that. But, again,
13 what they say is not evidence.

14 Once that is done, the State must proceed. The
15 State, as I told you earlier, has the burden of proof
16 in this matter. That is, the State has to carry the
17 case. The State has to convince you in the end that
18 the Defendant is guilty beyond a reasonable doubt of
19 the offenses that he is charged with.

20 And in this case he has two charges, and you must
21 return a verdict on each charge. And these are totally
22 independent verdicts. You may find him innocent of
23 both charges, you may find him guilty of both charges,
24 you may find him guilty of one and innocent of the
25 other with no consideration of what your finding may

1 have been on the other charge.

2 At the end -- as the State's case proceeds,
3 Ms. Walter or Mr. Martin will examine the witnesses.
4 They will put up a witness, they will ask them
5 questions. Then Mr. Hilliard will have the opportunity
6 to cross-examine. And it will go back and forth until
7 the State rests. Once the State rests, the Defense has
8 the opportunity, but not the obligation, to put up a
9 defense. And if they choose not to put up a defense,
10 you shall not in any way hold that against them because
11 they have no burden of proof whatsoever in this matter,
12 and there is a presumption of innocence.

13 But if they choose to, they may put up witnesses,
14 and it, likewise, will go back and forth, direct
15 examination, cross-examination. When that is
16 completed, when the Defense rests, they each get to do
17 what we call closing arguments, point out their strong
18 points, point out why the case should be resolved in
19 their favor. And that will be followed by my
20 instruction to you on the law, and then you will
21 deliberate and reach a decision in this case.

22 Again, I want to reiterate to you that you are to
23 consider no evidence in this matter that you do not
24 hear from that witness stand. That is the only
25 evidence you may consider. It is highly improper for

1 you to do any outside research in this matter. It's
2 highly improper to discuss it. I know it's hard to go
3 home to your wives, husbands, significant others, and
4 they say, what did do you today, and for you to say, I
5 can't tell you about it. My wife usually thinks I'm up
6 to something if I say that. But you just tell her that
7 the judge said you can't talk about it.

8 I ask you not to even discuss it among yourselves
9 until you've heard both sides and you've heard the law.
10 And I'll tell you why that is. It is so easy to hear a
11 witness and go back into a crowd, and I assume you're
12 mostly strangers -- you won't be when you leave here
13 after this trial, but you are now -- and to say
14 something about or like, I don't believe a word that
15 witness says, or, I believe everything that witness
16 says, I don't need to hear anybody else.

17 You've committed yourself, then, if you do that,
18 you've stuck your neck out. And it's awfully hard, as
19 the case develops, if you change your mind, to pull it
20 back in. So that's why I tell you, don't even discuss
21 it. When you go back into your jury room, think of
22 something else to do.

23 Now, let me tell you about trying my cases, and
24 I'm almost done with you. It's important that you are
25 able to see, hear, and concentrate on the evidence

1 that's being presented to you. I try not to go, as I
2 said yesterday, about an hour, hour and a half. If I'm
3 going too long and you become uncomfortable for any
4 reason, you need a break, please, I don't want you
5 sitting there uncomfortable and distracted. Raise your
6 hand, let me know that you need a break. We've got
7 plenty of time. I promise you that we will take a
8 break if that occurs.

9 Also, let me tell you about the attorney sickness.
10 I did it, both of these lawyers -- all of these lawyers
11 are going to do it, too. We become so caught up in
12 trying to present to you evidence -- I mean, that's
13 what these lawyers do, they present to you evidence,
14 that's what their job is.

15 But in doing so, oftentimes we'll stand between
16 the witness and the jury, we'll block you or we may
17 have an exhibit that we want to put -- I don't know if
18 there is going to be one in this case or not, but if
19 there is, you put up an exhibit and you're trying to
20 explain it to the jury, and you end up standing in
21 front of some of the jurors.

22 If that happens, raise your hand and let us know.
23 Because I promise you, these lawyers will not be upset
24 if you say, I can't hear what you're doing. They are
25 doing this for your benefit. They want you to see and

1 hear what they are doing. So don't hesitate to say,
2 excuse me, I can't see, I can't hear. Everything is
3 important. They want you to see and hear what they are
4 presenting to you and for your consideration. So
5 please do that.

6 Again, if you go in your jury room, we take a
7 break, you need anything, let Mr. Ropp know. He'll
8 bring it to my attention, and we'll try to take care of
9 it. I want you to be as comfortable as possible so you
10 can listen and hear what's taking place in this
11 courtroom.

12 Ms. Walker, Mr. Martin?

13 MS. WALTER: Mr. Martin.

14 THE COURT: Mr. Martin.

15 MR. MARTIN: May it please the Court, Your Honor.

16 THE COURT: Certainly.

17 OPENING STATEMENT BY THE STATE

18 MR. MARTIN: Every little girl dreams about
19 holding hands, sharing her first kiss. But for A.R.
20 -- A.R. and J.H. that dream
21 was anything but a nightmare. While most little girls
22 have a father that they can go to, these girls only had
23 him to blame. You see, while they were living in the
24 family home here in Horry County along with their
25 mother, Anatasya, their brothers and their stepdad,

1 Scott Rowan, their stepfather began grooming them at a
2 very early age.

3 Often times he would start by, at a very young
4 age, walking into their bedrooms while they were
5 changing, offering them alcohol, drugs like marijuana,
6 prior to molesting them. He'd do this in separate
7 rooms. He'd tell them things like, don't tell anybody,
8 nobody will believe you even if you did.

9 With A.R., the older sister, things sort of
10 progressed when she was about the age of 14. He would
11 touch her inappropriately on her breasts and other
12 private regions of her body. Not too long after he
13 started with her younger sister J.H. much in the same
14 way. Unfortunately for her, the activity went to much
15 more. From the ages of about 14 to 16 he forced her to
16 perform oral sex on him and engage in vaginal
17 intercourse.

18 You see, both girls were dealt a pretty rough hand
19 in life. They had -- in addition to Mr. Scott Rowan,
20 they had other male influences in their life.
21 Unfortunately, they never really knew their biological
22 father. Anatasya was pregnant with the youngest
23 daughter J.H. when he left the home.

24 But they did have a positive male influence in
25 their life, that was Mr. Billy Eller. He was a good

1 dad, he was a good provider. Even the mother had a
2 great relationship with him. Unfortunately for these
3 girls, shortly after relocating to Myrtle Beach, he
4 passed away tragically in an accident.

5 They didn't really have anyone they could go to
6 while this was going on. Their mother was around, but
7 she had her own demons she had to work out, substance
8 abuse, a failing relationship. She wasn't always
9 there. And it wasn't until J.H. n was about 14 and she
10 thought she was pregnant that she went to her older
11 sister, A.R. . And after revisiting a couple
12 different versions of what may or may not have
13 happened, they both discovered horrifically that they
14 shared the same abuser, Scott Rowan. Neither one of
15 them had known about that.

16 A.R. handled things a little differently. She
17 was very good in school, and that was kind of her
18 outlet. J.H. started doing self-harm, cutting
19 herself, struggling in school. And they talked about
20 all of this and developed a plan that they would
21 finally go to their mother and let her know what was
22 going on.

23 Unfortunately, because A.R. was such a good
24 student she actually graduated high school early and
25 escaped the home before they could go to the mother.

1 Unfortunately for J.H. , the abuse continued until
2 September 15th, 2015, when she was finally able to
3 escape. And her mother found her room empty, window
4 open, the letter detailing the abuse that both of them
5 had suffered.

6 Subsequently, after J.H. did eventually return
7 home, the Defendant, after the case was reported to
8 Detective Johnson and Horry County Police, was charged
9 with criminal sexual conduct with a minor third degree
10 with regards to daughter A.R. and criminal sexual
11 conduct with a minor second degree with regard to
12 J.H. .

13 Now, later on in the trial the judge is going to
14 instruct you on the law and on these charges
15 specifically. But the evidence will show that the
16 Defendant is guilty of criminal sexual conduct with a
17 minor, third degree, because he inappropriately touched
18 A.R. on her breasts and other parts of her body while
19 she was under the age of 16.

20 And the evidence will also show that he's guilty
21 of criminal sexual conduct with a minor second degree
22 with regards to J.H. . Because in addition to doing
23 many of the same things he did with A.R. , he engaged
24 in sexual battery with her while she was in between the
25 ages of 14 and 16. And the judge will tell you about

1 this, but sexual battery can be even the slightest
2 penetration. And there is no such thing as consensual
3 sex with a 14 year old.

4 Now, often times in opening statements, what
5 attorneys do is they give you the facts, and they give
6 you the law like I've done. And we also like to
7 provide to you a roadmap or an outline of kind of where
8 we see this trial going, how we see it progressing.
9 And often times we try to do that by telling you
10 stories or by sharing with you analogies, so that you
11 as the jury with not the same understanding that we may
12 have of the case can kind of better connect the dots,
13 so to speak.

14 But I'm not going to do that in this case. And
15 the reason I'm not going to do that is because it's not
16 my story to tell, it's their story to tell. And they
17 are going to tell it to you. And they are going to do
18 it for two reasons; one, because they need to, and
19 second, because they want to. Because in doing this,
20 justice will be served.

21 You're also going to hear from the sisters, you're
22 also going to hear from their mother, Anatasya. She's
23 going to talk to you a little bit about the family
24 dynamic, the girls' background, where they came from,
25 how they were in the home, her struggling relationship

1 with the Defendant. Mom's also going to talk to you
2 about her substance abuse issues and how she wasn't
3 available for those girls when she should have been.

4 You're also going to hear her talk about an
5 interaction that she had with her husband at the time
6 the day that J.H. ran away. And this confrontation,
7 conversation, whatever you want to call it, took place
8 for almost half a day where he admitted to her that he
9 inappropriately touched his stepdaughter A.R. . And
10 he had sexual intercourse, both oral and vaginal, with
11 and without a condom, with younger stepdaughter J.H. .

12 You're also going to hear from Dr. Carol Rahter.
13 She is an emergency room doctor with Horry and
14 Georgetown Hospital. She volunteers at the Children's
15 Recovery Center. That is a center that is designed to
16 help treat children with physical, mental, emotional,
17 sexual abuse, and she's been volunteering there since
18 about 1992.

19 She conducted the exam and interview of the
20 family, specifically of J.H. . And she's going to
21 talk to you about her findings. She did find a
22 penetrating injury to J.H. .

23 Finally, you're going to hear from Mr. Ray
24 Olszewski. He is a social worker at mental health and
25 Children's Hospital in Columbia. And he has been

1 dealing and volunteering and working there since 1999.
2 And specifically he deals with children who have been
3 victims of mal treatment. And he knows nothing about
4 this case at hand. He didn't deal with either one of
5 these girls or the family or the Defendant.

6 But he is what we would call a blind witness. He
7 is going to talk with you about just his involvement
8 with situations like this and kind of help us better
9 understand things like prolonged abuse and why it may
10 take one victim longer to report something than another
11 victim; but kind of highlight for us the importance of
12 these situations and help us kind of wrap our heads
13 around what's going on.

14 But I want to ask something from y'all here today.
15 While all of this is going on, your job is going to be
16 watching what takes place here on this witness stand,
17 nothing else. And imagine for a second when you're
18 doing that how difficult and how embarrassing it would
19 be to talk with a member of your family or your closest
20 friends, people who have known you for a very, very
21 long time, they know all of your dark secrets, and to
22 talk with them about your personal, intimate details of
23 your sex life.

24 Now, take that a step further and imagine that
25 you're here today in this setting, in this courtroom,

1 in that chair, talking to 14 total strangers who you've
2 never met before, who don't know the personal details
3 of your life, and having to talk with them about
4 intimate details of your sex life.

5 Now, take it one step further where you're in here
6 today in that seat talking to 14 total strangers about
7 how your stepfather inappropriately touched you, kissed
8 you, your first kiss, fondled you and raped you. Sure,
9 there is going to be some nervous laughter, there is
10 going to be some uncomfortable moments for all of us.
11 But I want you to think about that.

12 And after hearing the facts, hearing the evidence
13 from that stand, after having the judge instruct you on
14 the law, and after hearing from us in our closing
15 arguments on how we think you should interpret that
16 law, justice will be served here this week. And Scott
17 Rowan will be guilty. Thank you.

18 THE COURT: Mr. Hilliard, will you make an opening
19 remark?

20 OPENING STATEMENT BY THE DEFENSE

21 MR. HILLIARD: I will, judge. Thank you.

22 Wow, it took us a long time to get here. And I
23 know you're just starting, but we've used up a lot of
24 energy to get to this spot over the last few days. I
25 would like for you to remember back when we were all

1 listening to the Clerk of Court, y'all remember that in
2 the very beginning. And the clerk was telling you when
3 she was talking to the big panel before you 14 got
4 selected, and said that the people who were out there
5 waiting on trials didn't trust you. And therefore,
6 that's why a lot of cases got settled and a lot of
7 things happened.

8 I thought about that when she said it. And I
9 thought, well, we're going to pick 14 people, and we're
10 going to trust those folks. And when you went through
11 this process, you saw that we spent time and energy and
12 were thoughtful about selecting the 14 of you to be the
13 persons who make an ultimate decision in this case.

14 So here we all are, and we're going to spend some
15 time talking about unpleasant things. And at the end
16 of this, the judge, as he said, will put those -- the
17 law to you and make that gear. And you'll take your
18 information that you have and you'll make your gear.
19 And at the end of this, there will be a decision one
20 way or the other.

21 Now, when the Clerk of the Court said was that she
22 didn't envy -- let me say exactly if I can remember --
23 she didn't want to be a defendant. I'm guessing nobody
24 wants to be a defendant. And the solicitor, the
25 prosecutor in the case has said, imagine, if you will,

1 the difficulty that the prosecutrix, the witness, the
2 person who's making these allegations, imagine if you
3 will, how that is to come there and testify.

4 So to that same end, imagine if you will, an
5 innocent man sitting here with his fate in the hands of
6 12 strangers who will ultimately make a decision. It's
7 going to be your job. So it's a high stakes situation
8 for all involved, there's no question about that. And
9 it's not -- one of the things that the judge was saying
10 is that when you're here, he was saying that you can
11 use your common sense, your good common sense, in
12 making decisions about what you believe and what you
13 don't believe in the search for the truth and how you
14 look at the situation.

15 One of the things that he'll also tell you and I
16 will ask you on behalf of Scott to remember, and really
17 on behalf of everyone, because these are constitutional
18 things that we're talking about now, remember that this
19 is not an ordinary situation. You are not people
20 sitting here trying to make an ordinary decision about
21 whether to buy a used car or some other thing. There
22 is a framework, there is a legal framework for your
23 decision-making process.

24 And it's the thing that the judge has told you
25 about already, and that is the very first one is, of

1 course, the presumption of innocence. And when we use
2 these words, and you know, lawyers use these words all
3 the time, they mean a very specific thing when you're
4 on the jury. The presumption of innocence means that
5 at this point, right now, today, that Scott is not
6 guilty.

7 You start, that's a presumption. I mean, the
8 words mean what the words say. You start with a -- you
9 presume him to be not guilty. So you're saying in your
10 head, he's not guilty, he didn't do it. And how do you
11 get beyond that spot, how do you get somewhere else?
12 Because if he's presumed innocent today and we get to
13 the end of the case, how do you decide whether at that
14 point he's guilty or not guilty?

15 Well, proof, like what everybody says. You know,
16 the folks come up here on the witness stand and they
17 talk about it. You know, remember as the judge said,
18 Scott doesn't have to say anything, he's presumed
19 innocent. And the question is, as the search for the
20 truth, the question is whether or not the State of
21 South Carolina through their lawyers can prove to your
22 satisfaction beyond a reasonable doubt that he did
23 these terrible things. These are terrible things.
24 Either, either he is a monster or he's not; right?

25 That's not the question. The question is whether

1 they prove it beyond a reasonable doubt. And that's
2 hard to do. Juries and jurors want to be heroes
3 looking for justice, maybe. And the question is, do
4 they prove it beyond a reasonable doubt to the
5 satisfaction of the 12 of you and remove that
6 presumption of innocence, because that's where we
7 start. That's the framework that this information
8 comes to you, the perspective that this information
9 comes to you from.

10 So now, the judge has said also that the things we
11 say are not evidence. The prosecutor has said that
12 this is what the evidence will show. He has said that
13 it will be this and this and this and this and this.
14 The evidence in this case, ladies and gentlemen, is
15 going to be witness testimony, it is going to be what
16 is characterized ordinarily as a "he said, she said."
17 That is, there are people who are going to say that
18 Scott has done these things. Scott's going to say, I
19 didn't do it. He said, I didn't do it.

20 And I can tell you that, you know, the prosecutor
21 says that he confessed to his wife. Scott's going to
22 say, I didn't confess to my wife, that didn't happen.
23 There's not going to be any wishy-washy or trying to
24 figure out maybe a misunderstanding. Somebody's not
25 telling the truth. And the question is once you get to

1 the end of the case whether you can say with conviction
2 in your heart and beyond a reasonable doubt that
3 Scott's been proved guilty. Because, again, he doesn't
4 have to say anything.

5 One of the things that the prosecution talked
6 about, and this is -- at this point whether the expert
7 for the government testifies or not, maybe he will,
8 maybe he won't, but in any event, presuming for the
9 purpose of our discussion here today that the expert
10 for the government is going to talk to you, what he's
11 going to do is remove from your consideration things
12 you ordinarily use to decide whether to believe
13 something or not.

14 We'll talk more about that, but remember when you
15 hear his testimony. And I won't get a chance to talk
16 to you directly again until the end of this thing. But
17 remember that that's what that testimony is about, it's
18 removing ordinary considerations of truthfulness from
19 your box of things to think about in deciding what's
20 the truth and what's not.

21 I'm grateful, very grateful, for your presence
22 here today. This is a situation that's been going on
23 for some considerable period of time, as you will hear.
24 You're going to sit there and listen, as the judge
25 said, to all of the testimony, and at the end of this

1 you're going to make a decision.

2 So, again, we are thankful and grateful we have
3 selected you because we believe in you. And we will go
4 forward at this time. Thank you.

5 THE COURT: All right. Who do you intend to call
6 first?

7 MS. WALTER: J.H. .

8 THE COURT: I would imagine that that will
9 probably be half hour to an hour?

10 MS. WALTER: Yes, Your Honor.

11 THE COURT: So why don't we do this, before we
12 start with a rather lengthy witness, let's give the
13 jury a five-minute break.

14 Mr. Ropp, you take them back. We've been in here
15 close to an hour. Let's give them a break before we do
16 that so we won't have to break the witnesses'
17 testimony; okay?

18 (WHEREUPON, the jury exited the courtroom at
19 1:46 p.m.)

20 THE COURT: Let's be at ease for about ten
21 minutes, give everybody a chance to refresh themselves
22 before we begin.

23 MR. HILLIARD: Thank you, Your Honor.

24 (WHEREUPON, a brief recess was taken at
25 approximately 1:47 p.m.)

J. H.

-DIRECT BY MS. WALTER

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1 (WHEREUPON, the jury came into open court at
2 approximately 1:55 p.m.)

3 THE COURT: We have everyone back in the jury box
4 as well as our alternates. You may proceed, Counsel.

5 MS. WALTER: Thank you, Your Honor. The State
6 calls J. H. .

7 J. H. , after being duly sworn, testified
8 as follows:

9 THE CLERK: State your name and spell it for the
10 Court.

11 THE WITNESS: My name is J. H. ,

12 [REDACTED]

13 MS. WALTER: Thank you. May I proceed, Your
14 Honor?

15 THE COURT: Yes, you may.

16 DIRECT EXAMINATION

17 BY MS. WALTER:

18 Q And, J. H. , you're doing a great job speaking
19 into the microphone so that everyone can hear you. How
20 old are you today?

21 A I am 18 years old.

22 Q And what is your mother's name?

23 A Anatasya Herron.

24 Q Do you have brothers and sisters?

25 A I have two little brothers and a older sister.

J.H.

-DIRECT BY MS. WALTER

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1 Q Can you tell us their names.

2 A A.R. , O.E. , and S.R. .

3 Q I'm assuming A.R. is the sister.

4 A Yes, ma'am.

5 Q Okay. Do you know the Defendant, Scott Rowan?

6 A Yes, I do.

7 Q How do you know him?

8 A He is my third father.

9 Q Okay. Let's go back a bit. You said he was your
10 third father. Did you ever know your biological
11 father?

12 A No, ma'am.

13 Q Who was the first father figure that you remember?

14 A Billy Ray Eller, Jr.

15 Q Do you know how old you were when your mother and
16 Billy Eller started dating? Anytime you don't know,
17 say, I don't know.

18 A I think I was about two. I was little.

19 Q Okay. Where were you guys living then?

20 A I don't recall.

21 Q Do you know what state you were living in?

22 A Tennessee, I believe.

23 Q And at some point did you move from Tennessee?

24 A Yes, ma'am. We came to Myrtle Beach.

25 Q Who all came to Myrtle Beach?

1 A Me, my mom, my sister, and Billy.

2 Q Okay. And where did you start to live when you
3 came to Myrtle Beach?

4 A I don't recall.

5 Q Was it a house, a hotel?

6 A It was a hotel.

7 Q Okay. And you said Myrtle Beach, so that's here.
8 This is a silly question, but it's here in Horry
9 County; right?

10 A Yes, ma'am.

11 Q Okay, great. And did your mother and Billy Eller
12 have any children together?

13 A Yes, ma'am.

14 Q Which of your brothers is that?

15 A O.E. .

16 Q Did something happen to -- well, I'll back up.
17 How would you describe your relationship with Billy?

18 A It was great. I was daddy's little girl.

19 Q And how long was he in your life?

20 A For about four years.

21 Q Did something happen to him after you guys moved
22 here to Myrtle Beach?

23 A Yes, ma'am. He got in a motorcycle accident in
24 front of where he worked at.

25 Q And what happened to him?

J. H.

-DIRECT BY MS. WALTER

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1 A He was walking -- he was crossing the street to
2 get home from work and a motorcycle ran over his skull.

3 Q Did he die?

4 A Yes, ma'am.

5 Q How did that affect you?

6 A It affected me really bad. I just lost my whole
7 world in the blink of an eye.

8 Q After Billy died, did you stay in Myrtle Beach?

9 A We did. We had went to stay with some family over
10 the summer, but we continued to live in Myrtle Beach.

11 Q Okay. So when you say we went to stay with some
12 family, who is we?

13 A Me and my sister.

14 Q A.R. ?

15 A Yes, ma'am.

16 Q Where was this family that you stayed with?

17 A Tennessee.

18 Q Who was it?

19 A My grandmother.

20 Q Okay. So you said that was just for the summer?

21 A Yes, ma'am.

22 Q When you and -- well, did you and A.R. , at some
23 point, come back to Myrtle Beach?

24 A Yes, ma'am.

25 Q When you came back to Myrtle Beach, who -- did you

1 stay with your mother?

2 A Yes, ma'am.

3 Q Had your mother met anyone new at that point?

4 A Yes, ma'am.

5 Q And who was that?

6 A Scott Rowan.

7 Q All right. Were they living together at that
8 point, if you know?

9 A I don't recall.

10 Q What did you think of the Defendant when you first
11 met him?

12 A Honestly, I really don't know. I was very young.

13 Q Did -- at some point did y'all start living
14 together?

15 A Yes, ma'am.

16 Q Do you recall where the first time you lived
17 together was?

18 A I don't recall the name of the road, but we stayed
19 behind Tanger Outlets.

20 Q And who all lived together at that point?

21 A Me and my mom, my sister, my oldest little
22 brother, and Scott.

23 Q Was anyone else staying with you for a little bit?

24 A A friend of theirs named Allen.

25 Q How long did Allen stay with you?

J.H.

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1 A A couple months.

2 Q Do you remember that house behind the Tanger
3 Outlets?

4 A Yes, ma'am.

5 Q Can you tell us who stayed in what rooms.

6 A My mom and Scott stayed in the back bedroom, and
7 me and my sister shared a room. And the room next to
8 us was my little brother's room.

9 Q That's O.E. ?

10 A Yes, ma'am.

11 Q And during this time, was your mother working?

12 A No, ma'am.

13 Q Do you ever remember your mother working?

14 A No, ma'am.

15 Q Do you know if the Defendant was working?

16 A He -- I believe he was working at McAlister's Deli
17 at that point still.

18 Q Did anything happen while you were at that home
19 with the Defendant that made you uncomfortable?

20 A There was one incident when me and my sister -- I
21 was about seven, I think my sister was about nine. We
22 were in the back bedroom changing clothes, and him and
23 his -- or his friend Allen had walked into the bedroom
24 where we were changing at. And me and my sister asked
25 them very politely like, will you please leave the

1 room. And they stood there for a second and just
2 didn't say anything.

3 And my sister kind of raised her voice a little
4 bit just like, y'all need to leave the room. And they
5 were like, okay, and they continued to just stand in
6 the doorway and watch us change clothes. And my sister
7 took the blanket to try to cover us up a little bit so
8 that way like we were out of eyesight, and then they
9 finally turned around and left.

10 Q You said this was the back bedroom. Was this your
11 bedroom and your sister's bedroom?

12 A Yes, ma'am.

13 Q When the Defendant and Allen walked in, did you
14 have any clothes on?

15 A No, ma'am.

16 Q And so it was just a blanket that your sister used
17 to cover you?

18 A Ma'am?

19 Q It was just the blanket that your sister was able
20 to grab to cover you?

21 A Yes, ma'am.

22 Q And you said that the Defendant and Allen were
23 standing in the room, what were they -- or standing in
24 the doorway, excuse me. What were they doing as they
25 stood there?

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1 A They were just staring at us, like as if -- as I'm
2 sitting here staring -- looking at you as I'm talking
3 to you, they were just making like direct eye contact,
4 just staring.

5 Q And while they were doing that, were you and
6 A.R. saying to leave?

7 A Yes, ma'am.

8 Q Did anything else happen at that house?

9 A Not to my knowledge.

10 Q And then at some point did you guys leave that
11 house?

12 A Yes, ma'am.

13 Q Do you know where you moved after that?

14 A We moved to Rockdale Street in Carolina Forest.

15 Q So Carolina Forest, that's still in Horry County?

16 A Um-hum.

17 Q And just remember, you have to say yes or no so
18 that Terri can get everything down for you.

19 A Yes, ma'am.

20 Q When you moved to that home on Rockdale, who all
21 moved with you?

22 A It was me, my mom, my sister, both my little
23 brothers, and Scott.

24 Q Okay. So now we've added your second little
25 brother to the mix, that's S.R. ?

1 A Yes, ma'am.

2 Q Do you know when he was born?

3 A March 6th -- March 9th. I don't know my brother's
4 birthday.

5 Q Okay. So was he born when you guys were still
6 living in the Tanger Outlet home or in the Rockdale
7 home, if you know, if you remember?

8 A I can't quite remember.

9 Q Okay, that's fine. When you moved to the Rockdale
10 home, can you describe your relationship with the
11 Defendant at that point.

12 A It had started progressing to an awkward stance.

13 Q What do you mean by that?

14 A Not very long after we moved into that house did
15 he start giving us -- giving me marijuana and groping
16 on me.

17 Q All right. So let's back up a little bit. You
18 said he gave you marijuana. Do you remember the first
19 time that he gave you marijuana?

20 A I was about nine.

21 Q Can you tell us how that happened?

22 A Well, he had always smoked. And he was just
23 sitting on the couch smoking, and just kind of looked
24 at me and handed it to me, and it was like, do you want
25 to hit this? And I said, yeah.

J.H.

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1 Q How often would he give you marijuana?

2 A Every single day.

3 Q Where was your mother when this was happening?

4 A My mom would be in her office, as she would call
5 it, in our little computer room.

6 Q All right. So now I'm going to back up. You
7 described that house behind Tanger Outlets. Can you
8 describe this house on Rockdale.

9 A It was a two-floor house. Me and my sister had
10 the two upstairs bedrooms. My little brothers shared a
11 bedroom downstairs because they did not like being
12 separated. So my mom and my dad had the back bedroom
13 to themselves, and my mom turned the other bedroom into
14 an office.

15 Q And you're calling -- you're saying dad. Is that
16 the Defendant?

17 A Scott.

18 Q And you called him dad; correct?

19 A Yes, ma'am.

20 Q So when you moved into the Rockdale house -- I
21 don't think I asked you this first -- your mother still
22 was not working?

23 A No, ma'am.

24 Q How much time would she spend in the office -- in
25 her office?

1 A About 90 percent of the time.

2 Q When she would be in her office, was the door open
3 or closed?

4 A Closed. And she would have headphones on.

5 Q Was the Defendant working at this time?

6 A Yes, ma'am. I believe he was still working at
7 McAlister's for a short period of time.

8 Q Now, you said he would give you marijuana almost
9 every day. Did he ever make you do anything in
10 exchange for the marijuana?

11 A Yes, ma'am.

12 Q Would you tell us what he made you do.

13 A First it was just he would come up into our
14 bedroom with a bowl, and we would start smoking it.
15 And it would lead to him putting his hand up my shirt
16 or grabbing on my thighs. And then over as time
17 started progressing, he started getting a little more
18 comfortable with the fact I wasn't talking or saying
19 anything, and it started progressing more and more.

20 If I wanted it or if he had given it to me and I
21 did not comply to what he wanted or I did not let him
22 grab on my boobs or anything like that, then I was
23 punished.

24 Q Now, you said just then, if you wanted it. What
25 were you referring to, the groping or the marijuana?

J. H.

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1 A The marijuana.

2 Q And you're saying that if you didn't allow him to
3 then grope you, you got punished?

4 A Yes, ma'am.

5 Q Can you tell me some of the punishments that he
6 used?

7 A I would be grounded. I've been -- I have been
8 choked out. I've been slapped across the face. I've
9 been grabbed by my hair and thrown into a wall.

10 Q When you wouldn't comply?

11 A Yes, ma'am.

12 Q Did the Defendant ever give you anything besides
13 marijuana?

14 A Yes, ma'am.

15 Q What else did he give you?

16 A He's given me liquor and pills.

17 Q Okay. When -- let's talk about the liquor. Do
18 you know when he started giving you liquor?

19 A He started giving me liquor when I was about 11.

20 Q What kind of liquor would he give you?

21 A Southern Comfort, Jack Daniels, Jim Beam, Kraken
22 Black spiced rum, Grey Goose, whatever he had.
23 Whatever was in the home.

24 Q Did he ever ask you to do things or make you do
25 things in exchange for the liquor?

1 A Yes, ma'am.

2 Q And what was that?

3 A He would have me perform oral sex, he would have
4 me give him hand jobs, he would -- he would force me to
5 let him rub on me and all kind of things.

6 Q And, I'm sorry, we have to get specific.

7 A It's all right.

8 Q Okay. When you say he made you give him hand
9 jobs, what do you mean?

10 A He would take my hand and put it in his pants and
11 make me keep going until he ejaculated.

12 Q What did he make your hand touch, what part of him
13 did you have to touch?

14 A His penis.

15 Q And so do you know approximately how many times he
16 made you give him a hand job?

17 A More than I can count.

18 Q And you said at least once that he ejaculated.
19 Did he ejaculate frequently?

20 A Yes, ma'am.

21 Q How, if you know, did he clean himself up after
22 that?

23 A Usually a towel or a rag.

24 Q And you said that he would make you give him a
25 blow job. What do you mean by that?

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1 A He would undo his pants and force my head down and
2 force me to suck on his dick until he came.

3 Q How would he force your head down?

4 A He would grab me by my hair.

5 Q Where would this normally happen?

6 A In the living room.

7 Q And was anyone around?

8 A My sister would have been in her room, my mom was
9 in her office.

10 Q Your brother --

11 A My little brothers just run amuck, so I don't know
12 where they would be.

13 Q Did your sister spend a lot of time in her room
14 also?

15 A Yes, ma'am.

16 Q And how old were you when it progressed to having
17 to give him a hand job and a blow job?

18 A I was about 11 or 12.

19 Q As you got older -- let me back up. You said he
20 also gave you pills?

21 A Yes, ma'am.

22 Q What kind of pills did he give you?

23 A Pain pills.

24 Q Do you know when he did that?

25 A About the same time I was getting the alcohol.

1 Q How often would he give you pain pills?

2 A It wasn't very frequent. My mom was more of the
3 pill person. But every once in a while he would get
4 some from my mom just so he could give them to me.

5 Q How did the pills make you feel?

6 A They took away the pain.

7 Q And I'm going to ask you the same question about
8 the alcohol. When you drank, do you know how much you
9 drank?

10 A I drank until I couldn't feel anything anymore.

11 Q Do you remember anything specific happening one
12 day when you drank too much?

13 A There was one day that we were drinking moonshine,
14 and I had ate all the strawberries out of the
15 moonshine. And I had sat on the couch, and next thing
16 I remember, I needed to go pee. So I went to the
17 bathroom to use the bathroom. About like 30, 45
18 minutes later, my mom and my dad are coming in the
19 bathroom and were like, what are you doing?

20 And at that point I was laying in the bathtub
21 with, like, maybe two, three inches of water, not
22 enough to take a bath in, but all I remember was like
23 waking up and looking down, and I was like, I'm peeing.
24 And they're like, well, you're in the bathtub. I was
25 like, so.

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1 And then I got out of the bathroom. I went and I
2 had sat down on the couch to watch TV. And I can't
3 quite give you details of that, the instances that
4 happened the rest of that night. All I do know is I
5 had ejaculation inside of me that I had to clean out.

6 Q Do you know how old you were when that happened?

7 A I was about 15.

8 Q Was that the only time that something like that
9 happened?

10 A No, ma'am.

11 Q Did something -- was there a time when your little
12 brothers were staying someplace else?

13 A Yes, ma'am. My little brothers were staying at
14 Scott's sister's house in Dillon. And my mom and my
15 sister had left to go pick my little brothers up.

16 Well, when they left, my dad was in the shower. I was
17 laying in my bedroom. My dad had gotten out of the
18 shower, came upstairs into my doorway, completely
19 naked. And I was laying on my floor.

20 I started screaming at him and yelling at him and
21 telling him to get out of my room. He would not get
22 out of my room. He proceeded to come into my room, and
23 I was begging him to please just go downstairs. And he
24 had grabbed either a sock or a pair of underwear or
25 something that I had on my floor and shoved it in my

1 mouth.

2 He had put in both of his knees on my thighs so
3 that way I couldn't move. He had ripped off my pajama
4 pants, and he stuck his dick in my vagina and he raped
5 me. And I laid there on my floor crying my eyes out.

6 He came. He stood up like nothing had happened.
7 He walked back downstairs to go to his phone because my
8 mom had tried to call him, and he missed a call. And
9 I'm sitting there, I'm laying on my floor, I can't
10 move. I was -- I hated myself. And all I hear from
11 upstairs was him telling my mom not to get me nothing
12 to eat for dinner because I didn't deserve it because I
13 wouldn't come downstairs and spend time with him.

14 So my mom came home. She had gotten me a little
15 thing of chicken nuggets, had my sister sneak it to me
16 so that way I could eat. And that was that.

17 Q Was that -- if you can tell us, was that before or
18 after the incident with the strawberry moonshine?

19 A That was before. That was the very first time he
20 ever did it to me.

21 Q So when he stuffed a sock or a shirt in your mouth
22 and held you down with his knees, that was the first
23 time he raped you?

24 A Yes, ma'am.

25 Q When your mother came home, did you tell her what

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1 happened?

2 A No, ma'am.

3 Q Why not?

4 A Because the way my dad always made me out to be
5 was I was a pathological liar. He would ask me
6 questions he knew I couldn't answer in front of my mom.
7 He would ask me where I would be at a certain time
8 knowing that I was right there with him. He would ask
9 me things to make me look like you couldn't trust a
10 word I said for the specific purpose of this reason.

11 Q You said that he would ask you where you were when
12 he knew you had been with him. Would that be during
13 the hand job or the blow job or the rapes?

14 A Yes, ma'am.

15 Q And so that's why you didn't tell your mom?

16 A Yes, ma'am.

17 Q And is that the same reason why you didn't tell
18 her about everything that had led up to that?

19 A Yes, ma'am. Honestly, I just -- the way I saw it
20 is everybody always looks at me as a liar. To this
21 day, I'm still trying to get my family to have trust in
22 me and believe what I say because of the circumstances
23 I was put in. And it's -- you have no idea how hard it
24 is.

25 Q Are you lying today?

1 A Ma'am?

2 Q Are you lying here today?

3 A No, ma'am.

4 Q After that first initial rape, did you -- again,
5 and I am sorry we have to get a little personal with
6 you, were you already menstruating at that point, did
7 you have your period?

8 A Yes, ma'am.

9 Q Did there ever come a time when you or the
10 Defendant thought you might be pregnant?

11 A Yes, ma'am.

12 Q Okay. Can you tell us about that.

13 A There was one time in which the Defendant thought
14 that I was pregnant because I have very irregular
15 periods. I get one every three to four months. Well,
16 I hadn't gotten one, and this was right after one of
17 the instances where he hadn't used a condom. And in
18 that instance, he went to the store himself, bought me
19 a pregnancy test to take and had me pee on it right in
20 front of him.

21 And then there was another time that I thought I
22 was pregnant, and I had went to my sister and had my
23 sister help me to get a pregnancy test.

24 Q Okay. And we'll talk about that in just a minute.
25 You just said it was one time that the Defendant

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1 brought the pregnancy test, it was after an incident
2 where he didn't use a condom?

3 A Yes, ma'am.

4 Q Let's start it this way. If you remember, how
5 many times did the Defendant rape you?

6 A At least 12.

7 Q Of those 12 times, would he always use a condom or
8 never use a condom?

9 A He used a condom about two times.

10 Q Now, you said the second time you went to your
11 sister and asked her for help. What did you tell your
12 sister that day?

13 A At first, when I had went to her for help, I told
14 her that I thought I was pregnant. I told her I had
15 snucken out of the house one night and went for a walk
16 around my neighborhood because I was upset and that I
17 had gotten raped by some random person in the
18 neighborhood. I gave her some random description of
19 any teenage boy walking around you could think of and
20 told her that I needed her to be there for me, I needed
21 a pregnancy test.

22 Q Why did you tell her that it was some random boy?

23 A Because I didn't -- I didn't think she would
24 believe me.

25 Q What happened during the rest of that conversation

1 with your sister?

2 A We had sent my friend -- or our friend to go get
3 the pregnancy test for us. And me and her were sitting
4 there talking. And she was trying to -- the whole time
5 I'm sitting there begging her not to tell mom, just
6 please not tell mom. I didn't want mom to know. And
7 she was talking to me, and she was trying to make me
8 feel better.

9 And in the midst of it, she was like, well,
10 there's something I really want to talk to you about,
11 too. And she told me about how Scott, when she was
12 younger, had touched on her and groped her a couple
13 times in our bedroom. And the moment she told me that,
14 I just kind of -- I fell apart. I just started crying
15 my eyes out. And I told her that he did it to me, too.
16 I told her that she wasn't alone, that we were both
17 going through the same thing.

18 Q And, luckily, you were not pregnant at that time?

19 A No, ma'am, I wasn't pregnant.

20 Q Okay. Why didn't you want your mom to know?

21 A Because not only was it because I didn't think she
22 would believe me, but for once I thought my mom was
23 happy. And for once I thought we were taken care of,
24 we didn't have to worry about where we were going to
25 stay. I didn't have to worry about whether or not my

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1 brothers were taken care of.

2 Q You didn't want to risk destroying that?

3 A No, ma'am.

4 Q When you and A.R. finally talked about what had
5 happened, did you make any sort of plans?

6 A Yes, ma'am. We had made a plan that she was about
7 to be 17. State of South Carolina, 17 you can legally
8 live on your own. We had made a plan that she was
9 going to get out of the house, get her somewhere to
10 stay, and she was going to tell my mom. So that way I
11 would have somewhere safe to go when she told her, and
12 so that way she can make sure that I wouldn't be in
13 danger.

14 Well, the plans didn't go as we had hoped. My
15 sister graduated from high school early, she moved in
16 with her boyfriend, and I was left in the home to deal
17 with it by myself.

18 Q Do you know when that was?

19 A I do not.

20 Q Was this the same -- I'll back up. After your
21 sister left, were there other incidents with the
22 Defendant?

23 A Yes, ma'am.

24 Q Can you tell us about any of them.

25 A There was this one -- there was one incident when

1 my -- the day my sister came to pick the rest of her
2 stuff up from our house. And Scott had came upstairs,
3 and he wanted me -- I don't quite remember what he
4 wanted me to do, but I snapped, like everything in me
5 just finally hit a stop. And I flipped out. I told
6 him he was a dad. He needed to start acting like a
7 dad, that I needed a dad in my life, I didn't need
8 this.

9 He went downstairs, and he was mad. About five
10 minutes later he comes back upstairs, and he's crying
11 his eyes out, telling me he loves me, he wants to be
12 with me, not my mom. And I felt disgusted. I
13 completely hated myself at that point. I told him to
14 get the fuck out of my room, to leave me alone.

15 And he's sitting there crying, why are you doing
16 this to me, why are you doing this to me? I thought we
17 had something nice. I thought I was supposed to have a
18 dad in my life. That was the furthest from a dad I
19 could ever imagine.

20 And as he's upstairs crying telling me all of this
21 stuff, I hear my sister pulling in downstairs. And he
22 races to go downstairs. I locked myself in that
23 bathroom upstairs, and I cried for four hours. My
24 sister even came in to check on me before she left, and
25 I couldn't even speak to her. I couldn't even breathe.

J.H.

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1 I had just -- I had given up on everything.

2 Q When you say you gave up on everything, did you at
3 any point try to harm yourself?

4 A I tried to commit suicide a few times. I tried.
5 I've never been able to actually go through with it,
6 but I tried.

7 Q And did you ever cut yourself?

8 A Yes, ma'am. I have scars all over my body.

9 Q Why would you cut yourself?

10 A Anything -- I would do anything to just get my
11 thought, my mind off of things. I've turned -- I've
12 turned to drugs, I've turned to self-harm, I've turned
13 to everything I could possibly think of just to get
14 some feeling back.

15 Q At some point were you able to get out of the
16 house?

17 A Yes, ma'am.

18 Q Can you tell us about that.

19 A When I was 16, I finally ran away. I was working
20 at McDonald's at the time. I had about seven, \$800
21 saved up in a bank account that I was going to use to
22 get me a car. Well, I had -- like a week prior to
23 that, we had an altercation in the household. And at
24 that point it just kind of pushed me over the edge.
25 And I had had a runaway letter that I had written six,

1 seven months before I ever ran away. Like I had been
2 planning and planning and praying and praying for the
3 right time to come.

4 So that night I got off of work, I came home, I
5 called my friend and told him to be waiting outside.
6 About 30 minutes later I see them pull up. They helped
7 me jump out my two-story window. I left my notes, and
8 I disappeared.

9 Q And I'm going to get back to that in just a
10 minute. And again, I apologize for having to get
11 personal. After you left the house, did you have a
12 consensual relationship with a male?

13 A Yes, ma'am.

14 Q As a result of that relationship, did you come to
15 find out that you had a sexually transmitted disease?

16 A Yes, ma'am.

17 Q Have you ever blamed that sexually transmitted
18 disease on the Defendant?

19 A When I first found out that I had it, before all
20 knowledge and everything came into play, I did say at
21 one time that it was from him.

22 Q Do you know who you said that to?

23 A Sabrina.

24 Q That's your friend, Sabrina Houser?

25 A Yes, ma'am.

1 Q Is -- have you maintained contact with Sabrina?

2 A I've talked to her one or two times every once in
3 a while just to check on her, see how she's doing
4 because she was one of my best friends at the time.
5 But I don't talk to anybody anymore.

6 Q Now, let's go back. And you said that you had
7 written a runaway letter?

8 A Yes, ma'am.

9 Q Did you write just one letter?

10 A Altogether I think there were three. There was a
11 runaway letter. There was a revised copy of the
12 runaway letter, and then there was a third note that
13 left details of just what my dad had did.

14 Q Where did you leave those letters?

15 A Two of them were on the mirror in my bedroom, and
16 one of them was in the binder. Or, no, one of them was
17 on the mirror. I had the other one with me.

18 Q Okay. So one on the mirror, one on the binder,
19 and one with you?

20 A Yes, ma'am. I kept a copy with me in case the
21 Defendant got to it first.

22 Q Okay. Do you know if those letters were turned
23 over to the police?

24 A Yes, ma'am, they were.

25 MS. WALTER: Your Honor, I'm going to ask that

1 they open this.

2 MR. HILLIARD: I don't have any objection, Your
3 Honor.

4 THE COURT: It's admitted without objection. That
5 will be State's-1?

6 MS. WALTER: Yes, depending on how the Court wants
7 to do it because it's in one envelope, but -- see, I
8 turned my back on you just like that -- and then there
9 are three letters.

10 THE COURT: Okay, three letters, why don't you
11 introduce them.

12 You have no objection to any of them; right?

13 MR. HILLIARD: I don't, judge. But I think it
14 would be good if we could mark them independently.

15 THE COURT: That's what we're going to do.

16 MR. HILLIARD: Yes, sir.

17 THE COURT: And I will ask you to have her more
18 specifically identify.

19 MS. WALTER: I will.

20 THE COURT: And then have marked without objection
21 and entered; okay?

22 MS. WALTER: Can I mark them first and then show
23 her?

24 THE COURT: Certainly.

25 (WHEREUPON, State's Exhibit Nos. 1 to 3 were

1 marked for identification.)

2 (WHEREUPON, State's Exhibit Nos. 1 to 3 were
3 admitted in evidence.)

4 Q So I'm showing you what's been admitted as State's
5 Exhibit 1, 2 and 3. And I want you to just look at
6 those, and then tell me if you recognize them.

7 A Yes, ma'am, I do.

8 Q So, let's look first at State's Exhibit 1, which
9 appears to be two pages. What do you recognize that to
10 be?

11 A That's the runaway letter I left on my mirror.

12 Q Okay. And then State's Exhibit 2?

13 A That would be the copy that I had with me.

14 Q Okay. And how do you know the difference between
15 the two of them?

16 A Because the one that's all folded up, which would
17 be this one, I had in my possession. So rather than
18 being nice and neat on here, it was creased and put up
19 for safekeeping.

20 Q So that's, you're saying, as I throw it at you,
21 State's Exhibit 2?

22 A Yes, ma'am. That's the copy I had with me, and
23 that was the copy I left for my mom.

24 Q So one you left for your mom, two you had with
25 you, and what about State's Exhibit 3?

1 A That is the one I left for my mom to give details
2 of the situation that was going on.

3 Q Do you recognize that to be your handwriting?

4 A Yes, ma'am.

5 Q And you recognize those to be the letters that you
6 did, in fact, leave?

7 A Yes, ma'am.

8 MS. WALTER: Your Honor, I would ask that they be
9 published to the jury.

10 THE COURT: You may. And they are admitted,
11 Ms. Bautz; is that right?

12 COURT REPORTER: Yes.

13 THE COURT: Thank you.

14 Can everyone see that? Just raise your hand, now.
15 If they are trying to -- I promise you these attorneys
16 don't mind at all. They want you to see what they are
17 presenting. So just let us know if you can't hear or
18 see. You cannot see?

19 A JUROR: I'm having eye issues.

20 THE COURT: I will tell you what, how about him --
21 well, when we're done, can you let them circulate the
22 originals?

23 MS. WALTER: Absolutely.

24 Q 1 and 2 are the letters that were State's
25 Exhibit 1 and 2, essentially the same?

J. H.

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1 A More or less, yeah.

2 Q Okay.

3 MS. WALTER: Your Honor, with your permission,
4 what I can do is give the juror that's having trouble
5 Exhibit 2, which is essentially the same, then we can
6 pass them all around.

7 THE COURT: Okay, that's fine. But let's
8 eventually let them pass them around to see them.

9 MS. WALTER: Yes.

10 THE COURT: The originals; okay?

11 MS. WALTER: And with the Court's permission, I'll
12 just ask when they are done with the first page, just
13 let me know and I'll turn it to the second page.

14 (Jury is reading.)

15 MS. WALTER: Everyone ready for the second page?

16 THE COURT: Did everyone get a chance to read the
17 first one.

18 (Jurors indicate affirmatively.)

19 MS. WALTER: Is everyone done with that, okay.
20 I'm just going to take a minute to roll that back, Your
21 Honor.

22 Q Did any of the rapes leave any marks on your body?

23 A Yes, ma'am.

24 Q Okay. And can you tell us about that.

25 A I had bruises all over my body constantly,

1 fingerprints, welts, everywhere.

2 Q Was the Defendant ever physically abusive to you
3 -- well, in addition to sexually abusive, physically
4 abusive to you?

5 A Yes, ma'am.

6 Q Can you tell us about that.

7 A There was the incident I spoke of that happened
8 about a week to where I ran away. I was working at
9 McDonald's. And I was messing with my mom. She asked
10 me to clean something up. And like she mixes this like
11 chemical with some water as like our spray cleaner.

12 And I was messing with her, joking around, like,
13 mom, if you want me to clean it, you got to make the
14 chemical for me, like just joking. And Scott was like,
15 well, you need to learn how to do it yourself because
16 I'm sure McDonald's is going to have you do it. I
17 said, well, actually, they are not. I said, that's
18 morning shift's job. I don't work morning shift.

19 He's like, well, maybe one day you're going to
20 work morning shift. I said, well, considering the fact
21 that I go to school, that's not going to happen, I'm
22 going to stay on my middle shift.

23 And he -- at that time me and my mom were standing
24 in the kitchen, he got up off of the couch in the
25 living room, ran to where we were in the kitchen and

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1 slapped me across my face, started screaming at me. As
2 he was screaming at me, his spit was landing on my
3 face, and I like backed up a little bit. And I went,
4 started screaming at him back. Well, I tried to be the
5 bigger person, I tried to stop and walk around him.
6 And in which he pushed me down, climbed on top of me
7 and was choking me in front of my mom.

8 Q What did your mother do?

9 A She didn't do anything.

10 Q Who was the first male that you kissed?

11 A Scott.

12 Q Who did you lose your virginity to?

13 A Scott.

14 Q Was that by your choice?

15 A No, ma'am.

16 Q How are you doing now?

17 A Ma'am?

18 Q How are you doing now?

19 A I'm a wreck.

20 MS. WALTER: Thank you very much. And just answer
21 any questions Mr. Hilliard has.

22 THE COURT: Mr. Hilliard.

23 MR. HILLIARD: Thank you, judge.

24 CROSS-EXAMINATION

25 BY MR. HILLIARD:

1 Q That's a lot of years that you've been telling us
2 about here. How many years would you say that is all
3 together?

4 A Seven, to be exact.

5 Q Seven years?

6 A Yes, sir. From '09 to '16.

7 Q There was some of it that happened when you were
8 seven; is that --

9 A Yes, sir. There was the instance where he came
10 and stood in my and my sister's room. But as far as
11 like traumatic things, it wasn't really that big of a
12 deal considering the rest of the years.

13 Q It was significant enough that you remember it to
14 this day?

15 A Yes, sir. I have a great memory.

16 Q And you didn't tell your mom about it at that
17 point back when it happened; you and your sister nude
18 and Scott and his friend looking at you nude in the
19 room?

20 A No, sir.

21 MR. HILLIARD: Excuse me just one second.

22 MS. WALTER: May I see what you're approaching
23 with?

24 MR. HILLIARD: Sure.

25 Q This isn't a real good picture, but let me just

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1 ask if you can identify that in the top left-hand
2 corner there.

3 A It's my old house.

4 Q That's your old house?

5 A Yes.

6 MS. WALTER: Your Honor, I'd ask that that be
7 marked.

8 MR. HILLIARD: We'd offer it into evidence, Your
9 Honor.

10 THE COURT: Please have her identify it, and you
11 may mark it.

12 Do you have any objection?

13 MS. WALTER: Well, I'm not looking at the same
14 thing, so I would just like to see what he is actually
15 showing the witness.

16 MR. HILLIARD: You have a set right there. I'll
17 bring it back.

18 MS. WALTER: Thank you.

19 Q Can you identify this, please.

20 A It's my house on Rockdale Street.

21 Q Your house on Rockdale Street?

22 A Yes, sir.

23 Q Thank you.

24 MR. HILLIARD: Would you mark that for me, please.

25 (WHEREUPON, Defendant's Exhibit No. 4 was marked

1 for identification only.)

2 MR. HILLIARD: Marked as Defendant's Exhibit 4 for
3 identification.

4 MS. WALTER: No objection, Your Honor.

5 THE COURT: Very well. It's admitted without
6 objection.

7 (WHEREUPON, Defendant's Exhibit No. 4 was admitted
8 in evidence.)

9 MS. WALTER: No objection. It might make sense to
10 just mark that -- if we staple it all as the one
11 exhibit.

12 THE COURT: Do you want to do that?

13 MR. HILLIARD: No, sir.

14 THE COURT: Very well, proceed.

15 MR. HILLIARD: Thank you, Your Honor.

16 Q That's another photograph of your home; is that
17 right?

18 A Yes, sir.

19 Q On Rockdale?

20 A Yes, sir.

21 MR. HILLIARD: Mark that one for me, please,
22 ma'am.

23 (WHEREUPON, Defendant's Exhibit No. 5 was marked
24 for identification only.)

25 Q And that's a stairwell in your home on Rockdale;

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1 is that right?

2 A Yes, sir.

3 MR. HILLIARD: Thank you. Six, please.

4 (WHEREUPON, Defendant's Exhibit No. 6 was marked
5 for identification only.)

6 Q And this is the kitchen and living area of your
7 house on Rockdale?

8 A Yes, sir.

9 (WHEREUPON, Defendant's Exhibit No. 7 was marked
10 for identification only.)

11 Q And this is the door. What does that door lead to
12 on Rockdale, if you could tell us?

13 A The water heater.

14 Q The water heater?

15 A If that's the laundry room, right there in the
16 back door is the water heater room.

17 Q Okay, very good.

18 (WHEREUPON, Defendant's Exhibit No. 8 was marked
19 for identification only.)

20 MR. HILLIARD: That's Defendant's No. 8, judge.

21 Q And then this is a view from the other direction,
22 from the kitchen to the living room; is that right?

23 A Yes, sir.

24 Q And of your house at Rockdale?

25 A Yes, sir.

1 (WHEREUPON, Defendant's Exhibit No. 9 was marked
2 for identification only.)

3 MR. HILLIARD: That is Defendant's-9, Your Honor.

4 Q This is a drawing that I'm asking you to look at
5 and see if that is a drawing that is consisting of the
6 interior of your house at Rockdale. Take your time.

7 A That seems correct.

8 Q That seems correct?

9 A Yes, sir.

10 MR. HILLIARD: Mark this please, ma'am.

11 (WHEREUPON, Defendant's Exhibit No. 10 was marked
12 for identification only.)

13 MS. WALTER: Well, Your Honor, is the whole board
14 being marked or just that one page?

15 MR. HILLIARD: Just the one page.

16 MS. WALTER: I just want to make sure that for
17 purposes of admission it's just that page and not
18 whatever else has not been addressed.

19 THE COURT: Right, that's my understanding.

20 MR. HILLIARD: The board is to hold it together,
21 judge.

22 THE COURT: Okay, I understand.

23 MR. HILLIARD: So do you have objection to --

24 MS. WALTER: I just don't know what else is on the
25 board. I'm just trying to make sure that the record is

1 clean.

2 MR. HILLIARD: Well, we have a clean record. Do
3 you have an objection to that?

4 MS. WALTER: I do not have an objection to that
5 page, as already stated.

6 MR. HILLIARD: All right. How about this one?

7 THE COURT: Looks like, Mr. Hilliard, you have got
8 plenty of people that will help you hold those, so...

9 MR. HILLIARD: Yes, sir. I thought we'd bring
10 somebody.

11 Q Let me ask you about this one. It's, again, a
12 piece of paper. And does that look like the second
13 floor of your house?

14 A Yes, sir.

15 Q All right.

16 MR. HILLIARD: Mark this one as well.

17 (WHEREUPON, Defendant's Exhibit No. 11 was marked
18 for identification only.)

19 MR. HILLIARD: I'll just stick it right here,
20 judge, for the purpose of holding on to it. We'll come
21 back to that in a bit. Only the page is in evidence,
22 judge.

23 THE COURT: That's right, sir.

24 MR. HILLIARD: We'll take it off before we go
25 further.

1 Q Can you tell me what the phrase, "wake and bake"
2 means?

3 A It's when you smoke first thing when you wake up.

4 Q And did you and Scott and A.R. on occasion wake
5 and bake?

6 A Yes, sir.

7 Q How often would you -- well, let me ask this
8 question. So, when did you and Scott and A.R. start
9 waking and baking?

10 A Well, I can't tell you when my sister and Scott
11 started doing it because we never waked and baked
12 together. It was an individual thing. He would come
13 up to my room some mornings and smoke with me, and he
14 would go up to my sister's room some mornings and smoke
15 with her. But he never did it -- it was never a
16 wake-and-bake-together thing.

17 Q Never on any occasion did you and Scott and A.R.
18 wake up in the morning and smoke marijuana together?

19 A Not in the form in which you're stating it, no.

20 Q How about in a --

21 A There was times where we would all be together in
22 one room and smoke, but as far as waking and baking,
23 no, that never happened.

24 Q Well, help me understand the difference between
25 being in the same room -- are you saying being in the

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1 same room together in the morning time and smoking
2 marijuana?

3 A Like if we were downstairs in the living room in
4 the morning when we first wake up, all three of us were
5 down there?

6 Q Right.

7 A Then, yeah, all three of us would smoke together.

8 Q But that's not waking and baking?

9 A We were never -- we never went downstairs first
10 thing in the morning. When we would all smoke together
11 in the living room, it was in the evening. And even
12 then, my sister would rarely ever smoke with me because
13 she didn't like it. Everything that I did my sister
14 was never usually a part of.

15 Q All right. Well, when you say those things,
16 you're looking over there. Is it your sister is here
17 with us in the courtroom?

18 A Yes, sir.

19 Q All right. And this is Defendant's No. 11 in
20 evidence. This is the upstairs of your house; is that
21 right?

22 A Yes, sir.

23 Q That you've been testifying about?

24 A Yes, sir.

25 Q Okay. And so your room and your sister's room are

1 right there beside each other?

2 A Yes, sir.

3 Q That's a really small area; isn't that true?

4 A Yes, sir.

5 Q Okay, very good. When you were talking earlier
6 about running away from home -- let me ask a better
7 question. When you ran away from home, was that the
8 first time that you had said anything to your mom about
9 Scott having any sexual activity with you?

10 A Yes, sir.

11 Q So your mom never knew anything about it until
12 that time?

13 A No, sir. She had had her speculations, but I
14 never told her nothing.

15 Q She had her speculations. You talked about it
16 since then?

17 A Sir?

18 Q I say, when you say she had her speculations, is
19 that something you talked about when she had the
20 speculations, or is that something you've talked about
21 since then?

22 A We -- she talked about it when she had the
23 speculations and since then.

24 Q So when she had the speculations, you didn't go
25 ahead and tell her what was going on?

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1 A No, sir. Because when she would address the
2 speculations, she didn't address me, she addressed
3 Scott.

4 Q Were you there?

5 A Yes, sir, but I was not going to open my mouth.

6 Q Because you were afraid you would not be believed?

7 A Because I was afraid I wouldn't be believed, yes,
8 but I was also afraid of opening my mouth, of the
9 consequences of speaking up.

10 Q When you were talking earlier about running away
11 from home, you indicated that there was a confrontation
12 right before you ran away; is that right?

13 A Yes, sir.

14 Q And that confrontation was based on your stealing
15 marijuana from your family?

16 A No, sir. That confrontation was about the
17 cleaning chemicals incident that I had just went over a
18 moment ago.

19 Q How long after the cleaning event -- cleaning
20 chemicals event was it that you ran away?

21 A About a week. They -- the -- I had gotten in
22 trouble at one point with them for stealing marijuana
23 and alcohol, but that was months prior to my running
24 away.

25 Q Okay. So your running away was not based on the

1 sexual activity, the running away was based on the
2 physical activity with the bleach; is that right, or
3 cleaning agents?

4 A No, sir. The running away was me wanting to get
5 out of the house, me finally getting to the point where
6 I said, I cannot take this anymore. My body was done.
7 I was done emotionally, physically, I couldn't do it
8 anymore. That is my reason for running away. It had
9 nothing to do with any kind of confrontations. It had
10 nothing to do with just the physical abuse. It had to
11 do with I got tired of waking up every morning and
12 hating myself and hating my own family for not
13 noticing. That's why I ran away.

14 Q Your family didn't notice?

15 A No.

16 Q And you were saying that the boys were running
17 around the house sort of willy-nilly during all of this
18 period of time; is that right?

19 A Yes, sir.

20 Q And they never saw anything?

21 A My little brother did. But when he had finally
22 spoken up about it, it was months after everything had
23 been said and done. It was after he had already talked
24 to the Children's Recovery Center. It was after
25 everybody else had gotten to put their side of the

1 story in did my brother actually say that he had saw
2 something.

3 Q It was actually only after he had the -- he had
4 spoken to your mother about that; is that right?

5 A Yes, sir.

6 Q And the only person that he's talked to about that
7 is your mother?

8 A No. He talked to me about it, too.

9 Q Okay. How many times did -- and if I'm incorrect
10 or should recollect and don't, I'm sorry for that --
11 but tell me how many times Scott actually had sexual
12 intercourse with you.

13 A At least 12.

14 Q Could it have been more than that?

15 A Yes, sir.

16 Q And over what period of time, if you can recollect
17 for me?

18 A Between 14 and 16, so two years.

19 Q Between ages 14 and 16?

20 A Yes, sir.

21 Q And it never happened when you were 13?

22 A I'm not a hundred percent with the dates and times
23 of everything, but I'm pretty sure it started when I
24 was 14.

25 Q Your recollection is that he only had -- or he

1 only used a condom twice; is that right?

2 A Yes, sir.

3 Q You told your friend Sabrina that Scott had given
4 you an STD; is that right?

5 A At one point, yes, sir. But it was right after I
6 had gotten tested. It was right after I had started
7 pressing charges, before I had gotten knowledge or even
8 thought about what had happened, I did say it came from
9 the Defendant. But once knowledge came into -- once I
10 was able to pinpoint exactly where it came from, then I
11 took back anything I had said.

12 Q So once you found out Scott didn't have and never
13 had it --

14 A No, sir. Once I found out who gave it to me.

15 Q You know today that Scott never had chlamydia?

16 A Yes, sir, I do.

17 Q And so you know today that Scott didn't have
18 chlamydia?

19 A Yes, sir. I got it -- I had gotten it from
20 someone I had slept with after I had pressed charges
21 and after I had ran away and all that, I had gotten it.
22 I had it for about two, three months maybe, and then I
23 got rid of it.

24 Q The first time that you found out you had
25 chlamydia was you went to the rape crisis center for

1 your testing about Scott; is that right?

2 A Yes, ma'am -- or yes, sir.

3 Q And they told you that you had chlamydia?

4 A Yes, sir.

5 Q And you said, Scott did it?

6 MS. WALTER: Objection, Your Honor.

7 THE WITNESS: I didn't say that Scott had done it.

8 Q You told your friend that Scott did it?

9 A I didn't -- but the way you just worded it was
10 that I had told the CRC I had done it -- or that he had
11 done it.

12 Q I apologize, I misspoke. You told your friend
13 that Scott had done it?

14 A Yes, sir. When it first happened, yes.

15 Q And you told your mother that Scott had done it?

16 A When everything first happened, I did not have any
17 knowledge of any of who it could have come from. I did
18 not have any knowledge of anything. All I know is they
19 told me this, and the first thing that came to my head,
20 considering the fact the only person that -- besides
21 the person I slept with, the only person that I knew I
22 had a constant relation with was the Defendant.

23 So the first thing that popped into my head when I
24 got it was, oh, it must have come from him. And then
25 once knowledge came into play, I took back what I said

1 and I apologized.

2 Q Who did you apologize to?

3 A I apologized to the people that I spoke to for
4 miscommunicating with them.

5 Q You apologized to the people that you -- so you
6 told -- let me see if I can get this right. You told
7 people that Scott had given you the chlamydia?

8 A I told one person.

9 Q And you went back and apologized to that person
10 for telling them that Scott had given you chlamydia?

11 A No, I apologized for misinformation.

12 Q Help me understand, what do you mean by that? I
13 don't understand.

14 A Because if I was to tell you something, and I find
15 out a little bit later that I had a little bit of the
16 facts twisted, I'm going to come up to you, I'm going
17 to apologize for giving you the wrong information, and
18 I'm going to right it by telling you what really
19 happened.

20 Q So you apologized to your friend for giving the
21 wrong information about having got the chlamydia,
22 apologized to your friend; right?

23 A Yes, sir.

24 Q And you told your mom's lawyer that Scott had
25 given you chlamydia?

1 A Not to my knowledge. I don't even know who my
2 mom's lawyer is.

3 Q You know your mom had a lawyer for the divorce?

4 A For the -- no. I've never, I have no part in
5 that. I've never once talked to her divorce lawyer,
6 not to my knowledge. I have no part in their divorce.

7 Q I think you said earlier, and correct me if I'm
8 wrong about this, but I think you said earlier that
9 your family believes that you're not a truthful person?

10 A Yes, sir.

11 Q And you told folks on the jury that you're trying
12 to cause your family to believe you are a truthful
13 person?

14 A Yes, sir.

15 Q And you have not been a truthful person in the
16 past; true?

17 A Correct.

18 Q When you wanted your sister -- and again, if I'm
19 misspeaking this, please correct me, but when you
20 wanted your sister to help you with the pregnancy test,
21 you told her that you had been sexually assaulted out
22 by the pond?

23 A Yes, sir.

24 Q That wasn't true?

25 A No, sir.

1 Q And at that point you didn't tell her what was
2 going on with Scott?

3 A I told her a little bit later.

4 Q When was that?

5 A After me and her had sat down and talked and
6 realized that I wasn't the only person that was going
7 through it.

8 Q How many times were you sexually assaulted by
9 Scott after that?

10 A I'm not quite sure. But quite a few times.

11 Q So after you told your sister and after you talked
12 to her and said that you're not the only one that went
13 through it, and I'm not the only -- you and I are both
14 going through this same thing, at that point Scott
15 sexually assaulted you some more?

16 A Yes, sir.

17 Q And you and your sister decided that the best way
18 for you to handle the situation is to have her move out
19 of the house, and you'll move out of the house with
20 her, and at that point y'all can tell?

21 A No, sir. I was never moving out of the house.
22 She was going to -- she wasn't even going to move out
23 of the house. She was going to find somewhere to go
24 stay for a little bit that I would be welcome to go
25 with her the day that she does tell. But she wanted to

1 make it a safe home to where me and her could both live
2 back at home and actually, for once, be a family.

3 Q So what you-all wanted to do was to live back at
4 home, safe, away from Scott and all be a family; that
5 was the idea?

6 A Yes, sir.

7 Q All right. And at the same time -- let me ask
8 this question, a better question maybe. Scott was a
9 good provider, he earned significant money and helped
10 to pay for the things in the house; right?

11 A Yes, sir.

12 Q And he took care of the whole family in that
13 regard?

14 A To an extent. There were favorites. There was
15 favoritism, some people got taken care of way better
16 than others.

17 Q Who got taken care of way better than others?

18 A It was kind of a back -- it was a back-and-forth
19 kind of battle. Sometimes my sister would get to be
20 the golden star, sometimes my brothers would get to be
21 the golden star.

22 Q Did you ever get to be the golden star?

23 A I was always the trashy one.

24 Q I mean, you got to smoke the marijuana; right?

25 A I didn't give two fucks about marijuana.

1 Q But that's one of the things was that he wouldn't
2 let you have the marijuana unless you did things?

3 A I mean, over time, there was an addiction that
4 came into play with it. But I didn't -- I could have
5 cared two -- I couldn't care about the marijuana, like,
6 I really don't. All I wanted at that time was to get
7 the same treatment that my sister would get or that my
8 brothers would get. I wanted to feel equal in my own
9 home.

10 Q You were getting the alcohol?

11 A And that's not -- that means nothing compared to
12 having a family, to having a dad-and-daughter
13 relationship, to having people that care about you and
14 actually care.

15 Q Well, what were they getting that you weren't
16 getting?

17 A They got love, they got to be treated special,
18 they got everything. I got my head bashed into a wall,
19 called a piece of shit daily. I didn't get nothing.

20 Q So you were -- but you were the one that he wanted
21 the special relationship with; right?

22 A And I'm the one that did everything I could to
23 fight it. I'm the one that he knew, no matter what
24 happened, I wasn't going to tell, but I was going to
25 keep on fighting. And that's what I did is I fought

1 and I fought and I fought. I fought for as long as I
2 could. I tried to be -- I tried to be good in
3 everybody's eyes, I tried to make good grades, I tried
4 to do what everybody wanted, I tried to be like my
5 sister. But I can't. It's not me. That part of me
6 got ripped apart a long time ago.

7 Q It's got nothing to do with Scott; does it?

8 A It does.

9 Q All right. So Scott tried to do the same thing
10 with your sister that did he with you; right?

11 A Yes, sir.

12 Q But he never did?

13 A No. When he finally stopped with my sister was
14 when things progressively got worse with me.

15 Q When you say he finally stopped with your sister,
16 there were -- well, tell me about it. What do you know
17 about instances with your sister?

18 A I know that the time period when me and my sister
19 were sitting down talking and she told me that she had
20 gotten him to stop. And I looked at her, and like I
21 hated myself for thinking it, but I envied her because
22 the moment that it stopped, there was about maybe a
23 month or two period, and then there was the first time
24 that he raped me.

25 And I sat there, and I wanted to hate her, I

1 wanted to hate her so bad because by him stopping with
2 her, it just -- it made it worse for me. But at the
3 same time, I love my sister, and I'm so glad that she
4 was able to get out of that, no matter what kind of
5 situation it put me in.

6 Q Well, there was a point in time when you indicated
7 your sister hated you; is that right?

8 A Me and my sister, we've never gotten -- we've
9 never really gotten along, none of my family has. But
10 there is no hatred with any of our family. There is
11 dislike sometimes, there is discomfort, there is not
12 wanting to be around each other, but my family, we will
13 never hate each other.

14 Q But you don't get along with your sister?

15 A At times, no.

16 Q All right. So the point in time that we're
17 talking about where you told your sister, and you and
18 your sister planned on running away from home or
19 whatever that was, whatever that event was where your
20 sister was going to go and you were going to have a
21 safe place to be, that never came to pass, that never
22 happened?

23 A No.

24 Q Your sister moved in with a boyfriend, and at that
25 point you could have gone and stayed with them, right,

1 that would have been a safe thing?

2 A No. I was underage.

3 Q You would always have been underage under either
4 set.

5 A But if I'm 17, I can legally live on my own out of
6 my house. At that time I was not old enough. I could
7 not leave my house legally, not without getting my
8 sister put in jail or her boyfriend put in jail or
9 whoever she went to go stay with.

10 Q I'm going to hand the letters back to you that you
11 wrote.

12 A Okay.

13 Q Before we get into the letters, you need to take a
14 break?

15 A No.

16 Q Before we get into the letters, at the point in
17 time that Scott -- of the, give or take, 12 times that
18 Scott sexually assaulted you, where did those sexual
19 assaults take place?

20 A Mainly in the living room. There was about two
21 times in my bedroom. But a majority of everything that
22 has ever happened to me has been in that living room.
23 I think there was one or two times that he did it in
24 his bed.

25 Q One or two times in his bed and two times in your

1 bedroom, is that --

2 A Two times in my bedroom for sure.

3 Q Okay.

4 A And then I know there was one time that it
5 happened in his room. It might have been two times.
6 But I know it happened two times in my room, at least
7 once in his room, and multiple times in the living
8 room.

9 Q And the times that it happened in the living room,
10 who was in the house?

11 A Everybody would be in the house. It would not
12 matter.

13 Q Okay. So the times that Scott was sexually
14 assaulting you in the living room, everybody was in the
15 house?

16 A Yes, sir.

17 Q And so we're understanding the place we're talking
18 about, that's Defendant's Exhibit No. 7 and No. 9; is
19 that right?

20 A Yes, sir.

21 Q And the location of the television and the sofa in
22 Defendant's-7, is that approximately the same location
23 the television and sofa were in when you were being
24 sexually assaulted?

25 A Yes, sir.

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1 Q And the sexual assaults were taking place on the
2 sofa; is that right?

3 A Yes, sir.

4 MR. HILLIARD: If I could publish these to the
5 jury.

6 MS. WALTER: No objection, Your Honor.

7 THE COURT: Without objection. Have you marked
8 them?

9 MR. HILLIARD: Yes, sir, 7 and 9.

10 THE COURT: All right, they are admitted.

11 (WHEREUPON, Defendant's Exhibit Nos. 7 and 9 were
12 admitted in evidence.)

13 THE COURT: All right, Counsel.

14 MR. HILLIARD: Thank you, Your Honor. Thank you,
15 judge.

16 Q What would you say that the letters you left --
17 tell me again about where you left the letters.

18 A I had one on the mirror, I had one with me, and I
19 think the other one was in a binder.

20 Q And what was the purpose of writing these letters?

21 A To let my mom know why I was running away. To let
22 her know that I was running away, and to let her know
23 what was happening in her household.

24 Q And then, in the letters, you say that you don't
25 want her to call the cops; is that right?

1 A About me running away?

2 Q Right.

3 A Yes, sir.

4 Q And that if she does call the cops about you
5 running away, then you're going to tell about how she
6 has been cheating the government on money?

7 A Yes, sir.

8 Q Pardon?

9 A Yes, sir.

10 Q And how was she cheating the government on money?

11 A Honestly, I don't know. Like at the moment I'm
12 not recalling because, granted, like I said, I had writ
13 [sic] these letters six, seven months prior to me
14 running away. And also considering the fact this has
15 been going on for three years now, I cannot recall what
16 I was referring to in that statement.

17 Q Okay. So today you don't remember what your
18 mother was doing to cheat the government on money?

19 A I remember putting it in there for a reason. I
20 know that there was something. She had it -- she
21 wasn't registering completely that she was married.
22 That's what it was.

23 Q And then you were talking about the pills y'all
24 do, you were going to tell the police about the pills
25 that y'all do. That was your mom and Scott; is that

1 right?

2 A Yes, sir.

3 Q And you were doing the pills as well?

4 A Every once in a while, yes, sir.

5 Q And then you also said that your mom and Scott
6 were selling drugs; is that right?

7 A My mom was not. Scott was.

8 Q Well, it says, the drugs y'all sell?

9 A That may be what it says in the note, but that's
10 not what was going on. I was angry when I had writ
11 this letter, I was upset when I had writ this letter to
12 begin with. And as I stated, it sat there for months
13 untouched until the night I went to run away, and I
14 wrote another copy of it, and I left.

15 Q When you wrote the letter, what were you upset
16 about at the point in time that you wrote the letter?

17 A I don't -- I'm not quite sure. I was just, you
18 know, one day I was really upset, really mad, just kind
19 of done, fed up, and I wrote that I was going to run
20 away that day. I just never got the chance to.

21 Q And so you told your mom or you reminded your mom
22 that she had told you and A.R. that she would rather
23 die of cancer than have kids like y'all?

24 A Yes, sir.

25 Q That's what your momma told you?

1 A She had told me it one day when I made her very
2 upset.

3 Q Well, this says that she told both of you, you and
4 A.R., that because of kids like y'all, she would
5 rather die of cancer than have kids like y'all, both of
6 you?

7 A Yes, sir.

8 Q Is that what she said?

9 A Yes, sir.

10 Q Because of what?

11 A Because she was -- she was upset, she was mad.
12 People say hurtful things when they are upset and mad.

13 Q And then you say that she sat in the -- her office
14 every day and every night smoking weed, drinking, and
15 snorting pills; is that right?

16 A Yes, sir.

17 Q And you were angry that she wouldn't spend time
18 with you?

19 A I was angry that she would seclude herself because
20 she would still spend time with my sister. I was angry
21 she would seclude herself in that room, that she would
22 spend time with my sister and not me, that she would
23 let me be vulnerable but not care.

24 Q So she spent time with -- you were jealous that
25 she spent time with A.R. and didn't spend time with

1 you?

2 A I wasn't jealous. I envied the mother-daughter
3 relationship that they had because me and my mom will
4 never have that relationship.

5 Q You said you were running away to Arizona; is that
6 right?

7 A Yes, sir.

8 Q That wasn't true; was it?

9 A No, that was just something -- I just put some
10 random place down so that way she wouldn't know where I
11 was actually going to be at, to where as far as she
12 knew, I wasn't going to be in the State. The only
13 reason she knew I was still in the State was because I
14 was using my bank card because I wanted her to know.

15 Q You wanted her to know?

16 A Yes, sir. Like I said, I had writ this letter
17 months prior. I wanted my mom to know I was still in
18 the State. I wanted to make sure she knew I was still
19 safe. I didn't want my mom to worry, no.

20 Q The person that you actually talked to was your
21 grandmother; isn't that correct, the first person?

22 A The very first person I talked to was my
23 grandmother.

24 Q That's Scott's mom?

25 A Yes, sir.

1 Q So when you ran away from home, the person that
2 you wanted to know -- that you wanted to know that you
3 were safe was Scott's mom?

4 A No.

5 Q The first person?

6 A No, sir. About three or four days after I ran
7 away and finally turned my phone on and I was out, as I
8 was sitting there listening to voice mails that Scott
9 had left me, that his mom had left me, that my mom had
10 left me, I sat there and listened to the voice mails.
11 And I called the one that didn't say anything that hurt
12 me in the voice mails.

13 Q So the voice mails from your mom, even after you
14 left this letter, were hurtful; right?

15 A The first voice mail my mom left me wasn't the
16 most pleasant. But my mom had her own way of handling
17 this, and she had her right to. It wasn't easy for not
18 one -- not one of us. So my mom had the right to be
19 angry at first.

20 Q And you say in the letter that you have videos
21 that you took of y'all, your mom and Scott, hitting me
22 and y'all doing drugs?

23 A I never had any videos. I just said that to --
24 because I thought it would keep her from calling the
25 cops.

1 Q And you said that you gave Rebecca, who is Scott's
2 mom, a copy of the letters; is that right?

3 A Yes, sir. But I never got the chance to.

4 Q So that wasn't true?

5 A No. I was going to, but I never got the chance.

6 Q The first occasion that you told the prosecutor
7 about was an occasion where you were in your bedroom
8 and Scott was in the bathroom; is that what it was?

9 A The first --

10 Q The very first time.

11 A I was in my bedroom, he was taking a shower.

12 Q In your bathroom?

13 A No, downstairs in his bathroom.

14 Q So he was downstairs in his bathroom, and you were
15 upstairs in your bedroom?

16 A Yes, sir.

17 Q And your family had just left to go to Latta or
18 Dillon; is that right?

19 A Yes, sir.

20 Q So they had just left. Scott was taking a shower,
21 and he came up immediately upon them leaving and was
22 naked in your bedroom?

23 A I wouldn't say it was immediately upon them
24 leaving.

25 Q Okay.

1 A I mean, he finished his shower. But once he got
2 out of the shower and came upstairs.

3 Q He was in the shower when they left, and then he
4 came upstairs when he finished his shower; is that what
5 you're saying?

6 A Yes, sir.

7 Q So he was in the shower when they left, he comes
8 upstairs after he finishes his shower, and at that
9 point is the first time that he raped you?

10 A Yes, sir.

11 Q And that was the occasion where the boys had been
12 staying with Scott's sister in Latta, Dillon, Latta,
13 slash, Dillon; is that right?

14 A Yes, sir.

15 Q And that was the time that you had to sneak the
16 chicken nuggets?

17 A Yes, sir.

18 Q So the Latta event, Latta, slash, Dillon, what
19 time of -- what's the best you can do about telling me
20 when that happened?

21 A I really can't give you a time period. All I know
22 is my brothers went to stay with them for like a week,
23 and that's about the only time period I can give you.

24 Q So the kids were there for a week. Is it fair to
25 say it would not have been during school time?

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1 A No. It -- during school was like we got a lot of
2 little breaks and holidays. So normally on a break or
3 a holiday that we were on, the boys would go there.
4 They went over to his sister's quite frequently during
5 school, during the months school are in.

6 Q But it would have been -- are you certain they
7 were there for a week?

8 A It was about a week. They went there for a good
9 couple days, between five to seven days.

10 Q And it was during weekdays? Like it wasn't
11 Saturday and Sunday, but it was weekdays. Do you
12 remember that?

13 A If it was five to seven days, then there would be
14 no possible way for it just to be on a weekend.

15 Q Fair enough. When this happened, the event that
16 you're talking about, your mom and A.R. were on the
17 way to get the boys to bring them back?

18 A Yes, sir.

19 Q At this point, trying to put it all back together,
20 at the point in time that the event, the Latta, Dillon
21 event that happened, did you already talk to A.R.
22 about the trouble that you were having with Scott or
23 had that not yet happened?

24 A Had not yet happened.

25 Q So A.R. didn't know about any trouble that you

1 had had with Scott at that point?

2 MS. WALTER: You just have to say yes or no.

3 THE WITNESS: No, sir.

4 Q Thank you. Let's go back to the chlamydia for a
5 minute. Dr. Rahter did the testing and reported back
6 to you that you had chlamydia; correct?

7 A Yes, sir.

8 Q And at some point you found out that it wasn't
9 Scott, it was somebody else who gave you chlamydia?

10 A Yes, sir.

11 Q And you found that out by doing what?

12 A I had a conversation with the gentleman.

13 Q And --

14 A I had gotten word from his ex-girlfriend, which
15 happened to be one of my best friends, and I sat down
16 and had an adult conversation with him.

17 Q So you got word from his ex-girlfriend that you
18 should have an adult conversation with him, and then
19 you did that?

20 A No. I got word from his ex-girlfriend that he had
21 chlamydia because she had just found out she had it,
22 too. And she let me know because she knew I had slept
23 with him. So I went, I had a conversation with him,
24 found out whether or not it was true that he had it to
25 make sure he knew that he had it, too, so that way he

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1 wouldn't give it to anybody else like he did me and
2 her.

3 Q So had his ex-girlfriend told him that he had
4 chlamydia?

5 MS. WALTER: Objection, Your Honor.

6 MR. HILLIARD: I'll withdraw the question.

7 Q Who is that, what's his name?

8 MS. WALTER: Objection, Your Honor, relevance.

9 THE COURT: Sustained.

10 MS. WALTER: You don't have to answer that.

11 THE WITNESS: Can I take a break?

12 THE COURT: Certainly. Mr. Ropp, would you take
13 the jury out.

14 (WHEREUPON, the jury exited the courtroom at
15 3:37 p.m.)

16 THE COURT: We'll be at ease for a few moments.

17 MR. HILLIARD: Thank you, judge.

18 (WHEREUPON, a brief recess was taken at
19 approximately 3:38 p.m.)

20 MS. WALTER: Your Honor, I was hoping we'd get
21 through this witness. I have Dr. Rahter available this
22 afternoon. I would really like to get her in this
23 afternoon.

24 THE COURT: Well, we'll see; okay?

25 Okay, Chris, if you would.

1 (WHEREUPON, the jury came into open court at
2 approximately 3:55 p.m.)

3 THE COURT: All right, we have everyone back now.
4 Mr. Hilliard, you may continue.

5 MR. HILLIARD: Thank you, Your Honor.

6 Q Better?

7 A Yes, sir.

8 Q Did you have the opportunity to visit with your
9 sister over the break?

10 A Not really.

11 Q Okay. When we were talking about the moonshine,
12 strawberry moonshine?

13 A Yes, sir.

14 Q And I recognize that these are indelicate
15 subjects, but we're sort of stuck with it. You were
16 saying, I think -- and again, if I'm wrong, tell me --
17 but that you, at some point in time connected to the
18 strawberry moonshine event, that you found that you had
19 ejaculate up inside of you?

20 A Yes, sir.

21 Q And that happened before the Latta event; right?

22 A No, sir. That happened after.

23 Q All right. Latta happened when you were 14 years
24 old?

25 A Yes, sir.

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1 Q And the moonshine event happened when you were 12
2 or 13?

3 A No, sir.

4 Q All right. Let me...

5 MS. WALTER: Your Honor, may we approach for a
6 moment?

7 THE COURT: Yes.

8 (WHEREUPON, a bench conference was held off the
9 record in the presence of the jury but out of the
10 hearing of the jury.)

11 Q Do you remember doing an interview at the
12 Children's Recovery Center with their interviewer?

13 A Yes, sir.

14 Q And let me show you page 38 of that interview.

15 THE COURT: Mr. Hilliard?

16 MR. HILLIARD: Yes, sir.

17 THE COURT: What I will allow you to do is ask her
18 if she was asked, and tell her what the question was,
19 show it to her, and ask her if this was your response.

20 MR. HILLIARD: Thank you, Your Honor.

21 THE COURT: Okay.

22 Q And the question was: Is there an incident in
23 your head before the -- is there an incident in your
24 head before the other incident that you told me about
25 when your mom was in Latta, before that one, is there a

1 specific incident in your head that you can remember?

2 And your answer was?

3 THE COURT: Ask her -- show it to her and ask her
4 if that was her response.

5 MR. HILLIARD: Well, that was the question.

6 THE COURT: Okay. You just told her what the
7 question was.

8 MR. HILLIARD: Yes, sir.

9 THE COURT: Now show her what you have in your
10 transcript and ask her if that was her response.

11 MR. HILLIARD: Thank you, Your Honor.

12 Q So this is the question. Is this your response
13 starting at 19, line 19?

14 A Yes, sir.

15 Q And so line 19, your response is, I think I was
16 like 12, almost 13, and I had gotten strawberry. I was
17 drinking it. And he got you to eat a couple pieces of
18 fruit. And we were on the couch, and he started
19 sliding his hand down my pants. Right?

20 A Yes, sir.

21 Q So that was the event that you told the folks on
22 the jury about, was the event where you woke up in the
23 bathtub, and you were peeing in the bathtub and had the
24 ejaculate; that was that again?

25 A Yes, sir.

1 Q And do you recall now that that happened before
2 Latta or after Latta?

3 A Before.

4 Q So when you testified earlier today, you were
5 mistaken in saying that Latta was the first event?

6 A Yes, sir, I was mistaken.

7 Q All right. And the question at this point is...

8 MS. WALTER: What page, counsel?

9 MR. HILLIARD: Page -- I'm trying to find where
10 the pages are.

11 MS. WALTER: Upper right hand.

12 MR. HILLIARD: Thank you. 66.

13 Q So on page -- the question is, did someone ever
14 offer you pills? Do you remember that question?

15 A Sir?

16 Q During the same interview with the folks at the
17 Children's Recovery Center, do you recall them asking
18 you, did someone ever offer you pills? It's line 14 of
19 the same transcript.

20 A Yes, sir.

21 Q And do you see your answer there at line 15, was
22 that your answer?

23 A I guess. You have to think, this is from three
24 years ago.

25 Q It was from three years ago?

1 A Yes, sir.

2 Q Which thing?

3 A That whole paperwork. That was three years ago
4 when knowledge was fresh in my head and when...

5 Q So when knowledge was fresh in your head three
6 years ago, you remembered at that point that Scott had
7 never offered you any pills; right?

8 A He had offered me pills.

9 Q Well, you said no?

10 A I don't know why I said no in that interview.

11 Q But you did say no in the interview --

12 A Because I also know in that interview, it also
13 talks about how he had given me pills.

14 Q But you would agree with me that they offer you
15 pills, and you said no?

16 A Yes, sir.

17 Q So three years ago when it was fresh, you said no,
18 and today you say yes?

19 A She had asked me a question in that interview
20 before that I'd already told her about the pills.

21 Q Page 58, line 17, the question was about sexual
22 activity, criminal sexual conduct, how many times did
23 something like that happen. And line 19 is your
24 answer, do you see that?

25 A Yes, sir.

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1 Q And at that point you said between five and ten
2 times, that you didn't know exactly; is that right?

3 A Yes, sir.

4 Q So back when this was fresh, you believed it was
5 five or ten times you'd been sexually assaulted; right?

6 A Yes, sir.

7 Q And today your belief and testimony is 12 times?

8 A Well, when I answered that question for her, after
9 having the past three years for it to sit in my head
10 and count the times, then it equalled out to be more
11 than what I had originally said to the Children's
12 Recovery Center.

13 Q In the original note that you wrote, you said 12
14 times; do you remember that?

15 A No, sir.

16 Q Did you have the opportunity to meet with and
17 speak with the prosecutor after you got here for this
18 trial?

19 A After I got to the courthouse or to South
20 Carolina?

21 Q South Carolina.

22 A Yes, I did.

23 Q And on how many occasions and for what period of
24 time, do you recollect?

25 A One time. And for -- I sat down and talked to her

1 one on one for maybe ten minutes.

2 Q Ten minutes?

3 A Yes, sir.

4 Q In preparation for the trial?

5 A Not really. It wasn't really a preparation. It
6 was, I need you here at this time, and I need you to
7 tell the truth.

8 Q She didn't talk to you about the chlamydia event?

9 A No, sir.

10 Q What day was that?

11 A Yesterday.

12 Q I'm going to ask you to take a look at the back
13 side of State's Exhibit No. 3. And the note, it says
14 that, since that night, he has raped me 12 times?

15 A Yes, sir.

16 Q Did you have an opportunity to review the note
17 before you came to court today?

18 A I had the opportunity, but I did not get a chance
19 to read over any of the notes.

20 Q So you didn't look at anything to come to court
21 today and testify?

22 A No, sir.

23 Q And one last thing, to be certain that I
24 understand, that the sexual assaults that took place,
25 most of them took place on the sofa?

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-REDIRECT BY MS. WALTER

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1 A Yes, sir.

2 Q In the house?

3 A Yes, sir.

4 Q With everybody else there?

5 A I'm not going to say everybody was there every
6 single time, but there were times that everybody was
7 there when it happened.

8 Q Most of the time?

9 A I can't give you a for-sure answer on who all
10 would be in the household.

11 MR. HILLIARD: That's all I have. Thank you.

12 REDIRECT EXAMINATION

13 BY MS. WALTER:

14 Q The first question I'm going to ask you is, when
15 is your birthday?

16 A [REDACTED].

17 Q Well, happy early birthday. We've been talking
18 about the Defendant and Scott. Do you see him in the
19 courtroom?

20 A Yes, ma'am.

21 Q Can you point to him, please.

22 A He's right there (indicating).

23 Q What's he wearing?

24 A A black button-up shirt.

25 Q Is he the man that raped you 12 times?

1 A Yes, ma'am.

2 Q And did everything else that you've described to
3 us here today?

4 A Yes, ma'am.

5 MS. WALTER: Nothing further.

6 MR. HILLIARD: No, sir.

7 THE COURT: You may step down, thank you.

8 (Witness excused.)

9 MS. WALTER: The State would call Dr. Carol
10 Rahter.

11 CAROL ANN RAHTER, after being duly sworn,
12 testified as follows:

13 THE CLERK: Please have a seat. If you could just
14 state your name and spell your last name.

15 THE WITNESS: Carol Ann Rahter, R-A-H-T-E-R.

16 MS. WALTER: May I, Your Honor?

17 THE COURT: You may.

18 MS. WALTER: Thank you.

19 MR. HILLIARD: If I could interrupt for just a
20 second, I'm going to stipulate -- I know they probably
21 want to go through some of it, but I certainly
22 stipulate to Dr. Rahter as an expert witness in
23 connection to...

24 THE COURT: In what field is she offered?

25 MS. WALTER: She is being offered as an expert in

1 the evaluation and treatment of child physical, sexual,
2 and emotional abuse.

3 MR. HILLIARD: Yes, sir.

4 THE COURT: Ladies and gentlemen, normally, a
5 person who testifies cannot give an opinion or the
6 reasons that the person may have for that opinion.
7 However, there is an exception for witnesses we call
8 experts. When a person by education or experience has
9 gained specialized knowledge in a particular field or
10 art, that person may testify as an expert and may not
11 only give an opinion in the field, but that person may
12 also give the reasons that the person has for the
13 opinion.

14 Dr. Rahter has been offered as an expert in the
15 field of?

16 MS. WALTER: The evaluation and treatment of child
17 physical, sexual, and emotional abuse.

18 THE COURT: And counsel for the Defense has
19 stipulated, agreed, that she does possess the requisite
20 education and experience in that field to be qualified
21 as an expert. And although I have agreed that she does
22 have that expertise and that she may testify as an
23 expert, it is entirely up to you to place such weight,
24 value, and effect on her testimony that you believe it
25 deserves.

1 Ma'am.

2 MS. WALTER: Thank you, Your Honor, and I would
3 just like to go through a little bit of her background.

4 THE COURT: Certainly.

5 MS. WALTER: Thank you.

6 DIRECT EXAMINATION

7 BY MS. WALTER:

8 Q Dr. Rahter, where do you currently work?

9 A I currently am practicing emergency medicine in
10 Camden, South Carolina, and I'm the medical director of
11 the Children's Recovery Center.

12 Q Okay. And let's deal with the emergency medicine.
13 How long have you been doing that?

14 A 28 years.

15 Q And your position at the Children's Recovery
16 Center, how long have you been doing that?

17 A 22 years.

18 Q And you just -- you are Dr. Rahter. What type of
19 doctor are you, for lack of a better word?

20 A I'm board certified in emergency medicine.

21 Q And what do you do at the Children's -- well, let
22 me back up. Can you describe for us what the
23 Children's Recovery Center does.

24 A Yes. Children's Recovery Center is a child
25 advocacy center where we get referrals from law

1 enforcement and DSS, and we do forensic interviews of
2 the children. And then I do the forensic medical exam
3 on all of the children that come through there.

4 Q And you said, I believe, that a child has to be
5 referred to the Children's Recovery Center?

6 A Correct.

7 Q So could someone just walk off the street and say,
8 hey, interview me, examine me?

9 A No, that does not happen.

10 Q And once there is a referral, you talked about the
11 forensic interview. What do you do as part of the
12 forensic medical exam?

13 A I used to do the forensic interviews, too, but now
14 I just do the forensic medical exam. So we have a
15 colposcope, which is basically --

16 THE COURT: Excuse me, Dr. Rahter. I'm sorry to
17 interrupt.

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

21 Q You can continue.

22 A Okay. So I have a colposcope, which is basically
23 a fancy microscope that's hooked to a TV, so I evaluate
24 the children from head to toe. And we look at all
25 parts of their body. We start with their toes and

1 their fingerprints and their fingernails to get them
2 acclimated to it. They get to watch it all on TV.
3 Obviously, listen to their hearts and lungs and get
4 their blood pressure and so forth and then palpate
5 their abdomen.

6 So the last part of the exam is the genital exam,
7 which they also get to watch on the TV. So, basically,
8 the colposcope magnifies everything 15 times, so they
9 really can see their fingerprints well. And if there
10 is any abnormalities down there in the genital area, it
11 magnifies that, too. It's all videotaped so it's there
12 for the record. Especially if there is an
13 abnormality -- I mean, it's all videotaped, whether
14 it's abnormal or not normal.

15 Q And I want to back up for one second. You said
16 you used to be a forensic interviewer. How long did
17 you conduct forensic interviews?

18 A About 15 years.

19 Q And how long have you been doing forensic medical
20 exams?

21 A Oh, I always did the medical exams.

22 Q Took a step up?

23 A Yeah.

24 Q And in that time, approximately how many children
25 have you seen?

1 A I would say between five and 6,000.

2 Q And then when you are -- you said that you are
3 looking for abnormalities. Can you just describe what
4 type of abnormality might you be looking for?

5 A Well, the main purpose of doing the medical exam
6 is to reassure the child that they look normal. The
7 second reason we do the medical exam is to test for any
8 kind of infections they may have encountered. And the
9 third is to treat those infections and photo document
10 any injuries.

11 So there is multiple different injuries you can
12 get on a child from sexual abuse. You can get sexually
13 transmitted diseases, you can get transections of
14 hymens, you can get bruising of the genitalia, multiple
15 different things like that, petechiae which are little
16 broken blood vessels. So you're looking for all of
17 those things.

18 Q And do you find abnormalities in a majority of the
19 cases?

20 A No. It's rare to find an abnormality.

21 Q Can you tell us what goes into that, why is --

22 MR. HILLIARD: Objection, relevance.

23 THE COURT: I'm going to allow her to testify.

24 MR. HILLIARD: Thank you.

25 Q Why is it rare to find abnormalities?

1 A Because the majority of children have delayed
2 disclosures. And that tissue is very similar, believe
3 it or not, to the inside of your cheek, it heals very
4 rapidly. So I'm sure we've all bit down on our cheek
5 and you get that ridge and it hurts really bad, but by
6 the next day the ridge is gone, and by the day after
7 that, you can't see anything or feel anything. That
8 tissue is very similar to genital tissue.

9 So when you get an injury, even if there is an
10 injury there, it frequently heals before the child ever
11 discloses and before they ever get a medical exam. So
12 it's less than 5 percent of the cases have abnormal
13 findings at the Children's Recovery Center because of
14 delayed disclosure and rapid healing of that tissue.

15 Q Now, did you participate or did you conduct the
16 medical examination on J.H. in this case on
17 October 15th of 2015?

18 A I did.

19 Q Did you perform the forensic medical examination
20 on her?

21 A Yes, I did.

22 Q Can you describe for the jury what you did and
23 what you found.

24 A So I spoke to her, checked her blood pressure,
25 listened to her heart and lungs, did everything on the

1 colposcope, the TV. And her positive findings were
2 that she was a self-mutilator, so she had scars on her
3 thighs and her forearm. And she had a complete
4 transection of her hymen at 6 o'clock. Which the
5 hymen, we look at the hymen, which is kind of the --
6 the hymen is the entrance or the foyer into the vagina.

7 So, the hymen comes in many shapes, but we
8 describe it as a clock. So if you're looking at a
9 child, 6 o'clock is at the bottom, 12 o'clock is at the
10 top, 3 o'clock is on the right, and 9 o'clock is on the
11 left. So what that means is she had a complete
12 transection, a complete tear, through her hymenal
13 tissue at 6 o'clock.

14 Q What did that signify to you, or what is the
15 significance of that?

16 A That's diagnostic of a penetrating injury.

17 Q Are you able to tell, from looking at that, when
18 that penetrating injury occurred?

19 A No. I mean, it's healed, but they can heal in 72
20 hours. So I don't know if it was 72 hours before or
21 three years before. I have no way of knowing.

22 Q And is it more or less common to see a transected
23 hymen in nonconsensual sexual encounters, if that made
24 sense?

25 A Yes, it does make sense. There's many studies out

1 there --

2 MR. HILLIARD: I'm sorry.

3 THE COURT: Could you rephrase the question?

4 MR. HILLIARD: I don't understand -- I know the
5 doctor understands it, but I don't, I'm sorry.

6 Q Are you more or less likely to find a transected
7 hymen after a nonconsensual sexual encounter -- that's
8 a tongue twister -- or a consensual sexual encounter?

9 A You're more apt to see a transection in
10 nonconsensual intercourse because lack of lubrication,
11 fondling, being aroused. So in nonconsensual
12 intercourse, it's more likely to get a transection.
13 But you can see transections in consensual intercourse,
14 and we do see that in consensual intercourse, it's just
15 more likely in nonconsensual intercourse.

16 Q And did you also perform a test for J.H. for
17 sexually transmitted diseases?

18 A Yes, I did.

19 Q And what did that reveal?

20 A That's part of the medical maintenance that we do
21 on anybody who has had any kind of sexual encounter to
22 make sure we don't miss any infections because some of
23 them, the exam looks totally normal and they still have
24 an infection.

25 So we did a NAAT, which is basically a long word,

1 which is nucleic acid amplification test, which is done
2 on urine, and it checks for chlamydia and gonorrhea.
3 We did an HIV for AIDS, we did RPR for syphilis, and
4 then a hepatitis panel.

5 Q And were any of those tests positive?

6 A Chlamydia was positive.

7 Q Was that at all significant in your exam?

8 A There was nothing on her exam that made me think
9 that she would test positive for chlamydia, but we just
10 do that maintenance thing for everybody that comes
11 there that's been sexually active in any way. So it's
12 not uncommon that we see -- chlamydia is the most
13 common sexually transmitted disease among female
14 adolescents and young adults. It's not uncommon that
15 we see it, and then we just treat it with antibiotics.

16 Q And that's what you did in this case?

17 A Yes. Then we do follow-up to make sure it's
18 resolved.

19 Q Now, you also mentioned a positive finding of
20 self-mutilation. Why is that important?

21 A Well, that's why we look at --

22 MR. HILLIARD: Objection as to relevance.

23 THE COURT: Well, let's hear it. Answer the
24 question.

25 Q You can answer that.

1 THE COURT: Rephrase it as did it have any
2 importance.

3 Q Did the fact that you saw self-mutilation scars
4 have any importance in your mind?

5 A Yes, it does.

6 Q And can you tell us why it was important?

7 A Self-mutilation is something that adolescents and
8 young adults do when they are trying to alleviate
9 something that's bothering them because it makes them
10 feel better and release that pain. Children who have
11 been victims of abuse frequently have a pattern of
12 behavior. Self-mutilation is one of them, sexual
13 promiscuity is one of them, running away, drugs and
14 alcohol, getting pregnant, trouble with the court, all
15 of those are things that we see in children and young
16 adults that have experienced sexual trauma. That's why
17 we look at the whole body.

18 Q Was there anything else of significance that you
19 found during J.H. 's exam?

20 A No, I don't believe so.

21 MS. WALTER: Court's indulgence. I have no
22 further questions.

23 THE COURT: Mr. Hilliard --

24 MS. WALTER: And I believe you know Mr. Hilliard;
25 correct?

1 THE WITNESS: Yes, I do.

2 MS. WALTER: You consider him a friend?

3 THE WITNESS: I do.

4 MS. WALTER: Well, then, you should be able to
5 answer all of his questions.

6 MR. HILLIARD: I can guarantee you can answer all
7 of my questions. We are very proud of that colposcope
8 and we got it.

9 THE WITNESS: Yes.

10 MS. WALTER: Objection, Your Honor.

11 MR. HILLIARD: Weren't we very proud of that?

12 MS. WALTER: Objection.

13 THE COURT: Okay.

14 CROSS-EXAMINATION

15 BY MR. HILLIARD:

16 Q In any event, your testimony regarding the
17 penetrating injury, you can't say what the penetrating
18 injury that transected the hymen came from?

19 A No. All you know is that it's a penetrating
20 injury. It could be from an object, multiple things.
21 Anything that penetrates through the hymen can cause
22 that injury.

23 Q And the notion that it's more likely than not to
24 have been from nonconsensual sex rather than consensual
25 sex presumes that it was from sex at all?

1 A That's certainly true. I mean, we've seen
2 transections of the hymen when somebody has used a
3 vibrator on a child. We've seen it when there's been
4 no sexual abuse but there's been a traumatic
5 penetrating injury like falling on a fence or something
6 like that. So, yes, you can get -- all it is
7 diagnostic of is a penetrating injury. It doesn't tell
8 you what the penetrating object was.

9 Q Very good, thank you. And, also, you tested for
10 all of the sexually transmitted diseases; is that
11 correct?

12 A Correct.

13 Q And the only one that it was positive for was
14 chlamydia?

15 A Correct.

16 Q And let me show you, this is her report. And I'm
17 just going to show you, and I think these are your
18 notes. Are those your notes there, 10/19/15; is
19 that --

20 A That's Kelly's notes. And then I sign here when I
21 see the report and treat. So I treated her with a gram
22 of Zithromax on 10/22.

23 Q And your folks had permission to talk to her
24 mother about the fact that she had chlamydia?

25 A Correct.

1 Q Okay. Thank you, doctor. And there are many
2 different reasons why adolescents can engage in
3 self-mutilation that are not connected to sexual
4 activity; isn't that true?

5 A Absolutely.

6 Q And I think you said that J.H.'s exam regarding
7 the chlamydia was completely asymptomatic, that was
8 just something you did automatic?

9 A Correct. It's part of the maintenance that we do
10 if there has been any sexual activity.

11 MR. HILLIARD: Thank you, doctor, very much.

12 MS. WALTER: Nothing further.

13 THE COURT: Thank you, Doctor. You may step down.

14 MR. HILLIARD: No objection to her being excused.

15 THE COURT: And you're released from your
16 subpoena.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 MS. WALTER: May we approach, Your Honor?

20 THE COURT: Certainly.

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

24 THE COURT: All right, Mr. Foreman, ladies and
25 gentlemen, in my sidebar with counsel, I learned that

1 the next two witnesses may be lengthy, and I certainly
2 don't want to, on the first day that you're here, carry
3 you over. I know that you have probably family
4 obligations that you have to contend with. So I'm
5 going to let you go. It's almost 5 o'clock.

6 Mr. Ropp, will you have something for them in the
7 morning?

8 BAILIFF: Yes, sir.

9 THE COURT: You want biscuits or donuts? That's a
10 decision that our foreman has to make.

11 THE FOREPERSON: They are saying both. Can we
12 have both?

13 THE COURT: You take care of this jury in the
14 morning, okay. If you would be in your jury room about
15 9 o'clock, Bobby will have something for you, all
16 right, and I'll get to you just as quick as I can.

17 (WHEREUPON, the jury exited the courtroom at
18 4:34 p.m.)

19 THE COURT: Okay, Ms. Walter, you said you had
20 something.

21 MS. WALTER: I do, Your Honor. At this time the
22 State would request the opportunity to play the entire
23 Children's Recovery Center forensic interview, given
24 that Mr. Hilliard, number one, in the State's mind
25 certainly, suggested recent fabrication with the

1 remark, well, did you have an opportunity to visit with
2 your sister over the break, which is a clear
3 insinuation that she somehow discussed her testimony.

4 Additionally, he --

5 THE COURT: In what particular has he suggested
6 fabrication?

7 MS. WALTER: With everything where --

8 THE COURT: He simply asked, did you talk with
9 your sister.

10 MS. WALTER: And then he went on to cross-examine
11 her about specific portions of the forensic interview,
12 which I believe certainly for the completeness, rather
13 than taking it piecemeal when the --

14 THE COURT: We're not going there. Now, if you
15 can point to a specific instance where he has alleged
16 something to be a fabrication and you can point to a
17 prior consistent statement, I might entertain your
18 request to admit that part.

19 But we're not going to open up a probably
20 hour-and-a-half-long forensic interview which is going
21 to get -- no, no, no, we're not going to do that.

22 If you've got something specific, I'll go with
23 you. But we're just not going to open up this forensic
24 interview. She was over 12, it's not admissible. It
25 could come in under possibly a prior consistent

1 statement. We got to be more specific than that. You
2 got something specific that he alleged or insinuated or
3 has challenged her on as being a fabrication, what part
4 of the story?

5 MS. WALTER: The fact that today she said she had
6 been raped at least 12 times versus what she had said
7 at one point during the forensic interview.

8 THE COURT: And you have letters and all sorts of
9 things that say, prior consistent statements, 12. You
10 got her letters, you got her testimony today. If
11 you've got anything in that -- I'll hear on you that,
12 Mr. Hilliard. I mean, I didn't hear you get specific
13 on anything as far as fabrication.

14 MR. HILLIARD: No, sir. She said -- in the
15 letters she said she had 12 sexual assaults, and in the
16 testimony she said she had 12 sexual assaults, and at
17 the CRC she said she had four or five sexual assaults.
18 The CRC part was an inconsistent statement about the
19 number of sexual assaults, not so much a fabrication.

20 My challenge is not that she's not telling the
21 truth as to the number of sexual assaults. My question
22 is directed to her ability to recollect and whether
23 that challenges her testimony.

24 THE COURT: I'm not going to -- I'm not going to
25 admit this forensic interview, we're not going down

1 that road. It's clearly prohibited by statute, and I
2 don't think it meets any exception. I'm not going to
3 do it.

4 What did you have for me, Mr. Hilliard?

5 MR. HILLIARD: The bond issue, judge, as you've
6 indicated that you're unsatisfied, and I understand
7 that, with the \$2,000 that he has up for a 10-percent
8 bond. We have a bondsman or we had a bondsman. There
9 is a bondsman. We had a bondsman here, and what we
10 would ask Your Honor to do is, based on the fact that
11 my client has, as I've indicated, showed up for all of
12 the circumstances that we've had court. I recognize --

13 THE COURT: There was a bench warrant issued for
14 him.

15 MR. HILLIARD: Judge, that bench warrant is --
16 they issue bench warrants like candy corn in the
17 solicitor's office.

18 MS. WALTER: We actually issue them when people
19 don't show up.

20 THE COURT: They don't issue them, I do. And they
21 don't go out like candy corn. There is a reason for
22 them. Now, I lifted his bench warrant for him. I
23 looked in the file, and I was actually the one that
24 lifted it after 30 days or so, I think. Who's your
25 bondsman?

1 MR. HILLIARD: Here she is. Come around.

2 BONDSWOMAN: I'm sorry, I wasn't -- I want to
3 apologize for the way I dress, first of all, because I
4 didn't realize I was coming today.

5 THE COURT: And who are you with?

6 BONDSWOMAN: A. Owens Bail Bonding and Coastal.
7 I'm with A. Owens and Coastal.

8 THE COURT: Now, I would require a substantial
9 bond. You're willing to put up a substantial bond for
10 approximately two days?

11 MR. HILLIARD: Well, I guess the question would be
12 what is a substantial bond.

13 THE COURT: I would not consider less than a
14 \$25,000 bond.

15 MR. HILLIARD: Well, I guess that would depend on
16 what the --

17 THE COURT: If I considered it.

18 MR. HILLIARD: Yes, sir.

19 THE COURT: And I don't feel comfortable with
20 that. The rule is once trial starts, bond is relieved
21 and he is in custody. I call it the Stuart Axelrod
22 rule where I have been burned more than once.

23 MR. HILLIARD: Well, of course, in order to save
24 their \$25,000, he's got no place -- their house burned
25 down, their business is closed, he's got no place to

1 go.

2 THE COURT: Yes, he does, it's called J. Reuben
3 Long.

4 MR. HILLIARD: I mean, he's got no place to run
5 away to. His mom is here, somewhere.

6 THE COURT: I'm not going to release him, he's in
7 custody. Thank you.

8 MR. HILLIARD: All right, sir.

9 THE COURT: All right. We will adjourn until -- I
10 want the attorneys here at 9 o'clock in the morning
11 just in case. We'll probably start back about 9:30,
12 but I want you around; okay?

13 MS. WALTER: Yes, sir.

14 MR. HILLIARD: 9 o'clock.

15 THE COURT: All right.

16 (WHEREUPON, the hearing adjourned at approximately
17 4:40 p.m.)

18 (WHEREUPON, the hearing resumed on Wednesday,
19 April 11, 2018, at approximately 9:26 a.m.)

20 THE DEPUTY: They tried to serve it yesterday.
21 There was a vehicle there, but nobody would answer the
22 door, so they weren't able to get it served.

23 THE COURT: Well, what do you say about that,
24 Mr. Hilliard, what do you want me to do?

25 MR. HILLIARD: Send them back, judge, ask them to

1 hang around. I believe that it's important to be
2 served.

3 THE COURT: It is. And I would -- all I can do is
4 ask the sheriff's office to make another attempt.

5 MR. HILLIARD: Yes, sir.

6 THE COURT: All right.

7 MR. HILLIARD: Thank you.

8 MR. MARTIN: Judge, there's also another matter
9 that we would like to take up prior to us calling our
10 expert witness.

11 THE COURT: Okay.

12 MR. MARTIN: We intend to call that expert next,
13 but just before we do.

14 THE COURT: All right, Mr. Martin, what do you
15 have?

16 MR. MARTIN: Judge, we would move to preclude the
17 Defense from questioning the witness about an
18 unpublished Court of Appeals opinion. It's State v.
19 Barnes. I do have a copy of that if Your Honor would
20 like for me to hand it up.

21 THE COURT: Okay.

22 MR. MARTIN: John, have you seen a copy of this?

23 THE COURT: Well, this is novel.

24 MR. HILLIARD: They are prescient, judge.

25 THE COURT: Okay.

1 MR. MARTIN: Your Honor...

2 THE COURT: He's not being offered as an expert in
3 forensic interviewing; is he?

4 MR. MARTIN: Exactly, Your Honor, he's not. We
5 are not intending to do that. We are intending to
6 offer him as an expert in the dynamics of child sexual
7 assault.

8 THE COURT: Um-hum.

9 MR. MARTIN: And we would just ask that since
10 that's a legal principle not to qualify someone as an
11 expert in that area, and we are not trying to do that,
12 the Defense be precluded from asking him about that.

13 And, judge, it didn't speak --

14 THE COURT: I don't see where this really has
15 any -- first of all, it's unpublished, but why it would
16 have any particular relevance to this case? Because
17 he's not being offered as a forensic expert in forensic
18 interviewing.

19 MR. MARTIN: Correct, Your Honor. Defense counsel
20 mentioned it in chambers, and that's why we're bringing
21 it up.

22 THE COURT: All right. What did you mention,
23 Mr. Hilliard, what did you say?

24 MR. HILLIARD: What I was talking about, judge, is
25 that he has -- I can't remember if it's Court of

1 Appeals or the Supreme Court, one of them, whichever
2 one it was, said that he should not have been qualified
3 as an expert in connection with that area of the law.
4 And so he has -- one of the questions that they asked
5 about my expert, or perhaps the Court, in fact, asked
6 the question, has he ever been not qualified as an
7 expert in this case, this witness has -- the Appellate
8 Court has said that he was qualified mistakenly. And
9 so I would like to ask him that question.

10 THE COURT: Are you talking about Dr. -- or
11 Mr. Olszewski? Is that who you're talking you about?

12 MR. HILLIARD: Yes, sir.

13 THE COURT: Or your expert?

14 MR. HILLIARD: No, sir. I'm talking about the
15 person in that opinion, Ray Olszewski. The appellate
16 court said he should not have been qualified as an
17 expert.

18 THE COURT: Okay.

19 MR. HILLIARD: Not that his area of expertise was
20 not allowed to be testified to, but he should not have
21 been qualified as an expert.

22 MR. MARTIN: And, judge, that's not exactly what
23 the opinion is saying. It is saying he was mistakenly
24 qualified as an expert in an area of --

25 THE COURT: I thought it said it was likely an

1 error to qualify.

2 MR. MARTIN: That is correct, too, Your Honor.
3 Additionally, it doesn't go to his qualifications or
4 anything like that in the area where we would be
5 addressing as well. It's based --

6 THE COURT: Correct. I mean, how is it relevant
7 at all to the issue of his qualification in another
8 field?

9 MR. HILLIARD: I don't know until I ask him the
10 questions.

11 THE COURT: And I don't see where the Court made a
12 finding -- does the Court make a finding that it's
13 error? The Court said, in light of Kumara or Kromah,
14 State vs. Kromah, his qualification was likely error.

15 MR. HILLIARD: Yes, sir.

16 THE COURT: Is that right?

17 MR. HILLIARD: Yes, sir. You're reading it,
18 judge.

19 THE COURT: Has he ever been qualified in the
20 field that you offer him in?

21 MR. MARTIN: Yes, Your Honor.

22 THE COURT: Okay. So, I mean, why is it relevant
23 to even ask him if he was, even giving you the benefit
24 of the doubt, mistakenly qualified as an expert in some
25 other field, how is that even relevant?

1 MR. HILLIARD: My guess is he probably doesn't
2 know whether he -- I mean, that's a Court of Appeals
3 opinion. I don't know if he knows that or not.

4 THE COURT: Well, then, what precedential value
5 could the question possibly have?

6 MR. HILLIARD: I don't know until I ask him. But
7 it's going to be an in-camera hearing. I'm not certain
8 what -- they are trying to --

9 THE COURT: Well, in an in-camera hearing, I don't
10 mind you asking.

11 MR. HILLIARD: All right, sir.

12 THE COURT: There is no prejudice if you ask him
13 in an in-camera hearing.

14 MR. HILLIARD: Right.

15 THE COURT: I mean, where are we going to have an
16 in-camera hearing? I mean, that's not usually the
17 case.

18 MR. MARTIN: Judge, I was asking for this not to
19 be made an issue in the presence of the jury while
20 we're going --

21 THE COURT: Exactly, exactly. But when did this
22 become elevated to the level of having an in-camera
23 hearing? That's not usually what happens. I mean,
24 I'll let you ask him anything about his qualifications
25 to be an expert in the field he's presented for. The

1 fact that this is an unpublished Court of Appeals
2 opinion that says he was likely qualified in another
3 field or it was likely an error that he was qualified
4 in some other field, we're not going to get into that.
5 There is absolutely no reason for that. It's confusing
6 to the jury, it fails under 403, it has no precedential
7 value, it doesn't mean anything.

8 All right, let's move on; okay?

9 MR. HILLIARD: Judge, we have a motion. The
10 reason we say in-camera hearing is that, you recall
11 from the very beginning, that we had a motion to
12 exclude his testimony. And what I anticipated
13 connected to that, we had a written motion, passed it
14 up, and our position was that we anticipated an
15 in-camera hearing to see, number one, whether he's an
16 expert, and number two, whether the child abuse
17 dynamics and delayed disclosure is an area of the law
18 that can be put in front of the jury in general.

19 This is the situation you probably will recall,
20 judge, where there are two cases currently at the
21 appellate level to take up these issues. One of them
22 is -- and they are both challenges to the testimony of
23 child abuse dynamics and delayed disclosure. And if I
24 could put, for the purpose of this --

25 THE COURT: I mean, why do I need an in-camera

1 hearing if I allow them to present his qualifications
2 and then allow you to examine him on those matters
3 before he gives any opinion? Just let the jury hear
4 it. I mean, otherwise we have to do it twice.

5 MR. HILLIARD: I understand. And but that -- I'd
6 submit to the Court, judge, that that's exactly what
7 needs to happen because the jury doesn't need to hear
8 his qualification if there is -- if you're going to
9 exclude him from testifying. So I understand what
10 you're saying, and again, this is --

11 THE COURT: I mean, why not -- why do we not just
12 do that, let them put him up and offer him before he
13 gives any opinion, and then I make a determination as
14 to whether or not they have reached the threshold where
15 he may be qualified, may offer testimony as an expert.

16 And then, of course, the jury, in my charge, will
17 have an opportunity to determine whether or not they
18 believe him or not, whether or not they want to give
19 any weight to his testimony or give great weight to his
20 testimony. The jury always has that option when
21 there's an expert opinion given.

22 I mean, my question is, does it serve any purpose
23 to have an in-camera hearing on it and then have the
24 same qualifying testimony presented to the jury?

25 MR. HILLIARD: Yes, sir. There is a two-part --

1 the reason for this, judge, is it's a two-part
2 situation. One part is, is he qualified or not
3 qualified as an expert. If Your Honor qualifies him as
4 an expert, the second question is, is even if he is an
5 expert, is his testimony admissible in front of the
6 jury. And before you can make a decision as to whether
7 it's admissible or not, I submit you have to hear it.

8 Because you're going to be determining whether --
9 and that's what the two cases are on appeal now about,
10 is whether -- not whether he's an expert, because I
11 don't think he's an expert in those cases, but whether
12 that testimony is admissible. And that's the focus of
13 our motion is both.

14 THE COURT: Well, how long do you anticipate --
15 here we are on Wednesday -- how long do you anticipate
16 this in-camera hearing, this, quite frankly, I find to
17 be rather superfluous to have this other hearing, this
18 in-camera hearing, rather than just have it presented
19 in the court and I make that decision before he gives
20 any opinion?

21 MR. HILLIARD: I wouldn't anticipate it would take
22 over 30 minutes, judge. The two things, another two
23 things. One is we made this motion in the very
24 beginning and presented it to the Court, and that's how
25 we talked about it in the -- in camera, that's how they

1 knew about this part of it. And we determined at that
2 point that it was premature because they hadn't -- we
3 weren't in a position to talk about what his testimony
4 was going to be.

5 THE COURT: All right, okay. Let's let him put
6 him up, then. Okay, we'll do it in camera.

7 MR. HILLIARD: Thank you, judge.

8 MS. WALTER: Your Honor, may I make a suggestion?

9 THE COURT: Yes.

10 MS. WALTER: Why not have the qualification done
11 in front of the jury, and then if Your Honor wants, we
12 can excuse the jury, he can argue against precedent
13 when it's clear that this type of evidence has been
14 admissible any number of times. But I agree that it's
15 a waste of time to do that twice. Additionally --

16 THE COURT: I mean, what is wrong with that,
17 Mr. Hilliard? Otherwise, we're going to have to bring
18 you back and go through the same testimony again for
19 the jury if I make the decision.

20 Otherwise, you know, I can determine, outside the
21 presence of the jury, whether he's an expert and
22 whether the science is something that he should be able
23 to testify to and do all that before he gives an
24 opinion. Then I can tell the jury just disregard
25 anything they've heard from him should I rule in your

1 favor.

2 MR. HILLIARD: So as I understand it, we would
3 have a -- the suggestion is that we would have a
4 bifurcated proceeding where we would do the --

5 THE COURT: Yes.

6 MR. HILLIARD: -- qualification.

7 THE COURT: And he gives no opinion.

8 MR. HILLIARD: And then the jury would leave, and
9 then we would go into whether he was --

10 THE COURT: You can argue it, and then we'll --

11 MR. HILLIARD: And I could ask him the questions
12 about --

13 THE COURT: I'll either let him go forward and
14 give an opinion or I exclude it, one of the two. I
15 mean, I see no harm in that regard. He is not giving
16 an opinion.

17 MR. HILLIARD: We're just going to do the
18 qualification?

19 THE COURT: Right.

20 MR. HILLIARD: All right, sir.

21 THE COURT: Okay.

22 MR. HILLIARD: Thank you, judge.

23 THE COURT: Alison, could you ask the bailiff to
24 bring in the jury.

25 MR. HILLIARD: Are we still sequestering the

1 witnesses, Your Honor?

2 THE COURT: Yes, I believe so.

3 MS. WALTER: She's the first witness.

4 MR. HILLIARD: What's that?

5 MS. WALTER: She is going to be our first witness
6 up. That's why she's here, to save time.

7 MR. HILLIARD: Oh. But you're calling a witness
8 now?

9 MR. MARTIN: Your Honor, we intend to call the
10 mother next, and that's why she's seated behind me.

11 THE COURT: And not the expert.

12 MR. HILLIARD: Okay. Well, I misunderstood. I
13 thought they were saying they were calling an expert.

14 MR. MARTIN: Well, when I first put the issue
15 before the Court, I said we don't intend to call the
16 expert next; however, we wanted to bring the matter to
17 the Court's attention.

18 THE COURT: Okay. And we have, okay.

19 MR. HILLIARD: All right, sir. Thank you.

20 (WHEREUPON, the jury came into open court at
21 approximately 9:40 a.m.)

22 THE COURT: All right. We have our jurors and our
23 alternates back in the courtroom. Is the State ready
24 to proceed this morning?

25 MR. MARTIN: We are, Your Honor.

1 THE COURT: All right. You may call your witness.

2 MR. MARTIN: Your Honor, the State calls Anatasya
3 Herron.

4 ANATASYA HERRON, after being duly sworn, testified
5 as follows:

6 THE CLERK: Please be seated. State your name and
7 spell it for the Court; okay?

8 THE WITNESS: My name is Anatasya Herron.
9 A-N-A-T-A-S-Y-A, H-E-R-R-O-N.

10 DIRECT EXAMINATION

11 BY MR. MARTIN:

12 Q Good morning, Ms. Herron.

13 A Good morning.

14 Q How old are you?

15 A 37.

16 Q Where are you from?

17 A Virginia.

18 Q What was your -- how far did you go in school?

19 A I have a GED.

20 Q Are you currently employed?

21 A Yes.

22 Q What do you do?

23 A I'm a customer service manager.

24 Q How many children do you have?

25 A Four.

1 Q What are their names and ages?

2 A [REDACTED] A.R. , she is 20; [REDACTED] J.H. , she is 18; [REDACTED] O.E. is 12,
3 and [REDACTED] S.R. is 10.

4 Q When were [REDACTED] A.R. and [REDACTED] J.H. born?

5 A [REDACTED] A.R. was born [REDACTED] , [REDACTED] J.H. was born [REDACTED] .

6 Q Where were they born?

7 A Kingsport, Tennessee.

8 Q Do [REDACTED] A.R. and [REDACTED] J.H. share the same biological
9 father?

10 A Yes, they do.

11 Q Who is he?

12 A His name was Greg Herron.

13 Q Do you have any other children with him?

14 A No.

15 Q Let's talk about his relationship with them. What
16 was his -- did he have any relationship with them?

17 A Not really, no.

18 Q Was he involved in their lives growing up?

19 A He was in our lives. When [REDACTED] A.R. was one, we
20 separated. He never met [REDACTED] J.H. .

21 Q So when did he exactly leave the family?

22 A I don't remember the exact date, but it was a
23 little after [REDACTED] A.R. 's first birthday.

24 Q Did the girls have another father figure after
25 Gregory?

- 1 A Yes.
- 2 Q And who was he?
- 3 A Billy Eller.
- 4 Q When did you meet Billy?
- 5 A Sometime around 2001.
- 6 Q Do you have any children with him?
- 7 A Yes, I have one.
- 8 Q And how old would A.R. and J.H. have been when
9 they met Billy?
- 10 A One and three.
- 11 Q Did they live with you and Mr. Billy Eller?
- 12 A Yes.
- 13 Q Did you have a good relationship with him?
- 14 A Yes, we did.
- 15 Q How was his relationship with your daughters?
- 16 A They were very close.
- 17 Q So they were close to him?
- 18 A Yes.
- 19 Q Was he a good dad?
- 20 A Yes, he was.
- 21 Q Where did everyone live when you were with him,
22 what state?
- 23 A We lived in Kingsport, Tennessee.
- 24 Q And while living with Billy, did the family ever
25 relocate anywhere else?

1 A We moved to Myrtle Beach in 2006.

2 Q How long did you live with Billy while you were in
3 South Carolina?

4 A We were here a month, and then he was killed in a
5 motorcycle accident.

6 Q And approximately, if you remember, when did he
7 pass?

8 A It was March 26, '06.

9 Q 2006?

10 A Um-hum.

11 Q How old would your daughters have been when he
12 passed away?

13 A Around seven and nine.

14 Q That being J.H. seven, A.R. nine?

15 A Yes.

16 Q How did his death affect your daughters?

17 A It affected them deeply, especially J.H.,
18 because they were inseparable.

19 Q They had a good relationship?

20 A Yes, they did.

21 Q So after Gregory left and Billy died, did the
22 girls have another male figure enter their lives?

23 A Yes, they did.

24 Q And who would that have been?

25 A That was Scott Rowan.

1 Q Is he present in court today?

2 A Yes, he is.

3 Q Could you point him out for us.

4 A He's right there in the back shirt (indicating).

5 MR. MARTIN: May the record reflect she's pointing
6 to the Defendant sitting at the Defense counsel table
7 with the black shirt.

8 THE COURT: Very well.

9 Q When did you meet him?

10 A In July of 2006.

11 Q And were you still living in Myrtle Beach at the
12 time when you met him?

13 A Yes, I was.

14 Q After you met the Defendant, how quickly did this
15 relationship progress?

16 A It was pretty much immediate.

17 Q Did you move in together?

18 A He was staying with me from the very beginning,
19 but yeah, we more or less moved in together right away.

20 Q About when would that have been?

21 A That would have been July of 2006.

22 Q Did you have steady employment at this time?

23 A I was working at a job called Desperado's, but it
24 didn't last very long. I quit shortly after we started
25 seeing each other.

1 Q How old were your daughters when they met the
2 Defendant?

3 A They were seven and nine.

4 Q Would they have been about that age, or would they
5 have been that age when they moved in?

6 A Yes.

7 Q Did everyone live together?

8 A Yes.

9 Q And where did the family live?

10 A We lived in -- on Plum Court in Myrtle Beach.

11 Q Did you have any other children with the
12 Defendant?

13 A I have one.

14 Q Did you and the Defendant ever become engaged?

15 A Yes, we did.

16 Q When would that have been?

17 A 2008.

18 Q Did you ever get married?

19 A Yes, we did.

20 Q And when would that have been?

21 A We got married on Halloween 2008, but our marriage
22 license says January 2009.

23 Q How was your relationship with the Defendant?

24 A At first it was good, but over time it became very
25 distant.

1 Q I'm going to ask a personal question, I apologize.
2 You mentioned that you married in the October 2008 to
3 January 2009 time period. Were the two of you still
4 having sex at this time?

5 A Yes, we were.

6 Q Did you use condoms?

7 A No, we didn't.

8 Q When would you -- did you ever use condoms?

9 A We used condoms until we decided to try to have a
10 kid. So we stopped using them probably around 2007.

11 Q Did you ever see the Defendant with condoms after
12 that?

13 A One time he brought a box home that he claimed
14 someone left in his car as a joke at work.

15 Q When would that have been?

16 A I don't remember exactly.

17 Q During your relationship with the Defendant, were
18 there ever any issues with substance abuse such as
19 alcohol or drugs?

20 A Yes.

21 Q Did you yourself have any issues with substance
22 abuse?

23 A Yes, I did.

24 Q Let's talk about that for a second. What
25 specifically?

1 A When we first met, cocaine. And then I stopped
2 that, and then later on I had a problem with pain
3 pills, and I smoked pot occasionally.

4 Q Was there an incident or an accident that you were
5 involved in that worsened the situation?

6 A Yes, there was.

7 Q Let's talk about that. When would that have been?

8 A That would have been in 2012.

9 Q What kind of injury was it?

10 A A knee injury.

11 Q How was your relationship with the family while
12 all this was going on?

13 A Distant.

14 Q Would you often remove yourself from the family?

15 A Yes, I would.

16 Q Was there a room or somewhere you would go?

17 A Yes. We called it my office. There was a room in
18 the hallway across from the boys' room where all my
19 stuff was, and that's where I pretty much stayed.

20 Q What did you do while you were in there?

21 A I usually sat in there, listened to music on my
22 headphones or played video games or watched Netflix,
23 listened to music.

24 Q Was this mostly when the Defendant would come
25 home?

1 A Yes.

2 Q Would the children do the same thing while he was
3 home?

4 A They would pretty much stay in their rooms.

5 Q And why was this?

6 A Because no one wanted to be around him because he
7 was always in a bad mood.

8 Q Now, we talked about your relationship with the
9 Defendant. How was his relationship with [A.R.] and
10 [J.H.]?

11 A When we first got together, they were really
12 close. They hung out on the couch all the time, played
13 video games, watched TV. But as the girls got older,
14 they stopped spending so much time with him and spent a
15 lot more time to themselves in their room.

16 Q Did the relationship go south?

17 A Yes, it did.

18 Q About how old would they have been when that
19 happened?

20 A It gradually happened, but it got really bad as
21 they got more into, like, early teens.

22 Q We talked about substance abuse with alcohol and
23 drugs. Did you ever see the Defendant give your
24 daughters any alcohol or drugs?

25 A I've seen him give them alcohol, but I can't

1 recall ever seeing him smoke pot with them.

2 Q Regarding the alcohol, how did that make you feel?

3 A I didn't approve.

4 Q Did you ever give your -- any of your children
5 alcohol or drugs?

6 A I did give them a little bit of alcohol on
7 occasion, more of a taste. But when they got older,
8 into their teens, then I realized that they were doing
9 it behind my back, then I was a little more open to it
10 because I would rather them be at home than out on the
11 street, though I did not approve of them drinking heavy
12 or getting drunk. And I did smoke pot with [A.R.] when
13 she was close to her high school years because she was
14 having insomnia problems.

15 Q Let's go back to the alcohol. Do you know what
16 kind of liquor was in the home?

17 A Pretty much always Southern Comfort.

18 Q Did the Defendant drink?

19 A Rarely at home. Usually he would drink if he was
20 out with his friends or doing something for his work.

21 Q Did he smoke in the home?

22 A Constantly.

23 Q You mentioned the Defendant's relationship with
24 the girls worsened or went south. Did you notice
25 anything specifically with him and [A.R.] ?

1 A [REDACTED] avoided him every chance she could get.
2 She would pretty much stay closed up in her room or
3 duck and dodge him if she knew he was going to be home.

4 Q During this time, did she have any unusual
5 behavior changes?

6 A Not that I was aware of.

7 Q How was she in school.

8 A She did pretty good, though she was really high
9 strung and very stressed all the time.

10 Q Was she a good student?

11 A Yes, she was.

12 Q Did she graduate?

13 A Yes, she did.

14 Q When would she have graduated high school?

15 A She graduated high school in January 2015.

16 Q And would that have been early, late?

17 A Yes, it was early. She graduated a semester
18 early.

19 Q After that, did she eventually move out of the
20 home?

21 A Yes, she did.

22 Q And when would that have been?

23 A I believe it was around June or July.

24 Q Did this have anything to do with the Defendant?

25 A Yes.

1 Q Regarding [J.H.], did you notice anything
2 specifically change with her relationship with the
3 Defendant?

4 A Yes. They were always hot and cold. There was
5 always tension. She started cutting herself, she was
6 lying more, sneaking around, doing things behind my
7 back and pretty much avoiding everything she could.

8 Q Did you ever witness the Defendant and [J.H.] get
9 into a disagreement or fight?

10 A Yes, I did.

11 Q Specifically, when would this have occurred?

12 A They constantly had disagreements and fights.

13 Q Do you remember any fight in particular?

14 A There was one in particular. They were sitting on
15 the couch, and I was in the kitchen either cooking or
16 cleaning up, and I'd asked her to fill a spray bottle
17 with some Lysol for me. And she started joking around
18 that she didn't know how. And he started shouting at
19 her, and he told her, quit being stupid and to go do
20 what I said.

21 So she got up to do it, and I don't know if she
22 whispered something under her breath or if she said
23 something he heard or rolled her eyes or what, but he
24 jumped up and immediate got in her face. They were
25 screaming at each other. He grabbed her by the throat.

1 She told him to keep his hands off of her, not to touch
2 her. He shoved her down on the floor. She got back
3 up, and they screamed at each other some more, and she
4 went running up the stairs.

5 Q Did this trigger any kind of alarm in your head?

6 A Yes, it did.

7 Q How did it make you feel?

8 A It was a very intimate argument, like the kind of
9 argument that I would expect to have with him. It
10 just -- it made me uncomfortable, just the way she
11 screamed at him and told him not to touch her.

12 Q Did you talk with Scott about this afterwards?

13 A Yes, I did.

14 Q What did he say to you?

15 A I made a comment that by the way she reacted, you
16 would think he was trying to rape her or something.

17 Q Did you witness any other unusual or inappropriate
18 instances with the two of them?

19 A Yes, I did.

20 Q Let's talk about that. Do you remember a specific
21 incident at all?

22 A Yes. There was an incident where I was walking
23 out of my office and around the staircase, and they
24 were standing in the living room. And his back was
25 turned to me, and she was directly in front of him. It

1 looked like they were kissing.

2 Q Did you talk with the Defendant about this
3 afterwards?

4 A I asked him if he was kissing her, and he got
5 really defensive and told me that I was being
6 ridiculous and jealous and, yeah, I was kissing your
7 daughter, being sarcastic.

8 Q You previously testified to [J.H.] cutting
9 herself. Let's talk about that. Did you witness these
10 markings yourself?

11 A Yes, I did.

12 Q Did you ever see any markings on [A.R.] as well?

13 A Not that I noticed.

14 Q Okay. Did you notice any unusual behavior changes
15 other than that with [J.H.]?

16 A Just that she was always in trouble, she was
17 always lying, she was always hanging out in her room,
18 or if she was downstairs, she was, you know, right
19 there, right beside Scott.

20 Q You say lying. Can you give a -- can you expound
21 on that a little, give an example.

22 A She would come home upset, and I would ask her
23 what was wrong, and she would tell me something like,
24 oh, a friend of mine just tried to kill himself, or,
25 you know, my best friend is moving away. It's just the

1 way she said it, I knew there was something more wrong,
2 but so I -- and I could tell she was lying, but she
3 would never tell me what was wrong.

4 Q How was she in school?

5 A She did okay at first, but her grades dramatically
6 went down a lot as she got into high school.

7 Q How did things change after [A.R.] left with
8 [J.H.] ?

9 A It didn't really change. I mean, things between
10 her and Scott were still heated. There was still a lot
11 of tension.

12 Q Did [J.H.] ever leave or run away from the home?

13 A Yes, she did.

14 Q When would this have been?

15 A It was September 15, 2015.

16 Q Will you talk about that day and when you
17 discovered she left.

18 A I had gotten the boys off to school, and I was
19 standing at the bottom of the staircase around 7:40,
20 7:45 because that's usually when she went down, and I'd
21 make sure she got off to school on time. And she
22 didn't come downstairs.

23 So I tried yelling up at her. There was no
24 response. So I walked up the stairs and knocked on her
25 door, there was no response. So I tried to open it,

1 and it was locked. I checked the room across, directly
2 across from hers, in that room to see if she was in
3 there, and she wasn't. Because sometimes she would
4 sleep in there.

5 So I walked downstairs to the bathroom or --
6 sorry, to the kitchen and grabbed a butter knife. And
7 I went back upstairs, and I used it to pry the door
8 open. And when the door opened and I looked inside,
9 her screen and the glass part of the front of the
10 window were laying on her bed, and she was not in her
11 room.

12 So I went downstairs, I got my cell phone, I came
13 back up, and I made a phone call to Scott and told him
14 that I need him to come home, that J.H. had ran away.
15 And while I was on the phone with him, I looked, and
16 there were three pages of a letter taped to a mirror in
17 her room.

18 Q Let's talk about those letters. Did you recognize
19 the handwriting?

20 A Yes, I did.

21 Q Whose handwriting was it?

22 A It was J.H.'s.

23 Q Did you read the letters?

24 A Yes, I did.

25 Q What was the letter about?

1 A At first it started out telling me if I was
2 reading it, she was gone, and basically telling me
3 that, you know, she didn't have the good life that I
4 always said she did and that I was a terrible mother,
5 and that I should do her and all my kids a favor and
6 change, and that not to come looking for her.

7 And then as it got more into the letter, it
8 started talking about that she was being abused at home
9 along with her sister, and that I didn't marry the guy
10 that I thought I had married.

11 Q Did the letter say anything about defrauding the
12 government?

13 A Yes, it did.

14 Q Do you know what that was about?

15 A That was about the fact that when me and Scott got
16 married, I was never allowed to report his income on my
17 food stamps.

18 Q Did you attempt to call J. H. ?

19 A Yes, I did.

20 Q How about text?

21 A Yes.

22 Q Facebook message?

23 A Yes, I did.

24 Q Were you able to make any contact with her that
25 day?

1 A No, I wasn't.

2 Q After you read the letter, you mentioned you were
3 on the phone with the Defendant, did you talk with the
4 Defendant?

5 A Yes. I told him that he needed to come home
6 because he needed to explain what was being said in the
7 letter.

8 Q What happened after that?

9 A We hung up. And a few minutes later he called me
10 back, and he told me, I did it, I'm sorry. And I said,
11 You did what? And he said, I did it. I touched the
12 girls.

13 Q What did you do after hearing this?

14 A I hung up on him.

15 Q Did he call you back?

16 A Not at first. I tried to call him, and when he
17 didn't answer, I called his mother. And I told her
18 that I couldn't explain, but I needed her to call Scott
19 and tell him he needed to call me back immediately.
20 And a few minutes later, he called me back.

21 Q What did he say?

22 A I asked him, what do you mean by you touched the
23 girls? And he told me that he had touched [A.R.], but
24 things had gone further with [J.H.]. And I told him we
25 would talk about it when he got home.

1 Q Did he come home?

2 A Yes, he did.

3 Q And did you talk more about what had happened?

4 A Yes. He came in, he apologized, he told me that
5 he would tell me anything that I wanted to know, that
6 he just wanted to be honest with me and just wanted to
7 tell the truth.

8 Q Was he honest with you?

9 A Yeah, he was.

10 Q Let me rephrase. Did y'all talk about anything
11 specifically regarding J.H. ?

12 A Yes.

13 Q What was that?

14 A He told me that he had had sex with her on more
15 than one occasion, that two times was with protection,
16 one time without. I had asked him if he was sure she
17 wasn't pregnant because she had came to me before
18 saying she was having problems with her menstrual
19 cycle. He said yes, he made her take a pregnancy test.

20 Q You mentioned with and without a condom. Were
21 y'all still having sex at this time, you and the
22 Defendant?

23 A Yes.

24 Q Using a condom?

25 A No.

1 Q Did he mention anything about an incident in the
2 bathroom?

3 A I had found a semen-covered towel in the bathroom
4 floor maybe a month or two before that. And I asked
5 him about it, and he got really defensive. And I made
6 a joke about him jacking off in the bathroom. And he
7 got really mad and blew up on me about it, and it
8 turned into a really big argument. So I asked him
9 about it again that day, and he told me it was a blow
10 job that went into his hand.

11 Q Blow job from whom?

12 A From my daughter.

13 Q Which one?

14 A J.H. .

15 Q How many times -- did he tell you a number of
16 times that he and J.H. engaged in oral sex?

17 A He did not give me a number. He just told me it
18 happened more than once or twice.

19 Q How about vaginal intercourse?

20 A He only admitted to the three times.

21 Q Did he say anything about whether it was
22 consensual?

23 A He told me everything was consensual and that she
24 started it.

25 Q Did he say anything about -- you mentioned

1 pregnancy test. Did he say anything about making her
2 take a pregnancy test?

3 A Yes. He said he made her take one after the
4 unprotected sex.

5 Q How did you feel when he told you all of this?

6 A I was angry.

7 Q About how long did this conversation at the house
8 last?

9 A Pretty much all day.

10 Q After admitting this to you, did he move out?

11 A That evening we agreed that it was in his best
12 interest for him to go ahead and get his stuff and go
13 stay with his parents.

14 Q And whose idea was this?

15 A It was a mutual agreement.

16 Q Was there another incident during that time period
17 where you were present when he admitted to anything?

18 A When he left, he took some stuff for work and
19 stuff, he left and went to his mom's. Him and his mom
20 returned back to my house a little while later because
21 his sister was upset because no one had filed a missing
22 persons report for my daughter, J.H. .

23 And they both came in, and I let his mother read
24 the letter. And he kept telling her that if they find
25 J.H. , he's going to jail. And at some point he got

1 on the phone with his sister, and he told her that he
2 could not report J.H. missing because if he did, he
3 was going to go to jail because she had sent letters
4 out to everybody saying that he had defrauded the
5 government and it was tax fraud.

6 Q And this conversation was in your presence?

7 A Yes.

8 Q Whose idea was it for the Defendant to move out of
9 the home?

10 A It was a mutual agreement.

11 Q Did you still have a job at this time, or did you
12 not have a job?

13 A No, I did not.

14 Q Why not?

15 A Because he wouldn't let me get a job.

16 Q How long had it been since you had worked?

17 A I hadn't worked since Desperado's in 2006.

18 Q Who paid the bills?

19 A Mostly him.

20 Q Were most of the bills in his name?

21 A Everything was in his name except the insurance.

22 Q Was he the main financial provider?

23 A Yes, he was.

24 Q With him moving out, did he offer to help in any
25 way?

1 A Yes, he did.

2 Q What did he do, how did he offer to help?

3 A He told me that he would take the money he needed
4 for gas to get back and forth to work and that he would
5 give me everything else to help support me and the
6 boys. He also withdrew \$5,000 that we had saved for a
7 house we were going to buy and gave me that money so I
8 would be able to pay the rent.

9 Q And did he tell you why he was going to give you
10 that money?

11 A He said he was trying to help me and the kids out,
12 make sure that we would be okay if he went to jail.

13 Q What did you do with the \$5,000 you received?

14 A The following morning, after he came and got his
15 stuff and I filed a missing persons report for J.H. ,
16 I took it to the bank and deposited it into my private
17 savings account.

18 Q And after all this took place and you talked to
19 the Defendant, did you ever talk with A.R. ?

20 A I talked to her the day that J.H. ran away.

21 Q What was that conversation about?

22 A He had told me to go ahead and call her and talk
23 to her and verify that he had only just touched on her.
24 So I called her, and her and her boyfriend both came to
25 the house later on that afternoon. And me and her

1 walked outside, and I told her what J.H. had said,
2 what he had told me. And she agreed that he had
3 touched her, and then me and her ended up in an
4 argument.

5 Q Did she tell you where he touched her?

6 A She said her breasts --

7 MR. HILLIARD: Objection as to hearsay, Your
8 Honor.

9 THE COURT: Sustained.

10 Q Now, did J.H. ever return home?

11 A Yes, she did.

12 Q Did you ever call the police to report her as a
13 runaway?

14 A I reported her as a runaway the following day, on
15 the 16th.

16 Q Was there a reason it took you until the following
17 today to report her?

18 A First of all, I did not know you don't have to
19 wait 24 hours to file a missing persons report. And
20 the other reason was because I felt like if all of this
21 had really been going on, then she was probably better
22 off not being at home.

23 Q Prior to her return home, did she ever contact
24 you?

25 A She contacted me on Thursday and let me know that

1 she was okay and still in Myrtle Beach.

2 Q How long would that have been? You say Thursday.
3 How long would that have been from the 15th, the day
4 she ran away?

5 A She ran away on a Tuesday, so it was Thursday.

6 Q What day did she return home?

7 A She returned home on Friday.

8 Q If my math is correct, would that be September
9 the 18th?

10 A Yes.

11 Q When she returned home, did you talk with her at
12 all?

13 A I talked to her briefly on Thursday and asked her
14 to come home, and she told me she would be home on
15 Friday. But before she got home, I guess a cop spotted
16 her from where I had reported her as a runaway, and I
17 was actually called out to the house where she was
18 staying at.

19 Q Did you report the incident involving the
20 Defendant to the police?

21 A No, I did not.

22 Q Who reported it?

23 A Me and her did together that Friday when I found
24 her and we got together.

25 Q The same day she returned home?

1 A Yes.

2 Q Did she remain in the home with you after that?

3 A Yes, she did.

4 Q But the Defendant had moved out; correct?

5 A Yes.

6 Q To your knowledge, did she have any further
7 interaction with the Defendant after that?

8 A No, she did not.

9 Q Did you have any more interaction with the
10 Defendant?

11 A Only when involving our son or business with
12 money.

13 MR. MARTIN: Court's indulgence, one moment, Your
14 Honor.

15 Q Let's go back for a second when we were talking
16 about A.R. . And I asked you if she moved out of her
17 home, and you said?

18 A Yes.

19 Q Why did she move out of the home?

20 A She moved out of the home because my husband told
21 her she needed to get her stuff and get out.

22 Q Your husband, the Defendant?

23 A Yes.

24 Q I'm going to show you --

25 MR. MARTIN: Your Honor, may I approach the

1 witness?

2 THE COURT: Certainly.

3 Q I'm going to show you what's been marked into
4 evidence as State's Exhibit 1 and State's Exhibit 2 and
5 State's Exhibit 3. First State's Exhibit 1, do you
6 recognize this at all?

7 A Yes. That's a copy of the runaway letter that she
8 left.

9 Q How about State's Exhibit 2, did you ever see
10 this?

11 A That's the copy that she had with her.

12 Q And State's Exhibit 3?

13 A That was -- came along with one of the letters,
14 the letter I found.

15 Q And those were the letters we previously were
16 referencing about her running away?

17 A Yes.

18 Q Are these the same letters that you showed the
19 Defendant's mother?

20 A Yes.

21 MR. MARTIN: Court's indulgence again, Your Honor.
22 Your Honor, nothing further at this time. Please
23 answer any questions that Mr. Hilliard may have.

24 THE COURT: You may cross, Mr. Hilliard.

25 MR. HILLIARD: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. HILLIARD:

3 Q Under questions from the prosecutor, you said that
4 it was a mutual decision for Scott to leave; is that
5 right?

6 A Yes, it was.

7 Q And do you recall saying that, when the police
8 were asking about this, they asked you if the dad was
9 living here now; do you recall that?

10 | A Yes, I do.

11 Q And do you recall saying, no, I told him to get
12 the fuck out the day I found out what was going on?

13 A Yes, I did.

14 Q So was it a mutual decision, or did you tell him
15 to get the fuck out?

16 A I couldn't have kicked him out if I wanted to.
17 The house was in his name.

18 Q All right. Do you recall having a -- filing a
19 family court action for divorce?

20 | A Yes, I do.

21 Q And your lawyer in that case was Lori Jones; is
22 that correct?

23 | A Yes, it was.

24 Q Do you recall telling Ms. Jones that Scott had
25 given both you --

1 MR. MARTIN: Objection, Your Honor, relevancy.

2 THE COURT: I'm going to allow it.

3 MR. HILLIARD: Thank you, Your Honor.

4 Q Do you recall telling Ms. Jones that both you and
5 your daughter were recently diagnosed with STDs which
6 came from Scott?

7 A No, I did not.

8 Q You didn't tell her that?

9 A I told her that I had an STD that I got from
10 Scott. I did not tell her that my daughter did.

11 Q And the STD that you had got from Scott was what?

12 A Herpes.

13 Q Herpes?

14 A Yes.

15 Q Okay. And at the point in time that this
16 transpired, you knew that your daughter had been
17 diagnosed with chlamydia at that point; is that
18 correct?

19 A Yes, I did.

20 Q So -- let me ask you to take a look at this. Lori
21 Jones. Does this appear to be a letter to me from your
22 lawyer, an e-mail to me from your lawyer?

23 MR. MARTIN: Your Honor, objection. First of all,
24 this would be attorney/client privilege. Second, how
25 would she know anything about...

1 THE COURT: She can either admit that was her
2 position or not in a previous hearing.

3 THE WITNESS: Yes, sir, it's looks like an e-mail
4 from her.

5 Q And she said to me, my client and her daughter
6 were recently diagnosed with STDs which they allege
7 came from your client. That's what it says?

8 A Yes, that's what it says. But I never gave her
9 permission to disclose that to you.

10 Q All right. So you didn't give her permission to
11 disclose this to me, but is it true?

12 A I told her that I got an STD, but I did not tell
13 her that my daughter's was from Scott.

14 Q You didn't tell her that your daughter's STD came
15 from Scott?

16 A No, I did not.

17 MR. HILLIARD: All right. We would offer this
18 into evidence, Your Honor.

19 MR. MARTIN: Judge, objection. First of all, it's
20 hearsay. I'm not sure we --

21 THE COURT: There is no foundation to it
22 established yet, Mr. Hilliard.

23 MR. HILLIARD: Yes, sir. Thank you, judge. If we
24 could mark it.

25 THE COURT: You may mark it for identification.

1 MR. HILLIARD: Thank you.

2 (WHEREUPON, Defendant's Exhibit No. 12 was marked
3 for identification only.)

4 Q All right. So let's spend a minute. Let's spend
5 a minute talking about when were you diagnosed with the
6 herpes.

7 MR. MARTIN: Objection, Your Honor, relevancy.
8 We're not here to talk about mother, we are here to
9 talk about --

10 THE COURT: I'm going to give him some leeway,
11 it's cross-examination. Go ahead.

12 MR. HILLIARD: Thank you.

13 Q Well, and so what you're telling the folks on the
14 jury is that your husband had given you herpes; right?

15 A At the time that's what I believed, yes.

16 Q All right. And -- okay, let me back up a little
17 bit. Did you have herpes?

18 A I was diagnosed with it, but I've never had a
19 breakout or anything to make me believe I actually have
20 it.

21 Q You haven't been diagnosed with it. You
22 haven't -- or did you say you have been diagnosed with
23 it?

24 A No, I have been diagnosed. They said it came back
25 positive. But to my knowledge, I've never even had a

1 breakout. I've done research on it. I've never shown
2 any symptoms.

3 Q How did you come to have that test?

4 A Because when I found out he was having sex with my
5 daughter, I decided to get tested to make sure that he
6 wasn't having sex with someone else.

7 Q Okay. So when you were -- you knew that your
8 daughter had chlamydia; right?

9 A No. We got tested at the same time. We got our
10 results at the same time.

11 Q You got tested at the same time. You got tested
12 at the Children's Recovery Center?

13 A No. She did, and then I made an appointment and
14 got tested a day or two later.

15 Q And when the tests came back, you found out that
16 you had herpes; right?

17 A Yes.

18 Q But not chlamydia?

19 A No.

20 Q And that she had chlamydia; right?

21 A Right.

22 Q But not herpes?

23 A She had to be retested because they did not test
24 her for herpes the first time.

25 Q She didn't have herpes?

1 A No, she didn't.

2 Q So Scott is having sex with you and your daughter;
3 right?

4 A Yes.

5 Q And you have herpes; right?

6 A Yes.

7 Q And she has chlamydia?

8 A Yes.

9 Q And he doesn't have either one?

10 MR. MARTIN: Objection, Your Honor. This is --
11 first of all, I don't think it's in evidence. And
12 second, we've sort of addressed this.

13 THE COURT: Well, it's cross-examination. I'm
14 going to give him leeway in this regard. We've talked
15 about it, so let's go ahead and let him question this
16 witness about it.

17 Q You know that Scott does not have chlamydia;
18 right?

19 A She contracted chlamydia after they had had
20 theirs.

21 Q Yes, ma'am.

22 MR. HILLIARD: If you would instruct her, judge,
23 to answer my question yes or no.

24 THE COURT: I think she just did.

25 Q Well, the question is, you know that Scott does

1 not have chlamydia?

2 A I don't know personally what he has or doesn't
3 have.

4 Q Very good, very good.

5 MR. HILLIARD: Well, and that's an answer, judge.

6 THE COURT: Yeah.

7 MR. HILLIARD: Thank you.

8 Q And going back, just one time, you believe and
9 you're saying that he had sex with both you and your
10 daughter; right?

11 A Yes.

12 Q At the same time that both you and your daughter
13 had these sexually transmitted diseases; right?

14 A I know that he had to have had sex with me when I
15 had it because I haven't had a -- been with anybody
16 else in ten years.

17 Q Okay.

18 A As far as my daughter goes, I don't know if she
19 had chlamydia at the same time they were having sex.
20 She had sex with someone after they were having sex.
21 But I know for a fact that he was having sex with us
22 both.

23 Q Okay. And the reason that you know that your
24 daughter was having sex after she had sex with Scott is
25 because she told you that?

1 A Yes.

2 Q And she told you that after she found out that she
3 had chlamydia?

4 A No. She told me that before she found out she had
5 chlamydia.

6 Q All right. When you were thinking about and
7 talking about whether or not to report this to the
8 police, you indicated that you wanted her to be back so
9 she could tell her side of the story before you
10 reported it to the police; correct?

11 A Yes, I did say that.

12 Q Now, in your testimony, Scott had already admitted
13 to you that he had had full-blown sexual intercourse
14 with your underage daughter on three occasions; right?

15 A He had admitted that throughout an entire day.

16 Q Okay. For a whole and entire day you have these
17 three letters that talk about how terrible your
18 daughter has been treated and how she's been sexually
19 abused over years, you have those letters?

20 A Yes, I do.

21 Q And you talk to Scott, and Scott has admitted to
22 you that he's had sexual intercourse, full blown, with
23 your daughter on three occasions?

24 A Yes.

25 Q And that doesn't cause you to call the police;

1 right?

2 A He was telling me it was consensual, and at the
3 time, that's what the story I was hearing.

4 Q All right. So you didn't believe at that point in
5 time that him having consensual sex with your underage
6 daughter was illegal, that didn't -- you didn't know it
7 was illegal?

8 A As of the time, I was having trouble thinking
9 about anything at all.

10 Q All right. You were sexually abused as a child by
11 a stepfather --

12 MR. MARTIN: Objection, Your Honor. Objection,
13 relevancy.

14 THE COURT: I'm going to allow it.

15 MR. HILLIARD: Thank you, Your Honor.

16 Q You were sexually abused as a child by your
17 stepfather?

18 A Yes.

19 Q And this is a personal issue to you?

20 A When that happened to me, I was five. I have very
21 little memory of it.

22 Q All right. When you were talking to the police --
23 when you first reported this and were talking to the
24 police officer, do you recall saying, I was sexually
25 abused as a child by my stepfather?

1 A Yes, I did.

2 Q And so this is a personal issue?

3 A It's not really a personal issue. I have very
4 little memory of it.

5 Q So when you said this is -- do you recall saying
6 it to the police officer?

7 A Yes, I did.

8 Q All right. So you told him it was a personal
9 issue, but today it's not really a personal issue?

10 A I mean, it's always a personal issue when you're
11 sexually abused, but I have very little memory of it.

12 Q Okay. And then, you were also completely pissed
13 at yourself because you didn't even notice?

14 A Yes, I was.

15 Q And your daughter has said that she is sexually
16 assaulted, full-blown vaginal intercourse, over and
17 over and over again in the living room -- let me ask
18 you this.

19 MR. HILLIARD: Can I have that board, please. Get
20 the board.

21 Q This is Defendant's No. 10 in evidence. Would you
22 agree that this is a fairly accurate representation of
23 your home?

24 A Yes.

25 Q And so the part that's indicated to be Ana's

1 office, that would be your office?

2 A Yes.

3 Q Where you were in there listening to headphones
4 and doing pills and --

5 A Yes.

6 Q Were you smoking marijuana in there as well?

7 A Occasionally. I don't smoke pot that often.

8 Q Don't smoke pot that often. And then you were
9 drinking some alcohol?

10 A Yeah.

11 Q And so you were doing pills and drinking alcohol
12 and in your office?

13 A Yeah.

14 Q For how many years were you in your office
15 drinking and doing pills and -- how many years did that
16 happen over?

17 A Since my mom moved out at the end of 2011. Or
18 beginning of 2011, I believe.

19 Q Okay. So pardon me for my math is poor, but --
20 and J.H. was how old in 2011?

21 A Let's see. Sorry, I'm having trouble with math,
22 too.

23 Q Okay, I understand. Roughly. 12, 13, 9? Anybody
24 know?

25 MS. WALTER: 12.

1 THE COURT: When was the child born, ma'am?

2 THE WITNESS: '97. I'm sorry, '99.

3 MR. MARTIN: The State will stipulate that it was
4 probably about 12.

5 Q Okay. So she was about 12, born in '99, not '97?

6 A Yes. Yes.

7 Q Okay, '99. About 12. And so you started staying
8 in your office. When was your knee hurt?

9 A In, let's see, around -- it would have been around
10 September, October 2012.

11 Q Okay. So, but you started doing the pills and
12 drinking the liquor in 2011 when your mom moved out?

13 A I would go in there and drink. I didn't always do
14 pills.

15 Q Sometimes you did pills and sometimes --

16 A Sometimes I did.

17 Q And the rest of the family would be hiding from
18 Scott somewhere?

19 A The girls were usually upstairs in their room, and
20 the boys were usually at the hallway.

21 Q Pardon?

22 A The boys were usually in their room at the end of
23 the hallway.

24 Q All right. So this is Defense No. 11. Hold it up
25 a little high. Do you recognize that as the second

1 floor of your house?

2 A Yes.

3 Q All right.

4 A There was actually a closet up there, too.

5 Q There was a closet also?

6 A Yeah.

7 Q Okay. And Defendant's Exhibit No. 7, if you would
8 look at that, does that look sort of like your living
9 room?

10 A Yes.

11 Q And is the television in about the same spot that
12 your television was in about?

13 A I mean, it -- yeah.

14 Q And the sofa is about the same spot?

15 A Yeah. It's a lot bigger sofa and a lot bigger TV.

16 Q Okay. Bigger TV, bigger sofa, but about the same
17 spot?

18 A Yeah.

19 Q All right. And so you started -- in 2011 you
20 started staying in your office?

21 A Yes.

22 Q And you stayed in your office from 2011 drinking
23 and then listening on your earphones, and you knew that
24 the boys -- where were the boys?

25 A They were in their room.

1 Q All right. So you were in your office drinking,
2 listening to headphones, and you knew the boys were in
3 their bedroom?

4 A Um-hum.

5 Q And you knew the girls were upstairs in their
6 rooms; right?

7 A To the best of my knowledge, yes.

8 Q Okay.

9 A If they came downstairs or were in the kitchen or
10 whatever, I wouldn't have known. I usually have my
11 headphones on.

12 Q Okay. And so 2011, you're drinking and had your
13 headphones on, and then your knee got hurt in 2000 and?

14 A 2012.

15 Q 2012 your knee gets hurt, and you start taking --
16 I'm guessing we're talking about opiates, pain pills?

17 A Yes.

18 Q All right. So in 2012 you start taking pills and
19 drinking liquor, and every now and then you're smoking
20 marijuana --

21 THE COURT: I think we kind of covered all that,
22 Mr. Hilliard. Move to the next level.

23 Q All right. How about 2013? Were you drinking and
24 smoking and doing pills in 2013?

25 A Yes.

1 Q In your office?

2 A Um-hum.

3 Q In 2014?

4 A Um-hum.

5 Q Or let me ask a better question. Did you ever --

6 A I pretty much stayed in that office from 2011 to
7 2015.

8 Q Okay. And so up until the time that Scott -- is
9 that when Scott moved out?

10 A Yes.

11 Q So you stayed in your office doing pills and
12 alcohol and smoking marijuana periodically until Scott
13 moved out?

14 A Yeah.

15 Q And then the clouds opened and the sun came out
16 and you moved out of your spot?

17 MR. MARTIN: Objection, Your Honor.

18 THE WITNESS: No. I just had a wake-up call when
19 I realized what was going on with my kids and snapped
20 out of my habits.

21 Q But in the meantime, you didn't know that any of
22 this other stuff was going on?

23 A No, I did not.

24 Q When you talked to A.R., she said that Scott
25 made a couple of advances, but nothing ever happened?

1 A She said nothing sexual ever happened other than
2 him feeling of her.

3 Q When you were talking to the police officer, you
4 said to him, I have another daughter, too. She said
5 that he made a couple of advances at her, but nothing
6 ever happened?

7 A Yeah. She said that nothing -- there was never
8 any sexual contact. It was just him feeling her up.

9 Q And then you also said or she -- you told the
10 police officer that she had told you, I don't want
11 nothing to do with any of you?

12 A No, that's not what I said.

13 MR. HILLIARD: This is page 12, line --

14 THE WITNESS: What I said was that she said she --
15 or that she said she pretty much didn't want anything
16 to do with the family, and now I know why.

17 Q All right, okay. So do you recall saying that she
18 said, I don't want nothing to do with any of you?

19 A Yeah.

20 Q All right.

21 A Yeah.

22 Q And do you recall telling the police officer that
23 Scott was always hard on J.H. because he's always
24 considered her to be a liar and a troublemaker?

25 A Yes, I did.

1 Q And gets bad grades?

2 A I don't recall saying that.

3 Q Okay. But she did get bad grades?

4 A Her grades went down dramatically, yes.

5 Q While all this was going on, you were -- while
6 this was going on, you didn't notice that J. H. was
7 drinking a good deal during that period of time?

8 A I caught her when I suspected, I marked one of my
9 liquor bottles.

10 Q Right.

11 A To see if anything came up missing. And when it
12 did, I confronted her about it.

13 Q So you confronted her about drinking some of your
14 liquor?

15 A Yes.

16 Q And what kind of liquor was that?

17 A Usually rum.

18 Q Rum?

19 A Um-hum.

20 Q What kind of rum?

21 A Kraken or Captain Morgan.

22 Q Okay. And so the rum was what you drank?

23 A Yes.

24 Q And you confronted her about drinking your rum?

25 A Yes.

1 Q And, all right. Only on one occasion?

2 A That's the only time I actually caught her.

3 Q But she was in the house, and she was drunk some
4 of the time; right?

5 A I never saw her drunk.

6 Q You never saw her drunk the whole time other than
7 once, when you saw liquor missing?

8 A I didn't see her drunk then. I just had
9 suspicions because I knew that my bottles were coming
10 up short.

11 Q Did you ask everybody in the house, or did you
12 select her?

13 A No, I asked everybody.

14 Q So you asked --

15 A I asked Scott, and I asked A.R., and I asked
16 J.H., no one confessed.

17 Q J.H. didn't confess?

18 A She confessed when I confronted her about me
19 marking the bottle.

20 Q Okay. So you asked everybody, but J.H.'s the
21 one that confessed about drinking the rum?

22 A Um-hum.

23 Q All right. And what other alcoholic beverages did
24 you have in there; do you remember, bourbon?

25 A Let's see. I drank a variety. It's mostly rum.

1 I also drink Hennessy.

2 Q Hennessy?

3 A Well, it wasn't actual Hennessy. It was cognac.

4 Q Okay.

5 A And then occasionally beer or wine.

6 Q Okay. So more specifically, there was never any
7 Jack Daniels in your house, to your knowledge; was
8 there?

9 A Occasionally.

10 Q Occasionally?

11 A His mom would buy bottles for people for holidays,
12 so she would buy stuff like Crown or Jack Daniels or
13 something like that.

14 Q Jim Beam?

15 A Jim Beam. I did drink Jim Beam.

16 Q You drank Beam?

17 A Um-hum.

18 Q Then what about the marijuana, did you notice that
19 J.H. was high on marijuana ever?

20 A The only time I ever saw J.H. with marijuana was
21 when she had started working, and I found some --
22 actually, I smelled it and confronted her, and she had
23 bought some while she was at work.

24 Q And smoked it?

25 A And she was smoking it, that's why I could smell

1 it.

2 Q Okay. She was smoking some that she had bought at
3 work; right?

4 A Yes.

5 Q All right. And then there was the time when she
6 stole some of y'all's marijuana; do you remember that?

7 A He accused her of stealing some of his marijuana.
8 I couldn't say whether she did or not because I don't
9 keep up with his marijuana.

10 Q All right. And but when you were smoking, I think
11 you said that you were smoking some with [REDACTED] A.R.; is
12 that -- did I remember that right?

13 A Yes, I had smoked with her.

14 Q All right. And when you were smoking marijuana
15 with [REDACTED] A.R., whose marijuana were you smoking at that
16 point?

17 A I had gotten a little bit from Scott, and that is
18 what I kept in my office. A lot of times he would give
19 me some of his to put up for him so he won't smoke it
20 all.

21 Q Well, did you keep your stashes of marijuana
22 separate so it was your marijuana versus his marijuana?

23 A I didn't really smoke very often, so I rarely had
24 marijuana.

25 Q All right, so you were smoking some with [REDACTED] A.R.

1 because she had insomnia; am I remembering that right?

2 A Yes.

3 Q Okay. And then how about J.H. , did you smoke
4 marijuana with J.H. as well?

5 A No, I didn't.

6 Q Never?

7 A No.

8 Q And you never -- I won't ask that question.

9 A When I found the -- when I smelled the smoke and
10 found out she bought the pot at work.

11 Q Right.

12 A She smoked a joint, I took it away from her, I
13 finished the joint, and then I took the rest of the pot
14 away. Which I offered to give to him, but he got mad
15 because she had bought it at work, said he didn't want
16 it, so I smoked it.

17 Q Okay. So you took the marijuana away, the
18 marijuana cigarette and the marijuana away from your
19 daughter?

20 A Yes, I did.

21 Q You smoked the rest of the joint?

22 A Um-hum.

23 Q And then you said, well, Scott, do you want this
24 marijuana? And he said, that's not good enough
25 marijuana for me; is that what you're saying?

1 A No. He was mad. He said he didn't want it. He
2 was mad at her because of her buying it at work. When
3 he was mad about something, he didn't want it. He
4 asked for it later, and I told him I had already smoked
5 it.

6 Q All right. But in describing J.H. , you said
7 that she is known for lying a lot; correct? J.H. is
8 known for being a liar.

9 A She lies.

10 Q Okay. And then she is also jealous of A.R. ; is
11 that true?

12 A I wouldn't say that she is jealous of her.

13 Q Okay. A.R. is a good student?

14 A A.R. and J.H. are black and white, night and
15 day, they are nothing alike.

16 Q All right. And Scott, you have described as being
17 an asshole?

18 MR. MARTIN: Objection, Your Honor.

19 THE COURT: I will allow it.

20 Q Is that right?

21 A Yeah.

22 Q In fact, you said he was always an asshole?

23 A Pretty much.

24 Q He was really, really mean. Do you remember, you
25 said he was really, really mean?

1 A He is mean.

2 Q He is mean.

3 MR. HILLIARD: Excuse me just one second, judge.

4 (Discussion off the record.)

5 Q Do you remember telling your children on one
6 occasion that you would rather die of cancer than have
7 children like them?

8 A No, that's not what I said.

9 Q But that was in the note?

10 A That was in the letter, yes.

11 Q All right. And you're telling the folks on the
12 jury that somehow Scott made you defraud the
13 government; is that what you said?

14 A He wouldn't let me report his income on food
15 stamps. I always argued that I didn't like frauding
16 the government. That's where she overheard that,
17 that's where that came from.

18 Q Okay. What about drugs that y'all sell?

19 A I didn't sell no drugs. I had one friend, one
20 person I knew in the whole state of South Carolina.

21 Q And then says, y'all hitting me. Did you hit her
22 also?

23 A I smacked her in the face one time because I found
24 out she was on Snapchat, and my mom had contacted me
25 and told me that there was this thing about photos

1 being leaked or something. Me and her got into an
2 argument, and I slapped her.

3 Q She was on Snapchat?

4 A Yeah, it was something -- I don't even remember
5 all the details, but yeah, I slapped her.

6 Q I mean, what was that about, why -- I don't
7 understand. Snapchat, what's that?

8 A Because it was my understanding that she was
9 posting photos on something, and I misunderstood what
10 was said, and I thought she was posting photos she
11 shouldn't have been. It was a misunderstanding that my
12 mom started.

13 Q And before you found out there was a
14 misunderstanding, you slapped her?

15 A Yeah, because she started yelling in my face, so I
16 slapped her.

17 Q On the one hand, Scott was -- he was a good
18 provider for the family?

19 A Yeah, he worked hard, he made decent money.

20 Q And he paid the bills and those sorts of things?

21 A Yeah.

22 Q But he was mean to everybody in the house?

23 A Yes.

24 Q And they all avoided him?

25 A Yes.

1 Q And, really, y'all just sort of put up with him
2 because he was a good provider?

3 A Yeah. Well, the kids didn't really have a choice.
4 I put up with him because I thought my kids were happy
5 and despite him being hateful all the time.

6 Q You thought your children were happy?

7 A Yes, I did. They didn't want for anything. They
8 had everything they could want.

9 Q And A.R. was the favorite child?

10 A I don't have a favorite child.

11 Q Well, I've asked a poor question, I apologize.

12 A.R. was favored by Scott?

13 A A.R. was the oldest. She was always a lot more
14 mature. She always did well in school, she was
15 helpful. She was the type of kid that if you came
16 home, she would clean up the house for you while you
17 were gone. She wasn't favored, she was just an
18 outstanding child.

19 Q She got better presents?

20 A No.

21 Q No. She got the guitar?

22 A Yeah, she did get a guitar.

23 Q Was that a big deal when it happened?

24 A Well, I said that if you're going to give her a
25 guitar, I think I should be able to get J.H.

1 something. And he wasn't real happy about that, but I
2 ended up getting her a tablet.

3 Q So at least in that situation, [A.R.] was the
4 favorite child?

5 A In that situation, she got a much nicer gift from
6 him than [J.H.] did.

7 Q And that was true -- well, I mean, is that a
8 telltale sign of how he felt about the two of them, or
9 not?

10 A I don't even know how to answer that.

11 Q Very well.

12 MR. HILLIARD: Thank you, ma'am.

13 THE COURT: Mr. Martin?

14 MR. MARTIN: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. MARTIN:

17 Q Ms. Herron, Mr. Hilliard previously asked you if
18 you dealt drugs in the home, and you said no. Did
19 anyone else deal drugs out of the home?

20 MR. HILLIARD: Objection.

21 MR. MARTIN: Judge, he's opened the door. I think
22 I'm entitled to ask the question.

23 THE COURT: I'm going to let him ask that
24 question.

25 THE WITNESS: Yes.

1 Q Who was it?

2 A Scott.

3 Q What type of drugs?

4 A Mostly pot.

5 Q Anything else?

6 A When we first met, he was dealing pot and coke.

7 Q You also told the jury, Mr. Hilliard asked you,
8 that you thought your kids were happy. Looking back,
9 do you still believe that?

10 A No.

11 MR. MARTIN: Court's indulgence, Your Honor,
12 please. Nothing further, judge.

13 MR. HILLIARD: Just one, judge, or two maybe.

14 THE COURT: Limited to redirect.

15 RECROSS-EXAMINATION

16 BY MR. HILLIARD:

17 Q So when you picked Scott to be the step daddy of
18 your children and to be your loving husband, you picked
19 a cocaine and marijuana dealer to marry?

20 A When we first met, I was still grieving, I was
21 still going through a rough time. And my judgment was
22 off because I, too, was on cocaine. When he stopped,
23 we both cleaned up, he was working a legitimate job.
24 It wasn't until he started working at Sticky Fingers
25 where he started dealing pot again, and that was later

1 on.

2 Q Okay. So when you both got cleaned up, after
3 that, he was dealing pot?

4 A He quit dealing pot for years. He quit dealing
5 everything. It wasn't until, I would say, around 2014
6 that he started selling a little bit of pot at work to
7 help pay for his own habit.

8 Q So you're not saying that him being a cocaine
9 dealer or a marijuana dealer way back has anything to
10 do with this case, you're not saying that?

11 A I was just answering a question.

12 MR. HILLIARD: Thank you very much.

13 THE COURT: All right. Very well. Mr. Ropp,
14 let's give the jury a break.

15 You may step down, ma'am, as soon as the jury has
16 cleared the courtroom.

17 (WHEREUPON, the jury exited the courtroom at
18 10:50 a.m.)

19 THE COURT: All right. Ma'am, you may step down
20 at this time, thank you.

21 (Witness excused.)

22 THE COURT: All right. Counsel, I had a chance to
23 look back at and actually read the unpublished opinion
24 in Barnes, and I think perhaps you misinterpret the
25 case, or at least no one has spoken of the case in the

1 context I think the Court of Appeals meant when they
2 read it.

3 They were making no condemnation of
4 Mr. Olszewski's qualifications for anything. The Court
5 was simply referencing back Kromah. And in Kromah,
6 that was the beginning of the Court's disfavor with
7 qualifying experts as forensic interviewers for
8 children because the expert designation had, in some
9 view, resulted in a bolstering of the child's
10 testimony.

11 What the Court was saying in Barnes was, in light
12 of Kromah and subsequent cases and the growing disfavor
13 with qualifying anyone as an expert in forensic
14 interviewing of children, we no longer think that it's
15 even an issue, and there should not probably have been
16 anyone qualified in the Barnes case.

17 That's what the case is about. It's not about
18 Mr. Olszewski's qualifications as they may have been
19 when the Court looked with greater favor on experts in
20 child forensic interviewing. So I think that supports
21 my ruling, and we're not going to talk about that.
22 Okay?

23 MR. HILLIARD: Thank you, judge.

24 THE COURT: All right, thank you. Let's take
25 about a ten-minute break.

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1 (WHEREUPON, a brief recess was taken at
2 approximately 10:53 a.m.)

3 THE COURT: Please, take your seats. Okay,
4 Mr. Palmer.

5 (WHEREUPON, the jury came into open court at
6 approximately 11:07 a.m.)

7 THE COURT: All right. We have everyone back in
8 the courtroom. Yes.

9 MS. WALTER: Your Honor, the State calls A.R.
10 .

11 THE COURT: All right. Ms. A.R., come around,
12 please.

13 A.R., after being duly sworn, testified
14 as follows:

15 THE CLERK: State your name and spell your name.

16 THE WITNESS: A.R.,
17 .

18 MS. WALTER: May I, Your Honor?

19 THE COURT: Yes.

20 DIRECT EXAMINATION

21 BY MS. WALTER:

22 Q Good morning, A.R. How are you?

23 A Good morning. Good. How are you?

24 Q I'm good, thank you. How old are you?

25 A 20.

1 Q And what's your birth date?

2 A [REDACTED].

3 Q Do you have any brothers and sisters?

4 A I do.

5 Q Can you tell us who they are.

6 A I have a younger sister. Her name is J. H.

7 [REDACTED], and I have two baby brothers. One of them's
8 name is O. E., and one of them's name is S. R.

9 Q And you and J. H. share a biological father?

10 A Yes, we do.

11 Q And can you tell me about your relationship with
12 him, if any.

13 A I never knew him.

14 Q Okay. Did there come a time when you came to know
15 someone as a father figure after your biological
16 father?

17 A Yes.

18 Q And who was that?

19 A His name was Billy Eller.

20 Q Where were you living when you first met Billy?

21 A I don't remember the exact place, but I remember
22 it was in Kingsport, Tennessee.

23 Q Okay. And at some point, did you, along with
24 others and Billy, move to South Carolina?

25 A Yes, ma'am.

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1 Q Can you tell us about that.

2 A We were in a very poor living situation in
3 Kingsport, Tennessee. And so in order to get me and my
4 mom and my younger sister out of a bad situation, they
5 all decided to move us to Myrtle Beach, South Carolina
6 where we would have a better life.

7 Q Do you know -- and then when you moved here, do
8 you know where you moved?

9 A We moved to, I believe it's called Bermuda or
10 Verbuta Sands Motel.

11 Q And that was here in Horry County?

12 A Yes, ma'am.

13 Q So who -- just the four of you moved, your mom,
14 Billy, you, and J.H. ?

15 A And I believe O.E. was already born at the time,
16 so he was very little.

17 Q Okay. Did something happen to Billy after you
18 guys moved here?

19 A Yes.

20 Q Can you tell us what happened.

21 A He was working at the place that is now the wax
22 museum, it was the NASCAR cafe. And he was walking
23 home from work one night. And he was killed, he was
24 hit by a motorcycle.

25 Q How long after you moved here was that?

1 A Not very long.

2 Q And how did that affect you?

3 A It devastated us.

4 Q I can see you're still upset about it now. Why
5 did it devastate you?

6 A He was really important to our family. He was a
7 very good father figure and the only one that I ever
8 really knew. He took care of my mom a lot, and he was
9 a very family man. Like we used to all play video
10 games together, we had like a family video game night
11 where my mom would make jalapeno poppers. And she
12 never got the recipe right, so they were always awful,
13 but she always tried, every time.

14 And we were a really good family. And my mom and
15 him used to go to like the video store, the
16 Blockbuster. And he always made sure that we got kids
17 movies so that when they had their movie night, we can
18 have our movie night, too. And they would sit down and
19 watch the most annoying things like Finding Nemo and
20 stuff like that, but he always made sure to make it a
21 point that we were always a family.

22 Q How long, if you know, was Billy in your life?

23 A I don't recall. But as I recall, I believe four
24 years.

25 Q And then after Billy was killed, what did you do?

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1 Did you stay here in Myrtle Beach?

2 A Yes, we did.

3 Q Did you ever leave Myrtle Beach, even for a short
4 time, after Billy died?

5 A Me and my sister went and stayed with my
6 grandmother in Kingsport, Tennessee for the summer so
7 my mom could recollect herself. And we were, I
8 believe, pulled out of school a little early for the
9 circumstances. So we took that time, and we were there
10 for the summer.

11 Q And that's your mom's mom?

12 A Yes.

13 Q Okay. At what point, if any, did you come back to
14 Myrtle Beach?

15 A I don't remember, but I believe it was sometime in
16 June or July of that summer. We came home a little
17 early.

18 Q Do you know how old you were at that time?

19 A I believe nine.

20 Q And how old would J.H. have been?

21 A Seven.

22 Q Okay. When you came back, was there anyone else
23 in your mother's life at that point?

24 A Yes.

25 Q Who was that?

1 A His name was Scott Rowan.

2 Q Do you see him in court today?

3 A Yes, ma'am.

4 Q Could you point who him, please.

5 A (Indicating.)

6 MS. WALTER: Indicating, for the record, the
7 Defendant.

8 Q What was your first impression of Scott?

9 A Well, at first, I was very young so there wasn't
10 much, it was just a random guy at my house that was
11 just there. And then, as I got older and realized
12 that, you know, he was my father and that he was going
13 to be my father, I got very close with him.

14 Q Let's go back to the beginning. So when you and
15 J. H. returned from Tennessee to Myrtle Beach, was the
16 Defendant living with your mother?

17 A I don't remember if he was living there, but I do
18 remember he was always there. Like, he was there
19 often.

20 Q Do you remember where you were living when you
21 moved back?

22 A We were living in Plum Court or Grapevine in the
23 house behind the Tanger.

24 Q Tanger Outlets?

25 A Yes, ma'am.

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1 Q All right. Who all was living with you there?

2 A At the time it was me, my mom, potentially Scott,
3 my sister, my little brother, and I believe a roommate
4 of ours named Allen.

5 Q Do you remember that house?

6 A Yes.

7 Q Can you tell us who stayed in which rooms.

8 A So when you walk in, it's the living room, and
9 then more towards the back it's the dining room, the
10 kitchen. And then straight across from the living room
11 is the master bedroom and the master bathroom. And
12 then on this side there is a small hallway, a bedroom
13 on this side, a bedroom on this side and a bathroom
14 (indicating). And me and my sister stayed in the
15 bedroom on this side (indicating).

16 O.E. was staying in our room for a little while,
17 but when Allen moved out, he got older, he stayed in
18 that room. But at that time it was Allen, and then in
19 the master bedroom was my mom.

20 Q And I'm just checking with the court reporter. I
21 might need you to -- I know you're nervous. Just slow
22 down a little bit. She's trying to type down
23 everything you're saying.

24 A Sorry.

25 Q When you and J.H. moved back to South Carolina,

1 was your mother working at that point?

2 A I don't recall.

3 Q What about the Defendant, was he working?

4 A I don't recall.

5 Q All right. Did anything happen at the Plum Court
6 house that made you feel uncomfortable?

7 A Yes, ma'am.

8 Q Can you tell us about that.

9 A So, my sister and I were staying -- we were
10 changing in the master bedroom that was my mom's room
11 because she had a pile of clothes that were sitting in
12 the floor that she hadn't folded or put away yet, so
13 they were just sitting there in like a basket. And my
14 sister and I went in there to change. And my mom is
15 not home, but I do not recall the reason why.

16 And we were almost completely undressed, and the
17 Defendant and Allen walked into the room and saw us
18 changing. And I grabbed a blanket off of the bed and
19 my sister a towel off of the pile of clothes, and we
20 covered ourselves up. And we kept asking them to
21 leave, and they didn't.

22 Q You were both asking them to leave?

23 A Yes, ma'am.

24 Q What were they doing instead of leaving?

25 A They were just staring at us. They were just

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1 standing in the doorway staring. They didn't say
2 anything, they didn't do anything, they didn't move.
3 They just stared at us, and they wouldn't leave. And
4 then, after we kept asking them to leave, eventually
5 they were just like, okay. But they kept looking at us
6 like they were astounded, and then they finally walked
7 out of the room.

8 Q And how did that make you feel?

9 A Uncomfortable.

10 Q Did you say anything to your mother after that
11 incident?

12 A No.

13 Q How come?

14 A I don't really know. I kind of just felt like it
15 was nothing, maybe, because I never really had much
16 experience with stuff like that. So I just didn't
17 really know what to do.

18 Q Okay. And how old were you at that time?

19 A Nine.

20 Q And J.H. would have been seven again?

21 A Yes, ma'am.

22 Q All right. Did anything else happen in Plum Court
23 that stands out in your mind?

24 A No, ma'am.

25 Q Do you know when you moved from Plum Court?

1 A I believe it was in 2008.

2 Q Where did you move after Plum Court?

3 A We moved to [REDACTED] Rockdale Street.

4 Q Who all moved?

5 A Me, my mother, my sister, my baby brother, [REDACTED] O.E. ,
6 and our newly born baby brother, [REDACTED] S.R. , and Scott.

7 Q Okay. And do you remember that house?

8 A Yes.

9 Q And can you just tell us who stayed in which
10 rooms.

11 A There were two bedrooms and an attic closet
12 upstairs. Me and my sister stayed in the upstairs
13 bedrooms, me in one and her in the other. The
14 downstairs two bedrooms, on the right side, when you
15 first walk in, the first one was my mom's office, and
16 the second one was my baby brother's room because they
17 were inseparable. And then the master bedroom was in
18 the very back off of the kitchen.

19 Q Okay. And you said your mom's office. Can you
20 describe what was in there.

21 A She had a lot of her things in there. She had a
22 desk, a computer, music, we had reptiles that she kept
23 in there that were her pets. She had a cabinet that
24 was full of like her knickknacks and things that she
25 wasn't displaying around the house and a closet that

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1 had a couple of clothes and some stuff in it.

2 Q How much -- was your mother working at this point?

3 A No.

4 Q How much time did she spend in that office?

5 A She was there almost everyday.

6 Q Was the Defendant working at this point?

7 A I believe so, yes.

8 Q And, I'm sorry, how old were you and J. H. when
9 you moved to the Rockdale Street address, if you
10 recall?

11 A I was in fifth grade, so I think I was 10 or 11,
12 I'm not sure.

13 Q Okay. Did you, while you were at -- in that
14 Rockdale home, did you ever see the Defendant either
15 drinking or smoking marijuana?

16 A Yes, ma'am.

17 Q And I probably should have asked that separately.
18 Did you ever see the Defendant smoking marijuana?

19 A Yes, ma'am.

20 Q Did you ever see the Defendant drinking?

21 A Yes, ma'am.

22 Q So let's deal first with the drinking. What did
23 you see the Defendant drinking?

24 A He would drink Southern Comfort and Coke.

25 Q And did he ever give you anything to drink?

1 A Yes, ma'am.

2 Q Can you tell us about that.

3 A As I said before, we were pretty close for the
4 first couple years that he was in my life. And so he
5 used to drink, and he would offer me some. And I would
6 drink it because I thought he was drinking with me like
7 a buddy. And I thought it was cool to be hanging out
8 with my dad.

9 Q What about the marijuana?

10 A He smoked all day, every day, all the time, and so
11 it was always in the house, and we were always around
12 it. And I kind of smoked a little bit with my mom
13 right before bedtime because I had really -- still had
14 really bad insomnia and sleeping problems, and so she
15 would smoke with me a little bit. And then as I got
16 older, he would offer it to me for sleeping purposes.
17 And then he started offering it to me more and more,
18 almost every single day.

19 And then he tried to get me to smoke with him
20 before school, but I would refuse because I don't -- I
21 never smoked before school because I wanted to keep a
22 clear mind. I only smoked before bedtime because it
23 would help me sleep. But then it got to a point where
24 if I wanted to smoke before bedtime, I would have to do
25 things instead.

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1 Q So what would you have to do?

2 A I would have to let him put his hand down my
3 shirt.

4 Q When he put his hand down your shirt, can you --
5 where did he touch you on your body? I'm sorry.

6 A It's okay.

7 Q Where did he touch you?

8 A He touched my breasts.

9 Q Was this -- so it was under your shirt. Let me
10 back up. Do you remember the first time this happened?

11 A I do not remember the first time.

12 Q Okay. Is there any -- when he would put his hand
13 down your shirt, would you be wearing a bra or no?

14 A Yes, ma'am. I always wore a bra underneath my
15 shirts.

16 Q And was his hand over your bra or inside your bra?

17 A Inside.

18 Q Did he do anything with his hands when he put his
19 hand on your breast?

20 A He just kind of rubbed it.

21 Q Did you ever tell him to stop?

22 A No.

23 Q Why not? I'm sorry. Why not? And if you need a
24 break, just let us know.

25 A Okay. I kind of blacked out. I didn't -- I

1 didn't move or talk or breathe. I just sat there
2 silently and let it happen. I never pushed him away or
3 anything.

4 MR. HILLIARD: Can we go ahead and take that
5 break, judge?

6 THE COURT: No.

7 MR. HILLIARD: All right, sir.

8 Q Are you okay to go on?

9 A Yes.

10 Q Did you ever tell your mother after this happened?

11 A No.

12 Q If you recall, how old were you when this started,
13 the fondling?

14 A I believe I was 14.

15 Q Do you -- can you tell us approximately how many
16 times this happened.

17 A I'm not sure.

18 Q How long did it go on?

19 A A couple of months.

20 Q Do you remember the last time it happened?

21 A Yes, ma'am.

22 Q Can you tell us about that time.

23 A So I was sitting on the couch with him, and I was
24 still trying to be close with him. I was trying to put
25 it out of my mind and just keep the father-daughter

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1 relationship because we used to play video games
2 together and watch movies together and watch Stargate
3 Atlantis together and stuff like that. And he did it
4 again. And I just remember I ran up to my room, and he
5 didn't come in for a minute, and then he came upstairs
6 and he opened the door, and I was crying on my bed.
7 And he -- he approached me very kindly at first, and he
8 was like, are you okay? You know I didn't mean to.
9 I'm very sorry. And then I didn't say anything. I
10 just sat there and was just kind of spaced out.

11 And then he got very angry with me, and he was
12 saying, so what, now you're not going to talk to me?
13 This is ridiculous. You know, I never hurt you. And
14 then he would go back to being sweet, and he was saying
15 things like, I'm sorry, please don't tell your mother.
16 I won't do it again. And then he never did it after
17 that.

18 Q Besides that time when he said, don't tell your
19 mother, did he ever tell you to not tell your mother or
20 not tell anyone?

21 A Yes, ma'am.

22 Q Can you tell us about that.

23 A There were often very low-key threats that he
24 made. The one in particular that I remember is that we
25 were all outside, and we were having a cookout. We had

1 bought a new grill, and the boys were out there, and we
2 were roasting marshmallows and stuff like that. And,
3 somehow, him and my mother got on the subject of it, I
4 don't remember how, and she looked at me and my sister,
5 and she was like, if anything like that ever happened
6 to you girls, you would tell me; right? And we were
7 like, yeah.

8 But then Scott said, I'm sure that if something
9 like that ever happened to you girls and you didn't
10 tell your mother, you would be in more trouble than I
11 would. I'm sure she would be madder at you for not
12 fessing up when you had the chance and waiting until
13 later. And it was just kind of like a low threat that
14 if we did speak up -- I guess, if I spoke up, because I
15 didn't know about my sister, I took it personally that
16 if I did speak up, that she was going to be more mad at
17 me than at him because I never spoke up to begin with,
18 and it would seem like it was a lie.

19 Q So you took that as a threat?

20 A Yes, ma'am.

21 Q And what -- you said that they started talking
22 about it. What were they talking about?

23 A Molestation in general. They were talking
24 about -- I don't remember how we got on the subject. I
25 just remember we were talking about it because my mom

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1 has had previous experience with that, so, believe it
2 or not, she was very careful with stuff like that. She
3 would always ask us, if we had ever been around like a
4 strange guy, you know, if we were okay, if anything had
5 happened. And she was always very open about we could
6 always come to her if we needed to.

7 But I never did. And I don't know why I never
8 did. I was just very scared to come to her. It wasn't
9 like she was very close-minded about it, I was just
10 really scared.

11 Q And you said you didn't know about your sister?

12 A I didn't.

13 Q Did there come a time when you learned what was
14 happening to your sister?

15 A Yes, ma'am.

16 Q Can you tell us about that.

17 MR. HILLIARD: Objection. That would be hearsay,
18 Your Honor.

19 THE COURT: Let's take the jury out for a moment.

20 (WHEREUPON, the jury exited the courtroom at
21 11:25 a.m.)

22 THE COURT: Ms. Walter, repeat your question.

23 MS. WALTER: Can you tell us about that. I said,
24 did there come a time when you learned what was
25 happening with your sister? She said, yes. I said,

1 can you tell us about that. Which is an exception to
2 the hearsay because she can talk about, as I've
3 instructed her, without saying who her sister named,
4 she can talk about what her sister told her had
5 happened.

6 THE COURT: And how is that an exception?

7 MS. WALTER: It's an exception for sexual assault
8 cases. Once the declarant has testified, which in this
9 case would be J.H. , then others can testify as to,
10 essentially, time, place, and manner, but they cannot
11 testify to the identity of the perpetrator.

12 THE COURT: All right. Mr. Hilliard?

13 MR. HILLIARD: All right. So any person could
14 testify -- is that -- is what they are saying, is that
15 anybody can come in and say those things that
16 corroborate the victim's testimony?

17 MS. WALTER: Yes. Anyone that the victim has told
18 they were sexually assaulted can testify in that manner
19 as long as they don't say who the victim identified as
20 the perpetrator.

21 THE COURT: Let me look at this section.

22 MS. WALTER: I will also point out that this has
23 already come in through J.H. .

24 Your Honor, if you look at 801(d)(2) -- I'm sorry,
25 (d)(1)(D). Consistent with the declarant's testimony

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1 in a criminal sexual conduct case --

2 THE COURT: Just one second.

3 MS. WALTER: Do you want me to show you my book,
4 Your Honor?

5 THE COURT: I have it right here. I thought it
6 was actually in the rape shield statute. I know what
7 you're talking about, I just want to review it, (d)(1).

8 MS. WALTER: Capital D.

9 THE COURT: 801(d) subsection D, statements which
10 are not hearsay, (d)(1)(D)?

11 MS. WALTER: Yes, Your Honor.

12 THE COURT: This is what it says: Declarant
13 testifies at the trial or hearing and is subject to
14 cross-examination concerning the statement, and the
15 statement is, A, has to do with inconsistent
16 statements, B, consistent statements, C, identification
17 of a person after receiving the person, or, D,
18 consistent with declarant's testimony in a criminal
19 sexual conduct case or attempted criminal sexual
20 conduct where the declarant is the alleged victim and
21 the statement is limited to time and place of the
22 incident.

23 So if the declarant is the victim, says it is the
24 victim.

25 MR. HILLIARD: Right.

1 THE COURT: And it is consistent, what she is
2 saying is consistent with the declarant's testimony in
3 this case, and it is limited to time and place of the
4 incident. I don't think you can go into the incident,
5 it's the time and place of the incident.

6 MS. WALTER: Okay.

7 THE COURT: Okay?

8 MR. HILLIARD: Let's hear what she says, judge, if
9 you don't mind.

10 THE COURT: Okay. Ask her again and let me hear.

11 MS. WALTER: Well, I'll phrase it differently so
12 that I'm adhering to the Court's ruling, but I'm going
13 to have lead-up questions which I don't think are
14 necessarily germane to that.

15 Q So without going into specifics, did your sister
16 tell you when and where she had been sexually
17 assaulted? And if you don't understand --

18 MS. WALTER: So, Your Honor --

19 THE COURT: The place.

20 MS. WALTER: Place and time.

21 THE COURT: Place and time.

22 Q Do you understand? This is like legal stuff, I
23 know. You can -- in other words, you can talk about if
24 your sister gave --

25 THE COURT: Let me explain it to her. See, the

1 rules will not let you repeat what your sister told you
2 about what actually occurred. But you may confirm, if
3 she told you, the time and the location, place, that it
4 took place. Do you understand that?

5 THE WITNESS: Yes.

6 THE COURT: Okay. So did she tell you a location,
7 did she tell you a time, like date, time of day,
8 anything like that?

9 THE WITNESS: Like location in the house?

10 THE COURT: Yes. Yes.

11 THE WITNESS: I believe she told me in her bedroom
12 and in the living room on the couch.

13 THE COURT: Okay. And did she tell you when?

14 THE WITNESS: No, not a specific date.

15 THE COURT: Like a date, a time, anything like
16 that?

17 MS. WALTER: Or a date range would be appropriate,
18 Your Honor?

19 THE COURT: Yeah.

20 THE WITNESS: I don't remember a specific date.

21 MS. WALTER: Okay. That's fine.

22 THE COURT: Okay. So we know where we are; all
23 right?

24 MR. HILLIARD: Yes, sir.

25 THE COURT: All right. Chris, bring them back.

1 (WHEREUPON, the jury came into open court at
2 approximately 11:32 a.m.)

3 THE COURT: All right. You may proceed.

4 Q All right. Let's try and go back to where we
5 were. Did you learn at some point that something was
6 happening to your sister, J.H. ?

7 A Yes, ma'am.

8 Q Okay. You can tell us -- do you recall when you
9 learned about this?

10 A Do I recall when?

11 Q When you learned what was happening with your
12 sister.

13 A I recall a timeframe.

14 Q That's fine. When would that have been?

15 A I believe it was in March or April of, I want to
16 say, 2014.

17 Q Okay. How did that conversation come about,
18 without -- how did that conversation come about?

19 A She came to me upset that she thought she was
20 pregnant. I told her I would get her a pregnancy test.
21 She told me that something had happened to her and not
22 to tell my mother. And she explained to me what had
23 happened to her. And then I explained to her what had
24 happened to me.

25 Q And what did you tell her had happened to you?

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1 A I told her that -- in order to make her feel
2 better about something that she had told me, I told her
3 a dark secret, which was that Scott had been molesting
4 me.

5 Q Did your sister then tell you anything about what
6 was happening to her?

7 A Yes.

8 Q And you can only tell us if she gave you a
9 timeframe that you recall and if she told you where it
10 occurred.

11 A Yes.

12 Q So do you recall a timeframe?

13 A I do not.

14 Q Okay. Do you recall where she said anything
15 occurred?

16 A In the living room on the couch and in her
17 bedroom.

18 Q Of the house you guys were living in?

19 A Yes, ma'am.

20 Q All right. Once you learned that, did you and

21 J.H. make a plan -- strike that. Do you know if

22 J.H. had told your mother anything at that point?

23 MR. HILLIARD: Objection. That would be call for
24 hearsay as well, judge.

25 THE COURT: No. She is just going to ask her if

1 she knows.

2 MS. WALTER: Right, only if she knows.

3 THE COURT: Not what she may have said or
4 anything, just if she knows that there had been a
5 conversation.

6 MR. HILLIARD: Right.

7 THE COURT: I'll let her ask that.

8 MR. HILLIARD: Thank you.

9 THE WITNESS: I do know at that point that she had
10 not said anything to my mother.

11 Q Okay. Did you and J. H. make a plan to tell your
12 mother?

13 A Yes, ma'am.

14 Q Can you tell us what that plan was.

15 A The first plan we had was that we had an upcoming
16 dentist appointment. And when we had dentist
17 appointments, we did not have to go to school. We got
18 out for the whole day. And we knew that Scott would be
19 at work. So her and I decided that that day, during
20 the dentist appointment, we would try to make sure my
21 mom was in a good mood so that she would be more
22 willing to listen to us because we knew that she was
23 going to be very upset. And then we planned to tell
24 her after the dentist appointment when we got home
25 because we all got breakfast and stuff together, and we

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1 were having a really good day. So we didn't get out
2 much, so it was really nice when we had that. And then
3 he came home early.

4 Q When you say he, who came home early?

5 A Scott came home early from work, and we never got
6 to tell her.

7 Q Was that the only plan, or what other plans did
8 you make?

9 A Later on down the couple of months, we went to
10 Charlotte and stuff like that happened, and then when
11 we came back, my sister and I were -- we weren't
12 talking as much. We were kind of keeping our distance
13 from each other because we both kind of knew what was
14 going on. But we made a plan that when -- that I was
15 going to leave a letter, and I was going to run away
16 somewhere safe, and that my sister -- that my mom would
17 read the letter, find out everything that had happened
18 with my sister, and then he would not do it anymore.

19 But that plan failed because I looked into the
20 legal aspect of running away and found out that if I
21 had run away, that whoever took me in for the time
22 could go to jail for kidnapping or be charged for
23 kidnapping if they decided to press charges. And I
24 knew him, and I knew he would. And that was if my mom
25 didn't believe me.

1 And I also was scared that if I left the house,
2 left that note with my mom and she didn't believe me,
3 because he had very strong hold on her, he was very
4 manipulative, and -- or if he got to the letter first,
5 that my sister would be in a lot of danger, and so
6 would my mom. And so I decided that I was not going to
7 run away. I decided that I went to school, I had very
8 good grades, and I found out that I could graduate
9 early.

10 So I pushed myself to graduate early, and I got a
11 job so that I could start saving money. I ended up
12 being thrown out of the house early, and once I threw
13 out, I abandoned my sister and I didn't look back.

14 Q Where were you working to save this money?

15 A Sonic.

16 Q And you said you graduated early?

17 A Yes, ma'am.

18 Q What were you going to do after you graduated?

19 A I wasn't officially sure, but I decided that
20 because I did not have a major, I was going to take a
21 year off, and then I was going to get a place to live,
22 take my sister in, and then I would start college a
23 year late. But I graduated with my college credits
24 already on my record, so I would have to just go
25 straight into sophomore year. I didn't have to go into

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1 college as a freshman.

2 So I knew that it would be okay for me to take a
3 year off because I could pick up like I had gone to
4 school the whole time in the first place.

5 Q You said you got kicked out before you could move
6 out?

7 A Yes, ma'am.

8 Q Can you tell us about that.

9 A I was planning on moving in with my now fiancé, at
10 the time boyfriend, and his dad. I already talked to
11 him about taking me in, and he said it was fine as long
12 as I paid rent and everything like that. And so I was
13 planning on moving out. And I had set a date. And
14 then that date, it was raining really badly. And I
15 wasn't able to get all of my stuff -- I'm sorry, let me
16 back up.

17 They told me when I was working that, because I
18 was never home, that I had to pay rent, and so I
19 started paying rent to not live at my house, to stay at
20 work and at a friend's house so I wouldn't have to go
21 home. And then they called me one day and told me that
22 since I basically wasn't there, that I needed to go
23 home and pack all of my stuff up. I could leave it
24 there so long as it was packed up so that I could move
25 out when it was time, because I was only 17. So they

1 were waiting for me to turn 18.

2 So I went upstairs, I packed up all my stuff, and
3 so it was already packed up. And then a couple weeks
4 later, before the plan, they called me and they told me
5 that I need to get my stuff out now. And they said
6 that there was no more room for me, that they were
7 tired of me, and that I needed to get my stuff.

8 So all of my stuff was already packed up in the
9 room, and I made a date to move all my stuff out. And
10 they called me even before the original date that I was
11 telling that I had to get it out, and then it rained
12 and I was unable to get it out, and I didn't have
13 everything planned out the way I needed to.

14 And so I made another plan to do it the next
15 couple weeks or the next week. And they called me --
16 more specifically, he called me and told me that my
17 stuff was going to be on the street tonight if I didn't
18 come and get it.

19 Q When you say he called you, who do you mean?

20 A Scott called me.

21 Q So did you go and get it?

22 A Yes, ma'am.

23 Q And did anything happen when you went to go get
24 your things?

25 A The day before I went to get my things, I was on

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1 the phone with his mom, Rebecca, because she was
2 going -- she had a trailer, so she was going to help me
3 relocate my stuff. And she was the only person that I
4 actively knew with a trailer, and I didn't know
5 anything about trailer rentals or anything because I
6 was 17.

7 So I contacted her, and we were talking about
8 everything. And I told her that I was very upset with
9 him for the phone call about having to get my stuff
10 out. And I explained to her that I was upset with him
11 because he was always mean, and I kind of broke down
12 and started venting to her about how he was so mean,
13 how he kept us locked in our rooms, how he never let us
14 go out, how he never let us talk to each other, how we
15 were basically just people to clean the house and cook
16 for him, and that was it. And I just started venting
17 to her, and she kept defending him and saying, you
18 know, he loved us and he was our father --

19 MR. HILLIARD: Objection as to hearsay.

20 THE COURT: Well, it's not offered for the truth
21 of the matter asserted. I'll allow it.

22 MS. WALTER: Thank you, judge.

23 Q You can keep going.

24 A Okay. So I got really upset with her and told her
25 that he wasn't as perfect as she thought. And I told

1 her that he had been molesting me and that I had
2 suspicions about my sister as well.

3 Q What did she say in response to that?

4 A She asked how far it went. I explained to her
5 that it was just the groping of my breasts and stuff,
6 and that there were a few times where he asked me to
7 take my shirt off, but I didn't. And she said that it
8 wasn't as bad as I was making it out to be, that she
9 had had worse, that he still loved me and he was my
10 dad, and I needed to act like it, and to get over it on
11 my own.

12 And I was upset with her, but I let it go. And
13 the next day she helped me get my stuff out of the
14 house. She took me to lunch. We never spoke of the
15 conversation before that, and then I never spoke to her
16 after that.

17 Q You haven't spoken to her at all after that?

18 A Not that I recall.

19 Q And you said you left your sister and never looked
20 back. What do you mean?

21 A I was supposed to find a safe place for her, I was
22 supposed to get her out of the house. It was my job to
23 make sure everything was good. But once I got out of
24 the house, I was so happy to be out of the house that I
25 never went back for her. I left her there.

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1 Q Let me just back up a little bit. You told us
2 that you were -- you believe you were 14 when the
3 Defendant started fondling your breasts. Do you know
4 how old you were when you stopped eventually?

5 A I believe 14. It didn't go on for very long.

6 Q And did you ever self-harm?

7 A Yes, ma'am.

8 Q Can you tell us, first of all, why did you do
9 that?

10 A I can't really explain why I did it, just that it
11 helped.

12 Q Did you do this before or after the Defendant
13 molested you?

14 A After.

15 Q Okay. And what did you do?

16 A I used to cut my wrists with glass, and then I
17 started wearing bracelets up to my elbows so nobody
18 would notice.

19 Q Do you recall a time seeing the Defendant with
20 condoms?

21 A Yes, ma'am.

22 Q Can you tell us about that.

23 A I was standing in the kitchen. I believe I was
24 doing dishes after my mom had cleaned, but I'm not
25 sure. Or I might have been doing dishes before so she

1 could cook. And he came in the door, and he had a
2 whole roll of condoms. And it struck me as odd because
3 I knew that my mom could not have kids, and my mom
4 confronted him about it, and he said that a guy dropped
5 it in his car at work. But then he went to his bedroom
6 and put them in his safe, which struck me as odd. But
7 I never spoke of it after that.

8 Q Do you recall an incident or a night that you and
9 your mother went to pick up your brothers at the
10 Defendant's sister's house?

11 A Yes, ma'am.

12 Q Can you tell us about that.

13 A So my little brothers, I believe, were staying at
14 my Aunt Sandy's house for spring break. I believe that
15 that's what it was because it was a longer period of
16 time. Or it could have been a teachers workday before
17 a weekend or something like that, I'm not sure. And me
18 and my mom had gone to Dillon to pick them up. And on
19 the way home, my mom was going to get everybody
20 something to eat because it had been late, and it was a
21 long drive, and she didn't feel like cooking. So she
22 was going to stop at McDonald's and get everybody
23 chicken nuggets. So she was calling Scott to find out
24 what he wanted because he didn't like McDonald's, and
25 she was thinking about getting him Subway.

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1 And she called his phone, and it rang, and there
2 was no answer. And then she called him again, and it
3 was ringing, and there was no answer. And she did that
4 a couple of times. And then when she did answer --
5 when he finally did answer, she -- it was like, hey,
6 you know, I'm stopping to get food, did you want
7 anything?

8 And he's like, yeah, pick me up something, but
9 don't get J.H. anything. And she was like, why not?
10 And he was like, because she won't listen to me, and
11 she won't spend time with me, and she won't sit down
12 next to me, so she doesn't deserve anything to eat.

13 Q Did your -- and was your mom's phone on
14 speakerphone, or how were you able to hear --

15 A It was on speakerphone. She always carries on
16 speaker so she doesn't have to talk while she is on
17 the -- driving.

18 Q Okay. Was it unusual, in your experience, that
19 the Defendant did not answer his phone?

20 A Yes.

21 Q Why?

22 A He keeps his phone right next to him at all times,
23 and he always keeps it all the way up, even when he's
24 at work or anything. When he's on the couch, when he's
25 playing Halo or watching TV, he keeps his controller,

1 the remote, something to drink and his bowl and his
2 cell phone all on his little table right next to him
3 all the time.

4 Q When you say bowl, what do you mean?

5 A His bowl for smoking marijuana.

6 Q Okay. Did your mother, in fact, get J.H.
7 anything to drink -- eat, excuse me?

8 A Yes, ma'am, of course.

9 Q And just tell us what happened with that.

10 A I came in, and my sister was red in the face and
11 looked like she had been crying. And I was really
12 worried about her. And my mom had me give her some
13 chicken nuggets.

14 Q How are you doing now with your life?

15 A A lot better.

16 Q Thank you for coming in and answering my
17 questions. Please answer any questions Mr. Hilliard
18 has.

19 THE COURT: Mr. Hilliard.

20 MR. HILLIARD: Thank you, judge.

21 CROSS-EXAMINATION

22 BY MR. HILLIARD:

23 Q You all right?

24 A Yes.

25 Q You have been in the courtroom throughout the

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1 trial and had the opportunity to hear your sister and
2 your mom's testimony; is that right?

3 A Yes, that is true.

4 Q In talking about Dillon, slash, Latta, you don't
5 remember when that was; do you?

6 A I don't know the exact date, but I believe it was
7 around March or April.

8 Q Of what year?

9 A I'm not sure.

10 Q So it was March or April of some year, you don't
11 know what year it was; right?

12 A Correct.

13 Q Okay. And the two younger brothers, it was at
14 least at a point in time when they were going to
15 school; is that correct, ordinarily going to school?

16 A I'm not sure.

17 Q Don't know, okay, fair enough. You do recollect
18 that the phone call where it rang through and Scott
19 didn't answer, you know that that was on the way back
20 from Dillon; is that right?

21 A Yes.

22 Q So that that phone call that he didn't answer was
23 not shortly after y'all left to go to Dillon, it was
24 when you were coming back?

25 A Yes.

1 Q And is this the -- did I understand that you had
2 to sneak your sister some chicken nuggets because Scott
3 didn't want her to have anything to eat; is that right?

4 A I do not recall if I had to sneak them, I just
5 recall that I had to give them to her. She may have
6 been up in her room. My mom may have just sent me up
7 there because she didn't want her to come down, I'm not
8 sure, I don't remember that part. I just remember that
9 I'm the one that gave them to her.

10 Q Okay. So, I mean, you gave your sister some
11 chicken nuggets?

12 A Yes, sir.

13 Q That's all there is to that?

14 A Yes.

15 Q All right. And then when you were living at home
16 and going to school, your grades were good; is that
17 right?

18 A Yes, sir.

19 Q And your -- but you couldn't sleep. That's one of
20 the things that you had a problem with, insomnia?

21 A Yes.

22 Q And your mom would smoke marijuana with you so you
23 could sleep?

24 A Not often, but every once in a while, yes.

25 Q But what I mean, whenever you couldn't sleep, you

1 could go to your mom and say, hey, mom, can we smoke
2 some marijuana so I go to sleep, your mom would
3 accommodate you in that?

4 A No.

5 Q She wouldn't?

6 A It did not happen like that.

7 Q Well, tell me how it happened, please.

8 A There would be times where I would be up at like
9 4 o'clock in the morning when I had to be at school at
10 6 o'clock in the morning, and my mom would hear me up
11 getting something to drink or something like that. And
12 then she would just be like, you know, you can't sleep?
13 And I would say no, and she would be, like, okay, try
14 this. And then I would smoke one time one hit.

15 Because I didn't smoke often, so it only took one, and
16 then I would go upstairs, and I would go back to sleep.

17 Q Okay. And -- but did I understand you to say that
18 in order for Scott to let you smoke marijuana to go to
19 sleep, you would have to do something with him; is that
20 what you said?

21 A When he started offering me marijuana for sleep,
22 because it got to a point where my mom did not want us
23 smoking at all, and so he would give it to us, but he
24 offered it to me for sleeping purposes. And he would
25 tell me this would help me sleep because I was always

1 stressed out from my exams or something. And I was
2 very high strung and not able to sleep. So he started
3 offering it to me for sleeping purposes. And then it
4 went further than that.

5 Q And this was a point in time where your mother had
6 previously offered you the marijuana to sleep, but she
7 had stopped?

8 A Yes, sir.

9 Q And so you didn't have any source of marijuana for
10 sleeping unless you would do what Scott wanted you to;
11 right?

12 A Could you rephrase that?

13 Q Sure. So in the beginning, and correct me if I'm
14 wrong, but in the beginning, you would wake up at
15 4 o'clock in the morning, and your mother would hear
16 you walking around, and she would see you and she would
17 say, well -- or you would say you can't sleep, and
18 y'all would smoke some marijuana together?

19 A It wasn't like we smoked together. She would hand
20 me, if she had anything on her already, and it was very
21 rarely, and she would hand it to me if she had it on
22 her already. And -- like, here, you can hit this real
23 quick. And then I would smoke it one time, and then I
24 would usually go up to bed.

25 Q Okay. So you would -- would this happen upstairs

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1 or downstairs, or where would you do it?

2 A I would be downstairs usually to get something to
3 drink or something like that. If I was upstairs and up
4 late, she never came upstairs just to give it to me or
5 anything because she wouldn't have even known I was
6 awake unless I was downstairs.

7 Q All right. And so you were downstairs and awake,
8 and she knew that you were downstairs and awake. And
9 if she happened to have -- where would she have the
10 marijuana on her?

11 A If she was in her office, if she had been smoking
12 at some point for some reason and I was downstairs and
13 she heard me. There were times where she never heard
14 me downstairs, there were times where I never came
15 downstairs, there were times where I was awake for a
16 couple of days without ever being offered anything.

17 It wasn't like she just gave it to me every chance
18 she got every time I was awake. It was a very rare
19 circumstance if the circumstances lined up that she
20 happened to be smoking in her office or coming to bed
21 or something like that and I happened to be downstairs
22 at the same time, which was very rare.

23 Q Okay. And then after that, you went to her at
24 some point in time saying, hey, mom, it's 4 o'clock in
25 the morning. I can't sleep. Can I have some

1 marijuana?

2 A No.

3 Q You never did that?

4 A No, I never just asked them for it. I never went
5 to my mom, like, hey, mom, can't sleep, marijuana,
6 please. It was like only if I was already downstairs,
7 present, awake, and she happened to notice and happened
8 to be smoking already, which was rare.

9 Q All right. But what you said, I think, is that at
10 some point she wouldn't do that anymore?

11 A Yes. At some point it was to a point where, you
12 know, we were getting -- I don't know, she just kind of
13 looked at us and, I guess, accepted that she shouldn't
14 be doing that and told us -- or told me that she wasn't
15 going to be doing that anymore. And I was okay with
16 that because I didn't smoke for any reason other than
17 sleep.

18 Q Right. But at that point, you had to let Scott
19 fondle you in order to get you marijuana to go to
20 sleep, but that --

21 MS. WALTER: Objection to the form of the
22 question, Your Honor.

23 THE WITNESS: It was not like that.

24 MR. HILLIARD: Pardon?

25 THE COURT: Proceed.

1 MR. HILLIARD: Thank you.

2 MS. WALTER: You can answer that.

3 THE WITNESS: It was not like that.

4 Q Okay, go ahead.

5 A You are making it out as though I had an addiction
6 to it and only would be able to have it if he fondled
7 me. It did not happen like that. I had it once or
8 twice, maybe more, I'm not positive of the exact
9 number, with my mom once in a while if it just so
10 happened the circumstances lined up.

11 He was always smoking all day, every day, always
12 on the couch. And there had been nights where we had
13 started hanging out frequently where we were always
14 watching TV or something together, and he was already
15 smoking anyway, and he would hand it to me once in a
16 while. And it was only if I knew that I was wasn't
17 going to be able to sleep or before bedtime that I
18 would be like, okay, yes.

19 And then as that progressed, it got to a point
20 where he would wait until I had smoked, and then he
21 would start doing things. And eventually it got to a
22 point where I didn't want anything to do with that at
23 all.

24 Q All right. Well, let me ask you this way. I'm
25 going to read you something that I wrote down during

1 your testimony, and if you think that it's what you
2 said, please tell me, and if you think it's not what
3 you said, please tell me that; okay?

4 A Okay.

5 Q Ready? Okay. I would have to do things with
6 him -- and that was the quote part -- connected to
7 getting the marijuana. I would have to do things with
8 him. Do you remember saying that?

9 A Yes.

10 Q Tell me what -- tell me why you would have to do
11 things with him connected to marijuana.

12 A So this is the part that's hard to explain.

13 Q Okay.

14 A I used to hang out with him often. We would
15 always sit next to each other on the couch. We would
16 watch movies together. We would play video games
17 together, and he was always smoking. It was a while
18 between the times to which I was using it for sleep,
19 after my mom had stopped smoking with me, to the time
20 that he started offering it to me. There was space
21 between that. It wasn't immediately afterwards or
22 anything like that. My mom put her foot down and said,
23 they will not be smoking.

24 He complied to that for a short period of time. I
25 don't know how long the period of time was, but then

1 later, behind my mother's back, he started offering it
2 to me. I would smoke it a little bit with him because
3 I thought that I was having fun with him. I thought
4 this was something we were doing together. I thought
5 that this was just like the drinking thing that my mom
6 didn't know about where I thought we were connecting
7 like father-daughter should, because I knew that that
8 was one of the only things we connected on because the
9 only other thing he likes is football, and I don't like
10 football.

11 So we smoked a little bit together, and I would
12 usually only do it -- I know for a fact I only ever did
13 it at bedtime. I never did it before school, I never
14 did it during the day, only at bedtime. And it was
15 because I knew I was going straight to sleep. Then it
16 got to a point where he would offer it to me, then he
17 would put his shirt down my -- his hand down my shirt.
18 That is how that progressed.

19 And he would make it as though I would try to be
20 away from him, but he would throw guilt trips that --
21 even to my mother, that I didn't love him anymore, that
22 I wouldn't spend time with him anymore, that I was
23 growing apart with him.

24 And so I would feel bad and sit back down next to
25 him all the time, and he would offer it to me, and I

1 would say no. And there were times where he would
2 still try to reach his hand down my shirt. But the
3 first few times that I was smoking with him, I got high
4 first, then he reached his hand down my shirt. Is that
5 clear enough?

6 Q Well, and --

7 A If I phrased it wrong, I apologize.

8 Q Your mom -- one of the things that you said is
9 your mom has experience. Tell me what you meant by
10 that, please. Your mom has experience in the area of
11 sexual assault?

12 MS. WALTER: Objection, Your Honor.

13 THE COURT: It's already in evidence.

14 MS. WALTER: Well, it seems as though it's calling
15 for hearsay.

16 THE COURT: If she knows, she knows. If she
17 doesn't, she doesn't. And if she does know, we'll hear
18 where it comes from, and that may be objectionable.

19 THE WITNESS: I know that my mom has mentioned
20 before that her dad molested her when she was a child.

21 Q All right. Well, let me try to ask a better
22 question. When you were answering questions for the
23 prosecutor, you said that your mom was open to you
24 talking with her; do you remember that part?

25 A Yes. She was always open with us talking to her

1 about situations like that, yes.

2 Q Right. And because your mom had experience in
3 that area, she was even more open for you talking with
4 her about things like that; right? Isn't that what you
5 said earlier?

6 A Yes, that is what I said.

7 Q Okay. But you were afraid to talk to her?

8 A Yes.

9 Q And the times that Scott had touched you
10 inappropriately, you don't remember when those times
11 were; is that correct, the dates?

12 A I don't remember the exact dates. I believe that
13 it was the summer before I started my freshman year of
14 high school, but because I was usually high when it
15 happened, I don't remember.

16 Q So you don't -- because you were high when this
17 was going on, you don't really remember when it
18 happened sort of at all; is that right?

19 A I don't really remember the exact date.

20 Q Okay. And Scott kicked you out of the house
21 because your stuff was in the way; is that right?

22 A No. He kicked me out of the house because I was
23 never home to do chores or anything because I was
24 working and going to school. And then when I stopped
25 going to school, I was working full-time. And he

1 didn't like the fact that I was never home to do the
2 chores, and so he kicked me out. First he charged me
3 rent, and then he kicked me out because he wanted my
4 brothers to take the upstairs bedroom.

5 Q And you were angry about that?

6 A Yes, I was upset.

7 Q And when you talked to your grandma, when you
8 called your grandma and said, hey, Scott's being mean
9 to me, she defended him?

10 A It wasn't that he was just being mean. You're
11 making it out like he didn't grab my sister by her hair
12 and smash her head into the wall. He wasn't just being
13 mean.

14 Q All right. Well, he's grabbed your sister and
15 smashed her head against the wall?

16 A Yes.

17 Q When did that happen?

18 A I don't know the exact time.

19 Q All right. Well, in relation to your conversation
20 with your grandmother, how long before the conversation
21 with your grandmother?

22 A I do not recall.

23 Q A month, a year?

24 A I do not recall.

25 Q You have no idea?

1 A No.

2 Q Okay. And the Latta, Dillon situation, you have
3 no idea when that happened either, do you?

4 A I know that it was -- I do not know for a fact,
5 but I know, in theory, that it was, I think, between
6 March and April, but I do not remember the year.

7 Q All right. And when you're -- well, tell me what
8 it is that you were telling your grandma that she was
9 defending Scott about. What all things were you
10 telling her that she was defending Scott?

11 A I do not recall the exact specifications of the
12 argument.

13 Q Okay.

14 A Just that it escalated to the point where I
15 finally told her about the molestation.

16 Q And how long after the molestation had taken place
17 was it before you told your grandmother?

18 A I do not know the exact time period, but it was a
19 while.

20 Q And you never told your mom?

21 A No.

22 Q And your grandmother told you it was no big deal?

23 A Yes.

24 Q The condoms. So are you telling us that Scott
25 came into the house with a roll of condoms for

1 everybody to see when he just came into the house?

2 A Yes, sir. He came in laughing, and he said that
3 somebody had dropped them in his car, or that he found
4 them in his car at work, and that he took a friend
5 home, and they had dropped them in his car or something
6 along those lines, and he took them into the bedroom.

7 Q And put them in his safe?

8 A Yes. He had a safe.

9 Q And he put the condoms in the safe?

10 A Yes.

11 Q And your mother was saying, what the heck you
12 keeping those condoms for?

13 A I don't know if she said that, I just know that
14 she was like, where did you get the condoms, when he
15 walked in.

16 Q Okay. So she said, where did you get them, but
17 she did not say, why are you keeping them?

18 A No.

19 Q Back when you were talking about Billy, would you
20 say that J.H. was a daddy's girl at that point in
21 time?

22 A Yes. J.H. was a daddy's girl, and I was momma's
23 girl.

24 Q J.H. was a daddy's girl and you were a momma's
25 girl?

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1 A Yes.

2 Q And you had a good relationship with your mother?

3 A Yes, I did.

4 Q You could tell her anything?

5 A Yes.

6 Q And when J.H. told you that she had been
7 sexually molested by the stepfather, you didn't tell
8 your mom about that?

9 A The proximity between when me and my mother had a
10 mother-daughter relationship and the proximity to which
11 I found out what was going on with my sister was over a
12 period of about nine years. So mine and my mom's
13 mother-daughter relationship gradually fell apart.
14 When she started locking herself in her office, I
15 started locking myself in my room, and we were never
16 allowed to really be in the same room as each other
17 except for once in a while. Our relationship grew
18 apart. And I was also afraid.

19 Q You were never allowed to be together?

20 A We were allowed to be together, but it was
21 always -- it would always make him angry.

22 Q And Scott was always at home?

23 A Not always. And I was also not always at home
24 because I was at school. And when he worked day shift,
25 we got home at the same time.

1 Q And when he didn't work day shift?

2 A Then me and my mom would spend time with each
3 other if I wasn't working or had homework. And it
4 would be me, my mom, and my sister and my brothers.
5 And sometimes we would be doing things for him like
6 cleaning the house because he expected everything to be
7 spotless when he got home, whether it was day or night.

8 So if he came in the daytime, my mom spent all
9 morning while I was at school cleaning the house and
10 getting dinner ready. And then when he would come in
11 at night, we had already made dinner, put his up so it
12 would be warm or made him a special dinner because he
13 was very picky, and we would already have the house
14 clean and stuff when he came home. When he came home,
15 we went to our rooms.

16 Q And you were angry about that?

17 A I mean, yes, I was.

18 Q All right. So, but, I mean, even while you were
19 cleaning and straightening up and doing all of those
20 things, you had a chance to talk to your mother; right?

21 A Yes, I did have a chance.

22 Q So you could have talked to her at that point in
23 time, y'all weren't being separated?

24 A Yes, I could have informed my mom at any time.

25 The reason I didn't inform my mom is because I was

1 scared.

2 Q And you put together an idea to -- you made a plan
3 that you were -- well, tell me about the plan. It was
4 a plan that you made to tell your mom that Scott messed
5 up by coming home early, Scott spoiled your plan by
6 coming home early. When was that plan?

7 A I don't recall.

8 Q Okay. You had a plan that you were going to tell
9 your mom about what was going on, and Scott spoiled it
10 by coming home early?

11 A Yes. Because I wasn't going to tell my mom about
12 him when he was there because he was dangerous, and I
13 was scared of him. And I wasn't going to do that. I
14 was hoping that I could tell her before, when I knew he
15 wasn't coming home, so that we could actually sit down
16 and have a conversation about it and talk it out.

17 Q Okay. And so that was one day, one plan, he came
18 home early. That was one time?

19 A Yes.

20 Q And did he come home early the next day?

21 A He worked at different schedules. There were days
22 that he would be home all day, but I do remember that
23 there was a short period of time where we had a lot of
24 things going on. Like we went to Charlotte, and so we
25 were all in a hotel room for one or two days and stuff

1 like that, and there was never really much alone time
2 with my mom beyond that point.

3 Q And there was a plan to tell your mom connected to
4 that Charlotte trip; is that right?

5 A I'm not sure.

6 Q You didn't testify -- maybe I have this wrong, and
7 I apologize if I do. But you didn't testify that there
8 was some plan connected to Charlotte in telling your
9 mom?

10 A No. There was the dentist plan, and then there
11 was some stuff that happened between that. There was
12 the Charlotte trip, and then after that, there was the
13 second plan. They didn't have any correspondence with
14 each other. It was just the timeframe that I'm
15 remembering was that I remember we made a plan, I
16 remember there were things in between, I remember we
17 went to Charlotte, and then I remember we made another
18 plan.

19 Q All right. And the plan was for you to run away
20 from home?

21 A Yes.

22 Q But you did research looking into the legal aspect
23 of running away from home?

24 A Yes.

25 Q And you believe that somehow, as a sexual assault

1 victim, that you would have been -- that Scott could
2 have gotten your friends charged with kidnapping?

3 A Well, it was along the lines of there were
4 different aspects -- there were different ways that
5 this could go. There was my mom didn't believe me, he
6 had my friends arrested, and we went home to a
7 twice-worse household where at that point where he may
8 have thought things had already progressed where he
9 could do things that he was doing to my sister with me.

10 And then there was the aspect that she would
11 believe me, she would kick him out. And then there
12 were things in my mind such as if that did happen,
13 where would my brothers go, how long would a trial
14 last, would people believe you, stuff like that.

15 Q All right. So what you talked about was the
16 kidnapping?

17 A Yes. I knew that my friends could be charged with
18 kidnapping on one of the cases if my mom didn't believe
19 us and he stayed, that he could charge my friends with
20 kidnapping.

21 Q All right. And then, ultimately, you did leave?

22 A And then I more or less moved, slash, got kicked
23 out.

24 Q Right. And at that point, that was when you
25 abandoned your sister to whatever fate befell her with

1 Scott?

2 A Yes.

3 Q Do you believe that your sister was jealous of
4 you?

5 A No.

6 Q Your sister is known for lying; is that correct?

7 A Can you rephrase that?

8 Q Sure. When you did an interview with Detective
9 Johnson, do you recall telling him that your sister was
10 known for lying a lot?

11 A Yes, I do recall saying that.

12 Q Okay. And you've already told us that Scott was
13 really, really mean; right?

14 A Yes.

15 Q And you've also described him as an asshole?

16 A Yes.

17 Q And you said that on the occasion that something
18 occurred and he stormed out of your room -- and I think
19 you told the prosecutor this -- that it never happened
20 again after you told him to quit and you went upstairs,
21 and it never happened again; right?

22 A I went upstairs crying after it happened. He came
23 upstairs. He went through motions, notions of
24 emotions, and then he got to the point where he
25 apologized, said that he would not -- not to tell my

1 mom if he would not do it again.

2 Q And he never did it again?

3 A And he never did it again.

4 Q All right. And so the situation with your mom and
5 the -- was it a cookout where he threatened you,
6 impliedly threatened you; is that right?

7 A That was one of the instances.

8 Q One of the incidents?

9 A Yes.

10 Q How many times did he threaten you if you were to
11 tell what happened?

12 A I do not recall how many times.

13 Q All right. Tell us about some others besides this
14 one.

15 A There was a time when I was upstairs, I was on my
16 phone, I was talking to my now fiance because he knew
17 about the situation before when we had first met. He
18 was the first person I ever told. It was just a random
19 thing, I just needed to get it off my chest.

20 And he was begging me to tell somebody like the
21 cops or my mom because he felt like, even though it had
22 happened however long ago, that it was still relevant
23 and that I could still be in danger. And I was telling
24 him that I would be out of the house very soon, and
25 that I wasn't worried about it because it hadn't

1 happened and that it was over and done with, and I just
2 didn't want to think or talk about it anymore. I just
3 wanted it out of my life. And this was, of course,
4 before I knew about it was going on with my sister. He
5 came upstairs in the middle of the night and he said,
6 turn your phone off.

7 So instead of turning my phone off, I put my phone
8 down. And he told me, he said, if you want to tell
9 your mom, we'll tell your mom. Let's tell your mom.
10 We'll tell her everything. We'll tell her about how
11 you kept it from her, we'll tell her everything. And
12 he told me, he went nice and he said, don't you see
13 I've done everything for you? I bought you a guitar, I
14 gave you a spider. I gave you things that I never gave
15 anybody else. Don't you see that I love you and that
16 it was a mistake?

17 And then he said, all I ever did was touch you a
18 little bit. I never did anything bad to you. And then
19 he said -- he went back to being nice, and he said my
20 mom spent all the time on World of Warcraft, and he
21 felt like he wasn't getting love. And he said he tried
22 to find love in us girls, which is when I suspected
23 something may have been happening with my sister, but I
24 wasn't sure.

25 But then he immediately said, I never messed with

1 your sister, it was only ever you. I only ever messed
2 with you. And he said, and I was sorry for that. And
3 then he kept going on about something, and I told him I
4 didn't want to talk about it anymore, just to leave me
5 alone and get out of my room. And he left my room.

6 And then the next day he came up, and he -- it
7 wasn't what he was saying so much as how he was saying
8 it, as though you knew it was a threat. And he was
9 saying things like, we'll go down and tell your mom
10 right now. You'll be in more trouble than I will.
11 I'll tell her you're just using it to make your
12 boyfriend feel guilty and want to spend time with you
13 and be with you and that you're just using it as a
14 guilt trip. And that was another time that I
15 specifically remember his threats.

16 Q All right. And on that occasion, you were in your
17 bedroom talking on the phone?

18 A Yes.

19 Q And Scott heard you talking on the phone?

20 A Yes.

21 Q And Scott was downstairs smoking in the living
22 room?

23 A Yes, he was getting high. It was in the middle of
24 the night.

25 Q So it was in the middle of the night. And let me

1 show you -- I'll just try to hold this up myself best I
2 can -- Defendant's Exhibit No. 10. Is this a fair
3 representation of your house that we've been talking
4 about?

5 A I believe so, yes.

6 Q All right. And so when you say Scott was in the
7 living room smoking pot, he was down here smoking pot
8 (indicating); that is right?

9 A Yes.

10 (Discussion off the record.)

11 Q All right. Let me show you State's [sic] Exhibit
12 No. 6. Is that a fair representation of the steps?

13 A Yes.

14 Q Up to your bedroom?

15 A Yes.

16 Q All right.

17 MR. HILLIARD: And I want to publish this, if I
18 may, judge. It's in evidence. It's State's No. 6.

19 THE COURT: You may.

20 MR. HILLIARD: Thank you.

21 Q And also State's [sic] No. 11, is that a fair
22 representation of the upstairs of your house?

23 A Yes, but there is an attic in the middle.

24 Q There is an attic in the middle?

25 A It's an attic closet. It's upstairs. It's used

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1 as an attic. It's a closet between our bedrooms and
2 the bathroom.

3 Q Okay. And so what you're telling us, what you've
4 testified to is that Scott was down here in the living
5 room (indicating)?

6 A Yes.

7 Q And that you were up here in your bedroom
8 (indicating)?

9 A Yes.

10 Q And that those are the steps in between where he
11 was and where you were?

12 A Yes.

13 Q And he was down there smoking pot, and he could
14 hear you talking on your phone?

15 A Yes. It was very late. It was like 4 o'clock in
16 the morning, and he was the only one up.

17 Q All right.

18 A The way that our house is lined up, it's the
19 living room, the staircase, and my bedroom. So my
20 bedroom is right beside the staircase, and the
21 staircase is right beside the living room. So if there
22 was any talking going on, you could hear it if there
23 was nobody awake and the house was quiet. That's how
24 they always knew that we were up past our bedtime or
25 that my brothers were running about when they weren't

1 supposed to and stuff like that.

2 Q And so the sex -- you've indicated that your
3 sister told you that she was having sex in the living
4 room and in her bedroom; is that right, with Scott?

5 A She informed me that things that had happened had
6 happened in her bedroom and in the living room, yes.

7 Q And you never heard any of that?

8 A I was never home, or I always had my headphones in
9 because I always listened to music to do my homework
10 and stuff like that. And I always had my headphones
11 in, always, even when I was in class.

12 Q And Scott smoked pot all day every day?

13 A Yes. He smoked when he woke up. He would always
14 wake up an hour and a half, two hours early so he could
15 get high before he went to work. He brought a joint
16 with him or a bowl with him at work. He would smoke
17 when he was at work on break, which my mom found out
18 about and got very angry with him about. And then he
19 would come home, he would sit on the couch, and he
20 would immediately start smoking before he would eat,
21 and then he would smoke again before he went to bed.

22 Q For the whole time that he lived with you and in
23 your household with your family, that was what he would
24 do?

25 A Yes. It was -- got to a point where they would

1 even -- my mom would even make sure she pulled out
2 money for him so that he could have it because he
3 started smoking more and more, and then he started
4 keeping a lot in the house, and he kept it in the
5 cabinet that was holding the TV. And they even started
6 having to write it into our budget. And my mom
7 confronted him about it, that it was becoming a
8 problem. Not just the fact that he was smoking a lot,
9 but it was also starting to cost us a lot of money.

10 Q He never got fired?

11 A No, he never got fired, and he --

12 Q Never laid out of work?

13 A He was fired from McAlister's, but I do not recall
14 the reason because I was too young.

15 Q Okay. Well, he got fired at some point in time
16 that you were too young to remember, but after that, he
17 never got fired?

18 A Not that I'm aware of, no.

19 Q Well, I mean, during the time that you were living
20 there, you would have known if he got fired; right?

21 A I mean, I was never really much into their
22 business. I assume that he has never been fired. To
23 the best of my knowledge, he has never been fired
24 because he's always worked at the same two jobs as far
25 as I can recall.

1 Q So he might have got fired and you wouldn't know
2 about it, maybe?

3 A Yes. I never stayed in their financial business
4 like that.

5 Q I got you. So maybe he was just smoking pot all
6 day long at home?

7 A I know for a fact that he was smoking at work,
8 because I remember the fight that my mom had with him
9 because she found out he had been bringing it to work,
10 and she did not like that. And it was right around the
11 time that he started selling again at work. And my mom
12 did not like it ever when he was selling, and she
13 really didn't like it when he smoked. But when she
14 found out that he was smoking and selling at work, she
15 flagged it as a problem and it was one of their big
16 fights that I recall.

17 Q All right. So that was pretty bad. I mean, he
18 was somebody selling pot at work and your mom was mad.
19 He was making all you guys work and clean and wasn't
20 nice to you when you got home. Everybody in the house
21 was mad at Scott; right?

22 A It wasn't so much that we were mad at him, it was
23 just that he was always mad at us for every little
24 thing we did. If -- we were walking on eggshells
25 literally. It took absolutely nothing to set him off,

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1 and he was always angry with us. And I did not know
2 about the abuse that was going on sexually with my
3 sister, just what had happened to me. And for me, that
4 was icing on top of the cake.

5 But being that I thought that it was only me at
6 the time, I never spoke up about it because it was over
7 with me, and I wanted to just lock it behind a door and
8 be done with it. When I found out it was going on with
9 my sister as well, that's when it reopened the door,
10 and I tried to fight to get her safe. And then once I
11 finally was out of the house, I didn't care about her
12 anymore.

13 Q So this is a good way to get rid of Scott; right?

14 A I'm sorry?

15 Q I say, this is a good way to get rid of Scott?

16 A What do you mean?

17 Q I mean, this whole thing that we're doing here, if
18 he is to be convicted, then you will be rid of him?

19 A Yes. That statement is true.

20 Q Thank you. And when you were talking to Detective
21 Johnson, you were talking to him about your sister and
22 what she had told you. And you said you weren't sure
23 to believe her because she lies a lot. Isn't that
24 true?

25 A I do not recall saying that.

1 Q Okay. Let me show you. This is page ten.

2 MS. WALTER: You haven't given me that.

3 Q This is page ten of your conversation with
4 Johnson.

5 A Okay.

6 Q And look at line ten. Do you recall saying, I
7 wasn't sure because she lies a lot?

8 A That full statement says, and so, for a minute, I
9 didn't believe her. I thought maybe she just heard me
10 talking or something. I wasn't sure because she lied a
11 lot.

12 Q Right. But she does lie a lot?

13 A At the time I believed that.

14 Q At the time you believed that she lied a lot?

15 A At the time I believed that she lied a lot, yes.

16 Q Okay. But her reputation is getting better in the
17 family; right?

18 A Yes. Her reputation is getting better. She
19 doesn't lie. And, in theory, the things that she lied
20 about were insignificant things that made no sense. He
21 always made her out to be more of a liar than she
22 actually was. And that was something that we didn't
23 really see very much until later when we found out the
24 reason that she was lying is because of the things that
25 were going on.

1 Q All right. So Scott had convinced the family that
2 she's a liar?

3 A Yes.

4 Q And y'all believed Scott that she was a liar as
5 opposed to believing her?

6 A I did not take any part of any of it. I tried to
7 stay as far away from the whole situation as possible.
8 I stayed in my room or went to work or went to school
9 or focused on homework or my college classes or things
10 like that. I did not sit down and think, my sister is
11 lying about this, my sister is lying about that.

12 I had never actually heard anything that she had
13 specifically lied about, just that she had been often
14 called a liar, and that was just something that I
15 recognized was going on. I never really had any -- I
16 never really had her lie to me about anything in
17 specific that I knew about to call her a liar. I just
18 know statement-wise that she was known for lying.

19 Q Well, but what you said was, because she lies a
20 lot?

21 A Um-hum.

22 Q All right. And she lied to you about being raped
23 down by the pond by a stranger; right?

24 A Yes, because she did not want me to know what had
25 actually happened. That was her first statement before

1 I told her who had been doing things to me, and that's
2 when she told me who had been doing things to her.

3 Q Okay. So in the beginning, she says, I was raped
4 down by the pond, and after that you said, Scott has
5 been messing with me; right?

6 A Thoroughly through a different conversation, yes.

7 Q And then at that point, she said, hey, Scott's
8 been messing with me, too?

9 A Yes.

10 Q Right. So you were the one that first said,
11 Scott's been messing with you?

12 A Yes.

13 Q And then she said, Scott's been messing with me
14 also?

15 A Yes.

16 Q All right. And at that point she told you that
17 the thing she told you back about the pond was a lie?

18 A We never really got into that at that point. It
19 was more I found out that my sister was having the same
20 problem I was. And by that point, I was over there
21 comforting her while she was crying, and then we took
22 the pregnancy test, and then we decided a plan that we
23 were going to tell my mom.

24 Q How long after the pond incident was it that she
25 took the pregnancy test?

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1 A I'm not sure.

2 Q All right. Do you recall saying that Scott is a
3 freaking psycho?

4 A Yes.

5 MR. HILLIARD: Judge, excuse me just a second.

6 (Discussion off the record.)

7 Q Would your sister, J.H., try to listen to on
8 your phone to your conversations?

9 A I do not know.

10 Q Would she report back to Scott things that you
11 were saying on the phone; do you remember that?

12 A She would report back to him things in general,
13 not specifically things I say on my phone.

14 Q All right. Scott and J.H. would always be
15 watching --

16 MS. WALTER: Page, please, Counsel?

17 MR. HILLIARD: This is just a question, 13.

18 Q Scott and J.H. would always be watching movies
19 together; is that right?

20 A Yes, they often watched movies together.

21 Q And you felt like she and he were closer together
22 than you and he were?

23 A I do not know of their relationship. I just knew
24 that him and I were not close because I did my best to
25 avoid him.

1 Q And this is line 20. Do you recall saying, any
2 conversation I had on my phone that was overheard
3 she -- meaning J.H. -- would report back to him?

4 A Yes.

5 Q And that he used all of that against you?

6 A Yes.

7 Q And that he used everything in the fucking world
8 against me?

9 A Yes.

10 Q And then you said you were sorry for cussing?

11 A Yes.

12 Q So at that point J.H. was listening in on your
13 phone conversations upstairs?

14 A At that point I felt like that interview was a
15 while after the situation.

16 Q Going back to --

17 MR. HILLIARD: And I just got a few more, judge.

18 Q But going back to the Latta, Dillon situation, at
19 the point in time that that all took place, you didn't
20 have any knowledge about any problems that your sister
21 had with Scott; is that correct?

22 A I do not recall the specific timeframe. But as I
23 recall, I'm pretty sure that I knew about their
24 situation during that. Because that's why I felt so on
25 edge during the car ride.

1 Q So you were on edge during the whole car ride --

2 A Just on the way back.

3 Q On the way there you weren't on edge?

4 A On the way there I was a little bit worried. It
5 wasn't until my mom started calling him and he didn't
6 answer that I started getting really worried.

7 Q All right. So you and your mom were in the car
8 alone going all the way down there; is that right?

9 A Yes.

10 Q And you could have told her what your concern was,
11 you were a little bit nervous?

12 A I told her that I had a bad feeling, and she told
13 me, you know, that they happen. And I told her that I
14 had a really bad feeling in my stomach. And, you know,
15 she was asking me, what about? And I told her I wasn't
16 sure. She did ask me about it. I did confront her
17 about the feeling, but I did not tell her why I had the
18 feeling or what was going on.

19 Q And why not, at that point?

20 A Because I was still scared.

21 Q And on the way back, you were even more concerned
22 because of the phone call?

23 A I wasn't concerned until on the way back with the
24 phone call.

25 Q And he didn't answer the phone at that point?

1 A No.

2 Q Which really made you afraid at that point; is
3 that right?

4 A Yes.

5 Q But you didn't tell your mom at that point either?

6 A No.

7 Q All right. Do you recall that your interview with
8 the police was on September the 21st, 2015?

9 A I do not recall the exact date, but that does
10 sound correct.

11 Q Okay. And that was only a short time after J. H.
12 ran away from home?

13 A Yes.

14 Q Scott's mom's name is Rebecca; right?

15 A Yes, sir, as far as I know.

16 Q Okay. That's your grandma?

17 A Was.

18 Q Was?

19 A Was.

20 Q All right. And you -- when you got angry about
21 Scott and the situation and had a conversation with
22 her, you told her about Scott molesting you?

23 A Yes.

24 Q You did not tell her about Scott molesting J. H. ?

25 A No. I told her I had my suspicions, but that I

1 wasn't sure. Because I was okay with telling her what
2 was going on with me because it was my story to tell.
3 I was not okay with telling her what was going on with
4 my sister because it was not my story to tell. And if
5 my sister wanted her to know, my sister would have told
6 her herself.

7 Q So you told her that you had suspicions?

8 A Yes, because I was hoping at that point maybe she
9 would look into it or maybe tell my mom because I was
10 too scared to tell my mom myself because I was chicken
11 shit. And I was hoping maybe if I dropped the hint
12 that it was going on with her, too, without actually
13 saying it was going on with her, too, that it would
14 lead her, like any rational person would normally do,
15 to look into it. And I was hoping maybe she would tell
16 my mom for me because I wanted my mom to know, but I
17 was too scared tell her myself.

18 Q Well, when you put the -- never mind.

19 MR. HILLIARD: That's all I have. Thank you.

20 MS. WALTER: Your Honor, I only have a very few
21 questions. I will leave it to Your Honor.

22 THE COURT: Let's go ahead and do them. I would
23 like to finish this witness before lunch.

24 REDIRECT EXAMINATION

25 BY MS. WALTER:

1 Q A.R. , Mr. Hilliard said to you, you told us your
2 mom was always open to us talking to her; do you recall
3 that?

4 A Yes.

5 Q But was she always available to you?

6 A No.

7 Q And you had testified that she spent quite a bit
8 of time in her office?

9 A Every day.

10 Q And when you would come home from school, would
11 she be in the office?

12 A Yes. She would either be cooking dinner and then
13 going back into the office or already in the office.
14 She was -- either way, she was only out to cook dinner
15 and clean up, and that was it.

16 Q You said that you were afraid to talk to her, and
17 I think counsel also asked about physical abuse. So
18 did you ever see the Defendant be physically abusive
19 towards anyone in the home?

20 A Yes.

21 Q Can you describe that for us.

22 A There was one instance in particular when I was
23 younger and he was on drugs. He slapped my baby
24 brother, who was only about one or two years old, so
25 hard in the face that he left a purple hand mark across

1 his face. There were instances where, if you got in
2 his face, like what he considered to be getting in his
3 face, which would either be just stating anything, like
4 if he said the color is blue and you're like, well, I
5 think it's purple, that was considered being in his
6 face and talking back, he would just slap you in the
7 face.

8 There were instances where he threw things at us,
9 he threw objects at us, remote controls. Whatever was
10 next to him, he would inevitably throw it at you.
11 There were instances where I've seen him corner my mom
12 and get in her face. But my mom is pretty tough, so my
13 mom would always push him back and fight back. There
14 were instances where he slapped my sister and grabbed
15 her by her hair and thrown us around. There were
16 multiple instances where he was physical with us, yes.

17 Q You also said that he expected everything to be
18 spotless. Do you remember anything, any incident
19 with -- did you often have to do the dishes?

20 A Yes. So, there was an instance, and it's the
21 instance in which my mom told me that she wished she
22 had cancer so she could die to be away from us. And it
23 was because he was always keeping us on edge, and he
24 always yelled at us, and he always turned us against
25 each other often where if, you know, like you always

1 just wanted to put somebody else under the bus. Like
2 if you were being yelled at and you were being screamed
3 at and you were being hit or hurt, you would always
4 want like, well, it wasn't me, it was them.

5 And one day, I was in charge of doing the dishes.
6 And I was doing dishes for six people. And an average
7 dinner, that's usually a lot of dishes. It's six
8 plates, six bowls, six spoons, six forks, six pans,
9 whatever. And so it's usually a good bit of dishes,
10 and I did them.

11 There was one bowl in particular, it was a plastic
12 bowl. And when plastic bowls get grease on them, it's
13 really hard to get them out. You have to soak them for
14 a while and you have to scrub them for a while. And I
15 did all the dishes. I soaked it, I scrubbed it, and I
16 put it in the dishwasher, and it was still dirty. It
17 came out, and it still had grease on it.

18 And he was so mad, he took it out on my mom. And
19 me and my mom came home from school, and that's -- me
20 and my sister came home from school. And my mom was
21 upset, and she was standing in the kitchen looking at
22 the dishes, pulling them all out of the counters. And
23 she was hurt, and she told us that she hated us
24 sometimes and that sometimes she wished she got cancer
25 so she could die to be away from us. Because of the

1 fact that he had been yelling at her and screaming at
2 her all day for a dirty dish that I mistakenly left.

3 So he came home and made me redo every single dish
4 in the entire house all over again for one dirty dish.
5 And then as I was doing that, he would purposely go in
6 the kitchen and keep getting food to use up plates to
7 keep giving them to me to make me keep rewashing the
8 dishes over and over again.

9 Q Counsel also said to you this is -- this trial is
10 a good way to get rid of Scott. Did you get rid of
11 Scott when you left your house?

12 A See, that's how I feel about it. I was already
13 away from the entire situation. I was already moving
14 away. I was already out on my own. I would not put
15 me, my sister, and my mother through this nonsense just
16 to get him out of the house when all I had to do was
17 look at my mom and say, get him out of the house.

18 Like eventually she would have come to her senses,
19 eventually something would have worked itself out. I
20 didn't need to go through all of this just to do that.
21 If my mom was only staying with him, which I don't know
22 is true, because he was a good supporter in the first
23 place, eventually we would already have been out of the
24 house. It wouldn't have come down to that.

25 Especially not for my sister. She turned 18 very

1 recently. So -- well, I guess she's turning 19 in a
2 couple of days, but...

3 Q And then last question. You said you were scared
4 to tell your mother. Why were you scared to tell your
5 mother?

6 A I was scared of him. He really is -- you can't
7 explain him unless you've lived with him. Like to walk
8 on eggshells around him, to not be able to raise your
9 voice, to not be able to go in the living room without
10 being yelled at, to not be allowed to take control of
11 the TV to watch anything.

12 It wasn't like he locked us in our rooms
13 physically so much as we never felt comfortable not
14 being in our rooms, and we never in the same room. He
15 would always be upset if me and my mom were in the same
16 room. He would always walk in and check on us and made
17 sure, like, what we were talking about and stuff like
18 that. We never felt comfortable or safe.

19 And then on top of that, he had very, very, very
20 severe anger problems. And, of course, he always took
21 it out on us. There was one instance where he was
22 playing Halo, and he got so mad at the game and he
23 accused the guy of cheating that he kicked our dog,
24 like kicked our dog and our dog went down.

25 And he's always been like that. And I was 14 and

A. R.

-REDIRECT BY MS. WALTER

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1 scared of him. And then as I got a little bit older,
2 he also registered his gun in his name, which he always
3 kept on him, on his bedside. And he never threatened
4 us with it ever. It was never like, if you don't do
5 this, I'll shoot you. But just knowing that somebody
6 like him had one in the house also made me very on
7 edge.

8 And I was very upset with my mom when she brought
9 it in. And my mom didn't real like it being in the
10 house either because she has a problem with guns around
11 children, like if it was somewhere where my brothers or
12 something could get it. And so once he brought a gun
13 to the house, I was even more scared, and so I never
14 spoke up.

15 Q Thank you very much.

16 MS. WALTER: Nothing further, Your Honor.

17 MR. HILLIARD: I know, judge, but I got two based
18 on that.

19 THE COURT: All right, just two. Let's just keep
20 them on this planet.

21 MR. HILLIARD: Yes, sir, absolutely, 100 percent.

22 RECROSS-EXAMINATION

23 BY MR. HILLIARD:

24 Q And I wrote this down. Is this what you said:

25 All I had to do is say, get him out of the house, and

1 my mom would have gotten him out of the house?

2 A Yes.

3 Q That's what you said?

4 A That is what I just said, yes.

5 Q All you had to do was say that, and your mom would
6 have got him out of the house?

7 A That's an exaggeration.

8 Q An exaggeration?

9 A Yes. I mean, I didn't just have to look at her
10 and say, hey, mom, get him out. But I'm sure that if I
11 had really begged and cried for him to be out, that she
12 probably could have gotten rid of him without having to
13 go through all of this. There would have been other
14 ways.

15 Q All right. And page 15 of your conversation with
16 the police officer about your mom, you say that the
17 only time you've ever seen him get in a fight with your
18 mom was once in a while?

19 A Yes.

20 Q And usually she would get in his face before he
21 would get in hers?

22 A Yes.

23 Q But you have seen him push her in the corner?

24 A Yes. A lot of our fights were -- a lot of their
25 fights, my mom and Scott's fights, were over the way he

A.R.

-REDIRECT BY MS. WALTER

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1 treated us. And my mom would get defensive, and she
2 would get in his face first and tell him that he needs
3 to back off. Like if he ever put his hands on us, my
4 mom would get in his face and tell him to back off.

5 Q And your mom would fight back?

6 A Yes, my mom would fight back.

7 Q She never got hurt?

8 A She never -- they -- she never put her hands on
9 him, and he never put his hands on her other than to
10 push her into the corner.

11 MR. HILLIARD: Thank you.

12 THE COURT: All right, thank you. You may step
13 down.

14 (Witness excused.)

15 THE COURT: All right. Ladies and gentlemen, it's
16 a quarter of 1:00. Why don't we try to be back at
17 2 o'clock. It's an hour and 15 minutes.

18 Mr. Ropp, take them to the jury room.

19 (WHEREUPON, the jury exited the courtroom at
20 12:47 p.m.)

21 THE COURT: All right, 2 o'clock. What else do
22 you have, Ms. Walter?

23 MS. WALTER: We just have the expert left, Your
24 Honor.

25 THE COURT: Okay. All right. We'll be back at

1 2 o'clock.

2 (WHEREUPON, a luncheon recess was taken at
3 approximately 12:49 p.m.)

4 THE COURT: We just got our jurors back, be
5 seated. Chris, get them for me, thank you.

6 (WHEREUPON, the jury came into open court at
7 approximately 2:11 p.m.)

8 THE COURT: All right. We have our jury and
9 alternates back in the courtroom. Ms. Walter, you can
10 call your witness, or Mr. Martin.

11 MR. MARTIN: Thank you, Your Honor. State calls
12 Mr. Ray Olszewski.

13 THE COURT: All right.

14 RAYMOND OLSZEWSKI, after being duly sworn,
15 testified as follows:

16 THE CLERK: State your name, and spell your last
17 name for the Court.

18 THE WITNESS: Yeah, sure. My name is Raymond,
19 last name is Olszewski, that's O-L-S-Z-E-W-S-K-I.

20 DIRECT EXAMINATION

21 BY MR. MARTIN:

22 Q Good afternoon, Mr. Olszewski. Where do you work?

23 A I'm employed at the Metropolitan Children's
24 Advocacy Center in Columbia.

25 Q And how long have you worked there?

1 A Since 1999.

2 Q And what do you do there?

3 A My primary job responsibility is to conduct
4 forensic interviews of suspected child abuse victims.

5 Q You mentioned forensic interview, what exactly is
6 that?

7 A Well, a forensic interview or an investigative
8 interview is basically a fact-finding interview whereby
9 we try to determine whether or not something has
10 happened to a child, and if it has, to get as many
11 details as we can about what happened.

12 Q How long have you held that position?

13 A Since I started in 1999.

14 Q Can you tell us a little bit about your education.

15 A Sure. I have a Master's Degree in social work
16 from the University of South Carolina in Columbia. I
17 have a Bachelor's Degree in psychology as well. I also
18 have a postgraduate certification in forensic social
19 work diplomate, and I have attended numerous trainings,
20 seminars in the area of child abuse and child
21 interviewing.

22 Q Any other specialized training in that area?

23 A Well, let me say I'm also on the faculty for a
24 week-long forensic interviewing course that we put on
25 in Columbia three to four times a year where we train

1 frontline child abuse professionals and other forensic
2 interviewers on how to interview children. It is a
3 week-long, 40-hour course. I've been on the faculty
4 for that course since 2001. I, myself, went through
5 the course. It's now called ChildFirst South Carolina.
6 When I went through the course, it was called Finding
7 Words. I went through that with a team of people in
8 Boise, Idaho back in 2000, and then we started teaching
9 the course ourselves in 2001. I've been on the faculty
10 since we started teaching it.

11 Q So you talked about your specialized training and
12 the fact that you yourself have conducted training.
13 Through that, do you have any certifications of any
14 sort?

15 A Diplomate in forensic social work. I'm a licensed
16 social worker, I am an LMSW. I'm a licensed social
17 worker in the state of South Carolina.

18 Q Any other professional licenses?

19 A No.

20 Q Do you belong to any professional organizations?

21 A There is an organization, it's not currently on my
22 CV, called the Association of Forensic Interviewers.
23 It's sort of a fledgling organization that's being put
24 together to try to bring forensic interviewers around
25 the country together as a group.

1 Q Now, you told us -- let me get this right -- you
2 told us that you work for the Metropolitan Children's
3 Advocacy Center?

4 A That's correct.

5 Q In what circumstances does your organization
6 provide assistance?

7 A So we accept referrals from law enforcement
8 agencies and the Department of Social Services, Child
9 Protective Services. So in order for a child to be
10 referred and be accepted to be seen at our place, there
11 needs to be an investigation initiated either by law
12 enforcement or by Child Protective Services.
13 Oftentimes both are involved. But there needs to be an
14 investigation.

15 So, in other words, we do what we do to assist in
16 an investigation. We don't do interviews to see if
17 there needs to be an investigation, best way to think
18 about it.

19 Q Can you give us, give the Court and the jury, a
20 rough estimate on how many clients you've interviewed.

21 A It would be around 2,000, possibly more. I don't
22 have an exact number.

23 Q Have you ever been qualified as an expert in the
24 dynamics of child sexual assault?

25 A Yes. I don't know the exact wording. I've been

1 qualified as an expert numerous times, and sometimes
2 the wording is slightly different, depending on where.

3 Q In what courts?

4 A Family court in South Carolina, general sessions
5 court in South Carolina, courts-martial, also in the
6 State of Georgia in a criminal trial as well.

7 Q And do you have any idea about how many times?

8 A Again, I don't have an exact count. Maybe 20 to
9 25 times over the course of my career.

10 MR. MARTIN: Your Honor, before we move to ask the
11 witness to be certified as an expert, we extend a
12 courtesy to the Defense to see if they would like to
13 have any cross-examination on his qualifications.

14 THE COURT: All right. I will allow that.

15 (WHEREUPON, a bench conference was held off the
16 record in the presence of the jury but out of the
17 hearing of the jury.)

18 MR. MARTIN: Your Honor, for purposes of the
19 record, we are asking to qualify the witness as an
20 expert in the field of the dynamics of child sexual
21 assault.

22 THE COURT: All right. Ladies and gentlemen, let
23 me tell you what we're about to do because it's
24 somewhat different. It again goes back to our rules,
25 the rules that I discussed with you at the beginning of

1 this trial.

2 Normally, as I told you earlier, a layperson
3 cannot give an opinion. To give an opinion, a person
4 has to be offered as an expert, and he can only give an
5 opinion based upon education and experience and things
6 of that nature.

7 Sometimes when it's done, it's appropriate for the
8 person putting forward the expert to have the expert
9 testify as to his or her qualifications in a particular
10 field. Oftentimes, and it is permissible, for the
11 reverse party to then be able to cross-examine the
12 witness prior to the witness giving an opinion. He has
13 the opportunity to cross-examine him as to his
14 qualifications, education, training, experience, and
15 things of that nature.

16 In that regard, Mr. Hilliard has the opportunity
17 at this time to do that. Once he is done, and before
18 any opinions are given, I will probably excuse you from
19 the courtroom, and we will discuss it, the attorneys
20 and I. And I will bring you back, and I will then make
21 a statement as whether in the Court's opinion the
22 minimal requirements, the threshold, has been met.

23 That doesn't mean that you are bound to follow
24 that. If you are not convinced that a person has the
25 proper training, experience and education in a

1 particular field, you can totally disregard what that
2 person -- it's entirely up to you. You give it the
3 weight that you think that it deserves. My finding is
4 only that, on its face, it would appear that the person
5 may put forth an opinion and give the reasons for that.
6 But what weight it receives is up to you. All right?

7 Anything further in the way of instruction to the
8 jury, Mr. Hilliard?

9 MR. HILLIARD: No, sir, Your Honor.

10 THE COURT: Mr. Hilliard, you may cross-examine.

11 MR. HILLIARD: Thank you. And I appreciate the
12 courtesy extended by the prosecution. I'm confident
13 the Court would have allowed me to do it either way.

14 THE COURT: I would.

15 MR. HILLIARD: Thank you. All right, sir.

16 CROSS-EXAMINATION

17 BY MR. HILLIARD:

18 Q And Mr. Oshinski --

19 A Olszewski.

20 Q Olszewski, thank you. Thank you. And I'll do my
21 very best, I promise.

22 A It's okay.

23 Q Mr. Olszewski, when you were telling the
24 prosecutor that you've been qualified as an expert
25 witness on how many occasions roughly?

1 A Again, it's an estimate, 20 to 25.

2 Q 20 or 25 times in various courts?

3 A Yes.

4 Q All right, sir. And in those courts, you have
5 been qualified as an expert -- or let me ask a
6 different question. Today you are presenting yourself
7 as an expert in what?

8 A I don't remember his exact language, dynamics of
9 child sexual abuse or something.

10 MR. MARTIN: That's correct, Your Honor, dynamics
11 of child sexual assault.

12 Q Okay. So dynamics of child sexual assault is --
13 you're presenting yourself as an expert in that area
14 today?

15 A That's what he's asking to qualify me as, yes.

16 Q All right, sir. And how many times in any court
17 in the land have you been qualified as an expert in
18 dynamics of child sexual assault?

19 A I can't answer that. It is one of the things that
20 I'm sometimes qualified as. But like I said, the
21 language is sometimes different. Sometimes that's
22 included, sometimes it's not.

23 Q All right, sir. Well, let's exclude -- you are a,
24 by profession, forensic interviewer?

25 A Correct.

1 Q And you have been qualified as a professional in
2 that area as an expert?

3 A Yes.

4 Q Let's exclude, for the purpose of our discussion
5 today, every time you have been qualified as a forensic
6 interviewer or an expert in forensic interviews and
7 focus directly on what you're here today about, between
8 you and the prosecutor, what you have. Can you tell us
9 any time that you've been qualified in that specific
10 area?

11 A That specific area and only that area?

12 Q Yes, sir.

13 A I wouldn't -- I don't have that.

14 Q Ever?

15 A Yeah, it's happened, but I couldn't tell you an
16 exact number. I don't keep count of exactly what I'm
17 qualified in as and how many times in each area. Like
18 I said, the language changes, the phrasing changes as
19 to what I'm qualified in. So it's a hard question to
20 answer.

21 Q All right, sir. Let me read something to you and
22 see if you agree with it or not in that regard.

23 MR. MARTIN: Objection, Your Honor. We haven't
24 seen this, and I want to...

25 THE COURT: Show him -- if you have a document, it

1 hasn't been introduced, they say they haven't seen it,
2 let's see what it is.

3 MR. HILLIARD: Yes, sir.

4 THE COURT: Now, if it's a learned treatise,
5 there's a rule for learned treatise, and he may be
6 asked to read from it, parts of it.

7 MS. WALTER: May we approach, Your Honor?

8 THE COURT: Yeah.

9 (WHEREUPON, a bench conference was held off the
10 record in the presence of the jury but out of the
11 hearing of the jury.)

12 THE COURT: Let's take the jury out for just a
13 minute.

14 MR. HILLIARD: Thank you, Your Honor. Thank you,
15 judge.

16 (WHEREUPON, the jury exited the courtroom at
17 2:24 p.m.)

18 THE COURT: All right, Mr. Hilliard.

19 MR. HILLIARD: Yes, sir. Thank you, judge. The
20 reason this matters is that there are two appellate
21 court -- two appellate cases pending at this time, one
22 before the South Carolina Supreme Court on cert from
23 the Court of Appeals and one in the Court of Appeals at
24 this point in time.

25 THE COURT: And do they not both involve

1 designation of expert forensic interviewers?

2 MR. HILLIARD: No, sir.

3 THE COURT: Okay.

4 MR. HILLIARD: They involve exactly -- sort of.
5 They don't involve forensic interviewers because the
6 South Carolina Supreme Court has ruled unequivocally
7 that a person cannot be qualified as an expert
8 witness --

9 THE COURT: In Kromah.

10 MR. HILLIARD: Sir, exactly the case we have
11 there.

12 THE COURT: Okay. All right. So?

13 MR. HILLIARD: So this witness has testified,
14 number one, that his job is a forensic interviewer.

15 THE COURT: That he has experience in that --

16 MR. HILLIARD: That's what he does today, he's a
17 forensic interviewer. That's his job.

18 THE COURT: I mean, I haven't heard that.

19 MR. HILLIARD: Well, that's what he said, judge.

20 THE COURT: Suppose I give you that.

21 MR. HILLIARD: Yes, sir.

22 THE COURT: Go on.

23 MR. HILLIARD: So he's a forensic interviewer,
24 that's what his job is today. He testified that he'd
25 been qualified as an expert witness some 20 to 25 times

1 in courts. And the question that I have -- he doesn't
2 remember exactly what it is that he's been qualified
3 as, the language changes. The thing that I'm trying to
4 divide, and I want to use Kromah to do it, because the
5 South Carolina Supreme Court, in that language, says
6 that the title of forensic interviewer is a misnomer.

7 THE COURT: Exactly.

8 MR. HILLIARD: So he's got a job which the South
9 Carolina Supreme Court says is not a job which has a
10 real name. It's a misnomer.

11 THE COURT: His job today?

12 MR. HILLIARD: Yes, sir.

13 THE COURT: His job today --

14 MR. HILLIARD: Yes, sir.

15 THE COURT: -- is to provide testimony, expert
16 testimony, concerning the dynamics of sexual abuse of
17 children.

18 MR. HILLIARD: Yes, sir.

19 THE COURT: A forensic interviewer will testify as
20 to information that he or she received from an alleged
21 victim.

22 MR. HILLIARD: Yes, sir.

23 THE COURT: And the objection, the primary
24 objection to the use of forensic interviewers, as I
25 understand it through the case law, has been that

1 interviewers who are qualified as experts tend to
2 interpret what the child may say and, in essence,
3 bolster what the child may say.

4 MR. HILLIARD: Yes, sir.

5 THE COURT: And that's been the problem with
6 qualifying forensic interviewers. And that is
7 certainly, although it's statutory, it's certainly
8 fallen out of favor. And we all know that.

9 MR. HILLIARD: Yes, sir.

10 THE COURT: But what this witness is called here
11 today to -- I, frankly, don't care if he's a plumber.

12 MR. HILLIARD: Very well.

13 THE COURT: If he has had specialized training
14 that would support his opinion as to the dynamics of
15 sex abuse of children.

16 MR. HILLIARD: Yes, sir.

17 THE COURT: Now, what that entails, I'm not sure.
18 If you want to ask him if he has an opinion to put
19 forward, and let us talk about that, if you want to
20 cross-examine him as to that, we are outside the
21 presence of the jury now, I will let you do that right
22 now.

23 MR. HILLIARD: Thank you, judge.

24 THE COURT: All right?

25 MR. HILLIARD: All right, sir, thank you. And

1 what I'm trying to get to, judge, just so that --

2 THE COURT: My understanding is he's here -- and
3 this is through certainly no ex parte, it's been when
4 we have had discussions on the record and in status
5 conferences concerning this case --

6 MR. HILLIARD: Yes, sir.

7 THE COURT: -- is that his testimony is to
8 basically explain to the jury issues such as late
9 reporting, nonreporting of child abuse in children. Is
10 that correct, Mr. Martin?

11 MR. MARTIN: That's part of it, yes, Your Honor.

12 THE COURT: You say that's --

13 MR. MARTIN: Yes, Your Honor, that is one of the
14 main reasons.

15 THE COURT: Why don't you tell us.

16 MR. MARTIN: Judge, it's not just delayed
17 reporting. It's things such as the child's age, fear
18 of consequences.

19 THE COURT: Well, that all goes to the failure to
20 report, I mean.

21 MR. MARTIN: It all certainly, Your Honor, is
22 under that concept, but we were wanting to go into a
23 little more detail.

24 THE COURT: As I understand it, this witness has
25 not even talked to the victim; is that correct?

1 MR. MARTIN: That's correct.

2 MS. WALTER: That's correct. He hasn't seen their
3 testimony, he hasn't read any police reports.

4 THE COURT: He's testifying generically to what
5 the data would show. I guess there is something to
6 support his opinion. And I don't know, but I assume
7 there is, that or the research would support the
8 opinion that there are reasons for delayed reporting,
9 failure to report, reluctance to report, things of that
10 nature involving children who are the victims of sexual
11 abuse. That was my understanding of where we were
12 going.

13 MR. MARTIN: Yes, Your Honor.

14 THE COURT: That's what we're talking about;
15 right?

16 MS. WALTER: Yes.

17 MR. MARTIN: Yes, Your Honor.

18 THE COURT: All right. Now, Mr. Hilliard.

19 MR. HILLIARD: Yes.

20 THE COURT: That is quite different from a
21 situation where we had forensic examiners or
22 interviewers, and I've already told you that doesn't
23 work in this case because the statute says that the
24 child must be under 12.

25 MR. HILLIARD: Yes, sir.

1 THE COURT: This child was over 12, so a forensic
2 interview, while it may be useful for investigative
3 purposes, it's certainly not admissible in court; okay?

4 MR. HILLIARD: Yes.

5 THE COURT: So, but we don't even have a forensic
6 interview here, we don't have one. Now, the fact that
7 this witness may have extensive experience as a
8 forensic interviewer, as I said, I don't care if he's a
9 plumber.

10 MR. HILLIARD: Yes, sir.

11 THE COURT: What I'm interested in is whether or
12 not he has the requisite training, experience to give
13 an opinion as to the dynamics, the why, the where, the
14 when of child sexual abuse. That's what we are talking
15 about. Is there such language -- I mean, such
16 knowledge or information that could be the basis for
17 his opinion. And that's what I'm concerned with here.

18 MR. HILLIARD: Yes, sir, exactly, judge. And if I
19 could just amplify a little bit, I'm grateful for your
20 patience, truly. That's the cases that are before the
21 Appellate Court now that the Defense's position, the
22 Court of -- the Appellate Defense Commission, those are
23 guys that I talked to about this, those guys are
24 piloting and what the Supreme Court and Court of
25 Appeals is looking at, is this the same thing as the

1 other with a different hat. And that's what they are
2 looking at, and that's why I want to ask him a
3 question.

4 THE COURT: And I appreciate you wanting to put it
5 on the record.

6 MR. HILLIARD: Yes, sir.

7 THE COURT: But am I not bound by the law we have?

8 MR. HILLIARD: No question. Yes, sir, absolutely.
9 The thing that got us here to this spot is, what I'm
10 inquiring about is he said he's been qualified 20 to 25
11 times in something. He's not certain exactly what.
12 What I want to do is distinguish those times he's been
13 qualified as a forensic questioner or forensic person.
14 I want to pull those out because that doesn't count
15 here. If he's been qualified in the past as a forensic
16 examiner for the purpose of testifying, those things
17 won't count because that's not what we're talking
18 about.

19 THE COURT: And I understand.

20 MR. HILLIARD: Yes, sir.

21 THE COURT: But you and I both know that in the
22 world of forensic interviewers --

23 MR. HILLIARD: Yes, sir.

24 THE COURT: -- historically, forensic interviewers
25 have given that kind of testimony.

1 MR. HILLIARD: No question.

2 THE COURT: They've been asked to give opinions --

3 MR. HILLIARD: Yes, sir.

4 THE COURT: -- as to why a child may have done
5 delayed reporting, why a child did not report. That's
6 been part of the egg.

7 MR. HILLIARD: Yes, sir.

8 THE COURT: It's been part of it. But as I
9 understand, and I can see your point, and I understand
10 why the appellate defense would be interested in having
11 this question answered by the Supreme Court, but my
12 understanding is that the objection to the forensic
13 interviewer has been his bolstering, corroboration of
14 the information provided by the child.

15 Now, where does that cut off? On the one hand, if
16 you listen to the child and you just say, all the
17 indications are what this child told me is true, that's
18 bolstering. There is no question about it, it's not
19 permissible anymore in spite of the statute.

20 Well, where he's not talked to the child, and the
21 jury knows he has not talked to the child, and he
22 speaks only in generic sense, only in the generic sense
23 that, this is why in some cases we have delayed
24 reporting, in some cases we have failure to report. If
25 that information -- are you telling me that's

1 information that should never, under any circumstances,
2 be put forward to a jury?

3 MR. HILLIARD: I'm saying that I'm arguing it
4 against precedent regarding that.

5 THE COURT: And I understand your argument.

6 MR. HILLIARD: Yes, sir.

7 THE COURT: And I appreciate it.

8 MR. HILLIARD: Well, and I'm grateful that Your
9 Honor is allowing me to do it.

10 THE COURT: I appreciate your position.

11 MR. HILLIARD: Yes, sir. But the only -- the
12 threshold question, the only thing I'm asking him now
13 is, I want to exclude the number of times he's been
14 qualified --

15 THE COURT: And I think he answered the question
16 and says, I really can't. And I understand why he says
17 that. You know, you and I have been around this block
18 a long time.

19 MR. HILLIARD: Yes, sir.

20 THE COURT: And we understand that when we started
21 with the forensic interviewers, all that information
22 came in.

23 MR. HILLIARD: Yes, sir.

24 THE COURT: And I would bet you that this witness
25 has testified to this exact information as a forensic

1 interviewer. Would that be a fair statement?

2 THE WITNESS: Yes.

3 THE COURT: There you go. We know that. The
4 prosecution knows that.

5 MR. HILLIARD: Yes, sir.

6 THE COURT: But what we're trying to do is
7 eliminate the bolstering of the forensic interviewer
8 and limiting it to just the opinions that can be drawn
9 from the empirical data that we have concerning why a
10 child does not report or there is delayed reporting or
11 why a child may be fearful to report. I think we have
12 the case to take up the road because this interviewer
13 has not even talked to the child.

14 MR. HILLIARD: Yes, sir.

15 THE COURT: So I'm told.

16 MR. HILLIARD: That's true.

17 THE COURT: So, anyway, I believe it all goes to
18 the weight of his testimony, not necessarily whether or
19 not his testimony should be admitted. I'm going to let
20 you continue in front of the jury, but that's just my
21 thought on it now; okay?

22 MR. HILLIARD: All right, sir.

23 THE COURT: You may change my mind, but that's my
24 thought.

25 MR. HILLIARD: And I just -- so I'm not going to

1 be able to -- I wanted to read that one paragraph and
2 see if he agrees with it or -- it's what the Supreme
3 Court says about forensic interviewing. I wanted to
4 read that one paragraph to him to see if he agrees or
5 disagrees with it.

6 MR. MARTIN: Judge, once you're done reading.

7 THE COURT: Yes, sir.

8 MR. MARTIN: I'm just not sure how that is
9 relevant. We're going back down the same rabbit hole
10 again, so to speak.

11 THE COURT: I'm listening.

12 MR. MARTIN: I mean, this whole concept is, first
13 and foremost, against any legal precedent.
14 Additionally, we're in no way, shape, or form, as Your
15 Honor has stated, trying to qualify Mr. Olszewski as
16 any sort of expert in child forensic interviewing.
17 We're not trying to ask him anything about that. All
18 he said is something along the lines of doing that at
19 one point.

20 THE COURT: You know, if we look at this footnote,
21 what's the last sentence say? Somehow RATAC, which is,
22 we all -- I don't know what it means, but it -- it's
23 the method that they are taught to interview a child.
24 But it says it is supposed to convert the interviewer
25 into a human truth detector whose opinions of the truth

1 are valuable and suitable for the jury's consumption.
2 That's what we must avoid.

3 MR. HILLIARD: Yes, sir.

4 THE COURT: That's what we must avoid. This
5 witness' activity in this trial has nothing to do with
6 the traditional concept of a forensic interviewer. He
7 has not even spoken to the child. He has not had any
8 contact with the child. He's not here to offer any
9 opinion as to the truthfulness or falsity of anything
10 the child says.

11 I think in order to -- if I admitted this over
12 objection, regardless of whether it -- you know, is a
13 footnote in case law, we understand that, but aside
14 from that, it must stand the 403 test. And 403 does
15 not just speak to prejudice balanced against probative
16 value, it talks about confusion of the issues.

17 And I think that this is not an interviewer who is
18 offered as a witness in the concept of forensic
19 interviewer as addressed by the Supreme Court in this
20 decision, so I am going to exclude it.

21 MR. HILLIARD: Thank you, judge.

22 THE COURT: Thank you.

23 MR. HILLIARD: Yes, sir. May I have it back? If
24 I can just put on the record what it was.

25 THE COURT: You may.

1 MR. HILLIARD: Thank you, judge. Footnote four
2 from State vs. Kromah, 2013, footnote four. Thank you,
3 judge.

4 THE COURT: Very well, thank you. All right,
5 Chris.

6 Did you want to be heard on that, Ms. Walter?

7 MS. WALTER: No, I think Mr. Martin did a great
8 job.

9 THE COURT: I meant Mr. Martin. Did you want to
10 be heard on it further, did you want to put anything
11 else on the record?

12 MR. MARTIN: No, Your Honor. We put everything on
13 the record.

14 THE COURT: Okay, thank you.

15 (WHEREUPON, the jury came into open court at
16 approximately 2:41 p.m.)

17 THE COURT: All right. We have everyone in. You
18 may proceed.

19 MR. HILLIARD: Thank you, Your Honor.

20 Q All right. And tell me which, again, it was that
21 you've been qualified as an expert in, what specific --

22 A Dynamics of child sexual assault, I believe.

23 Q Dynamics of child sexual assault?

24 A I think -- I believe that's the language he used,
25 yes.

1 Q All right. And so you're -- today you're telling
2 the -- us all that you're an expert in the area of
3 dynamics of child sexual assault?

4 A Yes.

5 Q And the basis of your expertise and your ability
6 to offer testimony today is what?

7 A I've got more than 20 years experience in the
8 field. I, again, am part of the faculty that teaches a
9 course. The course itself is research based. In
10 addition to being a practitioner, I'm familiar with the
11 research. I'm not a researcher. Again, I've attended
12 numerous training seminars, workshops in this area
13 specifically dealing with the dynamics of child sexual
14 abuse. You have to understand the dynamics of child
15 sexual abuse in order to conduct forensic interviews
16 effectively, I believe.

17 Q All right, sir. And the samples -- so that the
18 testimony that you're giving here today regarding these
19 dynamics, is that going to be based on peer-reviewed
20 articles that you studied?

21 A I'm familiar with peer-reviewed articles, and it's
22 also based heavily on my experience as a practitioner
23 in interviewing victims about these issues because they
24 come up.

25 Q Well, tell me, can you cite for us any

1 peer-reviewed articles that you would be thinking about
2 connected to this issue?

3 A Well, there's an article, almost 40 years old now,
4 published by Dr. Roland Summit on child sexual abuse
5 accommodation syndrome, subsequent articles by Tom Lyon
6 in particular where he sought to establish research
7 evidence for the things that Dr. Summit talked about in
8 his paper.

9 Dr. Summit's paper, he was a psychiatrist, was
10 based on his experiences with victims that he was
11 treating in his practice. And Dr. Lyon, Tom Lyon,
12 sought to sort of put some science behind those things
13 that Dr. Summit had observed in his practice.

14 Q So, Summit, what's his name?

15 A Dr. Roland Summit.

16 Q All right, sir. And where is that article found?

17 A Well, I think it was published in the early '80s,
18 and I don't remember the journal it was published in.
19 It's pretty widely -- in our field it's pretty widely
20 known. You probably could look it up online and find
21 it.

22 Q All right, sir. And so Dr. Summit's article, was
23 that sort of the beginning of what you're talking
24 about; is that the --

25 A Yeah, it's sort of the seminal article in our

1 field.

2 Q Yes, sir.

3 A It talks about a lot of the dynamics that we still
4 talk about today in terms of how victims behave and
5 respond in situations where they've been sexually
6 abused.

7 Q And when they've been sexually abused?

8 A Yeah, and particularly within the family. His
9 article was particularly focused on intrafamilial child
10 sexual abuse.

11 Q All right, sir. And when it -- that's a
12 peer-reviewed article; is that correct?

13 A Well, again, that was not a research article.
14 Dr. Summit's article was based on observations of the
15 patients that he was treating or seeing in his clinic.
16 I think later on he regretted possibly using the word
17 syndrome. It is child sexual abuse accommodation
18 syndrome.

19 But it's not a syndrome in the medical sense in
20 that if you have this collection of behaviors in a
21 victim, you could say that this victim has been
22 sexually abused. He didn't mean it in that way, he
23 just meant that these are behaviors and things that
24 we've seen across victims that we have been treating in
25 our practice. The Tom Lyon article --

1 Q Well, let me interrupt you, and you can go into
2 that later --

3 A All right.

4 Q -- but I want to stay focused on the one that
5 you're talking about from 1980.

6 A Yeah.

7 Q That article was -- when you say we, you are
8 talking about like the Queen of England says we? I
9 mean, it is one guy; right, that wrote the article?

10 A Yes.

11 Q All right. And it was his study; right?

12 A Yes.

13 Q Based on his patients?

14 A Yes.

15 Q So the sample was not a random sample or research
16 sample; it's a doctor writing about his patients?

17 A Well, about patients that he -- right, exactly.

18 Q Do you know how many patients there were?

19 A I don't remember the number. But I think it's
20 important to connect it to the subsequent articles.

21 Q Well, before we get to it, let me finish with this
22 article, and then we can go to the next because I want
23 to know, was it ten or a hundred or...

24 A I don't know the exact number.

25 Q So it could have been five?

1 A It was not five.

2 Q All right. So maybe it was ten?

3 A I don't think it was ten. I don't have the exact
4 number, I don't believe. I don't believe he wrote an
5 article about ten patients.

6 Q All right, sir. So he wrote an article about his
7 patients?

8 A Yes.

9 Q And it was not a peer-reviewed article; right?
10 You said that already, I think.

11 A It was published in a legitimate journal. The
12 reason I want to bring up the subsequent article is
13 because I believe it was subsequently reviewed, and
14 that research was done on the things that he
15 observed --

16 Q We'll, let's --

17 MR. MARTIN: Objection, Your Honor.

18 THE COURT: Let's let him answer the question.
19 You know, he's trying to explain his answer. Let's let
20 him do it, and then you can go back.

21 MR. HILLIARD: Yes, sir.

22 Q All right, please.

23 A So, subsequently, Dr. Tom Lyon published an
24 article, I believe it was entitled, *Scientific Support*
25 *for the Child Sexual Abuse Accommodation Syndrome*, in

1 which he sought to go back and show that some of these,
2 you know, using numbers and research, that some of
3 these things were actually valid that Dr. Summit had
4 talked about. They're all things that we see every day
5 working in the field.

6 So that's why I think it's important to connect,
7 like I said, subsequent research with what Dr. Summit
8 was pointing out in the early '80s. The reason I bring
9 up Dr. Summit's article is because that's kind of where
10 it started and he's kind of the first person to put
11 this sort of -- a description to this set of behaviors
12 that practitioners in the field were observing, if that
13 makes sense.

14 Q All right, sir. So Dr. Summit was talking about
15 his patients. Do you know the age of those patients?

16 A I don't have the study with me.

17 Q All right, sir. So, well, let's do a little
18 definitional work. Child abuse dynamics, define child
19 as it's used in that statement.

20 A I mean, we define child as somebody under the age
21 of 18.

22 Q All right, sir. So you have somebody under the
23 age of 18. Do you know the ages of any of the Summit
24 study's children?

25 A I don't have the article in front of me.

1 Q All right, sir. So no is the answer?

2 A I mean, I've read the article. I've read it more
3 than once, I just don't have it in front of me. I
4 don't have all those numbers committed to memory.

5 Q Very good, all right. So they could have been 17
6 years old?

7 A I believe it was probably a variety of ages. I
8 don't think they were all 17 years old. Is that what
9 you're implying?

10 Q All right, sir.

11 A I don't know.

12 Q And so the next study was what?

13 A Study entitled, *Scientific Support for the Child*
14 *Sexual Abuse Accommodation Syndrome*.

15 Q And did you say that they had regretted naming it
16 a syndrome?

17 A I believe Dr. Summit may have regretted naming it
18 a syndrome because I think it caused some confusion
19 because syndrome is typically a word used in the
20 medical arena. For example, battered child syndrome.
21 So if you have this collection of injuries or things,
22 then you can say that this is, you know, this.

23 Q All right, sir. And going one more time back to
24 Dr. Summit's study, all of the patients of Dr. Summit's
25 which were part of that study were, in fact, victims;

1 right?

2 A Yes. Well, I mean, they were -- he was treating
3 them as victims, yes.

4 Q So they were victims?

5 A Yes.

6 Q So they had victimizers?

7 A Yes.

8 Q All right. And so the next study, what was the
9 next study?

10 A I'm sorry?

11 Q Well, the next one -- the one that you were
12 talking about where the second fellow went and looked
13 at Dr. Summit's stuff and decided to try to make it so
14 that it was more true or confirm it?

15 A *Scientific Support for the Child Sexual Abuse*
16 *Accommodation Syndrome.*

17 Q Perfect, thank you, yes. And the scientific
18 support, was that a peer-reviewed article?

19 A Yes.

20 Q And where did that appear?

21 A I don't know the journal that it appeared in.

22 Q And that was written by who?

23 A Dr. Tom Lyon. Dr. Tom Lyon, he's a psychologist
24 and a lawyer. He practices and researches at
25 University of Southern California.