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VOLUME I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

D. Garrison Hill, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PRENTISS LOVE,

APPELLANT

APPELLATE CASE NO. 2012-212037

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

COURT OF GENERAL SESSIONS
2011-GS-22-00432

STATE OF SOUTH CAROLINA,)
)
-vs-)
)
PRENTIS WAYNE LOVE,)
)
Defendant.)

April 23/25, 2012

B E F O R E:

HONORABLE D. GARRISON HILL

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

CANDICE A. LIVELY, Esquire
Attorney for the State

JONATHAN ERIC FOX, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

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(Convened at 2:37 p.m., April 23, 2012).

THE COURT: Okay, anything before we bring the jury in?

MS. LIVELY: No. The State is ready to proceed, Your Honor. Did I provide you with a potential witness list? I thought I might have handed it over.

THE COURT: Yes, ma'am.

MR. FOX: Your Honor, I have, if I can make a quick copy, I have a potential witness list also I will hand up.

THE COURT: Okay.

MR. FOX: I'll make a copy for the Solicitor.

THE COURT: Do you have any specific voir dire other than the general?

MS. LIVELY: The State doesn't, Your Honor. It is my understand typically in these kind of cases the Court would normally ask, you know, about if there had ever been someone who is a victim of a violent crime, or their family, in such a way we don't necessarily call out to jurors to tell us what happened and what effect from it if they were involved in this type event. I know that sometimes that is kind of a general question but the State

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really doesn't have any specific voir dire. I haven't seen any from the defense, so I'm not sure if there are any from them.

MR. FOX: I would request that Your Honor inquire whether any juror has been the victim or close family member has been the victim of a crime. I would also request if you would inquire whether any member of the jury panel is a member of any kind of victims advocate group like COSA or MADD or something.

THE COURT: Okay.

MR. FOX: That would be all, Your Honor.

MS. LIVELY: No objection in regard to that.

THE COURT: Insofar as any crime, what I would propose to ask, if any member of the jury panel or any member of their immediate family has ever been arrested, charged with, accused of or convicted of a crime that involved, I hate to say, violence or a crime that involved sexual assault or alleged sexual assault or if they had ever been a victim of such crime?

MR. FOX: I would ask Your Honor to include whether they had been a victim of, not whether a family member had been a victim.

MS. LIVELY: Your Honor, in doing so, I think

that is fine but in doing so we if we would have that person step up so we don't taint the rest of the jury in regard to stepping forward to discuss it.

THE COURT: Sure. What I will do is, there are a number of questions and I will tell them if they need to respond to any of the questions I need them to come up and I will just ask some other innocuous questions while they're coming up.

MS. LIVELY: Yes, sir, that's perfect. Thank you.

THE COURT: Thank you.

Okay, anything else before we bring the jury panel in?

MS. LIVELY: Not from the State, Your Honor.

MR. FOX: No, Your Honor.

THE COURT: Okay. You can bring them on in.

(Jury panel now present).

THE COURT: All right, ladies and gentlemen, thank you for your patience. We had to take care of some matters before we could bring you into the courtroom and we had an earlier case that was resolved and we had to resolve it in here and I appreciate your understanding.

We are going to select a jury in the case of

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the State versus Prentis Wayne Love, and Mr. Love, if you would stand up so the jury can see you, sir?

All right, thank you.

This is a criminal case and there are several things that apply to criminal cases that I need to advise you about and the first is that in a criminal case the defendant is not required to prove himself innocent or prove himself not guilty. Instead, the burden of proof is entirely on the State and Mr. Love has no obligation to produce any evidence or explanation whatsoever.

Second, the defendant in a criminal case, no matter what the charge may be, is always presumed innocent of that charge. And finally, the allegations that I'm about to read to you in these indictments are simply that, they are allegations. They don't constitute evidence or proof or even create a suspicion of guilt. The indictments are simply pieces of paper, they are the formal way the case begins and it is the way the government lets a citizen know what he is charged with and that is their only function. And again, Mr. Love has pled not guilty and the burden of proof is entirely on the State. He is presumed innocent.

Now, the first indictment, and there are two

indictments, the first indictment I'm going to read in case number 2011-GS-22-431, and it alleges that Prentis Wayne Love did in Georgetown County, State of South Carolina, on or about September 11, 2010, willfully and unlawfully commit the crime of criminal sexual conduct with a minor in the second degree by engaging in sexual battery, including but not limited to digital penetration, with a minor who was at least fourteen years or less but who was at least eleven years of age, to wit, initials BB. That is the pertinent part of that indictment.

And then the second indictment is case number 2011-GS-22-432. It alleges that Mr. Love being over fourteen years of age did in this County between December 31, 2009, and September 11, 2010, willfully and lewdly commit a lewd or lascivious act upon the body of a child less than sixteen years of age, to wit, initials BB, age fourteen, with the intent of arousing or appealing to or gratifying the lust or passions or sexual desires of said defendant or of the victim in violation of the South Carolina Code of Laws.

Now, those are the allegations of the indictments and our purpose now is to make sure that we can have a jury that can be fair and

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impartial to both Mr. Love and the State, so to that end I need to know if anyone is related by blood or marriage to the defendant Prentis Wayne Love or kin to him in any way. If so, please stand.

Does anyone have any personal, social or business relationship with Mr. Prentis Wayne Love? If so, please stand.

I'm going to read to you a list of people who may testify in this case, and listen carefully because I'm going to ask you if you know these people or have any relationship with them.

The potential witnesses are Prentis Love, Tabitha Love, [redacted], Regina Autry, Ginger Pop, Dianne Nordeen, Dr. Carol Rahter, R-a-h-t-e-r, Shannon Bellamy, Robby Sarvis, Anthony Carter, Ashley Jenkinson, John Gregory and Denise Brand. Those are the potential witnesses.

Did I leave anybody out or is that all the witnesses?

MS. LIVELY: That's all for the State, Your Honor.

THE COURT: All right. Is anyone related by blood or marriage or kin to any of these potential witnesses? If so, please stand.

Does anyone have any personal, social or business relationship with any of these potential witnesses? If so, please stand.

Does anyone know anything about this case other than what you have heard from me here this afternoon? If so, please stand.

I'm going to ask some questions now that require some information that is personal so if you need to respond I'm going to ask you to come down one at a time with the bailiff's assistance and we'll form a hopefully short line right here in the center aisle, but the questions are as follows.

Is there anyone who is a member of or contributor to, whether it is your time or your money, to any organization whose primary purpose is to promote more aggressive law enforcement or victims rights? That is the first question.

The second question, is there anyone who has ever been arrested for, accused of, charged with or convicted of any violent crime or a crime involving any alleged sexual assault or have you had any member of your immediate family be so accused or charged or convicted, or have you or any member of your immediate family been a victim of a violent or sexual crime?

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And the last question, is there anyone who knows of any reason why they could not be fair or impartial in hearing this case?

Those are the questions so if you need to respond, again, we can talk to you one at a time up here in a more private setting.

All right.

The next question. Is there anyone who has ever been employed by or had a member of their immediate family be employed by the Soclicitor's office for the Fifteenth Circuit? The Solicitor is Greg Hembree, so if you have been employed or had a member of your immediate family be employed by the Solicitor's office please stand.

All right. I'm going to ask if the lawyers who are going to be involved in the case could introduce themselves to you and introduce the people at their table.

Miss Lively.

MS. LIVELY: Thank you, Your Honor. Good afternoon, ladies and gentlemen. My name is Candice Lively, I'm a prosecutor with Horry and Georgetown counties, and sitting beside me is David Richardson who is also a prosecutor in our office, and then my lead investigator Ginger Pop with the

Georgetown County Sheriff's Department. Amy Garrett is my victim/witness advocate who will be seated with us during the trial.

Thank you.

THE COURT: Thank you.

MR. FOX: Good afternoon, ladies and gentlemen. My name is Eric Fox and I will be representing Mr. Prentis Wayne Love.

THE COURT: Thank you.

Is anyone related by blood or marriage or kin to any of the lawyers involved in the case or anyone they introduced? If so, please stand.

Does anyone have any personal, social or business relationship with the lawyers or anyone they introduced? If so, please stand.

Has anyone been represented or involved in a dispute where they were represented by one of these lawyers who were introduced or where the other side was represented by one of these lawyers? If so please stand.

Okay. Is there any further voir dire requested by the State?

MS. LIVELY: Not from the State, Your Honor.

THE COURT: The defense?

MR. FOX: None, Your Honor.

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THE COURT: All right, thank you very much.

All right, ladies and gentlemen, we're going to proceed with jury selection at this time. When your name is called you can simply stand up where you are and if you are chosen, and both sides have a certain number of what are called strikes, but if you are chosen they will direct you up here to one of the seats in the jury box.

Any need for more than one alternate?

MS. LIVELY: No, I believe one alternate will be fine.

MR. FOX: I think that's sufficient.

THE COURT: All right. Thank you very much.

THE CLERK: Juror number 201, Joyce Owens.

What says the State?

MS. LIVELY: Please excuse the juror.

THE COURT: All right, you may be seated.

THE CLERK: Juror 164, Franklin Lincoln.

What says the State?

MS. LIVELY: Present the juror.

THE CLERK: What says the defense?

MR. FOX: Please seat the juror.

THE CLERK: Please come and take a seat in the jury box.

Juror number 98, Horrance Goss.

What say the State?

MS. LIVELY: Please excuse the juror from the trail of this case.

THE CLERK: You may be seated.

Juror number 193, Richard I. Neidert, Jr.

What says the State?

MS. LIVELY: Please excuse the juror from the trial of this case.

THE CLERK: You may be seated.

Juror number 128, Amy Inman.

What says the State?

MS. LIVELY: Present the juror.

THE CLERK: What says the defense?

MR. FOX: Please excuse this juror.

THE CLERK: You may be seated.

Juror number 202, John Parker.

What says the State?

MS. LIVELY: Present the juror.

THE CLERK: What says the defense?

MR. FOX: Please seat this juror.

THE CLERK: Please take a seat in the jury box.

Juror number 171, Edward Madden.

What says the State?

MS. LIVELY: Present the juror.

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THE CLERK: What says the defense?
MR. FOX: Please excuse this juror.
THE CLERK: You may be seated.
Juror number 121, Douglas Holman.
What says the State?
MS. LIVELY: Excuse the juror from the trial of this case.
THE CLERK: You may be seated.
Juror number 176, Sharone McGee.
What says the State?
MS. LIVELY: Present the juror.
THE CLERK: What says the defense?
MR. FOX: Please seat the juror.
THE CLERK: Please take a seat in the jury box.
Juror number 44, Nancy Carver.
What says the State?
MS. LIVELY: Present the juror.
THE CLERK: What says the defense?
MR. FOX: Please excuse this juror.
THE CLERK: You may be seated.
Juror number 132, Ieshia Jenkins.
What say the State?
MS. LIVELY: Present the juror.
THE CLERK: What says the defense?

MR. FOX: Please seat the juror.

THE CLERK: Please take a seat in the jury box.

Juror number 28, James Bradford, III.

What says the State?

MS. LIVELY: Present the juror.

THE CLERK: What says the defense?

MR. FOX: Please seat the juror.

THE CLERK: Please take a seat in the jury box.

Juror number 175, Brandon McCray.

What say the State?

MS. LIVELY: Present the juror.

THE CLERK: What says the defense?

MR. FOX: Please seat the juror.

THE CLERK: Please take a seat in the jury box.

Juror number 262, Barbara Thompson.

What says the State?

MS. LIVELY: Present the juror.

THE CLERK: What says the defense?

MR. FOX: Please excuse this juror.

THE CLERK: You may be seated.

Juror number 47, Barry Causey.

What says the State?

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MS. LIVELY: Present the juror.
THE CLERK: What says the defense?
MR. FOX: Please excuse this juror.
THE CLERK: You may be seated.
Juror number 86, Brenda Ford.
What says the State?
MS. LIVELY: Present the juror.
THE CLERK: What says the defense?
MR. FOX: Please seat this juror.
THE CLERK: Take a seat in the jury box.
Juror number 179, Kimbaya McNeal.
What says the State?
MS. LIVELY: Present the juror.
THE CLERK: What says the defense?
MR. FOX: Please excuse this juror.
THE CLERK: You may be seated.
Juror number 271, Cynthia Tuttle.
What says the State?
MS. LIVELY: Present the juror.
THE CLERK: What says the defense?
MR. FOX: Please excuse this juror.
THE CLERK: Take a seat.
Juror number 224, Debra Rogers.
What says the State?
MS. LIVELY: Present the juror.

THE CLERK: What says the defense?
MR. FOX: Please excuse this juror.
THE CLERK: Please take a seat.
Juror number 205, Henry Pausch.
What says the State?
MS. LIVELY: Present the juror.
THE CLERK: What says the defense?
MR. FOX: Please seat this juror.
THE CLERK: Please take a seat in the jury box.
Juror number 114, Lindsey Hart.
What say the State?
MS. LIVELY: Present the juror.
THE CLERK: What says the defense?
MR. FOX: Please excuse this juror.
THE CLERK: You may be seated.
Juror number 192, Lawerence Myers, Jr.
What says the State?
MS. LIVELY: Present the juror.
THE CLERK: What says the defense?
MR. FOX: Please seat this juror.
THE CLERK: Please take a seat in the jury box.
Juror number 240, John Small.
What says the State?

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MS. LIVELY: Present the juror.
THE CLERK: What says the defense?
MR. FOX: Please excuse this juror.
THE CLERK: Please be seated.
Juror number 220, Eddie Robinson.
What says the State?
MS. LIVELY: Please excuse the juror from the trial of this case.
THE CLERK: You may be seated.
THE COURT: One second, let's make sure. Is that --
THE CLERK: Yes, Your Honor.
THE COURT: I'm sorry?
THE CLERK: Ask the question again.
THE COURT: Okay. Just to confirm, is everyone agreeable at this point there are going to only be objections for cause?
MS. LIVELY: That's correct, Your Honor.
MR. FOX: That's correct.
THE CLERK: Juror number 88, Deborah Fox.
What says the State?
MS. LIVELY: Present the juror.
THE CLERK: What says the defense?
MR. FOX: Seat the juror.
THE CLERK: Please take a seat in the jury

box.

Juror number 142, Kathy Kavanagh.

What says the State?

MS. LIVELY: Present the juror.

THE CLERK: What say the defense?

MR. FOX: Seat the juror.

THE CLERK: Please take a seat in the jury box.

Juror 258, Marily Tague.

What says the State?

MS. LIVELY: Present the juror.

THE CLERK: What says the defense?

MR. FOX: Seat the juror.

THE CLERK: Please take a seat in the jury box.

One or two, Judge?

THE COURT: This will be for the alternate.

THE CLERK: Juror number 65, Ronald Crowe.

What says the State?

MS. LIVELY: Present the juror.

THE CLERK: What says the defense?

MR. FOX: Seat the juror.

THE CLERK: Please take a seat in the jury box.

THE COURT: Okay. Any motions or matters

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concerning the process of selection of the jury, from the State?

MS. LIVELY: Not from the State, Your Honor.

THE COURT: The defense?

MR. FOX: No, Your Honor.

THE COURT: Okay, I find the process complies with all the statutory and constitutional requirements and, ladies and gentlemen, you have been selected to be the jury in the case of the State versus Prentis Wayne Love. We're going to ask that you go back to the jury room now and don't talk about the case and we'll have some preliminary instructions for you as soon as we can resolve some other matters and ask you out here. So, thank you.

(The jury was excused from the courtroom).

THE COURT: All right. Those of you who remain, call back tonight after 6:00, is that right?

THE CLERK: Yes, Your Honor.

THE COURT: Okay, thank you very much. Appreciate your cooperation. Call back after 6:00.

(Jury panel excused from the courtroom).

THE COURT: Okay, any pretrial matters?

MS. LIVELY: Your Honor, the State filed a motion in limine to exclude any victim's records or

anything related to her counseling notes with her counselor Denise Brand. I have never actually provided those to the defense because I did not have them in my possession. I typically in cases like this do not get counselor notes because I consider the testimony of the victim as well as any opinion testimony from the counselor to be a separate and distinct issue regarding counselor notes which I believe to be confidential.

Your Honor, the defense did file a motion regarding that issue and in response to his motion whenever I filed my motion in limine to exclude mention of it, Your Honor, in order to try and help with the process of you making a decision regarding those matters the State did provide under seal the records to you regarding the counselor notes from Denise Brand who is the therapist for the child [redacted]

Your Honor, like I said before, I have not seen these records, they were not in my possession, I advised Attorney Fox that we were going to be sending them to you under seal for the purpose of an in-camera review regarding any potential exculpatory information that would be, at least give the opportunity for the defense to receive

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that information if there was any exculpatory material, and the State would ask that if the Court has determined there to be any exculpatory material within these counselor notes that that information be disclosed and that the State may address our opinion as to whether or not those records would be inadmissible under a different rule of evidence such as prejudicial issues and those things.

So, not being aware of what it was the Court has actually been able to determine by its in-camera review, that would be the initial basis of the State's motion in limine to exclude any of that. The only other issue I believe we have is the fact that the defendant does have a prior criminal history and the State obviously does not intend to bring that into evidence. I have instructed all my witnesses that it is not to be mentioned under any circumstance. However, obviously if the defendant were to decide to testify in his own defense later on in the trial, then we can address the issue again at that time.

It is my understanding those are the two motions before the Court regarding the case. Even if a forensic interview was done, Your Honor, there is not a motion regarding the introduction of the

actual video into evidence because the child was fourteen at the time of the interview, which does not meet the statutory requirement of forensic interviews and the videotape actually comes in, and so for that purpose there is no motion in regard to that.

I did want the Court to be aware one was out there so if and when, while I still bring in my forensic interviewer for her to come in as part of the investigation, the interview was done and she well be limited to time and place in regard to the disclosure as is allowed under the hearsay exception for sexual assault cases.

THE COURT: Certainly I'm not going to opine about about the credibility --

MS. LIVELY: I'm not qualifying her as an expert. It is one of those situations where if it becomes necessary, but in this particular case I do not intend to even qualify her as an expert, she will be a fact witness only.

THE COURT: Okay. Thank you.

MS. LIVELY: Thank you.

THE COURT: Yes, sir, Mr. Fox.

MR. FOX: Your Honor, this initially was my motion to obtain counseling records. My

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understanding is Miss [redacted] who is the alleged victim in this case, after disclosing, was referred to Denise Brand for counseling and it has been ongoing, my understanding. I believe Your Honor has a copy of my motion. I want to emphasize my motion is not limited either to this being produced under Rule 5, I think Rule 5 provides a basis, I think the United States Supreme Court case of Kyle versus Whitley provides a basis, as well as due process, Brady versus Maryland, as well as just general due process consideration.

I would also take the position that, and I talked to Miss Lively about how we would handle this situation, it was her suggestion we obtain the records under seal and forward them to Your Honor for review. I was consulted about that and I thought that was a good way to initially address it. I would say, Your Honor, in your evaluation that it should encompass more than material that might be exculpatory. Again, because under the various cases, Kyle v Whitley, the case is cited in my motion as well, in re, Michael H, there may be other reasons why this may be discoverable evidence.

Obviously if you find something in there

about exculpatory, if she were to say, "By the way, Prentis Wayne Love never did anything to me," of course that would be discoverable. But if there are inconsistencies in there from what she had previously told people and now telling her counselor, that is one example, and I have no indication at this point, but if she were to have competency issues, which was a Family Court case, Michael H., there was an issue of competency as a witness and the court said, "Yes, you can explore that." So, there are many ways it might be discoverable.

I would also say to the Court you don't know our case, you certainly can identify as a lawyer and as a judge material that will be exculpatory, what you don't have is some of the other discovery I have, you have not of course spoken to my client, you're not familiar with my theory of defense. There may be material you would not recognize as important, that I would, and so I would ask the Court to take a more expansive view of that.

I think clearly it is discoverable material. It may or may not end up being relevant, may or may not be something that is going to be introduced at trial and if there is something, if Your Honor does

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give me that material and I do intend to introduce something or ask, of course the Solicitor can object at that time and it may be there is a separate objection from the State's side as far as keeping that out.

Your Honor, I also just address briefly, I think it was included in the Solicitor's written material, too, Your Honor, she cites the South Carolina case of State v Trotter in which that was the Supreme Court of South Carolina said counseling records are not discoverable under Rule 5 but they limit their theory or their application to Rule 5 and they said that is not, counseling notes are not a medical record, they don't qualify under that, but in that case the trial court said, "Look, I'll provide," the objection at trial was this witness can't testify because the person wasn't on the witness list, "Therefore, Judge, we want you to exclude any testimony." Now, I'm basing that objection on South Carolina Rules of Criminal Procedure, Rule 5, and rules of evidence, rather, and the Court said, "I'm not going to exclude it but, counselor, I will give you the records, you can look them over, you can cross-examine this person," he did not do that, so Trotter, I think

actually supports my position, the Supreme Court indicated it is discoverable material. It may not be discoverable under Rule 5 but it is under other theory. I think we're entitled to them, Your Honor.

THE COURT: Well, thank you for your argument. I agree with you that I don't know your case as well as you do and I certainly have taken that into account when reviewing the record and the decision on the motion regarding the record, so anything further at this time?

MS. LIVELY: Your Honor, one of the things that, in regards to Mr. Fox's argument, I understand where he is attempting to distinguish what it is he is asking for here and the thing that the State is concerned about is just like with any of these type cases, where everything comes down to the statement of the victim as well as in exchange for what the defendant's theory may be in the case. If we were to get into all these hearsay statements that are made by the victim and we get into some counseling notes and some records and inconsistencies, if there are any, something other than exculpatory material, then what we're going to have is a State versus Jeffcoat situation where I'm

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going to stand up and say, well, Your Honor, now that they are trying to show inconsistencies in her statement or some reasons for those inconsistencies, after, you know, disclosure was made, now we might be getting into an issue of whether now I can put up people that can give prior consistent statements of the victim and it becomes a war of the hearsay statements that have been collected over a period of time, so the concern that the State has is how far does that get us if we start to let all these statements in regarding things that happened have been said by various individuals, including the victim and/or the defendant in this case? So that would be my concern, that at what point do we stop?

The State understands I'm limited in regard to time and place of what the victim had said to people regarding the sexual assault and I intend to stick by that. That is the reason why in regard to the counseling records which I consider what Trotter calls them, raw data, what the counselor is doing for the focus of therapy, not as an investigatory tool, I do not believe they are appropriate not only for disclosure but as well as impeaching the victim if there is no exculpatory

information. That is the position the State would take in regard to that. That is all I would have to say in regard to the records, Your Honor.

THE COURT: Thank you, Miss Lively.

MS. LIVELY: Thank you.

THE COURT: All right. Let me, in light of your argument, I'm going to review some of it. Just bear with me for a few minutes.

Okay. Well, based on my review and the legal principles, I find there are some isolated portions of the report that should be disclosed to the defense and what I would like to do is redact of course everything on these particular pages that is not subject to disclosure, which will take a little bit of time to prepare. I don't think any of this material is something the defense necessarily needs before we do the opening statements but I will be glad to take a break and prepare it so you can have it before we begin the case.

MS. LIVELY: Fine, Your Honor.

THE COURT: Thank you.

MR. FOX: That's fine.

THE COURT: It shouldn't take very long, thank you, probably about fifteen minutes. Take a fifteen minute recess.

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(Recessed at 3:35 p.m.).

(Resumed at 3:53 p.m.).

THE COURT: All right, I have redacted the records and the isolated portions I mentioned that should be disclosed will be available up here for you all to look at. Of course they are under protective order in the sense these isolated portions that, I think twelve lines of the report are all that are subject to disclosure, but nevertheless, they are subject to protective order in that they will not be shown to or disseminated or copied or reproduced or used for any purposes other than the lawyers' eyes only and Mr. Fox can verbally transmit what the disclosed items consist of but the remainder of the records are going to be held under seal until the conclusion of the trial and thereafter unless there is a motion made to disclose or, excuse me, unseal them they will be ordered to be destroyed without infringement, assuming it can be done without infringing on anyone's interest.

MR. FOX: Your Honor, just to make a record, we would renew our motion. We understand the Court's ruling and do not take exception other than noting our exception we don't have full disclosure

of the record.

THE COURT: Sure.

MR. FOX: I would also request that the entire sealed record remain a part of the whole record so that if we have an appeal, so any appellate court can make a review of those records.

THE COURT: That is what I was intending to articulate earlier, maybe not so well.

MR. FOX: I misunderstood.

THE COURT: That's okay.

All right, I'm going to make Court's Exhibit 1 under seal the portions I just disclosed, which is the twelve lines of the records that I did rule were disclosable, that will be held under seal. And of course Court's Exhibit Number 2 will be the remainder of the records under seal for purposes of any appellate review or other post conviction review should we get to that point. Of course I'm not intimating anything on the outcome of the trial, just for the record.

(Counseling records marked as Court Exhibit Numbers 1 and 2).

Anything else before we bring the jury out?

MR. FOX: Not from the defense, Your Honor.

MS. LIVELY: Your Honor, I did want to bring

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up a matter that I was reminded of just a few minutes ago, not in regard to this particular ruling, the State is fine, I have no additional issues regarding that.

THE COURT: Yes, ma'am.

MS. LIVELY: The actual bond for the defendant needs to be addressed. Also the bondsman who was not aware it was actually going to trial this week just came up and talked to me. He is in the courtroom. He apologized to me, he is not appropriately dressed but he said he was not aware he was actually here because of a trial being started but it is my practice to request that the defendant be taken into custody during the trial of the case. This defendant has a conviction for ABHAN and is actually on probation or parole at this time, so of course that is a concern for the State, and also after speaking with the bondsman he also says he has concerns, once a case is called to trial, regarding staying on the bond, so the State is asking, Your Honor, that the defendant be held at the Georgetown County Detention Center during the trial of the case. As I say, the bondsman is here in the courtroom, if you will stand for His Honor. He did come in and talk to me and relay

that information, Your Honor.

THE COURT: Okay, thank you.

Mr. Fox, yes, sir?

MR. FOX: Your Honor, obviously we would ask that Mr. Love be allowed to remain out. He has been charged with these things for well over a year, he has never failed during that time to appear before when required, including today, not once, it has never been an issue with his bond. I realize it is in Your Honor's discretion, certainly there is discretion to detain him and I would ask the Court not to detain him.

THE COURT: Okay.

MR. FOX: He actually, just for the Court's clarification, he has a bond on the present charge and he has a separate bondsman on the potential violation of probation.

THE COURT: Okay.

MR. FOX: Which I guess is not technically at issue but Ray Johnson is his other bondsman who I spoke to, Mr. Johnson is willing to stay on the bond, and I recognize he actually is not responsible for this bond on the CSC and lewd act charge.

THE COURT: Yes, sir. Okay, I make it a

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policy that once a case is called for trial the bond is invalidated and therefore he will remain in custody when court is not in session.

Anything further before we bring the jury in?

MS. LIVELY: I believe, I believe that was all the pretrial motions, Your Honor, to be handled. That is all from the State. Thank you.

THE COURT: Do you anticipate the case lasting how long, I guess is my question?

MS. LIVELY: Well, Your Honor, I would anticipate that I would be done tomorrow afternoon if I get started and I can, I believe that we should be finished tomorrow afternoon with the State's case, just don't hold me to that.

THE COURT: I'm not.

MS. LIVELY: But that is my best guess, I think tomorrow afternoon since there is no forensic interview to show and that kind of thing that takes a lot of time. I think tomorrow afternoon.

MR. FOX: And, Your Honor, obviously at this point I'm not ready to say what we may or may not have in the way of witnesses.

THE COURT: I know.

MR. FOX: But I would think if that holds, that we're able to get the State's case by tomorrow

afternoon, I would think we either might finish the testimony by tomorrow afternoon or possibly a little bit of time Wednesday morning but I think we can wrap up the entire thing by Wednesday morning.

MS. LIVELY: I agree.

THE COURT: Okay. And I'm certainly not trying to press anybody or make you commit to something you don't want to at this time.

MR. FOX: And while we're on general scheduling, I'm prepared to open, but we prefer, though it is not a lot of material, prefer to be able to look at what has been disclosed and confer with my client before we start testimony. I assume maybe one of the first witnesses, I don't know if Miss Lively plans to start today but my preference would be to perhaps open today but allow me to review this and consult with my client before we take any testimony.

MS. LIVELY: What I was going to do, I don't mind tipping my hat on opening and then calling the father of the victim since he was, since he was the initial person that met the defendant, just to kind of establish a time line, so I was not planning on starting with my victim, so I don't know if that assists Mr. Fox in his decision but the State is

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ready to proceed with that being our first witness. I don't mind telling you that.

MR. FOX: My preference, Your Honor, of course would be, we'll do whatever Your Honor says, I would prefer to wait for any testimony until I have a chance to look at that and consult with my client but if Your Honor wishes to go forward with the father that's fine. My personal preference, what I ask is that we be allowed to adjourn overnight other than opening this afternoon and start on the testimony in the morning. It may be, I don't foresee the same issue with the father as I might with the victim but it could be, I don't know yet what he is going to testify to.

THE COURT: Right.

MR. FOX: There may be an issue there, Your Honor.

THE COURT: Okay. Well, we're going to do the opening statements. I guess you can look over the portions that have been disclosed, I can give you a few minutes to do that right now if you want but I would like to go ahead and have that jury hear some testimony just so we can get the trial moving.

MR. FOX: If we take just a few minutes so I

can consult with my client?

THE COURT: Right.

MR. FOX: Is it okay if we step back?

THE COURT: Sure.

(Recessed at 4:05 p.m.).

(Resumed at 4:20 p.m.).

THE COURT: Okay.

MR. FOX: We're ready to proceed, Your Honor.

THE COURT: Okay, bring the jury on in. Thank you very much.

(The jury returned to the courtroom).

THE COURT: Good afternoon, ladies and gentlemen. We're going to go ahead and get started now with the trial of State versus Prentis Wayne Love. Before we actually begin the case I want to give you some preliminary instructions. Hopefully it will demystify the proceedings a little bit.

To begin, the first thing I want to do is thank you for your service this week. I know we're taking you away from your families and your jobs and other important aspects of your life and asking you to come up here and serve on a jury and I know it is inconvenient for you but I also know that you are here in part because you understand and respect the right to a jury trial is a valuable and

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fundamental right that all of us enjoy and you are making it possible for the State and for Mr. Love to have a jury trial this week.

As I mentioned this morning, the right to a jury trial was something our founders thought was essential to a democracy and to a fair system of justice. In fact John Adams, one of our greatest founders, said that the right to vote and the right to a jury trial are the heart and lungs of a good democratic government. So, again thank you on behalf of your justice system for being here this afternoon and this week and serving.

The second thing I want to do is introduce some of the people in the courtroom who are essential and key participants in the trial this week. You have already met the lawyers, they introduced themselves to you a little while ago and I introduced myself to you this morning and I'm Gary Hill, Circuit Judge from Greenville and I'm glad to be down here with you in Georgetown this week.

Some of the other people in this process who are essential include the court reporter Mr. Henry Young who is here to my right and as you can see he takes down every word that is said because Circuit

Court is a court of record and he is one of the finest court reporters in the state and I'm glad to be working with him this week.

I want to also introduce you to my law clerk, Lindsey Overby, she's in here seated at the bench at this time. She's a lawyer and a graduate of the law school at U.S.C. and she helps me research matters that arise during trial and helps me prepare for trial.

The Clerk of Court, who is Miss Alma White, you saw was intimately involved in the jury qualification and the selection process, and then and then one of her assistants Mr. Keith Moore will be here during the trial and he is seated to Miss Overby's right.

And then perhaps the most important people in the process are the bailiffs and they are here for your assistance, and the bailiffs are Jackie Orr who is seated back in the back and Mr. Roy Nolan, who is seated here to your left, to my left, and Mr. Little who was in here earlier but you may see him. There he is. Mr. Little is hiding back there in the corner. So, they are here for your assistance.

Now, ladies and gentlemen, everybody I

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introduced and certainly I have done this and certainly the lawyers have done this, we have all taken an oath to do our job and you're going to take an oath to do your job and I'm going to ask Mr. Moore to administer that oath to you at this time, and listen to the words because they are words that have been around a very long time and they sum up pretty nicely your obligations, then I'm going to amplify on that after you take the oath.

So, yes, sir.

THE CLERK: Ladies an gentlemen of the jury would you please stand and raise your right hand.

Do you solemnly swear or affirm that you will truly try the issues joined in this case and a true verdict render according to the law and evidence so help you God?

JURORS: I do.

THE CLERK: Thank you. You may be seated.

THE COURT: All right. Thank you, Mr. Moore.

Now, ladies and gentlemen, as I said this morning, if you are selected as a juror, and you have been now, you will be a judge, and there are two judges in this case. There is the judge of the law, that's the role that I occupy, and there

is the judge of the facts and that's the role that you fulfill.

As the judge of the law I have two main duties. The first duty I have is to rule on the admissibility of evidence during this trial. During this trial there may be objections to evidence and don't hold it against the lawyers for objecting to the evidence, they have a sworn obligation to object to evidence when they think it is improper, but if they do object I will rule on the objection under the law, as the judge of the law. Usually I can do that on the spot, sometimes we have to take a break if things get a little thorny, but nevertheless if I sustain the objection that simply means the objection is upheld and the evidence is not something you can consider. If I overrule the objection that means the evidence is proper and you can consider it in reaching your decision.

Now, the second job I have as the judge of the law is at the end of the case after you have heard all the evidence and heard the lawyers' arguments I will instruct you on the law that applies to the facts of this case. Now, you are the judge of the facts and that simply means that

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your decision as to what the facts are in this case is yours alone. I'm not going to indicate to you what I think the facts of the case are or what you have heard should be. I have no opinion because the Constitution designates the jury as the sole and exclusive judge of the facts in cases tried in this courtroom.

Now, ladies and gentlemen, don't interpret anything I do during this trial as indicating any kind of comment or statement on the facts because as I said, I'm to uphold my oath and not do that during this trial, so you as the judge of the facts will have to base your decision as to what the facts are on the evidence and you can only use two things in determining what the facts are. Only two things constitute evidence.

The first form or source of evidence is witness testimony. I don't know much about this trial but I anticipate we will have people who come in who have knowledge about the case and are sworn, they will testify about their knowledge. So, sworn witness testimony is the first type of evidence you can use in determining what the facts are.

The second is by way of an exhibit. An exhibit is simply a physical, tangible object. It

might be a map or photograph or something of that nature but you will know it's an exhibit and you'll know it's evidence and therefore it is something you can use to determine what the facts are because it will be back in the jury room with you at the end of the case and it will have a sticker on it that says exhibit number so and so.

So, keep in mind as we go through the trial those are the only things you can use in determining what the facts are. The first is sworn witness testimony and the second is an exhibit. Nothing else constitutes evidence, as I will instruct you.

Now, ladies and gentlemen, by necessity you will have to weigh and evaluate the credibility of all the evidence. That simply means for every witness that testifies and every exhibit that is introduced you will have to gauge its credibility or believability. In the case of a witness who testifies I can give you some guidelines for gaging believability. You consider what opportunity they had to know or see or observe about the things they have come here to talk to you about and testify to, you can consider how their evidence stacks up to the other evidence in the case, you can consider

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their demeanor on the stand, you can consider their interest in the outcome of this case, that is, whether they are biased or prejudiced for someone or some issue in the case. And you can use whatever you use in your day to day life to determine whether you think someone is telling you the truth because you certainly didn't have your common sense evaporate when you walked in the Georgetown County courthouse.

Now, ladies and gentlemen, as the sole judge of the facts you have a very great responsibility and your decision as to the facts, as I have said, is yours alone but it is also important for you to understand how final your decision is when it comes to determining the facts. If I make a mistake as to the law it can easily be overturned or reversed on appeal. But a jury's decision as to what the facts are is almost always final and conclusive under our system of justice.

So, I know it is hard to sometimes sit and listen for long periods of time so we all know, however, it is when our mind starts to wander that something important happens, so let's try to keep attention throughout the case. And this trial will probably last several days but regardless of how

long or short it is, it's a very important matter for both the State and Mr. Love, so please try to keep attention throughout the trial. We'll try to take breaks every now and then to make sure everyone is refreshed and if someone needs a break before we take one or one is scheduled just let us know and we'll try to take it.

Now, ladies and gentlemen, this is a criminal case and as I mentioned earlier there are several fundamental principles of criminal law that apply and the first is that Mr. Love is presumed innocent. He doesn't have any obligation to produce evidence or any explanation whatsoever. No one charged with a crime is required to prove themself innocent or prove themselves not guilty.

Mr. Love pled not guilty and that put the burden of proof on the State and the only way the State can gain a conviction is if all twelve of you agree the State has proved each and every element of the crime beyond a reasonable doubt.

You will recall there are two indictments at issue in this case and again the indictments are not evidence. They don't constitute proof of anything, the indictment is not a witness, it's not an exhibit, it is not something you can take into

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account in determining the facts but bear in mind that Mr. Love has pled not guilty and the burden of proof is entirely on the State.

Now, how many of you have sat on a criminal trial before as a juror? If you would, just raise your hand.

Okay, so, we have two people.

JUROR: I ain't never been on a criminal trial but I had jury duty.

THE COURT: Okay. So at least one person has sat as a criminal juror before. The rest of you may know from your open experience a little bit about the structure of a criminal trial. Let me tell you about that structure just to demystify things a little further as to what to expect over the next several days.

In just a moment you're going to hear the opening statement of the Solicitor Miss Lively. She is going to give a brief synopsis or outline of what she thinks the evidence is going to show in this case in nonargumentive fashion and she goes first because the State bears the burden of proof. Then Mr. Fox on behalf of Mr. Love may give an opening statement or may not because he doesn't have any obligation to produce any evidence or

explanation, as I said, but he may give an opening statement as well.

And then we'll move into the presentation of evidence by the State. Again, bearing the burden of proof, they are going to go first at which time Mr. Love will be able to confront those witnesses and that evidence. Then after the State completes its presentation of evidence Mr. Love will have the opportunity to, again not the obligation, to produce any evidence he wishes to and then after you have heard all the evidence the case will be at the stage where the lawyers will give you their closing argument, where they will tell you what they think the evidence has shown and what your verdict should be.

Then the case will move to the stage where I give you the instruction on the law you are to apply to the facts of the case, then the case is going to be in your hand for a decision as to what those facts are and your application of the law to those facts and you will ultimately reach a verdict in this matter.

Now, until we reach that point, ladies and gentlemen, don't talk about this case with anyone, don't discuss it with your fellow jurors until you

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have heard all the evidence and heard the argument of the lawyers and been given the law you need to apply to those facts because until you have heard all those things you won't have the tools you need to do your job, and it is very important to keep an open mind because these trials are often like puzzles, the lawyers must present them one piece at a time.

So, I thank you for your attention to me and at this time we will have the opening statement by Miss Lively.

MS. LIVELY: Thank you, Your Honor.

May it please the Court, Your Honor?

THE COURT: Yes, ma'am.

MS. LIVELY: Thank you very much.

Ladies and gentlemen of the jury, thank you for your patience. I know it has been a long day and whenever we have a process such as this where jurors are called forward to hear a case involving something like criminal sexual conduct with a minor in the second degree as well as lewd act on a minor immediately the urgency in having these cases heard is something that just jumps out at you. The cases that deal with child victims are sometimes difficult to hear but they happen and that is why

we're here, ladies and gentlemen, and all of you are going to have to hear some difficult information but in hearing this information what your job to do is exactly what the judge has said, put all the facts together, and as the sole person from the State I always welcome the responsibility to present this evidence to you through witnesses, investigators and the actual victim in this case Minor She will testify before all of you as to what happened to her at the hand of the defendant Prentis Wayne Love.

Now let me explain the actual statute so you will know as jurors what it is you are going to be looking for because I think it is helpful for you to know what I have to prove beyond a reasonable doubt. The first charge is criminal sexual conduct with a minor in the second degree, and the way our Legislature has divided up our different types of criminal sexual conduct cases in dealing with minors, it deals with the age of the child. First degree would be some type of sexual battery with a child under the age of eleven. That's not what we have here, so we have CSC, which is short for criminal sexual conduct with a minor second degree, which would be sexual battery with a child between

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the age of eleven and fourteen.

The evidence will show and Minor will tell you that at the age of thirteen she met the defendant. She met him through a Ducks Unlimited function, with her parent there, friends, family. One of these easy going public events. You will learn from her as well as her family members how the defendant became close to them and how he had access to Minor

So, what I have to show you in order to achieve criminal sexual conduct with a minor between the ages of eleven and fourteen is to show there was some sexual battery that occurred at the hand of the defendant on Minor And the evidence will show that during the time when Minor knew this defendant from the time she met him when she was thirteen, until September, October, or September of 2010 he did commit sexual battery on her. She had turned fourteen by that time but still that is what I have to show you. Sexual battery can be any type of penetration of a child's genitalia by either an object, by a hand, by a part of the defendant's body on the child. Penetration, however slight.

The defendant is also charged with lewd act

on a minor. Now, lewd act on a minor is a little bit different because it includes things that might not rise to the level of an actual sexual battery, and let me just break it down for you. Someone touching a child, kissing a child for his own gratification. If you determine that it is, and only you will be the ones to determine what was going on, use your common sense, if he's kissing her, fondling her, touching her in a way that is inappropriate, in a way that is at all sexual in nature, that is what lewd act on a minor is, because sometimes, ladies and gentlemen, there may not be that opportunity for a battery, there may not be that opportunity where the person goes to the next level.

So these are the two offenses that the State has to prove to you occurred at the hand of the defendant on [redacted] Ladies and gentlemen, you will get to hear from her yourself. You will hear from her family members about how they welcomed the defendant into their home, you will hear how they had the ultimate betrayal at the hand of the defendant. You will hear how [redacted] got to know this defendant, how she trusted this defendant, how the entire family did. She babysat

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his kids.

Ladies and gentlemen, once you hear all the evidence and the testimony of the witnesses and especially Minor in this case we will prove to you beyond a reasonable doubt that these events occurred.

And the other thing I want to make sure that you understand, because it is one of the things that is so difficult with these types of cases, when you're dealing with sexual abuse most of the time, and in a case like this you will hear from Minor these events take place in private, you don't usually have video, you don't usually have pictures. The information comes out some other kind of way and that is what happened with Minor You will hear that. So, understand that. Abuse happens in private but who do we have that was there, who can tell you what happened? That's Minor Who else do we have who can tell you how the defendant had access to Minor Her family. So, it will all come together and make sense, ladies and gentlemen. Just listen to the testimony, it is evidence, direct evidence as to what occurred and you will come back with a verdict of guilty on both charges. It will all make sense.

Thank you.

THE COURT: Thank you, Miss Lively.

Yes, sir, Mr. Fox.

MR. FOX: Thank you, Your Honor, if it please the Court.

Good afternoon, ladies and gentlemen. I also want to quickly thank you for your time and service this week.

The judge told you about John Adams. I heard Winston Churchill say three great duties and obligations of any citizen in a democracy is to vote, serve your country in time of war and jury service. I mean, this really is as important as it gets, important to the State of South Carolina, it is certainly important to Mr. Love.

There are countries around the world that we would think of as sophisticated, advanced countries, where the right to a jury trial does not exist, where panels of judges who may be educated on the law but come from a particular frame of mind, a particular background, where a panel of judges decide this kind of cases. It is actually a fairly rare thing, what we're doing here today. We take twelve ordinary citizens from different backgrounds and throughout the county, the State

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intrusts you, we intrust you to come to a just verdict.

And remember in your oath, remember that you have no enemies to punish or friends to reward here this week. You are here because you're not involved in this case, you're not related or have any knowledge of Miss [redacted] and her family or Mr. Love and his family or myself or the judge, you are here precisely because you don't have any connection to this case. You're not here to reward anybody or punish anybody. You are here to the best of your ability to do justice.

But doing justice doesn't necessarily mean automatically convicting somebody. Justice means in our system getting the right answer, getting the right verdict, and if the evidence leads you to a verdict, no matter how emotional this case may be, if the evidence or lack of evidence leads you to a verdict of not guilty, your oath as jurors require you to return that verdict. You have nobody to reward or punish here.

Very briefly I want to talk to you about burden of proof. The judge has already told you the State of South Carolina has the burden of proof. Mr. Love has no burden, it is his choice to

present testimony, testify or not testify, he doesn't have to prove a thing, partly because it's said it's impossible to prove a negative. It is one thing to try to prove something. It is another to prove something didn't happen, much more difficult.

The burden of proof in a criminal case is beyond a reasonable doubt. Judge Hill will define that for you when he gives you his instruction at the end of the case, he will tell you something like a reasonable doubt is a doubt that you can assign a reason to, you have a doubt you can assign a reason to based on what you have heard in the courtroom, based on the evidence and testimony presented, not on something frivolous, not on I think something happened or didn't happen, but based on what you're presented with in the courtroom this week, and then taking the law the judge gives you at the end and applying that testimony, that evidence to the law.

But beyond a reasonable doubt is not beyond all doubt. There are very few things you can know in life 100 percent. One thing I know a hundred percent, that none of you were around any of the events that we're going to talk about this week, so

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you can't know 100 percent, you weren't witnesses to what happened or didn't happen. But you must be satisfied, all twelve of you, beyond a reasonable doubt.

If you think about, if you have a car wreck and we're in what we call Common Pleas the burden of proof there is what we call a preponderance of the evidence. You just need to tip the scale in your favor a little bit. In this courtroom you have to tip them a lot, okay? Beyond a reasonable doubt is exactly what it sounds like.

I would ask you to keep that in mind as we go forward. As the judge requested, keep an open mind. You're going to hear, it is an emotional case, this isn't an easy case. Our natural sympathy goes out for people that are victims in this kind of crime but you have to determine whether this crime occurred at all, that's why you're here. It is not an easy thing to do but that is what you're here for and that is what you swore an oath to do and that is what I heard you say you would do. I think when you hear everything in this case, not just from the State's side, when you have heard everything we ask you return a verdict of not guilty.

THE COURT: Thank you, Mr. Fox.

Okay, Miss Lively, you may call your first witness.

MS. LIVELY: Thank you, Your Honor. The State will call Anthony Carter to the stand.

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ANTHONY E. CARTER, after being first duly sworn, testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record, please.

THE WITNESS: My name is Anthony E. Carter.

DIRECT EXAMINATION BY MS. LIVELY:

Q Thank you. Mr. Carter, where do you live?

A Murrells Inlet.

Q Okay, and how long have you lived in the Murrells Inlet area?

A A little over seven years.

Q All right. And are you employed?

A At the time, no, ma'am.

Q Okay. And is there a reason for that?

A Yes, ma'am. I'm under doctor's care, I have had four major surgeries in the last three and a half years.

Q And where did you work before you had these medical problems?

A I worked for myself and I worked for the Piggly Wiggly at night stocking shelves.

Q Mr. Carter, are you married?

A No, ma'am.

Q And do you have a fiance?

A Yes, ma'am.

Q What is her name?
A Shannon Bellamy.
Q Do you have any children?
A I have a son and a stepdaughter, I call her my stepdaughter.
Q All right. And what is your son's name?
A Anthony James Carter.
Q How old is he?
A Eighteen.
Q Okay. And your stepdaughter, what is her name?
A [redacted]
Q How old is [redacted]
A Sixteen.
Q Now, Mr. Carter, do you know the defendant Prentis Wayne Love?
A Yes, ma'am.
Q Okay. How did you meet the defendant?
A I met him through the D.U. organization, he was working for one of the guys in D.U. where we had our meetings at, our weekly and monthly Ducks Unlimited meetings.
Q Okay. Are you very active in that organization?
A Yes, ma'am.

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Q All right. And what specifically does that organization do or what is its purpose?
A Saving wetlands, educating people on water foul and water foul lands, protecting --
Q All right. And do you remember how long ago it was whenever you first met the Defendant Love?
A I want to say 2009.
Q Okay, all right. And was that at a Ducks Unlimited function? Do you recall?
A I wouldn't call it a function. I would say I met him, he was working at a dogs weigh-in.
Q What is a dogs weigh-in?
A A dogs weigh-in is a dog kennel club in Murrells Inlet that belongs to Harris Willard and we was having one of our weekly meetings there for the D.U. and I'm the chairman over the D.U. Green Wings, which is the kids division of Ducks Unlimited, and Mr. Love was there working for Mr. Willard and we got introduced to each other there and been friends ever since.
Q All right. And you said you were friends ever since. Tell the jury how you became friends with Mr. Love, the defendant. What kind of things would you all do together?
A Well, it started just as an acquaintance,

just helping out through the D.U. organization. Like I said, I'm over the kids' Green Wings and he wanted to get into Green Wings division with us in the Ducks Unlimited and be a part of it with the kids, and through him helping build all the games and helping with all the functions with D.U., we become really close through that time. We hunted together, fished together, he duck hunted with my son basically every day of the duck season, and the same thing, fishing, just seven day a week relationship, twelve, sixteen hours a day sometimes.

Q Would he ever spend the night at your house?

A His kids have.

Q Okay. How many kids does he have, Mr. Carter?

A Two.

Q And --

A Two that I know of.

Q All right. And were you close with his children?

A Yes, ma'am.

Q Okay. Is he married?

A I think they are still married. I know he had a wife, I know they had some issues and --

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Q What is her name?
A Tabitha.
Q Okay. Did you have an opportunity to spend time with Tabitha?
A Yes, ma'am.
Q All right. Now, Mr. Carter, you said that he, the defendant, would come to your house sometimes seven days a week during the duck hunting season. How close did you consider you and the defendant at that point after he had spent that kind of time with you?
A Well, it wasn't just during the duck hunting season. I mean, it was literally a seven day relationship for several years.
Q Where did he live in comparison to where you live?
A Probably a half a mile.
Q Okay.
A From my house. He had to pass my house every day going to and from work, but he helped me out a lot when I was going through my surgeries, any kind of help I needed he would come by and get the trash, take it to the dump for me, things. I was having shoulder surgery on both shoulders and lots of things I could not do and he would come help me

do them.
Q And is your home in Georgetown County?
A Yes, ma'am.
Q It is, okay. And how about the defendant's home, was it in Georgetown County?
A Yes, ma'am.
Q All right. Now, Mr. Carter, did you ever have any functions or times whenever you had the defendant and his wife over to your home?
A Yes, ma'am.
Q Okay. Could you, do you recall any particular time at the end of 2009?
A At the end of 2009?
Q Yes.
A Well, I had several big barbecues and oyster roasts throughout the year for my fiance's birthday, for my birthday, for all the kids' birthdays, I cooked and celebrated his, his wife's, his kids' birthdays at my house. I mean, it was never ending, all together all the time.
Q Okay. And would [redacted] be present for those functions as well?
A Yes, ma'am.
Q All right. How about your son A J, was he there?

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A A large part of the time. He lives with his mother here in Georgetown but he would come stay with me the whole summer and anything we did during the summer he was present for that, and stays with me every other week, sometimes he stays with me weeks at a time, obviously during duck season he would stay with me every day that he could stay with me for duck season.

Q Okay. And, Mr. Carter, was there any type of party or function at your house around New Year's Eve in 2009?

A Yes, ma'am.

Q Okay. And do you recall who was there for that party?

A Several people.

Q Do you recall if the defendant was present?

A I'm trying to remember in my head whether it was 2009 or 2010.

Q Okay.

A But, yes, every New Year's function I had he was present from the time I met him, until. Him and his kids, his wife.

Q All right. And do you recall whether or not your stepdaughter [redacted] would be there?

A Yes, ma'am.

Q All right. Now, Mr. Carter, do you recall whether or not your daughter, I will call her your daughter, do you consider her your daughter?
A Yes, ma'am.
Q Okay. That is Minor correct?
A Yes, ma'am.
Q Do you recall if there were ever any times when Minor would spend the night over at the Loves' home?
A Yes, ma'am.
Q And do you know, what was your belief as to why that took place?
A Well, Minor fell in love with their kids the first time she met them, she took to them and they are very loving kids, easy to, anybody would fall in love with them. She would babysit them and sometimes she would just go spend the day over there, go do crafts, back cookies, gingerbread houses, things like that with Tabitha and the kids and Wayne, and sometimes she would go and spend the night. Courtney, their oldest child, would ask Minor to come stay and she would go over and stay with them sometimes.
Q And when she would spend the night over at the Loves' home did you have any concerns at that

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time?
A No, ma'am.
Q Okay. Now, Mr. Carter, what other type of events did you share with the defendant that included your fiance as well as Minor
A What other type of events?
Q What other kind of places would you all go together, for instance?
A We spent many a day in the boat in the river, out in Murrells Inlet itself, out collecting Sand Dollars, off sand bars and, you name it, I mean, we would go out to eat, just everything, everything my family done they was a part of it.
Q Okay. What about fishing, did you all ever fish together?
A Yes.
Q Okay. Tell the jury about that.
A I fished with Wayne multiple times. I put on a tournament, and this is the sixth year of it now, I put on a tournament out of Wachesaw Landing, it was every Thursday afternoon from the first Thursday of time change, through the end of September every year, it was just a small tournament, 6:00 o'clock to dark tournament one day a week up until present. We do it on Wednesdays

now instead of Thursday.
Q Who in your family would actually go to the fishing tournament and actively participate?
A Me, my son, Shannon, my daughter Minor
Q So, Minor would fish?
A Yes, very much so. She was, she got real good at it, she's won one several times, beats us old guys out of our money.
Q Now, Mr. Carter, what type of boat did you have during those tournaments, that you would go with, where Mr. Love was present?
A Well, I have had several boats. I had a larger boat that me and my son and Wayne would go fishing in or I could take the whole family in. And then I had motor problems with it and I had to get a smaller boat and it would only fit two people at a time. It was actually a boat I bought for my son, and me and him rebuilt it together and he just left it at my house because that's the only time he would use it was to come over and stay with me and take it duck hunting or go fishing because of how close we lived to the river, so it stayed at the house and I used it sometimes.
Q Who would be, who would be in that boat during the fishing tournament?

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A A lot of times and Minor me and my son at other times, sometimes me and my fiance.
Q And that is Shannon Bellamy?
A Yes.
Q That is Brittany's biological mother, correct?
A Yes, ma'am.
Q Now, Mr. Carter, were there ever times whenever Minor would go to the tournament but not ride in the boat with you?
A Yes, ma'am.
Q Okay. Please tell the jury what you recall in regards to times she would go to the tournament and not be in the boat with you.
A Well, she become one of the guys. I mean, she fished with me every day of the summer when she was out for school, every day I could take her fishing, four, five, six days a week I would take her fishing and she would fish the tournaments with me and there would be times her mom would have to work so she could fish with me but when her mother was off work she was a big part, still is a big part of the tournament that we put on, it is a big, it's a family thing we do, it is all women and children fish free in it, I mean, it is just a big

family function we do every year and times when Shannon would want to fish or my son would be able to come over and fish [redacted] would fish with Wayne.

Q The defendant?

A Yes, ma'am.

Q And when she would fish with Wayne in the boat were they alone?

A Yes.

Q And where would, where would you and the defendant be during those times whenever [redacted] went on the turnament?

A Ninety percent of the time, 99 percent of the time within sight of each other, we all just fished right there around the little marina at Wachesaw but there was several occasions that they disappeared for twenty minutes, thirty minutes, "I'm going to run over here and fish in this creek and see if I can catch a fish." I mean, the tournament we put on is a one fish tournament, basically two and a half hours to have a good time, whoever catches the biggest fish wins a little pot. People would move around. I mean, lots of people fish in it, most of the time in everybody's sight but there is times that you would lose sight of

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somebody for twenty, thirty minutes at a time, sometimes other people longer but my daughter most of the time never more than thirty minutes.

Q Okay. And whenever you would lose sight of her you said never more than maybe twenty or thirty minutes, is that correct?

A Yes.

Q Now, how familiar are you with the creeks and the channels in that area where you all would be fishing?

A Very.

Q Okay. So have you been in and out of those creeks and channels?

A Yes, ma'am.

Q How many times?

A Well, I'm 47. Basically I would say 45 years.

Q Okay.

A As I was a little boy I grew up just running those creeks with my dad and granddad, as a teenager and now my kids and everybody else's kids.

Q Are some of those creeks close to the area that you would be fishing, are they winding?

A Yes.

Q And how would you describe them with regard

to the foilage and trees and overhang? Could it be secluded?

A Yes. Yes, you could lose sight of somebody from here to those doors back there. I mean, you had to be familiar with Fox Creek and White Creek and Black Creek, it's real winding, turning corners, there might be some places you can see for half a mile but some places you can't see fifty yards.

Q Were you all ever close to a place called Sand Island?

A Yes.

Q And how far, I mean, would you all ever be around that area for the fishing tournament?

A Yes, every tournament.

Q That is all in the same area?

A Sand Island is probably 200 yards from Wachesaw Landing where we put in at. That is, all of that is considered Sand Island and White Creek.

Q And Fox Creek?

A Fox Creek.

Q Okay, all right. Now, through the summer of 2010 was this when the tournaments, the fishing tournaments you were talking about were being conducted?

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A Yes.
Q All right. Now, at the end of the summer, right before, we'll say, school was starting back, how were things between yourself and the defendant Mr. Love, your relationship, was it the same, had it changed in any way?
A It was pretty much the same. I had a few questions that I didn't really know a lot about.
Q Let me ask you this. In regard to the contact that you said was there during the duck hunting season and things like that, was Mr. Love still coming to your home and still spending time with your family?
A Yes.
Q Okay. And were you still seeing his younger children and still having them even come by your house?
A Yes. They spent the night at my house many a time.
Q How about [redacted] was she still spending time and babysitting their children?
A Yes.
Q Now, was there a time when -- let me ask this. In September of 2010, can you please tell this jury what plans you had on September the 11th

of 2010?
A September the 11th, 2010, every year my family goes down to the Dead Dog Saloon, they have a big salute every year for the fallen firefighters on 9/11. We go to it every year, we go eat supper, we donate. Lots and lots of people, big function, lots, just about everybody from the inlet goes and we know most of them. Me, my son, my daughter, Wayne and a few other people was going to the Dead Dog to eat supper and go to the function, it is just a big get together, party, if you want to call it, for the firefighters, and it ended up my fiance Shannon had to work, she couldn't go, [redacted] was supposed to go with me but she got a call from her friend Ashley who wanted her to come over and spend the night with her, so she ended up not going with us and it ended up just being me and my son, several other guys, and Mr. Love was supposed to be there but he showed up late.
Q Okay. Do you recall approximately what time you actually showed up at the Dead Dog that afternoon?
A I would say I got there around 5:00.
Q Okay. And did you have any contact with the defendant as to when he was going to show up that

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day?
A Several times. He was actually on the way when I talked with him, he was, he said, leaving work, he would meet me down there, so --
Q And how long were you at the Dead Dog Saloon before he actually showed up, if you can recall?
A Probably 40, 45 minutes.
Q All right. And where was he working at the time, do you remember?
A He was working with a, I don't remember if he was still working with the landscape company at that time or the tree service or if he was, I know he had been helping one of our friends who owns Biographics, I know he had been helping him do some sign work, I'm not real sure of where he was working at that time.
Q How long did it take you to get to the Dead Dog Saloon from your house?
A Five minutes.
Q Okay. Now, you already stated that Minor didn't come with you, she was going to go to a friend's, Ashley?
A Yes.
Q Where was Minor whenever you went to the Dead Dog Saloon?

A She was at home, she was waiting on Ashley and her mother to come pick her up.
Q Okay. And tell the jury what the name of that road is that you live on?
A Hyatt Avenue.
Q That is the home where she was?
A Yes, ma'am.
Q Whenever you left was anyone with [redacted] at the house?
A No, ma'am. She was home alone.
Q Were you aware at that time what time Ashley was coming to get her?
A They said they would be there sometime between 5:15 and 5:30.
Q So, whenever you left [redacted] on that afternoon when was the next time you saw her?
A The next day, I'm pretty sure.
Q Okay.
A She come home, she may have spent the next night but I think she only spent that night and come home the next day.
Q So is it your testimony, your knowledge she did spend the night with Ashley that night?
A Yes, ma'am.
Q Okay. Whenever the defendant, or did the

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defendant finally show up at the Dead Dog Saloon that afternoon on September 11?

A After multiple calls, him saying, "I'll be there in a minute, I'll be there in a minute," to multiple calls of him not answering the phone for a period there, until finally he said, "I'm about to pull in the driveway, I will be there in two minutes," and fifteen minute later he showed up finally.

Q Okay. And what did you all do that evening at the Dead Dog Saloon?

A He pulled up, he wanted to drink a beer, he didn't have any money, he didn't have any money to donate to the firefighters, I loaned him money to donate to the firefighters and give him some money to buy a beer with and he sat down and eat supper with me and my son.

Q And at that point in time was everything normal in relation, in the relationship that you had with the defendant?

A Yes.

Q Okay. What, if anything, changed that relationship between yourself and the defendant Wayne Love?

A I don't really think I could nail it down to

one thing. Several things changed, his actions, some of the things he was doing.

Q Whenever he -- let me just back up for a second. When you state some of the things he was doing, on the night that he showed up at the Dead Dog Saloon was there anything he was doing that you noticed, that bothered you?

A Just real jumpy, just -- but he said he was coming from work, he said he was tired but he was just real edgy at the time, you know, but he sat down and eat supper with me and my son, I mean.

Q Was he alone?

A Yes.

Q Did he have, did he have a phone with him? You said he didn't have money. What about a phone?

A Yes.

Q What is his phone number, do you recall?

A I deleted it out of my phone.

Q Okay.

A I can't really recall his number in my head, to tell you the truth.

Q That's fine. Had you ever called his number before?

A Yes. Yes, numerous times.

Q All right. So, you used to know it, you

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don't know it now?
A I know it, I just can't think of it at the time.
Q That's fine.
A It is like 2860 or something, I remember, I'm not a hundred percent sure and I logged it in my phone and I never dialed his number, I just hit speed dial for Wayne.
Q He was one of your speed dial numbers?
A Yes.
Q Okay, all right. Now, did you ever see the defendant on the phone that night?
A Oh, yes, several times.
Q Now, do you remember when he, when his birthday is?
A Do I remember when Wayne's birthday is?
Q Yes.
A Early October.
Q Okay. When he had a birthday do you recall that year, which would have been 2010, if he, if you all had a party for the defendant?
A For Wayne?
Q For Wayne or were you ever at a party for Wayne?
A Yes.

Q Okay.
A Yes. I say party, I mean we had his family over and I cooked and we had a birthday cake and stuff like that, I mean.
Q And were there any problems at that time between you and the defendant?
A No.
Q All right. Now let's move forward a little bit. Tell the jury what happened with [redacted] at the end of October, 2010.
A [redacted] I assume this is what you're talking about, she got caught by her stepmother with a cigarette and a little white pill in her overnight bag that she carried to North Carolina.
Q Okay. Let me just back up for a second. Where does her stepmother and biological father live, so the jury knows?
A North Carolina.
Q North Carolina, okay. And so would she visit her biological father and stepmother at times?
A Yes.
Q All right. And so now back to what you were telling the jury, in October of 2010 something was found by the stepmother?
A She called Shannon, and this is what I was

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explained, I wasn't on the phone, she explained she found a cigarette and a little white pill in Brittany's overnight bag and assumed it to be a pain pill and her mother took over from there.

Q Okay. Was [redacted] in trouble?

A Oh, yes.

Q What kind of kid had she been up until that time?

A Normal kid, loves to text on the phone, still loves to text on the phone. She has always been a good kid. I mean, she spent basically every day of her life around me because I had been out of work since I got hurt in July of 2007 and I had, like I said, several surgeries so I was in and out of therapy, [redacted] was there to help me through a lot of it when her mother would have to work.

Q Did you see any of this coming, and what I'm talking about is what just came out from the stepmother, did you see any indication of drugs or smoking?

A No. No, never a hint.

Q Now, after that came out what did you and Shannon do, if anything, regarding [redacted] being punished?

A She was, her phone was taken, she was put on

restriction, she was in some pretty big trouble. I mean, I felt pretty let down, this is my little girl I had been around for so long and so many days fishing and hunting, literally she goes duck hunting with me and the guys, she goes fishing with me and the guys. I was actually kind of shocked, if you want to know truth. I mean, I never seen it coming. I mean, she's a normal kid, every kid has their things about them that they do, you know, but never been in trouble, never anything like that.

Q Once all this came out and Minor was placed on restriction was there anyone else you talked to Wayne about regarding what was found?

A Yes, ma'am.

Q Tell the jury about that.

A Well, Mr. Love at the time was out of work, I had been paying him to work at my house putting up insullation under, under an addition we had built on there, paid him to redo all my flower beds and stuff. Just basically what I could do to help him out, you know. Like I said, we loved his kids, I mean, we fed them and clothed them and treated them like our own. Very open, went over to their house, talked to them about it because we found out that they knew about the pain pill and the cigarettes,

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and went and had a discussion with them about it.
Q Did you specifically talk to the Defendant Love about it?
A Yes.
Q What did the Defendant Love say to you?
A I explained to him it takes a community to raise a child now days, it is not the good old days anymore, you know. He told me he didn't want to get involved, that he didn't feel like it was his place to come to us and tell us anything about it and of course we disagreed with that and that was the end of it. We left their house and went home.
Q After you went home and you got that comment from the defendant regarding him not saying anything did any other information, was any other information disclosed by Minor [redacted] regarding what had been going on?
A Not at the time, no.
Q All right. At any point in time, you can't tell me specifics, I just want to know a simple yes or no, at any point in time did she disclose to you anything regarding contact between her and the defendant?
A Yes.
Q Okay. Now, in that information she provided

to you are you aware of timing and place regarding any type of contact between her and the defendant?
A Yes, ma'am.
Q Okay. Tell the jury just in relationship to time and place what she told you.
A Well, her mother found out to begin with.
Q Okay.
A And her mother called me and would not tell me what happened but later speaking to [redacted] that night when she calmed down enough that she could explain the situation, explain what went on, there was three different times that contact had been made between him and her.
Q Just in regard to her and talking about contact, timing and place?
A In the river, in the boat, between him and her, once on New Year's Eve at his house, and on 9/11 in my house.
Q When you learned these things what did you do?
A My first reaction, when Shannon called me and told me what happened she told me she was going to kill Wayne, that is all I knew, that was all I got. Fortunately I was standing there with two of my best friends. When I got told this she would not

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tell me why, she just said, "You need to come home, [redacted] needs you." I got home, [redacted] come running out the door shaking, crying, she couldn't talk. Her mother was gone. She said, "Mama's going to kill Wayne."

MR. FOX: Objection, Your Honor, we're getting into hearsay now.

MS. LIVELY: Okay.

THE COURT: Sustained.

BY MS. LIVELY:

Q You can't tell me what [redacted] said, okay? You have already talked about some things [redacted] has told you. As a result of what happened on that particular day what specifically did you do?

A Once I found out, talked to Brittany, I picked the phone up and I called Wayne, I told Wayne, I said, "I know what you did, I know what you have been doing, you need to turn yourself in to the law."

Q Mr. Carter, up until that day when you learned this information was there any ill will or dislike by you of the defendant?

A I paid him $400 three days before that to redo my flower beds. No, no ill will at all. At numerous times, "I love you like a daddy, you're

the dad that's never been in my life." I mean, he wanted to learn everything about what I did and how I did with all these different organizations of raising money and all this tournamnet stuff, he wanted to be a part of that. I mean, he literally, his own words, you know, "You're like a daddy to me," and so, no, no ill will at all, didn't have an inkling that anything like this had happened, didn't have a reason to think it.

MS. LIVELY: Thank you, Mr. Carter. Please answer any questions Mr. Fox may have for you.

THE COURT: Cross examination.

MR. FOX: Thank you, Your Honor.

CROSS EXAMINATION BY MR. FOX:

Q Mr. Carter?

A Yes, sir.

Q Forgive me if I jump around a little bit. With regard to you and your wife finding out about [redacted] you found out there was a cigarette and pill. Did you ever find out what that pill was?

A I never found out, no, I did not.

Q Okay. And ever get any clue that this was, did you have an opinion whether it was a one time thing or maybe it had been going on prior to your knowledge?

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A Yes, I did. I was told that by Wayne and Tabitha the night I went over there and confronted them about knowing about the pill and cigarette, they told me they didn't want to get involved.

Q So, again, you testified you and your wife took that very seriously, correct?

A Yes, very serious.

Q Because at that time [redacted] was how old?

A Thirteen.

Q Okay. Now --

A Maybe, I think she was thirteen, maybe just turned fourteen, I'm not sure.

Q And you said when that came to you, when you found that out that was just a shock to you?

A Yes.

Q Okay. Anything in Brittany's behavior that led you to think, "This is a different child from what I'm used to, she's acting different, things are different," anything that, looking back you said, "That might have been a clue"?

A There is lots of things I look back on now and see that she was acting different.

Q Now, with regard to -- but at the time it got your attention, right?

A What?

Q At the time when her mother, Brittany's mother found -- I'm sorry, was that a stepmother that found the pills and cigarette?
A Her stepmother.
Q Her stepmother? At the time the pill and cigarette were found, at that point you didn't have anything that was making you think, alarm bells weren't going off back then, right?
A No.
Q I heard you testify about the kind of boat that you had, that you would use in these fishing tournaments. Do you know what -- did Wayne have his own boat?
A Yes.
Q You know him as Wayne, right?
A Yes, sir.
Q Prentis Wayne Love but everyone calls him Wayne?
A Yes.
Q Did Wayne have his own boat at that time?
A Yes.
Q What kind of boat did he have?
A Fourteen foot aluminum Jon boat.
Q Describe that for people that don't fish and run around the creeks in a Jon boat. What does a

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Jon boat look like?
A A little small, narrow, aluminum boat, has two seats in it. We took and built a deck in it, put a trolling motor on it, made it into a little fishing boat to fish out of it.
Q An open boat, right?
A Yes.
Q It doesn't have a roof on it?
A No, no.
Q It doesn't have a cabin?
A No, no cabin.
Q Fits maybe five or six people on there, maybe a few more, is that about right?
A I would say three people.
Q Very small?
A Four at the max.
Q I got you. So that's the boat that when Minor would go with Wayne that is the boat they would take, right?
A Yes.
Q During any of these times, at anytime when Minor would go fishing, you testified a couple occasions she went off with Wayne, did she ever go off with anybody else besides Wayne?
A No.

Q Okay. What about a fellow named Steve?
A Steve?
Q I don't know his last name.
A I know a Steve Szuch.
Q Was he ever involved in fishing tournaments?
A Yes.
Q To your knowledge did [redacted] ever go off with Steve and fish?
A No.
Q Did she ever fish when you weren't around, ever go with anybody else, Prentis' family or anybody else?
A No.
Q So, just with you and just with Wayne?
A Just with me, just with Wayne -- there may have been once.
Q So, maybe there was times when someone else took her out?
A She may have went one time with my son. I may be wrong there. I don't think she ever been with my son by herself.
Q Okay. Now, these, the creeks and all, you're fishing on the river, the Wachesaw Landing is on the river, is that correct?
A Yes.

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Q Sand Island, you're not on Murrells Inlet in the creeks by the ocean?
A No.
Q You're not talking about those creeks?
A No.
Q You testified about how in parts it is very narrow and vegetation and all. If you were back there, and you say 99 percent of the time people just stay close, you can see everybody, correct?
A Yes, sir.
Q And it wasn't just Wayne that would sometimes go off in creeks, other people would go off hunting for fish, right?
A Yes.
Q That wasn't unusual?
A No.
Q You did that yourself?
A Yes, sir.
Q Go where you think the fish are, right?
A Yes, sir.
Q Okay. And I imagine these are in places at least some fairly tight turns?
A Yes, sir.
Q Did you ever come around one of those turns in a boat and suddenly see someone you didn't

realize was there when you came around the corner?
A Yes.
Q It could be sudden, right, because again it's narrow, tight twisted turns, vegetation?
A Yes.
Q Someone might come up at anytime?
A Yes.
Q Okay. And it sounds like you were, if I understand you correctly, people in these tournaments were fishing in a fairly small area?
A Some of them. Most of them fish right around the marina but there is other creeks you can go in, hundreds of creeks can you go in and fish.
Q But you can do that in just a matter of a couple minutes from Wachesaw, if you have a motor boat you can get to places typically where people would fish in, what, five minutes or so?
A Five to ten minute run, yes, sir.
Q Now, talking about, you also talked about 9/11 and 2010 when you went to Dead Dog like you usually did for the function honoring the firemen and you testified about Wayne saying he was coming, saying he was coming, he seemed to take a little bit longer than normal to get there. Did that ever happen to you before with any of your other

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friends? In other words, someone say, "Look, I'm on the way," then take a little bit longer than you expect?

A Yes.

Q That's a normal thing that happens all the time, isn't it?

A Yes, it's a very normal thing that happens.

Q Okay. Now, you all were good friends, families intertwined, the kids played with the kids, you liked their kids, your daughter babysat Wayne's kids?

A Yes.

Q He was someone that you felt comfortable with to the point of letting your family go down to his house whether you were there or not and his kids come up to your house, correct?

A Yes.

Q Okay. You testified that at the time that [redacted] when it came to your attention and your wife's attention she had been caught with that pill and that cigarette, when that came to your attention, at that time there was nothing from [redacted] about any problems with Wayne, correct?

A No. At some point in the future there was. At that time, no.

Q But whenever that was, it was after being caught with the pill and the cigarette, correct?
A Yes.
Q Whenever it was she said these things happened, it was after that?
A Yes.
Q Okay.
A No doubt about that.
MR. FOX: The Court's indulgence, Your Honor.
THE COURT: Yes, sir.
MR. FOX: Thank you. No further questions, Your Honor.
THE COURT: Redirect.
MS. LIVELY: I just have one question:
REDIRECT EXAMINATION BY MS. LIVELY:
Q Mr. Carter, Mr. Fox was asking you about the creeks and you described how there was overhangs and very narrow. One of the things he asked you was sometimes a boat might come up on you in one of those creeks. Do you recall that question?
A I do.
Q If you were sitting there in one of those narrow creeks and you didn't have your motor on would you hear another boat coming?
A You would hear another boat coming for miles,

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echoing through those swamps. Sometimes you could hear it with your motor running.

MS. LIVELY: Okay, thank you.

THE COURT: Recross?

MR. FOX: No, Your Honor.

THE COURT: Thank you, sir. You may step down.

(Witness excused).

THE COURT: All right, ladies and gentlemen, we're going to recess for the evening. Be back in the jury room at 9:15. We're going to resume the case at 9:15 in the morning. Don't talk about the case, do any kind of outside investigation, and hope you have a nice evening. Continue to keep an open mind.

(Jury excused from the courtroom).

(One juror remained).

THE COURT: Okay. Come on up, I ask the lawyers to come up real quick, the juror said she needed to talk to me, I have to do it on the record. Tell me your name.

JUROR: Ieshia Jenkins

THE COURT: What is your number?

JUROR: 132.

THE COURT: Yes, ma'am, Miss Jenkins.

JUROR: Yes, sir. Earlier I told you I had a doctor's appointment tomorrow, you know, at 8:00 at MUSC.

THE COURT: You didn't tell me that.

MS. LIVELY: MUSC?

JUROR: Do you need me to call and cancel it?

THE COURT: I don't know anything about your condition. You told me it was serious, I didn't have any idea it was in Charleston, I thought it was a local appointment. Is it going to cause you an issue?

JUROR: I was going because I'm pregnant and my daughter has fluid around her heart.

THE COURT: That is what you told me. You did not tell me that it was in Charleston and not a local appointment. That presents a problem. So when do you think you could be back?

JUROR: Probably about 10:00.

THE COURT: Do you have a local doctor, a local OB?

JUROR: The only thing I could think of if I was to call my doctor and ask him if I could be seen in Georgetown in the morning instead of being seen in Charleston, seen at Georgetown Hospital tomorrow.

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MR. FOX: She may have a hard time getting that arranged. At this time, Your Honor, it is 5:30, the appointment is first thing in the morning.

THE COURT: Do you think you can be back by 10:00?

JUROR: Yes, sir.

THE COURT: Okay. Well --

JUROR: I mean, if I need to cancel --

THE COURT: You're asking me to, you're telling me you've got a serious condition so I've got to take you at your word on that, all right?

JUROR: Yes.

THE COURT: I tell you what, go back over there, they'll let you back in, I'll let you know what we're going to do in just a minute, all right?

JUROR: Thank you.

(Juror excused from the courtroom).

THE COURT: Okay. I don't know what to do, we can excuse her or wait until 10:00.

MR. FOX: I don't think there is any chance she gets back here at 10:00.

MS. LIVELY: I would be shocked if she gets back here at 10:00.

MR. FOX: Driving time, it is a good hour and

a half driving time.

MS. LIVELY: There is another problem. There always is, isn't there? I was informed by my victim advocate that the third juror on the front row proceeded to take a nap. You saw it?

MR. FOX: Coming this way?

MS. LIVELY: Yes.

MR. FOX: I saw him closing his eyes even when the judge was giving preliminary instructions.

MS. LIVELY: So we might want to address that, I'm sure, I don't know. Unfortunately this has happened more than once around here where we have had jurors who like to take a nap during testimony. However Your Honor wants to handle that but it was probably during at least half of his testimony that he was kind of slouched down with his hand over his eyes, basically with his eyes closed. So, under those circumstances I would rather, I would also like to have the Court address that issue because if I'm just getting started, I know they have been here all day but that concerns me because tomorrow is going to be nothing but day long testimony.

MR. FOX: Yes.

MS. LIVELY: So that concerns me.

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MR. FOX: I would join in that request, Your Honor. If he's doing that he may or may not be asleep but maybe you can do kind of a general, not pick on any one person but however you think is best.

THE COURT: What are you all asking me to do exactly?

MS. LIVELY: I will tell you right now, because it was only our initial witness, maybe do a general admonishment, they have been here for a late day, they have been sitting around a lot today but tomorrow for them to come in, you know, just freshen up, maybe. I don't know, whatever, however you feel comfortable. I don't want to point anybody out but it was pointed out to me and I feel like I need to bring it to the Court's attention and just have the Court address it. It might just be because they have been sitting around all day and they're tired, maybe a little bit more stuff going on tomorrow early in the morning maybe will help. We might not be able to because the other juror --

THE COURT: I can foresee us sitting around here waiting until 12:00 o'clock until she gets back.

MS. LIVELY: I know.

MR. FOX: Easily.

MS. LIVELY: I would expect probably that would be around the time she would come back because I believe even her getting there and being checked and things they have to do, she being pregnant and her daughter has fluid on her heart -- does she have two appointments?

THE COURT: I think it is the baby.

MS. LIVELY: The baby, I'm sorry, I couldn't tell how far along she might have been.

THE COURT: I can't imagine that being a quick in and out appointment.

MS. LIVELY: Do you want to give her until like 10:00 to see if she can get here and if she can't we put the alternate in her spot?

THE COURT: Let's just bring her back out and tell her to give us an update. Can she call? Who can she call?

THE CLERK: She can actually call me on the phone or give her my number downstairs.

THE COURT: You can bring her back out. Mrs. Jenkins?

BAILIFF: Yes, sir.

THE COURT: Thank you.

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(Juror Ieshia Jenkins returned to the courtroom).

THE COURT: Okay, Miss Jenkins, do you have a way to call here and let us know kind of when we can expect you back in case you get delayed? Since it's a medical appointment it may not exactly start on time.

JUROR: Yes, sir. I'm supposed to call this number back, right?

THE COURT: Mr. Moore can give you several numbers to call. I'm asking have you got the ability to call us, have you got a cell phone?

JUROR: Yes, sir.

THE COURT: If you will, just as soon as you get out of your appointment and getting ready to get back on the road, if you will call us so we can know when to expect you that will be a good help. I hope everything goes well with your checkup appointment.

JUROR: Thank you. I appreciate it.

THE COURT: Thank you.

(Juror excused from the courtroom).

THE COURT: So I guess maybe we just need to, is there a way to contact the other jurors and tell them to be here at 10:00?

THE CLERK: I don't think they were instructed to call us back.

THE COURT: All right.

MR. FOX: Maybe they can get a quick nap in in the morning before we start, Judge.

THE COURT: All right. Thank you.

MS. LIVELY: Thank you, Your Honor.

MR. FOX: Thank you, Your Honor.

(Recessed at 5:45 p.m.).

(Reconvened at 11:14 a.m., April 24, 2012).

THE COURT: Okay, I believe we have everybody we need. Anything before we bring the jury out?

MS. LIVELY: Nothing from the State, Your Honor.

MR. FOX: No, Your Honor.

THE COURT: Okay.

MS. LIVELY: You are going to address the issue of trying to stay awake?

THE COURT: Yes.

MS. LIVELY: That was all.

THE COURT: Thanks for reminding me.

MS. LIVELY: Thank you.

(The jury returned to the courtroom).

THE COURT: All right. Good morning, ladies and gentlemen. We're about to begin the testimony

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again and before we do that I just want to remind everybody how important it is to pay attention throughout the trial and to remain alert, and I know it is difficult to do but it is essential that everyone do that and if you notice your neighbor having trouble focusing you can certainly maybe assist them in maintaining alertness throughout the trial.

So, with that, we'll have the State call their next witness.

MS. LIVELY: Yes, sir, thank you, Your Honor. The State calls Shannon Bellamy to the stand.

SHANNON BELLAMY, after being first duly sworn, testified as follows:

THE CLERK: Please state your name for the record, please.

THE WITNESS: Shannon Bellamy.

DIRECT EXAMINATION BY MS. LIVELY:

Q All right, Mrs. Bellamy, if you don't mind, scoot up enough where we can hear you.

Thank you.

Shannon, where you do live?

A Murrells Inlet.

Q Is it on Hyatt Avenue?

A Yes, ma'am.

Q How long have you lived there?

A Since 2005.

Q And who lives there with you?

A My fiance Tony Carter and my daughter [redacted]

Q And do you work?

A Yes.

Q Where do you work?

A Posser's Barbecue.

Q What do you do there?

A Cashier.

Q Miss Bellamy, how many children do you have?

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A I have one daughter and a stepson.
Q And your daughter's name is?
A [redacted]
Q [redacted] okay. And are you divorced from her dad?
A Yes.
Q Where does he live?
A He lives in North Carolina.
Q What part of North Carolina?
A Charlotte.
Q Okay. And does [redacted] have visitation with her father?
A Yes.
Q Okay. Now, do you know the defendant Prentis Wayne Love?
A Yes.
Q Okay. Tell the jury how you came to know the defendant.
A We initially met him at Shellcrackers, he worked there. That is down from my house. And he was associated with Ducks Unlimited and I'm not sure if Wayne was a member but I know there were meetings together and stuff, so they became friends and that is how I met him.
Q Who is in Wayne's family you met?

A His wife Tabitha and his children A. J. and Courtney.
Q Hold old were the kids?
A At the time four and six when I met them.
Q Do you remember about what time or when it was that you actually met the Love family?
A Either 2008 or 2009, I'm not exactly sure.
Q All right.
A Probably 2009.
Q And after meeting the entire family how often would you and the Love family have contact with each other?
A Wayne was around a lot especially during hunting season and stuff but there was a few occasions we had them over to eat and especially birthday parties and stuff like that, holidays, we cook out or something, they would come.
Q Whenever you met the defendant Wayne Love how old was your daughter, do you remember, in 2009?
A Twelve or thirteen.
Q Okay. About twelve or thirteen years old and do you know how old he was at the time?
A 29 or 30.
Q Okay. Now, was there ever a time when [redacted] would spend time over at the Love home

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without you or Tony being there?
A Yes.
Q Okay. What was the purpose of that?
A A couple times she babysat their kids and a couple times she went over there like crafts with Tabitha and the kids and I think one time she went to cook gingerbread or something, cooking something.
Q On any of those occasions did [redacted] actually spend the night?
A Yes.
Q And do you recall when that would have been?
A I think there was only a couple. The first time I don't know but she did spend New Year's Evde there.
Q Okay. And on New Year's Eve, do you remember when that was?
A When it was turning 2010.
Q December 31st, 2009?
A Yes.
Q Into January 1st, 2010?
A Yes, ma'am.
Q Okay. Now, did you all have any type of function going on at your home for New Year's Eve?
A Yes. We had a New Year's party.

Q All right. Who all was there?
A Wayne and Tabitha, just friends of ours, a couple couples from the neighborhood, people down the street and some friends of Tony's from Georgetown, hunting and fishing buddies, a couple of my girlfriends, and [redacted] was there, the kids were there, Courtney and A. J. were there.
Q Okay. And was there any alcohol consumed at that party?
A Yes.
Q Okay. Did you consume alcohol at that party?
A Yes.
Q All right. How about the defendant, did you observe him drinking alcohol at the party?
A Yes.
Q And when the party was over where did everybody, or particularly where did the defendant go? Do you recall?
A Home.
Q Okay. What about [redacted] where did she go?
A She spent the night with them, they were supposed to do something, Tabitha and her and the kids were supposed to do something so she went home with them and spent the night.
Q Okay. Tell the jury how close your home is

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to where the defendant was living.
A Right around the corner, maybe a mile if you actually tracked it.
Q Okay, all right. And was [redacted] able to drive at that time?
A No.
Q All right. So, if she went over to the defendant's would you know about it?
A Oh, yes.
Q And what was your communication like with your daughter during that time? Did you all talk about everything or did you all have a good relationship?
A Yes, but she was a teenager so I guess as well as a teenager communicates.
Q Okay. Was she allowed to have a cell phone at that time?
A Yes.
Q All right. Did she have her own telephone number?
A Yes.
Q What was her telephone number?
A 450-0813.
Q All right. Now, what type of plan did she have on this cell phone, what could she do on the

cell phone?
A She was on the family plan but she had unlimited calls and texting, was the only one at the time in the family had texting, talking and texting.
Q And was her phone, did it have the capability to take pictures? Do you remember?
A I don't believe so, not the first phone, I don't think so.
Q Okay. Now, you mentioned the New Year's Eve party. Was there other times that Minor spent alone with the defendant?
A During the fishing tournamnet a couple times when she was in the boat with him.
Q Let me back up, then, regarding the fishing tournaments. Were there times you went on these fishing tournaments?
A Yes.
Q When you would go on these fishing tournaments where would you actually fish from?
A In Tony's boat. That was the reason she was in Wayne's boat, we had a very, very small, like a little boat at the time and it was just three people was too crowded to actually fish out of, he was usually by himself so she would fish out of his

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boat.
Q All right. Where would you go on this little fishing tournament, what was the area?
A We put in at Wachesaw Landing, I don't know the name of all the creeks and stuff, we were around Sand Island, the creeks and stuff back there but I don't actually know the names, but around that area.
Q All right.
A There on Wachesaw and Sand Island.
Q And what year was this these tournaments were going on?
A 2010.
Q 2010, okay. You stated that there were other times whenever the defendant would have been alone with Minor in his boat, is that right?
A Yes.
Q Okay. Do you remember how many times that happened, approximately?
A Not exactly. There were a few. I mean, maybe four or five. I know it was more than two, I don't know more than five or six.
Q Okay.
A A few.
Q All right. And after those times whenever

the defendant and [redacted] were alone were there other times after those fishing tournaments had taken place whenever the defendant would still be coming by your house, if it was after hunting season at that point?

A Yes.

Q Okay.

A Yes.

Q What reasons was he coming by your house?

A Him and Tony were friends, he did some work for us in the yard and stuff and they would do odd jobs here and there, they was friends, came over and hang out.

Q At anytime during your relationship, your family's relationship with the defendant did you have any problems with him or any problems between him and [redacted]

A No.

Q In September of 2011, September 11th, 2011 specifically, do you recall what you were doing that day?

A Working.

Q Where were you working?

A Litchfield Beach Golf Course.

Q And what were your hours for that day?

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A 3:00 to 11:00, that was my normal schedule.
Q 3:00 p.m. until 11:00 p.m.?
A Yes, ma'am.
Q What was the rest of the family supposed to be doing that day?
A They were going to the Dead Dog for the firefighter tribute for 9/11.
Q Who all was planning on going to that tribute?
A Tony, Minor [redacted] A. J. and some friends of Tony's, buddies he fished with, Wayne was going with them.
Q All right. And do you know about what time they were planning on going?
A I think they were planning on going late afternoon or early evening, around 5:00 or so, 6:00. I'm not exactly sure.
Q Because you had to work?
A Yes.
Q All right. Whenever you left the home at 3:00 o'clock or whenever you left to go to work who all did you leave at your house?
A Tony, Minor [redacted] and A. J.
Q All right. And whenever you got home that night who was in the home?

A Tony and A. J.
Q Where was Minor
A She had changed her plans and went to spend the night with her best friend Ashley, went to Ashley's house.
Q What is Ashley's last name?
A Jenkinson.
Q Are Ashley and Minor pretty close friends?
A Yes.
Q Okay. And so that day whenever you were at work, at that time did you have any idea of anything that had gone on at your home?
A No.
Q All right. Now, Shannon, after the September 11th event at Dead Dog that you were not a part of, what was the next thing that happened that concerned you regarding your daughter Minor
A She had gone to spend the weekend at her father's house and her stepmother had called me and told me she had found a cigarette and a pill in her bag.
Q Okay. So on a weekend -- was this one of her normal weekend visitations?
A She doesn't have set weekends, I have full custody but he does have, if she chooses to go I

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let her go, there wasn't a set weekend, it was at the end of October.

Q All right. And on this weekend who was it that contacted you about this issue?

A Her stepmother.

Q All right. What did you do as a result of that telephone call that you received?

A When she got home I sat her down and talked to her about it and she was put on restriction.

Q Okay. Specifically state who you're talking about?

A Minor

Q [redacted] was put on restriction?

A Yes, ma'am.

Q Was this the first time, or not, that you had an issue such as this arise regarding you daughter?

A The first time ever.

Q Okay. Were you surprised or caught off guard?

A A little bit surprised but not really caught off guard. I just kind of thought that was typical teenager trying stuff for the first time.

Q How did you remedy it, what was your restriction of her?

A I took away her phone, I-Pod. She pretty

much was allowed to go to school and come home, couldn't go anywhere with any of her friends or anything, no computer, no anything.

Q You just shut her down?

A Yes.

Q All right. And how long had it been since she had any contact with the Love family? Do you remember by that time?

A No, not specifically. I mean, I -- oh, yes, she would have seen them in October because his birthday is October 6th, we went to their house, they had a birthday party for him, but between October 6th and then I'm not sure but --

Q Whenever you got all the equipment, I will call it, the phone, I-Pod, all the computer and everything, what did you do with that information, what did you do with her phone and with everything that you received from her?

A I went through her phone, I was trying to just check her text messages and that sort of thing but of course being a typical teenager she had erased most of it from her phone.

Q All right. Were you able to retrieve anything from the phone that related to the pill and the smoking?

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A Not on the phone itself. I went on the computer and checked the phone record, I was just going to see who all she was texting, that kind of thing.

Q Okay. And what kind of a phone plan, who do you have it with?

A T-Mobile.

Q And what, with your contract, what are you allowed to do in regards to checking your phone record?

A You can see incoming and outgoing calls and texts. You can't actually see the text message but you can see the incoming and outgoing phone numbers.

Q Do they give you volume, like how many?

A Yes. It lists every one.

Q All right. Was this available for [redacted]s phone?

A Yes.

Q Okay. And did you actually go on the computer and pull the record for Brittany's phone?

A Yes.

Q All right. And is this something you can get along with a copy of your bill?

A They used to send it to you but they don't

anymore. I guess you can request it, but you can print it yourself off the computer.

Okay. So, everything that you're getting in regard to the record, then, you're able to access by the computer?

A Yes.

Q Okay. You have done that yourself, right?

A Right.

Q All right. Let me go back for just a minute, just so we can show the jury a picture of your home, so they can get a visual in their mind.

MS. LIVELY: If I may approach, Your Honor?

THE COURT: Sure.

Q This is 8 and 9, I'm going to show you these two photos and ask you if recognize State's Exhibit 8 and State's Exhibit 9?

A Yes.

Q What is State's Exhibit 8 and 9?

A It's the front of my house.

Q Is this a fair and accurate representation of what your home would look like in 2010?

A Yes.

Q Okay.

MS. LIVELY: Your Honor, the State would move to offer 8 and 9 into evidence at this time.

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MR. FOX: Without objection.

THE COURT: All right, they are in evidence.

(Two photoraphs marked and received in evidence as State's Exhibits 8 and 9).

MS. LIVELY: Your Honor, we do have the ability to actually pull these up for the jury to see on their monitor. So, Miss Pop, will you do so?

BY MS. LIVELY:

Q What is this black thing with wheels on the front?

A Tony's cooker.

Q Did you get a lot of use out of that cooker?

A Oh, yes.

Q Were there several parties and just gatherings of friends in that neighborhood at your home?

A Yes.

Q Was that a common occurrence?

A Yes.

Q Was the defendant present at many of those?

A Yes.

Q All right. State's Exhibit Number 8 is a little bit farther out, which is the one that shows your entire yard and the street, correct, as you're

looking at it?
A Yes.
Q That is a pretty big yard. Is that pretty much your entire lot that you all were on?
A The back yard is about the same size.
Q Okay, all right. So plenty of room for friends and family?
A Oh, yes.
Q All right.
MS. LIVELY: Okay, thank you, you can actually take those down now.
Q Once again where is your house located?
A On Hyatt Avenue in Murrells Inlet.
Q Is that Murrells Inlet in Georgetown or Horry County?
A Georgetown.
Q Georgetown County, okay.
Now, getting back to the phone records, whenever you pulled up the information that you can pull up regarding incoming and outgoing, you said that you cannot read what is actually the content of the text, is that what I'm understanding?
A Correct.
Q In regard to your statement and determining volume, were you able to look and determine how

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many incoming and outgoing texts were going from her phone?
A Yes.
Q Okay. And was there anything that you saw in regards to looking at those messages that gave you concern?
A Yes.
Q And what was that?
A There were quite a number of incoming and outgoing text messages between her and the defendant Wayne Love.
Q How did you know it was her and the defendant Wayne Love?
A Because I knew the phone number.
Q What is his phone number?
A It was 283-2720. I don't know what it is today.
Q Okay. And so whenever you saw all the incoming and outgoing data did you actually print that data out?
A Yes.
Q Okay. And did you provide that information to me?
A Yes.
Q All right. And whenever you printed out all

that data and reviewed it -- do you know an exact number of text messages between the two of them?

A No.

Q Okay. All right. And in going through all the text messages, if I show you these just to refresh your recollection initially could you tell us a volume of how many text messages were going in and out maybe for just like the month of September of 2010?

A Hundreds.

Q Between whom?

A [redacted] and Wayne.

MS. LIVELY: Your Honor, if I may approach?

THE COURT: Yes, ma'am.

Q I'm going to hand you what has been marked as State's Exhibit Number 5 and ask you, it is several pages, ask you if you recognize those documents I'm handing you?

A Yes, ma'am.

Q And again, in regards to your plan do you have access to those business records as a result of the plan you have with T-Mobile?

A Yes.

Q Are you able to actually get those records and print them out for your own personal use?

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A Yes.
Q Okay. And in receiving those documents off the computer are you able to alter them in any way?
A No.
Q And whenever you printed out those documents is there anything on there that you actually put on there yourself regarding you looking at the incoming and outgoing?
A I highlighted them and wrote the month.
Q That is the only way you modified or documented anything in regard to those particular records?
A Yes.
Q Okay. Are they a fair and accurate representation of the records that you pulled off the computer, that reflect incoming and outgoing texts for this particular phone with [redacted]
A Yes.
MS. LIVELY: Your Honor, the state would move to enter the, I believe it is Exhibit Number 5, into evidence at this time.
MR. FOX: I would object without having the keeper of the business record, someone with T-Mobile come and testify about how it is they keep them on the computer. She can testify how she

accessed them off the computer but I would object without having someone from T-Mobile to explain how they accumulate the information, store it and what their process is, because I think it is a prerequisite for introducing business records.

MS. LIVELY: Your Honor, these being documents that are a report, that are in a data compilation, which is what it is, this person being, Miss Bellamy has clearly stated this is part of her data plan, this is something she just printed off the computer, it is not something she can alter in any way, it is something that is sent to her, she does not even receive paper documents anymore, she receives everything by computer.

Unless there is some type of an indication that the preparation indicates some type of lack of trustworthiness in this particular record, then the fact she can testify as to them being her daughter's number, records that are provided to her through her plan as well as her not being able to alter them in any way, they are printed out, just that, a report, it would be like her walking in here with her telephone bill which we would be able to show to the Court and to the jury regarding her telephone number and the amount of money that she

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pays to pay her bill or the incoming or outgoing calls, as long as it does not have the hearsay information of the text messages. All we're showing is just the actual data compilation back and forth in the telephone record.

THE COURT: All right. Ladies and gentlemen, I'm just going to ask you go back to the jury room for a few moments while we resolve this. Don't talk about the case, continue to keep an open mind.

(The jury was excused from the courtroom).

THE COURT: My question is wouldn't she have to be the custodian, the actual maker of the record in order for the business record exception to apply?

MS. LIVELY: Well, Your Honor, the circumstances with how computerized these records are now days and the fact she has to know enough information about her own personal data that she is seeking in order for her to receive this information, then I don't believe you have to have the custodian of the record. It is not like somebody is at the doctor's office and we're talking about records that are under seal and that nobody has access to. What we have is someone who through her data plan, through having a password

protected account can go on the computer and pull up these documents that are in relation to just her incoming and outgoing volume. It doesn't go to, like I said, the actual content of what's being texted back and forth.

So, with it being a data compilation it would be like us just bringing in every one of her phone bills to say she had over so many text messages per month. The only difference is she pulled it off the computer because she has access to that herself instead of having brought in her mailed bill which would have exactly the same information on it and that information is sent to her as personal information on her personal, on her personal telephone and there is no concern regarding trustworthiness of this particular document because it is something that she cannot alter, it is something that comes off the computer straight from the website as provided in her contract.

We did have her phone dumped which I was going to have one of the detectives come in and testify about that and that obviously is one where I'm going to have the detective come in here and say, "I physically went into the phone, pulled data off the phone using this particular type of

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instrument," and that information, obviously I'm going to have to have him come in and testify about that because how that was done and the reliability of it is obviously an issue.

However, where we have got just the volume and data compilation it is different than dealing with, you know, I'm not going to sit here and say the truth of the matter asserted is that he sent a text, "Please send me a naked picture," that's not what we're able to find out looking at the volume here, we're not able to point out, "Hey, meet me later," on the phone. It is data she is paying for incoming and outgoing on the phone and she can look at that information, is what it is, it is not anything subject to her being able to change, so that is the reason we feel like, even though I understand what you're saying, and that is absolutely related in regard to a particular kind of record, the kind of record we're dealing with here is just a data compilation and there is no concern regarding the trustworthiness of it.

MR. FOX: Your Honor, I just reply it doesn't matter if it is a data compilation or memorandum, it is covered by the rule 803(6), it says you've got to have, it can't be introduced, it has to be

shown by the testimony of the custodian or other qualified witness unless the source of information indicates lack of trustworthiness. That is the second part. If there is an indication of trustworthiness it doesn't matter if the custodian is here, we never really get to that issue. The rule is very specific, data compilation isn't held to any lesser standard than the other items listed in the rule. It is clear the custodian or other qualified witness, which would be someone who knows how the records are kept, how it's compiled, et cetera, not just how they are accessed, is required under the rule.

MS. LIVELY: And, Your Honor, what I'm trying to provide, and I understand exactly what Mr. Fox is saying in regard to custodians or other qualified witness, we look at the situation of whether or not even as a lay witness she would be qualified to say, "I used my password, I know the telephone number, it is part of my data plan, I'm able to access this information, I cannot alter it because it is what it is on the computer," and then that would be enough to establish that she knows what she's pulling off, the information comes from the phone that she is using, or that her daughter

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is using. That would be my argument in regards to her being qualified to establish that is how she got the record and that is what, and that is information that she accessed through her own personal account.

THE COURT: Okay. Well, I understand the theory, however I believe I've got to sustain the objection under the rule. I don't believe foundation has been met. I think the foundation requires someone to come in, whether the custodian or other qualified witness, is the phrase used in the rule, to establish the record was made and kept in the course of regularly conducted activity and was the regular practice of the business activity to make the record and it was made at or near the time of the event and it was made by, information transmitted by a person with knowledge.

An Other qualified witness is any person who can credibly testify the record satisfies the requirement of the exception and I don't believe Miss Bellamy would be qualified to testify about T-Mobile's business practices and consequently there is inadequate foundation for the business record exemption to apply, so it would be hearsay and inadmissible.

MS. LIVELY: Your Honor, regarding clarification as to what I can ask this witness, she did go into the record and was able to determine that there had been text messages back and forth between her daughter and the defendant in volume, she actually said she took away the phone and she was going to limit, when she got the phone back, how much text messages she can have. This kind of led to the question to the daughter, "Why in the world were you and him having so much contact," and that is where the disclosure came out, so I just need to make sure in regard to your ruling I understand we can't actually put the records in.

THE COURT: Right.

MS. LIVELY: She obviously did review them, which was the premise for her going to the daughter and saying, "What in the world is this all about," and then that is where it came out.

THE COURT: Well, that testimony about the volume has already come in.

MS. LIVELY: Yes, sir.

THE COURT: Without objection.

MS. LIVELY: Okay. And that is how I will address it, then, whenever I reconvene with my

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direct testimony.

THE COURT: All right. Anything else before we bring the jury back in?

MS. LIVELY: No, sir. Let me just, I'm going to retrieve the record.

THE COURT: Okay.

All right, you can bring the jury back in. Thank you.

(The jury returned to the courtroom).

THE COURT: Yes, ma'am.

MS. LIVELY: Thank you, Your Honor.

BY MS. LIVELY:

Q Before we broke, Miss Bellamy, we were talking about you reviewing some of your phone records involving [redacted]. Is that correct?

A Yes.

Q All right. And after this incident occurred where she got put on restriction what information did you actually review in order to kind of follow up and see what in the world she had been up to over the past few months?

A Her phone calls, incoming and outgoing calls, text messages.

Q And once again was there anything that struck you out of the ordinary in reviewing those records?

A Yes.
Q What was that?
A The amount of calls between her and Wayne.
Q Okay. Just calls or --
A Text messages, there was a few actual phone calls but text messaging mainly.
Q And was it one or two text messages that you were seeing?
A No, it was hundreds.
Q I'm sorry?
A Hundreds.
Q Hundreds?
A Yes.
Q When you saw this what did you do, what did you say to [redacted]
A I asked her what was going on. I mean, what in the world they would have to talk about, talk or text between her and Wayne.
Q Okay.
A And she initially just tried to blow it off like it wasn't any big deal and I just explained to her that a 30 year old man and fourteen year old child, that is just not normal, that would kind of be like myself texting her friend Ashley who was her age hundreds of times a day and she said,

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"Well, what in the world would you talk about," and then I said exactly, that is when she got it that that is not normal, that is not right, she realized that age something is wrong.

Q And after this conversation with [redacted] did she ever disclose anything additional to you?

A Yes. When I got across to her why I was asking, that I knew that something like this, that is abnormal, something is not right.

Q Okay.

A She told me --

Q All right. You can't tell me exactly what happened but I need to ask you time and place, okay?

A Okay.

Q Was she able to give you any information as to the time the first event occurred?

A Yes.

Q When was that?

A New Year's Eve.

Q 2009?

A Yes.

Q And where did this take place?

A At their house, at Wayne's house.

Q At Wayne's house, the defendant's house?

A Yes.
Q And was what she told you something inappropriate?
A Yes.
Q Now, the next time -- was there a next time?
A Yes.
Q That she disclosed?
A Yes.
Q Tell this jury the time and place that she disclosed to you in regard to there being another time?
A During a fishing tournament when she was with Wayne in his boat.
Q When she was alone with him?
A Yes.
Q After disclosing these things to you did she actually give you a final time whenever there had been some type of inappropriate event?
A Yes.
Q When was that?
A 9/11.
Q Did she tell you 9/11 of 2010?
A Yes.
Q Okay. Where did this happen?
A In my house.

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Q When you learned these things, Shannon, what did you do?
A Lost it, went to his house, he wasn't home and I was looking for him.
Q Did you ever threaten him, Shannon?
A I never found him to threaten him.
Q Who did you contact regarding what you learned?
A The police.
Q Was this matter reported?
A Yes.
Q And after the matter was reported was there anything that you had to do to follow up or assist in the investigation?
A Yes, ma'am. I took her to the Children's Recovery Center.
Q Did you know what the purpose of that was for?
A Yes. That was, they videotaped, they videotaped an interview.
Q And are you aware of anyone else interviewing her before that time?
A Just the policeman that came that night.
Q Okay. And by that time, according to the information provided to you from [redacted] had

there been any other inappropriate contacts from the September 11th time, until you called the police?

A No.

Q And do you remember the day that you called the police when you learned this happened?

A October 26, 2010.

Q October 26, 2010?

A Yes.

Q After Minor went to the Children's Recovery Center for the forensic interview what else did you do as a mother to assist your child?

A I asked the people at the Children's Recovery Center if they could recommend a counselor for me, which they did.

Q And have you followed up with that recommendation?

A Yes.

Q All right. And who is Minor seeing?

A Denise Brand.

Q And how long has she been seeing Denise Brand?

A Since December, 2010, until the present.

Q Is she still a current client of Denise Brand?

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A Yes.

MS. LIVELY: Just one moment, okay, Miss Bellamy?

Miss Bellamy, thank you so much. Please answer any questions Mr. Fox has for you.

CROSS EXAMINATION BY MR. FOX:

Q Miss Bellamy, you reviewed your daughter's phone records and she had an unlimited plan, right, for calling and texting?

A Yes.

Q So she had, is it fair to say in a given month -- you reviewed several months worth of records?

A Yes.

Q Is it fair to say in an average month that she had thousands of calls and texts?

A Yes.

Q Okay. To any number of people, different people?

A Yes.

Q Okay. And in fact it's a fairly, if you look at the physical records themselves it is a fairly high stack, isn't it?

A Yes, sir.

Q Okay. So, Wayne Love was far from the only

person she was in contact with on her phone through calls or texts, correct?
A Correct.
Q Now, with regard to the cigarette and pill that was found when she went up to stay with your ex-husband, did you ever determine what kind of pill that was?
A Vicodin
Q it was what?
A Vicodin.
Q Did you ever find out where Tabitha obtained that pill?
A You mean [redacted] yes, sir.
Q I'm sorry, [redacted] I apologize. So your daughter got that -- where was that, where did she get that?
A Her friend Ashley.
Q Ashley Jenkinson?
A Yes.
Q Was that the only time she had Vicodin?
A I don't know.
Q Okay. You never found out whether it was a one time thing or ongoing issue?
A No.
Q Did you ask her?

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A Yes.
Q And what -- did she give you any indication whether it was a one time thing?
A I don't remember.
Q Was she being open with you about it?
A Yes, but she was scared, she knew she was in trouble so I'm not sure exactly how much she was being --
Q Now, when you go back to the records, when you pull those records, you just got it, you have your daughter's number indicated for her phone and whoever she was contacting or whoever was contacting her, correct?
A Yes.
Q In other words, it showed the existence of a text or call but not what was contained in that message?
A Correct.
Q The call itself, of course you don't know, they don't record the call, you just know that the call happened, correct?
A Correct.
Q So there is absolutely no way of knowing what the content of that contact back and forth between [redacted] and Wayne was?

A Correct.
Q All right. Now, the fishing tournament, you say there is a lot, basically people that knew each other, right, your husband organized this thing, your fiance organized this thing, there would be friends around. Was it your father would go or Tony's father participated in these?
A Tony's fther.
Q [redacted] would sometimes fish with him, correct?
A Tony, yes.
Q Or with Tony's father?
A No.
Q Never with Tony's father?
A No.
Q Do you know a man named Billy Buckhardt?
A Yes.
Q Did [redacted] ever go fish with him?
A No.
Q Never?
A Never.
Q What about anybody other than Tony or Wayne?
A No, sir.
Q Okay. Did you go to all the tournaments?
A No, sir.

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Q Okay. How many would you say you missed during the course of the tournament season?
A I have no way of recalling that. They start usually in April and last through September and I was working, so if I was off I would generally go, so I have no way of knowing that.
Q From April to September, right?
A Yes.
Q Once a week, roughly, on average?
A Yes, Thursdays.
Q Five or six months worth, say 18 or 20 times, say something like that?
A Something like that.
Q As far as you know did Minor attend all of them?
A No, she didn't attend all of them.
Q Okay. When you --
MR. FOX: The Court's indulgence.
Thank you Your Honor. No further questions.
THE COURT: Redirect?
MS. LIVELY: Yes, sir, Your Honor, thank you.
REDIRECT EXAMINATION BY MS. LIVELY:
Q Miss Bellamy, when you were reviewing those records, incoming and outgoing, you already said you saw hundreds between the defendant and your

daughter. Right?
A Yes.
Q In reviewing those records did you see hundreds of text messages between [redacted] and any other 30 your old man?
A No, ma'am.
MS. LIVELY: Thank you.
THE COURT: All right. Thank you, Miss Bellamy.
(Witness excused).

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[redacted] [redacted] after being first duly sworn, testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record.

THE WITNESS: [redacted]

DIRECT EXAMINATION BY MS. LIVELY:

Q [redacted] can you just scoot up a little bit, if you don't mind, so everybody, everybody can see you?

Okay, [redacted] where do you live?

A Murrells Inlet.

Q Is that Georgetown County or Horry County Murrells Inlet?

A Georgetown County.

Q And how old are you?

A Sixteen.

Q Are you in school?

A Yes, ma'am.

Q Where do you go to school?

A St. James High School.

Q And how are you doing in school this year?

A Good.

Q Now, there has been a litle bit of talk about whenever you found, or a pill was found. I just want to talk about that real quick. Okay?

A All right.
Q Now, [redacted] do you have a drug problem?
A No, ma'am.
Q When that pill was found where did you get that pill?
A Ashley Jenkinson.
Q And is she your friend?
A Yes, ma'am.
Q Why did you get that pill from her?
A Experiment.
Q And have you experimented with any other drugs?
A No, ma'am -- well, cigarettes.
Q Cigarettes? How about alcohol, have you experimented with any alcohol?
A Yes, ma'am.
Q And about how old were you at that time, again?
A Thirteen, fourteen.
Q Fourteen? Had you ever been in trouble like that before?
A No, ma'am.
Q Had you ever been kicked out of school for anything before?
A No, ma'am.

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Q Were you a good student back then?
A Yes, ma'am.
Q Now, Minor [redacted] in the fall of 2009 did you have the opportunity to meet the defendant Prentis Love?
A Yes, ma'am.
Q You did? And do you remember whenever you met him where you were?
A I was at my house.
Q Okay, all right. And how was he introduced to you?
A Tony introduced him to me.
Q And Tony is?
A My stepfather.
Q Not technically your step-dad but you refer to him as your step-dad, is that right?
A Yes, ma'am.
Q He's not married to your mom, right?
A They're engaged.
Q How long had he lived with your mom and you out on Hyatt Avenue?
A Years, five or six years.
Q Okay, all right. And your father, where does he live?
A North Carolina.

Q And has he remarried?
A Yes, ma'am.
Q What is your stepmother's name?
A Kelly Bellamy.
Q What is your father's name?
A Timothy Bellamy.
Q Do you have any brothers or sisters?
A Yes, ma'am. I have a stepbrother Anthony Carter and I have a little sister Katie Bellamy, Summey Freeman and Chance Bellamy.
Q Do you like kids?
A Yes, ma'am.
Q Did you have the opportunity to spend any time with the defendant's kids?
A Yes, ma'am.
Q What are their names?
A Courtney and A. J.
Q When you met them how old were they?
A I think six and four.
Q Did you spend any time with them at their house?
A Yes, ma'am, several times.
Q Why is that? You're thirteen, four years old and six years old, what are you doing hanging out with little kids?

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A Well, we had done arts and crafts before, around Christmas time we made cookies, gingerbread houses, and several occasions I would babysit them.
Q How would you describe the relationship between you and the defendant's wife Tabitha? Did you all get along well?
A Yes, we got along.
Q And did you like their children?
A Yes, ma'am, very much.
Q How about Wayne, how did you feel about him?
A We were close.
Q At what point in time, if ever, did the relationship between you and the defendant change from him being the father of these kids you would babysit, to something else?
A What do you mean?
Q Was there a time whenever something happened between you and Wayne at his house?
A Yes, ma'am.
Q Do you know what I'm referring to?
A Yes, ma'am, New Year's Eve.
Q New Year's Eve? And let me just back up. You actually had a forensic interview at the Children's Recovery Center in 2010, isn't that right?

A Yes, ma'am.
Q This is after you admitted everything to your mom, is that right?
A Yes, ma'am.
Q Was that the first time, at the forensic interview, where you actually sat down and told as much as you could remember about what had happened between you and the defendant?
A Well, a couple days before I had told the cops.
Q All right.
A But that was the first time, yes, that I had ever been interviewed.
Q Was that interview a detailed event about everything that had happened?
A Very.
Q All right. So let me take you back, then, to New Year's Eve 2009. How old were you?
A Thirteen.
Q All right. And where were you on that night after you had left your home?
A His house.
Q His house? Who all was there?
A Me, Tabitha, Courtney and Aden.
Q Where was Tabitha?

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A Tabitha had went and got in the bed.
Q Let me ask you what type home did they live in?
A Trailer.
Q It was a trailer, what, a single wide, double wide, what?
A I think single.
Q Okay.
A I don't know.
Q Was it big?
A No. Small.
Q And so she goes to bed and where are the children? Are they asleep or running around or what?
A I put them in the bed.
Q Where did you go after you put the children to bed?
A On the couch.
Q And where was the defendant?
A The defendant had dropped us off at his house and he had went back to my house, I don't know why, I never found out, and then he had returned later.
Q Okay. When he returned later tell the jury what happened.
A Well, Tabitha was in the bed and he at first

just came in the house, he went and changed clothes and we were sitting on the couch.

Q Do you know whether or not he had dranked any alcohol that night?

A Yes, ma'am, he did.

Q Did you actually see him drinking alcohol?

A Yes, ma'am.

Q Could you smell any alcohol on him?

A Yes, ma'am.

Q Had you dranked any alcohol?

A No, ma'am.

Q Now, had you taken any pills?

A No, ma'am.

Q Now, [redacted] when he sat on the couch next to you what did you do?

A At first we were watching TV and then later on that night -- later on that night he had kissed me and he tried to put his hand up my shirt.

Q A deep breath, okay? When he kissed you what kind of kiss was it?

A A french kiss.

Q What part of his body touched your body?

A His hands.

Q And where did his hands go?

A They tried to go up my shirt.

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Q What did you do?
A I told him no and I told him to stop.
Q Did he stop?
A Yes, ma'am.
Q Did he say anything to you?
A No, ma'am.
Q What did you do after that happened?
A I had actually went to sleep and he had got on the other couch.
Q Did he touch you or do anything else that night?
A Later on that night, yes, ma'am.
Q What happened?
A I had got up in the middle of the night to use the restroom and when I came back in the living room he started kissing me again and again tried to stick his hand up my shirt and I told him to stop and he got back on the other couch and I went back to sleep.
Q Okay. What were you feeling at that time?
A Scared, nervous. I didn't know what was going on.
Q Why didn't you go home at that time?
A I don't know, I didn't think about it.
Q The next day what did you do?

A I had stayed at the house with Tabitha and Wayne and the kids and later on that evening my mom came and got me.
Q Did you tell anybody that day?
A Not that day.
Q Now, was there -- how were things progressing between you and the defendant after that point?
A What do you mean?
Q Did he ever say anything to you about what had happened?
A No, ma'am.
Q He didn't? When was the next time the two of you all had the opportunity to be alone together?
A In the fishing tournament.
Q In the fishing tournament, okay. Tell the jury about that.
A I don't remember the date, one of the fishing tournaments, mom was not working and so she rode with Tony in their boat and I rode with Wayne in his boat.
Q Okay. And do you like to fish?
A I used to.
Q You used to? And before the fishing tournamnet you were in with the defendant would you fish with your step-dad Tony?

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A Yes, ma'am, several times.
Q Okay. And were you a pretty good fishearwoman?
A Yes.
Q Now, [redacted] whenever you were on the boat with the defendant at this fishing tournament, tell the jury if anything happened on that time.
A The first time?
Q The first time. We're going in chronological order, okay, the very next time you had an opportunity to be alone with him was that whenever you were on the boat with him?
A Yes, ma'am.
Q Tell the jury what happened on that time.
A He -- at first we were talking, just goofing off and then he started kissing me and he stuck his land up my shirt and he also tried to get down my pants.
Q What did you do?
A I told him no.
Q Did he stop?
A Yes, ma'am.
Q Had he been drinking that day?
A No, ma'am.
Q Where was your step-dad when this was going

on?
A They were in the other boat.
Q Where were you guys in regard to his boat?
A We were in the river, I don't know the name of the creek.
Q Okay, all right. Was there any, were there any other boats around you could see?
A No, ma'am.
Q Now, after that happened did you tell anyone?
A No, ma'am. Well, I told Ashley, my best friend.
Q You told your best friend Ashley?
A Yes, ma'am.
Q Did you ever tell your parents?
A No, ma'am.
Q [redacted] why didn't you tell anybody at that point?
A I was scared.
Q Was there a next time whenever you were alone with the defendant?
A Yes, ma'am. It was in another fishing tournament. Once again my mom was off work and she wanted to go with Tony so I went with Wayne and the same things happened.
Q Would that be the same exact inappropriate

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touching?
A Yes, ma'am.
Q Touching, and you need to be specific, was it the chest area?
A Yes, ma'am.
Q How about was there any kissing this time?
A Yes, ma'am.
Q And did he try to touch anywhere else?
A No, ma'am.
Q And would he ever say anything to you when he did these things?
A No, ma'am.
Q Did he tell you how he was feeling about you or why he was doing these things?
A No, ma'am.
Q Did you ever say anything to him?
A No, ma'am.
Q At this time, by the time this happened the third time were you texting him or having contact with him by then?
A Yes, ma'am.
Q Okay. And how much contact were you all having?
A A good bit.
Q A good bit? Would you say you texted him ten

times daily, fifty times daily? Give me a general idea.

A Around this time not that much, maybe ten or twenty. It wasn't like an everyday thing.

Q What kind of things would you text him?

A I honestly don't remember. It was conversational.

Q Was there a time after that that you were alone with the defendant again?

A Yes, ma'am.

Q All right. Tell the jury about that.

A It was another fishing tournament, it was toward the end, it was one of the last ones I fished with him, and once again the kissing and the trying to go up my shirt.

Q And so his hand was actually reaching up into your shirt?

A Yes, ma'am.

Q What part of your area was he touching?

A My breasts.

Q Was he kissing you at that time, too?

A Yes, ma'am.

Q Now, [redacted] was there another time where you were alone with this defendant and more things happened?

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A Yes, ma'am.
Q All right. Let me take you to September 11th, 2010. Do you recall that day?
A Yes, ma'am.
Q All right. Tell the jury what you were doing own September 11th, 2010.
A That morning Wayne, my stepfather Tony Carter and my stepbrother A. J. Carter were supposed to go to the Dead Dog Saloon for the firefighters and I was supposed to also go. That morning Tony and A. J. were oversleeping so I texted Wayne and I was letting him know, "Hey, they are sleeping, they are going to be late." He then asked me for a nude picture.
Q I'm sorry, a what picture?
A A nude picture.
Q A nude picture of who?
A Me.
Q Okay. What did you do?
A I told him no.
Q Okay. And what happened next?
A He had asked several times that day, he repeatedly asked me to send him nude pictures.
Q What did you do?
A I told him no.

Q So, you were texting back and forth to him, to the defendant?
A Yes, ma'am.
Q At one point in time he asked for a nude photo of yourself?
A Yes, ma'am.
Q Did you ever send that?
A No, ma'am.
Q Did your step-dad and A. J. finally get up?
A Yes, ma'am, they did.
Q They did, and where did they go?
A They had went down to the Dead Dog Saloon later that evening.
Q And --
A Around 6:00.
Q At that point in time you had decided not to go, is that correct?
A Yes, ma'am. My best friend Ashley Jenkinson called me and asked me if I would like to spend the night with her.
Q All right. Was that the plan for you?
A Yes, ma'am. After Tony and A. J. left my mom had left at 3:00, was already at work and Miss Vickie, her mother, was supposed to be coming to pick me up.

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Q Ashley's mother is Miss Vickie, right?
A Yes, ma'am.
Q Okay. So, the only person at home at that time would have been who?
A Me.
Q All right. Your mom left at 3:00 to go to work. Correct?
A Yes, ma'am.
Q And you said A. J. and Tony had already left and gone to the Dead Dog Saloon around 5:00 or so?
A Yes, ma'am.
Q What time was Ashley's mom Vickie suppose to pick you up?
A When Tony and A. J. had left she told me she would be there around like fifteen or twenty minutes.
Q All right. During all this were you still having communication with the defendant?
A Yes, ma'am.
Q All right. What was going on with that?
A He had actually called me after Tony and A. J. had left and he asked what I was doing and I told him I was packing to go stay with Ashley and he had asked to ride by.
Q Did he ride by the home?

A Yes, ma'am.
Q And when he rode by the home what happened?
A I went outside, we were talking, we went back inside.
Q Okay. And when you went back inside where did you go?
A The kitchen.
Q When he was there did you ever ask him or mention the fact he had asked for a nude photo?
A Yes, ma'am.
Q What did he say to you?
A He told me that he just wanted one and he had asked me if he could take it off his phone.
Q Okay. Did you let him?
A No, ma'am.
Q After that conversation what happened next?
A He started kissing me, he stuck his hand up my shirt and he also stuck his hand down my pants.
Q And when he stuck his hand down your pants, [redacted] you have to tell, what did he do when he stuck his hand down your pants?
A He fingered me.
Q I know asking this is hard but I need to know specifically. When you say he fingered you, where did his finger go?

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A In my vagina.
Q When this happened what did you do?
A Nothing.
Q While he was doing this what did he do?
A He had his hand on his penis.
Q Did you see his penis?
A Yes, ma'am.
Q Where were his clothes?
A His pants were pulled down and he had a shirt on.
Q When he had his hand on his penis what did he do?
A He was ejaculating it.
Q And what happened when he was doing that?
A Sperm came out.
Q What did he do?
A He took a paper towel and cleaned his self up.
Q Did he say anything to you, [redacted]
A No.
Q What did you do?
A Nothing.
Q How long did all this take place?
A It took place in my house, approximately maybe five or ten minutes.

Q Did he leave after that?
A Yes, ma'am.
Q Did you have any more contact with him that day?
A Yes, ma'am, that night I did.
Q Okay. Tell us about that.
A I don't remember what we had talked about.
Q Did you talk to him by phone?
A Texting.
Q Texting? If you had to guess how many times you all texted each other on that day could you give us a general idea?
A That day?
Q That day.
A Hundreds.
Q Now, minor were there any other times after September the 11th of 2010 when you had sexual contact with this defendant?
A No, ma'am.
Q Was that the last time you recall?
A Yes, ma'am.
Q Okay. Tell us, I'm going to take you back to the beginning, about when you got in trouble for the pill, tell the jury once you got in trouble and you came home what did your mom and your step-dad

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do?
A When I came home from North Carolina that weekend, it was in October and they both sat me down, Tony and my mom Shannon, and they questioned what it was and how I got it and why I was taking them.
Q Okay. And did you tell them?
A Yes, ma'am.
Q Okay. You told them it came from Ashley, you have already stated that?
A Yes, ma'am.
Q And did you tell them why you were taking it?
A No, ma'am.
Q Why were you?
A Experimenting.
Q So, no other reason other than experimenting?
A Sure, experiment.
Q Now, Brittany, was that when you told your mom and your step-dad about what was going on between you and the defendant?
A No, ma'am.
Q What prompted you to come out and tell what was going on between you and the defendant?
A About a week after I had got caught with the cigarettes and pills my mom had sat me down and she

had went through my phone because she had had it and she went through my phone record on the computer and she had asked me why me and Wayne had so much contact with each other.

Q Okay, all right. So that was the part of your restriction, was having your phone taken away, right?

A Yes, ma'am. I had no phone, no I-Pod, computer, nothing.

Q All right. So when your mom confronted you about that what, if anything, were you thinking or were you concerned about?

A I was freaking out that she would find Wayne's number and ask me and also that she would find anything else out.

Q And at that point in time what did you decide to do?

A At first I didn't say anything to her, just kept brushing it off, ignoring her and then I finally broke down and came clean.

Q When you broke down and came clean did you tell her about the events that you told the jury about here today?

A Yes, ma'am.

Q Now, [redacted] by telling your mom and your

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step-dad these things did it get you off restriction?

A No, ma'am. I was on restriction for two months, no phone, I-Pod, nothing.

Q Did you want to tell them what had happened between you and Wayne?

A Yes, ma'am.

Q Okay. Why did you finally want to tell them what had happened?

A I couldn't take it any more, hold it in, and it wasn't right.

Q And why had you waited so long to tell, [redacted]

A I don't know.

Q How did you feel about Wayne?

A When I first met him I kind of looked up to him as a big brother and I looked up to Tabitha like a big sister and their kids looked up to me like an older sister to them and then it just grew.

Q Did you care about him?

A Yes.

Q Are you sad this happened?

A Yes.

MS. LIVELY: One moment, okay?

Q [redacted] I'm sorry, I need to go back and

ask you something. You had talked about giving your interview at the Children's Recovery Center. Do you recall that?

A Yes, ma'am.

Q Okay. And in describing the different events between, what happened between you and the defendant Wayne was there ever a time when anything other than his hand touched your breast area?

A Yes, ma'am.

Q And you need to tell us what.

A His mouth.

Q Did you have your shirt on or off?

A It was pulled up.

MS. LIVELY: Okay, thank you. Answer any questions the defense may have for you.

THE COURT: Mr. Fox.

MR. FOX: Thank you, Your Honor.

CROSS EXAMINATION BY MR. FOX:

Q Minor the first time anything happened was New Year's Eve, correct?

A Yes, ma'am.

Q And you were at Wayne and Tabitha's house?

A Yes, sir.

Q And after Wayne came back and you say he touched and kissed you, what time of night was

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this?
A Past midnight.
Q Okay. And your parents had had a party at their house that night, right?
A Yes, sir.
Q You lived a mile or so down the road?
A Yes, sir.
Q Okay. You had your phone with you?
A No, sir.
Q You had a phone in the house?
A I did not have a phone at the time, I did not get one until my birthday in February.
Q Is there a regular phone in Wayne's house?
A Yes, a house phone.
Q Where did Wayne go after, after the first time you say he did these things and you said stop, where did he go then?
A Are you talking about when he first came to the house?
Q That night you're in Wayne's house.
A Yes, sir.
Q And you decide to spend the night and you say he kissed you and touched you and you said stop that, where did he go then? Did he go back in the bedroom or where?

A On the couch, in the same room.
Q After you told him to stop he stopped?
A Yes, sir.
Q Did you ask to go home?
A No, sir.
Q Okay. How about -- so you went ahead and slept through the night, stayed there, got up in the morning, right?
A Yes, sir.
Q You had plans with Tabitha and the kids the next day, right?
A Yes, sir.
Q Did you ask to go home the next morning?
A No, sir, I didn't ask to go home at all.
Q Okay. At some point you went back home, correct?
A Yes, sir.
Q Okay. You didn't tell your mom at that time, right?
A No, sir.
Q You didn't tell your step-dad?
A No, sir.
Q Didn't tell anybody at that time. Correct?
A No, sir.
Q Okay. Then it was how long until there was

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another incident with Wayne?
A A couple months.
Q Okay. In between New Year's and the next fishing tournament when you say this happened again did Wayne, did he ever threaten you?
A No, sir.
Q Did he ever say, "For God's said, don't tell anybody about this"?
A No, sir.
Q Did you ever tell anybody?
A I told my best friend Ashley Jenkinson.
Q Anybody else?
A No, sir.
Q Did you tell any adult?
A No, sir.
Q Okay. So, this happened, you say, on New Year's Eve?
A Yes, sir.
Q You had seen Wayne in between?
A Yes, sir.
Q The whole family was friends, right?
A Yes, sir.
Q Your mom and step-dad, Wayne and Tabitha and the kids, you all get along?
A Yes, sir.

Q Okay. And when it came time to go fishing you went off with Wayne alone?
A Yes, sir.
Q Okay. Did you ever go off with anybody else alone during those fishing tournaments?
A My stepfather.
Q Okay. And you say this happened again?
A Yes, sir.
Q Okay. And again did you tell anybody?
A My best friend Ashley.
Q You didn't tell anybody else? Now it has happened, you say now it's twice?
A Yes, sir.
Q Okay. So then you went again on the boat with him alone. Correct?
A Yes, sir.
Q You kept going on the boat alone with him even though these things are supposedly happening, right?
A Yes, sir.
Q Okay. And still not telling anybody, any adult about what is happening?
A Correct.
Q Okay. Now, we come down to 9/11 and nothing is said, he just grabbed you, nothing said?

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A Correct.
Q Okay. Not before or after?
A Correct.
Q Okay. Not by you, not by him?
A Correct.
Q And you had unlimited calling and texting on your phone, you were in touch with lots of people all day long. Is that fair to say?
A Yes.
Q That's what you got it for?
A Yes.
Q Literally dozens if not hundreds a day?
A Yes.
Q The way teenagers do. So, did you ever have any of your friends, male friends request a nude picture of you?
A No.
Q Nobody else made that request?
A Yes.
Q And in fact somebody sent you a picture, didn't they?
A Yes.
Q Okay. Now, did you, when you got caught with the Vicodin and the cigarettes, that wasn't the first time you had had Vicodin, was it?

A No.
Q And you didn't tell your parents the truth about that, did you?
A Not at first.
Q Okay. And when they first asked you about Wayne, was it your step-mom, I'm sorry, your mother, first started asking but you denied anything about that, right?
A Yes, sir.
Q You lied to your mom about that?
A Yes, sir.
Q At anytime, any of this incidences, all this time and all this contact with Wayne, did he ever make any threats?
A No.
Q So, there wasn't anything to prevent you from telling somebody, you knew it was wrong, if these things happened you knew it was wrong, right?
A Yes.
Q At the time that you went to the Children's Recovery Center and they did, they interviewed, you, right?
A Yes.
Q It was just you and the, the therapist or doctor, you and one other person, right?

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A Yes, sir.
Q Wayne wasn't there?
A No.
Q Your parents weren't there?
A My mom was not in the room.
Q Right. In the room with you alone with the interviewer, right?
A Yes.
Q They gave you all the time you needed to tell them everything you needed to tell them?
A Correct.
Q Nobody rushed you?
A No.
Q Nobody tried to tell you, you know, "Don't give us all the information," no one is suggesting to you what to say, right?
A No.
Q So at that point there were no threats to you?
A No.
Q Okay. I'm sure it was uncomfortable but you had every opportunity to say anything you needed to, right?
A Correct.
Q Okay. Did you ever, anybody ever, did you

ever get pills from anyone other than Ashley?
A No, sir.
Q Did you ever take them from anybody?
A No, sir.
Q You never took them from your family?
A No, sir.
Q You had mentioned, Miss Lively asked you if you only took the pills and cigarettes, there was nothing else?
A Pills, cigarette and alcohol.
Q Pills, cigarettes and alcohol, okay.
MR. FOX: Thank you, no further questions.
THE COURT: Any redirect?
REDIRECT EXAMINATION BY MS. LIVELY:
Q [redacted] did you want to have to be here to testify today?
A No.
Q When this came out, as Mr. Fox asked you, and your mother asked you if anything was going on between you and the defendant you said no?
A Right.
Q Did you want everybody to hear what had happened between you and the defendant?
A No.
Q Were you embarrassed?

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A Yes.
Q Even though he never threatened you, why didn't you tell anybody?
A I was scared, nervous.
MS. LIVELY: Thank you. That's all I have, Your Honor.
THE COURT: Recross?
MR. FOX: No, Your Honor.
THE COURT: All right, thank you. You may step down.
(Witness excused).
THE COURT: Let me talk to the lawyers real quick about scheduling.
(Unrecorded bench conference).
MS. LIVELY: Your Honor, I'm going to see if Officer John Gregory is here. He would be a pretty quick witness.
THE COURT: Okay.
MS. LIVELY: They're checking real quick. One moment, Your Honor.
THE COURT: Okay.
MS. LIVELY: Your Honor, the State would call Ashley Jenkinson to the stand.
THE COURT: All right.

ASHLEY JENKINSON, after being first duly sworn, testified as follows:

THE CLERK: Please be seated and state your name for the record, please.

THE WITNESS: Ashley Jenkinson.

DIRECT EXAMINATION BY MS. LIVELY:

Q Hi, Ashley. How old are you?

A Sixteen.

Q And are you friends with [redacted]

A Yes.

Q How long have you known [redacted]

A Since we were two, so fourteen years.

Q Okay. And would you consider the two of you all best friends?

A Yes.

Q Now, Ashley, where do you go to school?

A St. James High School.

Q What grade are you in?

A Tenth.

Q How old are you right now?

A Sixteen.

Q Okay. So you're the same age, right?

A Yes, ma'am.

Q All right. Now, Ashley, do you know the defendant?

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A Yes.
Q Okay. Do you know him by Wayne?
A Wayne.
Q All right. And when did you have the opportunity to meet him?
A A couple years ago.
Q All right.
A At a Ducks Unlimited Foundation.
Q When you met him were you with Minor
A Yes.
Q And was her family there?
A Yes.
Q All right. Now, were there any other times whenever you had the opportunity to be around the defendant?
A There might have been a couple other times maybe at Brittany's house.
Q You may have seen him at Brittany's house?
A Yes.
Q Now, Ashley, in 2010 about how old would you have been?
A Fourteen.
Q Fourteen, okay. And you and Minor were still best friends at that time, is that a fair statement?

A Yes.
Q All right. Was there ever a time when you learned that [redacted] was having some type of a relationship with the defendant?
A Yes.
Q Okay. Will you please tell me if she discussed with you a time and place where something happened between her and the defendant?
A Describe it?
Q The first time, don't tell me exactly what happened, tell me where it happened and when.
A At the defendant's house on New Year's.
Q New Year's?
A Of 2010 or 2011.
Q 2011 was last year, so think about it.
A Yes, 2010.
Q So, when this happened how did she, you can't tell me exactly what happened, but it happened at the defendant's house. Is that right?
A Yes.
Q Okay. Do you remember how long it was after New Year's Day that she told you?
A A couple days, maybe a week.
Q And when she told you what happened how did she act? I mean, you're her best friend, tell us

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how she acted about the defendant.
A Like she liked him.
Q Did you know how old he was?
A I knew he was older, a lot older.
Q So, she liked him?
A Yes.
Q Do you know or did you ever see whether there was any communication between them by phone?
A Yes.
Q Did you see it for yourself?
A Yes. She would text him. She would text him and they would talk on the phone.
Q Were you present when this would take place?
A Yes.
Q And did you ever see any of the texts from the defendant?
A Yes.
Q Okay. And what type of things were they talking about, like going fishing or will you babysit my kids, what kind of things did the text messages say?
A Everything. Like what she said, like you said, fishing, they would go out on the boat, and about the kids, they just talked like it was normal.

Q And was there another time whenever [redacted] told you that something else had happened between her and the defendant?
A Yes.
Q Okay. Can you tell me when and where?
A On a boat a couple months later, probably the beginning of the summer.
Q When you say on a boat, did she tell you whose boat?
A Yes.
Q Who's boat?
A Wayne's boat.
Q Wayne's boat, okay. And how did she act about what had occurred at that time?
A She acted like it was nothing wrong, just that it happened.
Q And you're her best friend, now, okay, right?
A Yes.
Q You all are still friends?
A Uh-huh (Affirmative).
Q How did you feel about your friend having a relationship with this man?
A I didn't think it was right because I knew he was older than her, a lot.
Q And whenever she would talk about him how

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would she act about him, how did she treat him, like a neighbor or a friend or what?

A Like a boyfriend almost.

Q Did she have any other boyfriends at the time?

A Not that I can remember.

Q Again you're her best friend, right?

A Yes.

Q Was there another time that she told you something had happened?

A Yes.

Q Okay. Can you tell us when that was?

A Probably a couple weeks later, maybe a month, on the boat again.

Q On the boat again?

A Yes.

Q With the defendant?

A Yes.

Q On his boat?

A Yes.

Q Now, was there, and once again while this was going on, do you know whether she, has she relayed to you she was telling anybody else?

A No. I didn't think she was telling anyone else. She didn't tell me she was telling anyone

else.
Q Did she appear scared or nervous about what was going on?
A A little bit. I think she was afraid she was going to get caught.
Q Do you know whether, had you ever seen any text messages from the defendant or ever heard him threaten her in any way?
A Not that I remember.
Q So, how would you actually, if you were talking about [redacted] and the defendant, how would you describe their relationship at that time?
A Like a normal, like boyfriend-girlfriend relationship, like they would talk and flirt and text all the time.
Q Okay. Was there another time whenever [redacted] told you about an event that happened?
A Yes.
Q Between her and the defendant?
A On 9/11.
Q 9/11, okay. And what was the plan for that day?
A I don't remember what she was doing before but I know she was going to come spend the night at my house.

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Q Okay. And what time were you and your mom going to pick her up?
A It was probably around 5:00 o'clock because she got off around 3:30.
Q Your mom got off work at 3:30?
A Yes.
Q And whenever -- and did you actually go with your mom and pick Minor up that day?
A Yes.
Q Did she spend the night with you that night?
A Yes.
Q Okay. And when she was with you did you learn that anything had happened?
A Yes.
Q Okay. And where had it taken place?
A At Brittany's house.
Q All right. And about when had it happened?
A Anytime before 5:00 o'clock.
Q Before you got there?
A Yes, before I got there.
Q Now, during the time she was with you did you actually see her phone and observe who she was having contact with?
A Yes.
Q Who was she having contact with while she was

with you that day and night?
A Wayne Love.
Q And was it like one or two texts? Do you remember kind of the volume, how long it was taking place?
A It was all night.
Q All night?
A Yes.
Q Did you ever see any of the texts?
A Yes.
Q And what did you see?
A They were talking about I think how he came over earlier and just like normal stuff, what's up, how are you.
Q And has Minor told you any other time whenever they have been together, that there had been a time and place, incident between her and the defendant, that you recall?
A I think there was once more on the boat.
Q All right. Now, tell us about whenever Minor got into a lot of trouble because of something that was found that had been yours?
A Minor got in trouble for having Vicodin that I had given her.
Q Okay. And when that happened did she tell

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you about it?
A That she got in trouble?
Q Right.
A Yes.
Q Okay. And did you get in trouble, too?
A Yes.
Q All right. Did your mom and her mom talk about it, do you recall them actually talking about what had happened?
A Yes, because [redacted] had told me that I was going to get in trouble because she told her mom so I went ahead and told my mom.
Q Are you all still friends?
A Yes.
Q Despite this happening?
A Yes.
Q All right. And, Ashley, at that time do you know whether or not anything regarding the relationship between [redacted] and the defendant had come out?
A Yes, I know she told her parents.
Q Okay. Was that sometime after she was placed on restriction or before?
A It was when she got in trouble she told everything.

Q She finally told everything?
A Uh-huh (Affirmative).
Q That's a yes?
A Yes.
Q All right. Ashley, based on you being best friends with Minor and seeing the relationship, do you know whether or not she wanted to get the defendant in trouble?
A I don't think she did. I think she was upset about it.
Q Okay.
MS. LIVELY: Thank you, Ashley. Answer any questions Mr. Fox may have for you.
CROSS EXAMINATION BY MR. FOX:
Q Ashley, you care an awful lot about Minor
A Yes.
Q She's been your best friend forever?
A Yes.
Q You care what happens to her?
A Yes.
Q You wouldn't want to see anything bad happen to her?
A No.
Q Okay. Is it fair to say you would even protect her if you could?

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A If I could, yes.
Q And you say you didn't think this relationship she had, you thought she had with Wayne was a good thing, right?
A Yes.
Q You thought it was not a good thing?
A Yes.
Q Did you ever mention it to her parents?
A No.
Q To your parents?
A No.
Q Mention it to anybody?
A No.
Q This went on, this relationship you described went on for many, many months. Correct?
A Yes.
Q So, that's your best friend?
A Yes.
Q You would protect her if you could, right?
A Yes.
MR. FOX: Thank you. No further questions.
THE COURT: Redirect?
MS. LIVELY: No questions, Your Honor.
THE COURT: All right, thank you, Miss Jenkinson.

(Witness excused).

THE COURT: All right, ladies and gentlemen, we're going to go ahead and break.

MS. LIVELY: That's fine.

THE COURT: Just be back in the jury room at 2:00 o'clock and we'll try to resume the case at that time. Don't talk about the case with anyone, continue to keep an open mind. Thank you very much.

(The jury was excused from the courtroom).

THE COURT: Okay, see you back at 2:00.

MS. LIVELY: Thank you, Your Honor.

(Recessed at 12:55 p.m.).

(Resumed at 2:12 p.m.).

THE COURT: Okay, anything before we bring the jury?

MS. LIVELY: Just one moment, Your Honor.

THE COURT: All right.

MS. LIVELY: The State is ready, Your Honor.

THE COURT: Mr. Fox?

MR. FOX: The defense is ready, Your Honor.

THE COURT: All right. As far as scheduling, what do you anticipate the remaining length of your case to be?

MS. LIVELY: We'll be finished today.

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THE COURT: All right, you can bring the jury in.

MS. LIVELY: I'm sorry, to make sure, whenever I say finished, the State will probably rest today. As for closing argument and all that, of course obviously that probably will be tomorrow, depending on the defense.

THE COURT: Sure, okay. Thank you.

MS. LIVELY: Thank you.

(The jury returned to the courtroom).

THE COURT: All right, you may call your next witness.

MS. LIVELY: Thank you, Your Honor. The State would call John Gregory to the stand.

JOHN GREGORY, after being first duly sworn, testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record.

THE WITNESS: John Gregory.

DIRECT EXAMINATION BY MS. LIVELY:

Q Mr. Gregory, where are you currently employed?

A I'm employed at the Georgetown City Police Department as an investigator.

Q In your job as an investigator do you have opportunity at times to assist other agencies in an investigation?

A I do.

Q Okay. And have you had the opportunity to assist Investigator Ginger Pop in the investigation of this particular case?

A I did. I was employed as an agent of the Fifteenth Circuit Drug Enforcement Unit.

Q The Drug Enforcement Unit?

A Right.

Q All right. What, if any, specialty did you actually have at that time regarding your working with the Drug Enforcement Unit?

A The Drug Unit had a machine called Cell

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Bright which is a data recovery machine to recover data from cell phones.

Q Okay. And Cell Bright, just so the jury kind of understands what you would have to do in order to retrieve the information, describe to the jury what you have to have in hand in order to actually comply with what Cell Bright is requiring you to put into it?

A I need the source, which is the cell phone itself, then I have the Cell Bright machine itself, and the Cell Bright machine interfaces with the cell phone and it allows you to get certain things from certain phones. You can get cell phone messages, pictures, contacts, missed calls, the call log off a cell phone.

Q Okay. And whenever you used the Cell Bright did you -- how did you learn how to use it?

A It was shown to me by another agent from the Horry County part of the 15th Circuit Drug Unit.

Q Is it easy to use?

A It is fairly easy. You plug the phone in and the phone has what they call auto connect, you plug it in, it starts to interface, it asks you what phone that you're looking for, you scroll down to that phone, you press start and it starts to

interface with the other phone.
Q Okay. When it is interfacing with the phone, the target of what you're trying to get, what comes out of it? Is there any like hard documentation that comes out as a result of this, the use of the Cell Bright?
A It comes out into a report that can be, that reads and it comes out in two forms. It comes out in a web base or it comes out in a PDF base, which means you just take, what it means is you put a thumb drive in so once the machine and the telephone interface, then you send it to the source, which I use most of the time because it is portable, is a machine about yea big, it is portable, so I would use a thumb drive. I could just hand the thumb drive to the person that asks me to do it.
Q Okay. You mentioned this briefly but Investigator Pop came to you regarding some assistance with the case against the Defendant Love, is that correct?
A Yes, she did, she asked me to download a phone.
Q Download a phone, and the phone she gave to you to download, was this the phone belonging to

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the victim [redacted] or the Defendant Love?
A She said it was the victim's phone.
Q The victim's phone, okay. Did you fully dump the phone? That is what you call getting the information, correct?
A Yes, analyze the phone.
Q Analyze the phone and retrieve information off the then victim's phone?
A I did.
Q All right. And was this pursuant to any type of consent by the family or someone to allow you to go into the phone itself?
A The question I usually ask, "Do you have a search warrant or consent form?" Investigator Pop informed me she had consent, had a written consent form.
Q All right. Based on having consent to enter the victim's phone, did you do so?
A Yes, I did.
Q All right. And were you able to retrieve some information from the phone?
A I received a report back from the information off the telephone.
Q Okay. I'm going to approach and show you what has been marked State's Exhibit Number 10 and

11 and ask you whether or not you recognize these documents?

A Yes. This is the report that came off the telephone and this is color pictures that came off the phone, photos.

Q Okay. So, 10, is that, you think that is your complete report from whenever you did the analysis of the phone?

A It is.

Q Okay. And then 11 is just a few pages, is that correct?

A Yes.

Q Is that just a color copy of the same information of a couple pages that is in the State Exhibit 10?

A It is.

Q Okay.

MS. LIVELY: Your Honor, the State would move to offer State's Exhibits 10 and 11 into evidence at this time.

MR. FOX: We would object, Your Honor. It is purported to be from Brittany's phone. The only testimony or evidence of that would be another officer told this officer what the origin of the phone was. They haven't laid a foundation for

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that.

THE COURT: You can ask him further foundation if you want.

MS. LIVELY: I can ask him some more questions.

THE COURT: All right.

BY MS. LIVELY:

Q Whenever you actually did the analysis of the phone did you have a phone number that you used for that analysis?

A On the report it comes out, sometimes it produces a cell phone number which is usually sometimes indicated at the bottom of it, the report here.

Q Okay.

A And sometimes it puts it out as that or sometimes it is the serial number of the phone, it all depends on which phone it is.

Q Okay. Whenever you put the information into the Cell Bright is there any documentation that comes out that confirms it belongs to a Shannon Bellamy or [redacted] or anything like that?

A No, it does not.

Q Okay. So all you do is you just take the phone itself as provided to you by the investigator

and just dump what is actually on it?
A That's correct.
Q So the information that you have is basically what was provided to you by Officer Pop?
A It is.
Q Okay.
MS. LIVELY: Your Honor, if we have to, at this time the State is planning on calling Investigator Pop, we can address it with her during her testimony if the Court doesn't feel there is enough foundation at this time.
THE COURT: I'm going to overrule the objection. They're in evidence.
MS. LIVELY: Okay, thank you.
(Phone records marked and received in evidence as State's Exhibits 10 and 11).
BY MS. LIVELY:
Q Once you actually provided or got the information that is in Exhibits 10 and 11 did you do any other additional assistance with Investigator Pop in this investigation?
A No, I did not.
Q Okay. So what was your sole purpose in regard to helping Investigator Pop with her investigation?

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A Data recovery from the cell phone.
Q Okay. And do you know whether or not she had the Cell Bright in order for her to have done it herself?
A No, there is only one Cell Bright amongst law enforcement in Horry County and it happens to be owned by the 15th Circuit D.U.
Q Is it common occurrence they will come to you to get assistance for something like this?
A More than once a week it will usually happen.
MS. LIVELY: Okay, thank you very much. Answer any questions that the defense may have for you.
CROSS EXAMINATION BY MR. FOX:
Q Mr. Gregory, we meet again.
A Yes.
Q Is this printout everything you're able to get off the phone?
A It was, counsel.
Q And, so, in looking, it looks like you've got a record of -- are these texts that are, if I show this to you, toward the back, these pages I'm looking at?
A Yes.
Q And you can actually pull --

A If you look at the top, this left corner, it tells you whether incoming or outgoing messages.
Q I got you. And was this, I'm sorry, I think I asked this, is this everything you were able to pull off the phone?
A Yes.
Q If something was deleted off the phone, a message or record of a phone call, would you have pulled that?
A It depends on what kind of phone it is. Sometimes with a smart phone you can usually get some of those messages because it is not deleted because a smart phone is basically a computer and although you delete it visually there is still trace evidence and records inside the phone.
Q Do you recall, was this a smart phone?
A I do not believe it was a smart phone, sir.
Q Okay. You were also able to pull off contacts from the phone, phone numbers you put in there for friends and family and that sort of thing?
A Yes.
Q And that is also what is reflected in this report?
A Yes.

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Q And --

MR. FOX: The Court's indulgence, Your Honor. Thank you. I have no further questions.

THE COURT: All right. Any redirect?

MS. LIVELY: No, Your Honor.

THE COURT: Thank you, Mr. Gregory.

THE WITNESS: Thank you.

(Witness excused).

THE COURT: All right, ladies and gentlemen, before we call the next witness there was some inquiry about whether the jurors could take notes. You certainly can take notes if you need. If you need a pad or pencil to take them we'll provide it to you. Just bear in mind that the taking of notes has several hazards. The first hazard is that don't get so engrossed in taking the notes that you forget to pay attention to the witnesses while they're on the stand because one of your jobs is to judge credibility and that often requires your close attention to their demeanor on the stand and how they come across.

Secondly, remember that your notes are not infallible, your notes can be wrong and simply because someone has notes doesn't make their memory of the testimony any better than someone who did

not take notes.

And third, after the case is over, if you do take notes, I'm going to, we will collect them and destroy them.

So is there anybody who wants to take notes?

All right. Okay.

Yes, ma'am, you may call your next witness.

MS. LIVELY: Thank you, Your Honor. The State would call Dianne Nordeen to the stand.

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DIANNE NORDEEN, after being first duly sworn, testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record.

THE WITNESS: Dianne Nordeen.

DIRECT EXAMINATION BY MS. LIVELY:

Q Dianne, where are you currently employed?

A I'm employed with the Children's Recovery Center.

Q And what is the Children's Recovery Center?

A The Children's Recovery Center is a child advocacy center which serves Georgetown and Horry County. Child advocacy centers are throughout the area, are throughout the United States, and in fact throughout the country, throughout the world, providing forensic interviews and forensic medical exams to children when abuse is expected.

Q Okay. When you say forensic interview, what is a forensic interview?

A A forensic interview is a fact finding interview, it is used to elicit a factual and detailed statement from a child without using leading questions.

Q Okay. And whenever you do a forensic interview of a child is there certain standards

that you have to follow in the state of South Carolina based on Jessie's Law?

A Yes. We use a forensic interview called Child First, which was started at Corner House, the first child advocacy center in the United States. A protocol is used with that interview technique called the RATAC II protocol, report, anatomy, touch inquiry, abuse scenario, closure. It is basically a step by step guideline for interviewing children but it is flexible and the stages can be modified as needed and according to the child's direction.

Q And is there any type of requirement regarding a record being made of this interview, during the process?

A Yes. We record, we audio and video record all interviews.

Q Okay. And is it your understanding that such an interview, a video of the interview, if a child is under twelve it would be something that could be used in court?

A That's correct.

Q Okay. And what is so important about actually doing an audio and videotaping of the interview, of such a detailed interview of a child?

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A Well, the process itself can take anywhere from twenty minutes to an hour and a half, just depending again on each child and how much information they provide and taking notes isn't always dependable. We don't always gather all the information the child is telling us while we're taking notes. So, we record that interview and we can go back and listen to it later. It is also helpful for law enforcement to view rather than just depending on our reports, they can watch the interview, or an investigative person from the Solicitor's office also preparing for court, it is used to view when both parties are preparing for court.

Q If a child is over, is twelve or older and you're dealing with a forensic interview do you treat them any differently than you would maybe a child that was six or seven years old?

A No, we use the same protocol for all children. Again, it's a flexible protocol, so with smaller children we may elicit names for body parts, parts of the body that we refer to as the private parts, using an anatomical drawing or an anatomical doll and then of course for an older child, a teenager, we would expect that we can just

point to those parts of the body and ask that child what name you have for this part of your body, what name you have for this part of your body, rather than using an anatomical drawing or anatomical doll.

Q Okay. In this particular case involving the Defendant Love and Minor did you receive a referral to Children's Recovery Center for an interview?

A I did.

Q Okay. And who made the referral to your center?

A The referral was made by Donna Sherrill from the Georgetown County Sheriff's office.

Q Who is Donna Sherrill?

A Donna Sherrill is a victim's advocate.

Q Were you aware at the time the referral was made what the basis for the forensic interview was going to be, what the general allegations were?

A The information we receive, we have a one page intake form that basically gives us the information about the child, their age, their date of birth, who has custody, and then the referring agency information and then just two or three lines regarding the allegation.

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Q Okay.
A And then that is accompanied by the police report.
Q All right. And whenever you receive this information how important is it for you to accept that information but also go into the interview with an open mind?
A It is very important. We consider as many hypotheses as needed to give us an explanation, for us to ask the child questions that might help us understand if there is another explanation for what may have occurred or a different understanding about the details of the situation.
Q Okay. And whenever you met -- well, when did you meet with Minor
A I interviewed Minor October 29th, 2010.
Q Okay. And October 29th, 2010, how old was she at the time?
A Fourteen years old.
Q Okay. Even though she was fourteen was this interview video recorded and audio recorded?
A It was.
Q All right. Whenever you performed the actual forensic interview with Minor were you able to use the standard protocol that you just testified

to the jury about regarding the RATAC method?
A Yes, I was.
Q And in regard to dealing with [redacted] and just in being able to respond to your questions did she appear to understand what it was you all were talking about?
A Yes, she was able to provide coherent and detailed statements to the questions that I asked her.
Q Okay. Now, Dianne, in conducting the interview, at the end of your interviews don't you typically draft a report and kind of a synopsis of everything that was disclosed?
A Yes, I do.
Q Okay. And if no disclosure is made by a child regarding sexual abuse or physical or anything, even maybe alcohol use in general, I'm talking about [redacted] but if no disclosure is made what type of conclusion do you put at the end of your synopsis?
A We simply write impression, interview, with no abuse.
Q You put whether or not there was an impression, not whether you believe, because you don't do that, is that right?

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A Tht's correct.
Q Okay. After the interview with Minor were you able to, was there disclosure during that intérview?
A Yes.
Q Okay. And without revealing anything other than time and place, did you get enough information from Minor to determine when and where particular incidents had occurred?
A I did.
Q Okay. Tell the jury, based on your forensic interview of Minor if she provided you with an initial incident, a time and place of an initial incident of abuse?
A Yes, she did. It was January 1st of 2010 and the location was the living room in the home of Wayne and Tabitha Love.
Q Okay. After the disclosure of that particular event were there any other disclosures of time and place of events that occurred with this particular child?
A Yes. The last event occurred September 11th, 2010, at Brittany's home and there were three incidents in between January 1st and September 11th which occurred on Wayne Love's boat and my

understanding is it was on the Intracoastal Waterway.

Q And during the interview what was her demeanor that you personally observed of the child?

A She was anxious and fidgety, as many kids are when they are talking about something uncomfortable, but she seemed to be calm and we just went at a pace that was comfortable for her so she was able to provide the details. She wasn't able to provide so many flowing statements I think due to the anxiety level that she was experiencing, but what I generally do when I ask a question, "Tell me about that," that is an open ended question which allows the child to provide what we call a narrative statement about the abuse they experienced and then I follow that up when they stop speaking, then I say what happened next, that allows them to provide more detail, and I did that often with [redacted] just to give her reassurance that it was okay to continue talking and to attempt to elicit more details regarding the incident she experienced.

Q Was there anybody else in the room with you whenever this interview was being done?

A No. The interview is done with just the

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interviewer and the child in the interview room. It is to prevent outside influence on the child.

Q And at anytime during the interview did you leave and then return to the room with additional information or additional questioning of this particular child?

A Yes. Toward the end of the interview, after the child has shared the details of their abuse we talk about personal body safety, who is someone they can go to, an adult they can go to that they trust and feel safe with if something else happens, and we talk about that their body belongs to them and no one is allowed to touch them in any way hurts them or in any way makes them feel uncomfortable, and then I have the child write a list of names of all the adults they have in their life who they feel safe with and then I leave the room to speak with the investigator who is in my office watching the interview on a computer screen to see if that investigator, or the victims advocate actually was the one was watching, to see if they have any further questions or if I missed anything during the interview that would be important for me to have, and so I left the office to speak with the victims advocate briefly.

Q Okay. Were you able to conclude the interview after that brief moment of separating from the child?
A Yes.
Q Okay. Do you remember about how long the interview took place?
A It took one hour and fifteen minutes.
Q Okay. And after you finished the interview did you provide a videotape copy of that to myself, which has since been given to the defense?
A Yes.
Q Did you do any additional investigation, or it is not actually investigation, you are actually there to do just the forensic interview, is that fair to say?
A That's fair to say.
Q Are you a law enforcement agency?
A I am not.
Q Okay. After you finish that information and documented it did you do anything else other than possibly having to come to court in the future in regard to this particular case?
A We have just, we have multidisciplinary team meetings where we staff the case with the referring agency and representative from the Solicitor's

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office and talk about the details of the interview, provide information that, any further information that may be needed, provide a copy of our report and that's it, and that is the extent of our involvement in each case.

MS. LIVELY: Okay. All right, thank you Miss Nordeen. Please answer any questions the defense may have for you.

THE COURT: Cross-examination.

CROSS EXAMINATION BY MR. FOX:

Q Miss Nordeen, you say in this interview Miss Bellamy disclosed three areas, you said one time and place was at the defendant's home. Correct?

A Yes.

Q That was one incident?

A That's correct.

Q Other times were on the defendant's boat, correct?

A That's correct.

Q And there were three of those incidents?

A That's correct.

Q Okay. And the only other one was at Miss Bellamy's home, correct?

A Correct.

Q Do you know where in Miss Bellamy's home, did

she indicate where in her home?
A The living room.
Q In the living room, okay. Any other disclosures of events, time and place disclosure, any other place other than those three areas we talked about?
A No others to me.
MR. FOX: Okay, thank you. No further questions.
THE COURT: Redirect?
MS. LIVELY: One moment, Your Honor.
Thank you for your patience.
REDIRECT EXAMINATION BY MS. LIVELY:
Q I just wanted to review a couple of the things that were in the interview --
MS. LIVELY: Your Honor, I believe I am done. I have no redirect for this particular witness.
THE COURT: Thank you, Miss Nordeen.
THE WITNESS: Thank you.
(Witness excused).
THE COURT: All right, you may call your next witness.
MS. LIVELY: One moment, Your Honor.
The State would call Investigator Ginger Pop.

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GINGER POT, after being first duly sworn, testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record.

THE WITNESS: Ginger Pop.

DIRECT EXAMINATION BY MS. LIVELY:

Q Investigator Pop, where are you currently employed?

A I'm with the Georgetown County Sheriff's office.

Q And how long have you been working at the Sheriff's office?

A Approximately two and a half years.

Q Okay. Before you worked at the Sheriff's office where were you employed?

A I was employed by the South Carolina Department of Natural Resources.

Q And how long did you work for DNR?

A I was employed beginning in 1999, so about eleven years, ten and a half years.

Q Okay. How familiar are you with the Intracoastal Waterway and the different creeks and canals off the Waccamaw River?

A Very.

Q All right. And in your job both at DNR as

well as the Sheriff's office has that been helpful to you in conducting an investigation such as in this particular case?

A Yes, ma'am.

Q All right. And did you have an opportunity to be assigned a case involving the defendant Wayne Love in October of 2010?

A Yes, ma'am.

Q Okay. Please tell the jury how this particular case got assigned to you.

A I was assigned this case on October the 27th of 2010. It originally came into the Sheriff's office on October 26 of 2010 and after review it was assigned to me.

Q Okay. What kind of a case, based upon the information that was provided to you, what kind of case were you going to be investigating?

A A sexual assault case involving a minor.

Q Okay. And were you provided information as to a possible suspect in the case?

A I was.

Q What was the name of that suspect?

A Prentis Wayne Love.

Q All right. And based upon the information you had was Georgetown County the proper

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jurisdiction for the investigation?
A Yes, it was.
Q All right. Who was the first person that you talked to in regards to what your investigation was going to include?
A On the date I was assigned the case I contacted the child's mother to get some more information from her about this incident.
Q Okay. So initially whenever you receive a case such as this does it make a difference to you whether or not it was a freshly committed crime in comparison to something that may be from a delayed disclosure?
A It does make a difference whether or not it is freshly committed or there has been some time in between the actual event and the time it was reported.
Q Okay. If this matter had just happened and the victim was at the hospital what would you have done?
A I would have gone immediately to the hospital.
Q Was that the case here?
A That was not the case here.
Q Based upon information that you received how

much time had passed since the incident, the last contact happened between the victim and the proposed suspect?

A I'm not sure if it was in the report or after speaking with the mother but my best recollection was that September 11th was the last contact with the defendant, between the defendant and the child in this case, and this was the 27th of October.

Q Okay. So, based upon the information that you were gathering in your investigation what did you do in regard to the child being talked to regarding the incident?

A When I spoke to the child's mother on the 27th I advised her of the need for a forensic interview to be conducted at the Children's Recovery Center and advised her that I would have the victims advocate or make those arrangements between her and the victims advocate and the Children's Recovery Center to make arrangements for her to be interviewed by them.

Q Okay. Why is it you would not have conducted an interview of the child yourself?

A The Sheriff's office has a policy that they would like for children of these types of crimes to be interviewed by a forensic interviewer, so that

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is why we refer them straight over there.
Q Okay. So, once the referral was done -- do you remember exactly when it was that the child was going to be interviewed?
A October 29th was her scheduled date for her interview.
Q Were you able to do any type of investigation between the 27th and the 29th to gather information in this case?
A In between those dates typically I will gather as much personal information about the defendant as I can, ensure that the safety of the child is in place, that there are no other suspects that need to be identified, that her safety is no longer in jeopardy.
Q Okay. And did you gather any information regarding the proposed suspect in this case?
A I had gotten some personal information about him, address, birth date, cell phone numbers, that type of stuff.
Q Okay. Did you document that information and save it for the remainder of your investigation?
A Yes, ma'am.
Q Okay. What was the age of the defendant at the time?

A At the time of this report he was thirty.
Q Okay. And what was the age of the victim?
A At the time of the report she was fourteen.
Q Okay. Now, after the forensic interview was completed on October 29th of 2010 were you provided with an actual report or synopsis of the disclosure during that interview?
A The victims advocate was able to come back from that interview with an actual audio-video disc recording of that interview of the child in this case.
Q Okay. And once you had that information in your hand how did that help you in determining time and place of event for actually following up with your investigation?
A After reviewing the interview on that audio-video disc of the CRC interview it revealed several incidents that the child had revealed to the interviewer of events between the defendant and the child.
Q Okay. And were those the, the descriptions enough for you to determine timing and place of the actual event?
A Yes, they were.
Q Okay. And I'm going to show you a couple,

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I'm going to show you a couple of aerial maps and ask you whether or not, I'm going to show you first of all State's Exhibit Number 6 and then State's Exhibit Number 7. I'm going to ask you about Number 6 first. Were you there whenever this aerial photo was prepared and documented through the Georgetown courthouse office?

A Yes, ma'am.

Q And that aerial view, is that an accurate representation of the neighborhood and area between the defendant and victim's family?

A Yes, ma'am.

Q Are you able to look at that and specifically show to this jury where the defendant lived in comparison to where the victim was living?

A Yes, ma'am.

MS. LIVELY: Your Honor, the State would move to enter State's Exhibit Number 6 into evidence.

MR. FOX: No objection.

THE COURT: It's in evidence.

MS. LIVELY: Okay, thank you.

(Aerial photo marked and received in evidence as State's Exhibit Number 6).

MS. LIVELY: Your Honor, if I may have the witness step down for a moment so I can publish

this to the jury.
BY MS. LIVELY:
Q Okay. Now, if you don't mind, Investigator Pop, I need you to please come over here.
A Yes, ma'am.
Q Don't block the jury, okay? Now, just tell them basically what area we're looking at here.
A This is going to be an aerial photo. If I may orient myself, Wachesaw Road is over in this area, this is Brookgreen's property, the most eastern section of Brookgreen's property. I'm sorry. This is Wachesaw Plantation area in here. This is the road, I don't know if you're familiar with the stables and the new River Road cut-through there, and there is some stables and a new fire department in that area.
Q All right. Can you tell me where Hyatt Avenue is, which is where the victim's family lived?
A This is Hyatt here in Murrells Inlet.
Q If you will, just flag for me approximately where her home would be, where their home would be on that map.
A Right there.
Q Okay.

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A I just put the corner of the sticky on their house.
Q All right. And then if you would, please, in regard to where the defendant's home was located?
A Yes, here it is.
Q If you would please flag the defendant's home.
A Again I will be placing the corner of that there.
Q Okay. Now, Investigator Pop, did you have an opportunity to drive between the two locations and determine about how far apart they were?
A Yes.
Q Okay. And how far apart are they?
A Approximately two miles, 2.3 miles, it took me about five minutes.
Q Okay. So they live pretty, very close?
A Very close.
Q Okay. And how many ways back and forth are there between the homes? Like if Mr. Love were going to go to work would it be easy for him to drive by the victim's home?
A It would be easy for him to do that.
Q All right. Okay, thank you very much.
A Thank you.

Q If you will have a seat.

Were you during your investigation given information to lead you to believe that this was, that this was a close family friend or just a casual acquaintance?

A I was led to believe he was a close family friend.

Q Okay. And during your investigation, in speaking, after having the forensic interview of the child as well as the talking with the family, were you able to narrow down the times and places of each event for your report?

A I was.

Q Okay. Well, let's talk about the initial event. As part of your investigation what are you're looking for in a sexual assault case? What information was given to you regarding timing and place of the initial event?

A The first allegation was going to be on New Year's Eve, December 31st, 2009, into January 1st of 2010 at the defendant's home, inside his home, on the couch.

Q Was that in Georgetown County?

A That was.

Q All right. And were you given information

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and able to determine, based on the forensic interview as well, another place where an event took place in your investigation of sexual assault?

A Yes, I was.

Q Okay. What were the next times and places?

A The second allegation involved a couple times and that was going to be on the defendant's boat in the Waccamaw River area, around Sand Island, near Wacca Wache Boat Landing.

Q In regard to that particular area did you have some concerns about possible jurisdiction issues and it being within your county?

A Yes, ma'am, that was a concern.

Q Okay. So, in doing your investigation were you able to narrow it down, from your interviews, as to the locations of the particular events?

A Yes, I was.

Q Okay. I'm going to show you now what is marked as State's Exhibit Number 7 and ask you whether or not you recognize this aerial view and if it's an accurate representation of areas on the Waccamaw River within Georgetown County?

A Yes, ma'am, it is.

Q Okay. And are you, from your experience as an DNR investigator as well as investigator with

the Sheriff's office, familiar with this area and does that appear to be an accurate representation?

A Yes, is it.

MS. LIVELY: Your Honor, the State would move to introduce State's Exhibit Number 7 into evidence at this time.

MR. FOX: Without objection.

THE COURT: It's in evidence.

MS. LIVELY: Thank you.

(Aerial photograph marked and received in evidence as State's Exhibit Number 7).

BY MS. LIVELY:

Q If you don't mind, Investigator Pop, bring that with you and step down so we can show the jury.

All right. Now, once again just if you don't mind trying to help the jury acclimate themselves as to what exactly it is that we're looking at here, okay?

A Sure. This is the Waccamaw River, this is south heading into Georgetown, this being north heading up into Horry County. You're familiar with Sand Island, this is all Sand Island in here. This is the Waccawachi boat landing. You can see these little white things up here, these are what is

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basically known as the fingers that go into Sand Island Creek there, Sand Hill Creek, White and Black Creek here.

Q Once you received information from both the forensic interview as will as interviewing the step-dad Mr. Carter and Miss Bellamy were you able to narrow down the event that you were looking into in your sexual assault investigation?

A I was.

Q Okay. Would you please show the jury what areas of the Waccamaw River and Sand Island that you were actually drawn to based on the information you received?

A Based on speaking with the parent of the child in this case, the creeks that the child had described to them and they would be typical in these fishing tournaments, what the child called Sand Island Creek but typically encompass these, and another creek the child knew as the first creek to the left from upper Wacca Wache, which is this creek here, which dumps into Black and White Creek right in there.

Q If you don't mind, just for general area so the jury can see what you're talking about, will you mark that?

All right. That was one event that you were able to determine?

A Yes. It was described as creeks around Sand Island, so that would encompass from there to here but she stated it would typically be a creek around Black and White Creek which borders Sand Island property here.

Q And were all those areas, once you were able to determine the descriptions given to you, were all those areas within Georgetown County?

A Yes.

Q Okay. All right, you can have a seat.

Now, Investigator Pop, with your unique background and work with DNR, can you give us, just based upon your history with DNR and then with the Sheriff's office, a description of what these creeks look like whenever you are going in and out of them in a Jon boat?

A Right. In particular Fox Creek is a very narrow creek, very winding creek, it does have a few sections where it's a little I would call stretched out. It is hard to travel fast in this creek because it is so winding. It does have a lot of trees that have fallen into the creek so you can not maintain a high speed at all, you have to

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obviously watch out for low lying limbs, trees submerged under the water, is it a very winding, snakey creek.

Q Okay. And how difficult is it to find a place of seclusion within these creeks?

A Not difficult at all.

Q And, Investigator Pop, once you received the information as you stated over and over again, regarding the disclosure and the information from the family, were you able to determine a final event, as a result of your sexual assault investigation, between the proposed suspect and the victim?

A I was.

Q Will you tell us the time and place regarding the final event?

A The last event is going to be September 11th of 2010, which would have occurred at the child's home.

Q All right. And after that final event did you have any information that there was any additional contact between the victim and this defendant?

A I did not.

Q All right. Once you received all this

information regarding the allegation, the timing and the place and the people involved, did you compile a case report with all this information?

A I did.

Q Okay. Did you do anything additional in regard to your investigation, to determine if there was any other evidence out there that could be had as Investigator Gregory was discussing earlier?

A Right. On November the 11th, I believe it was, or maybe November the 12th, I did ask Agent Gregory to assist me in some data recovery off the cell phones provided by the child's parent.

Q Okay. Did you receive consent from the family in order to conduct this phone analysis?

A I did.

Q All right. And as a result of the consent from the family what was actually turned over to you for the phone analysis?

A From the parents?

Q Yes.

A They provided me with two cell phones.

Q Okay. And whose cell phones were those that you received?

A The child's.

Q The child's, all right. And do you remember

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what kind of phones they were?
A I honestly don't remember. They were just the little small what I would call, you know, inexpensive, you know, not the most, at least not like an Apple I-Phone or anything, just an average teenager's phone.
Q All right. And whenever you provided the phones to Agent Gregory was the sole purpose just for him to actually retrieve whatever data that might have been left on those phones?
A Yes, it was.
Q Okay. Once again when did you do this?
A November the 12th, 2010.
Q Okay. And based upon the information you had from your investigation when was the last event between the defendant and the victim?
A Well, the last event was September the 11th, 2010.
Q So, two months down the road you get the phone?
A Her parents had brought the phone in November the 3rd.
Q Okay.
A They brought the phone in on November the 3rd, it was placed in evidence and the information

was retrieved on the 12th.
Q Okay. And at that time were you aware of whether or not the child had maintained the phone in her custody at all by the time you received it?
A It was my understanding that she, the phone had been under restriction and she had not had the phone.
Q Okay. All right. Now, have you reviewed what is in State's Exhibit Number 10 and Number 11 which was retrieved off the phones given to you by the victim's parent?
A Yes, I have.
Q And in that information were you able to review and determine whether or not the victim had any type of information regarding the defendant in her phone?
A She had a picture on her cell phone of the defendant and also his phone number was saved in her contact list.
Q Okay. And what is the defendant's telephone number?
A 283-2720.
Q Okay. And the record that you received, were you able to retrieve any specific text messages or incoming and outgoing messages over the phone?

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A The data recovery off the phones was very limited in this data recovery report so it was not able to give us, you know, everything that had been deleted or anything like that.

Q So the volumes of texting and calls and things like that, that was not something that would come off the phone?

A At the time the technology we had, no, it was not able to recover that.

Q Okay, fine. Now, Investigator Pop, once you received the final bit of information that you were able to get from the phone were you able to actually meet with and speak with the defendant?

A I met with the defendant on November the 2nd.

Q Okay. Prior to actually even doing the phone you had already met with the defendant?

A Yes, ma'am.

Q After meeting with defendant and all the information you retrieved in this particular case did you seek warrants or a warrant in the case?

A I also obtained a warrant for his arrest on November the 2nd as well.

Q And what was the charge at that time?

A Criminal sexual conduct with a minor between the ages of eleven and fourteen in the second

degree.
Q Okay, all right. And after that particular warrant was served did you conduct any additional investigation in this particular case?
A Trying to retrieve the data off the phone would have been an additional item that we tried to do.
Q Okay. Was there any need at that point in time for you to get any kind of DNA or forensic evidence in regard to this particular case?
A No, ma'am, because of the delayed disclosure the amount of time that had gone between, you know, the last incident on September the 11th, up to the time of the report, by the time I was assigned the case you would not have expected to have been able to recover DNA from that incident.
Q Okay. So no attempts were made for DNA?
A No, ma'am.
Q Okay. And was there any need at all for you to do any type of fingerprint analysis or anything of that nature?
A No, because the defendant and the child in this case, both families were so close they were in and out of each other's homes, you would expect to have his fingerprints in the child's home as well

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as her fingerprints in his home.
Q Okay. And you spoke to the family members of the victim in this case, correct?
A I spoke with both her parents.
Q Both her parents, okay. Based upon all this information, you said that you sought the warrant for CSC with a minor second degree?
A Yes, ma'am.
MS. LIVELY: One moment, Your Honor.
THE COURT: Yes, ma'am.
Q And once again, you had mentioned at the time of the victim's disclosure she was fourteen years old. As a part of your seeking the warrant were you able to confirm the age of the victim at the time of the event, up until the time you got the warrant?
A Yes. From her date of birth and from the New Year's Eve date, she would have been thirteen. September 11th she would have been fourteen.
Q Was she between the eleven and fourteen requirement of that particular charge?
A Yes, ma'am.
Q The defendant at the time of his arrest was how old?
A He was 30 years old.

MS. LIVELY: Thank you. Answer any questions the defense may have for you.

THE COURT: Cross-examination.

CROSS EXAMINATION BY MR. FOX:

Q Officer, based on the information you got from the people you talked to and the report you got, there was an incident at Mr. Love's house?

A Yes.

Q On New Year's Eve, and a couple in the boat?

A I think three to four times.

Q Okay, and another time at the victim's house, correct?

A On Hyatt, yes, sir.

Q Okay. Now, any others at all?

A Not to my knowledge.

Q Now, on Miss Bellamy's phone, the phone you had Officer Gregory do the data recovery on?

A Yes.

Q I'm sorry, you have them right there. You say Mr. Love was in the contact list. How was he referred to in the contact list?

A Wayne.

Q And below that?

A His phone number.

Q Doesn't it also say big brother, like

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description, big brother?
A May I refer?
Q You may.
A If I may, if you're looking at page 19 of 41, number 181?
Q I've got a couple places.
A Yes, you do.
Q Hold on. Yes.
A So --
Q Let me ask if you have, it says page 6 of 8?
A Yes, I do.
Q Is that, does that appear to be about number 74, does that appear to be Wayne Mr. Love's -- I'm sorry, go to -- one moment. Page 12 of 41, I'm sorry. Page 12 of 41. It is also in that contact list. Do you have that?
A I do.
Q Okay. The first one, I think number 105, is Wayne, correct?
A Yes sir.
Q And appears to have his phone number? That is the number you identified as Mr. Love's phone?
A Yes.
Q And the notes, what does it say in the note?
A On page 12 of 41, number 105, underneath that

number it does have big brother.
Q Okay. Now, did you go through -- there are several pages of contacts, are there not?
A Yes.
Q Printed out. Did you go through and see if there are any other adults, any reason to find any other adult in that contact list other than, say, parents?
A I would not know if they are adults. It just has names.
Q Okay. And there is, I think you said, one picture that was recovered of Mr. Love. Correct?
A Correct.
Q And that is just a picture of him that looks like the Myrtle Beach Pelican mascot, doesn't it?
A I'm not a sports person but it's a duck.
Q It might be a duck?
A A duck is a duck.
Q Something, it is not a real animal?
A Correct.
Q It's a puppet or a mascot or something, stuffed animal, something like that?
A Something, right.
Q Nothing strange about that photograph, is there, in your opinion? In your mind anything

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strange about that photograph, the photograph itself, a photograph of a man?

A Hugging a duck or riding a duck, I'm not sure what he's doing. I understand what you're asking, though. It's an adult man --

Q Do you think the picture speaks for itself?

A Yes.

MR. FOX: Thank you. That's all.

THE COURT: Redirect?

MS. LIVELY: No, Your Honor.

THE COURT: Thank you, Miss Pop. You may step down.

THE WITNESS: Thank you.

(Witness excused).

MS. LIVELY: Your Honor, may we approach for a moment?

THE COURT: Sure.

(Unrecorded bench conference).

THE COURT: All right. We're going to take a break about 15 minutes. Don't talk about the case, continue to keep an open mind and please select someone to be the foreperson of the jury and write their name down on a piece of paper and give it to one of the bailiffs, if you would, during your break. Thank you.

(Jury excused from the courtroom).

THE COURT: Before we take a break let me just ask Mr. Love some questions if I can get him sworn in.

PRENTIS WAYNE LOVE, after being first duly sworn, stated as follows:

THE COURT: Okay, Mr. Love, I just want to go over with you some questions about your right to testify or not testify because we may reach that stage of the trial today, we may not, but I just need to make sure that you understand you have the right to take the stand and testify and if you do so you will be subject to being cross-examined just as your lawyer has cross-examined the State's witnesses. And the cross-examination could be questions about anything relevant to the case or anything that might bear on your credibility.

In addition, you I'm sure discussed with your lawyer the fact that if you do put up evidence you lose the right to have the final closing argument, your lawyer still gets to make a closing argument but the State would actually have the last word before the jury and they would get to go last in the closing argument phase.

You also have the right, Mr. Love, to not

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testify and if you chose not to testify the Court will tell the jury, as I have already told them, you don't have any burden to produce any evidence and you have a constitutional right to remain silent and that right also guarantees you the right to let the jury not hold it against you for remaining silent and I would tell the jury they cannot take into account whatsoever the fact you have not taken the stand and that you certainly are within your right to do that and they could not draw any inference from it or conclusion whatsoever.

Do you understand those things, sir?

THE DEFENDANT: Yes, sir.

THE COURT: And is the State going to seek to impeach Mr. Love with any prior offense if he were to take the stand?

MS. LIVELY: Yes, sir, Your Honor. This defendant has a prior conviction which he is currently on either probation or parole for for assault and battery of a high and aggravated nature in the common law which carries up to ten years. He did receive an active sentence at that time and we would be seeking to impeach him in regard to that particular offense.

We also have information where he has a breach of trust with fraudulent intent which we would be seeking to impeach him with as well.

THE COURT: And what are the dates of these offenses, convictions?

MS. LIVELY: The ABHAN, Your Honor, the conviction date, sentence date was March the 15th of 2006.

And then the conviction for breach of trust with fraudulent intent was from 2002, June 25th of 2002. Let me see if I have got it here. It was actually pled to and restitution ordered on February 6th of 2003 in front of Judge Kittridge and I have the sentence sheet for that as well. All this has been provided to the defense, Your Honor.

THE COURT: All right. So, if you did take the stand, Mr. Love, the jury would learn about those prior convictions unless for some reason I ruled they were not admissible under Rule 609, but if you did not take the stand of course the jury would not learn about the prior convictions. Do you understand that, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions of me

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about your right to testify or not testify?

THE DEFENDANT: No, sir.

THE COURT: Okay. Well, you don't have to tell me now what you're going to do but I'm sure you have already talked to Mr. Fox at length about your strategy and your rights and that you understand the consequence of your choice. Okay, thank you very much.

All right, we'll take a break until about 3:30.

MS. LIVELY: Thank you, Your Honor.

(Recessed at 3:17 p.m.).

(Resumed at 3:36 p.m.).

THE COURT: Okay. The jury sent a note that Miss Jenkins, juror 132, had been chosen to be the forelady.

(Juror note was marked as Court Exhibit Number 3).

THE COURT: Ready to bring the jury out?

MS. LIVELY: Your Honor, I want to address an issue just for the record, that several people keep reminding me or telling me they have noticed a certain juror has continued to nod off during the deliberation, I mean not deliberation but during the trial, which concerns me obviously with his

ability to continue to be a part of this case as well as deliberate at the appropriate time. If I didn't have my victim's family and other individuals actually tell me and noticing it themselves, I'm focused on what I'm doing so I haven't specifically noticed but I just believe that for the record it is important for me to address that again.

THE COURT: Well, I will be glad to bring the gentleman out and ask him, question him.

MS. LIVELY: I would like for you to do so. I hate to alienate him but then you gave them another talk to this morning. If that is how he listens, by shutting his eyes, then he needs to at least address that and state that he has been fully listening to all the testimony, because I'm just concerned about, like I said, his being involved in the deliberations at the end of everything.

How about you, Mr. Fox?

MR. FOX: I haven't noticed. I mean, I have no reason to doubt what people are telling Miss Lively but I haven't noticed, myself, today any problem but I have also been focused on what I'm doing and Mr. Love indicates it might be more than one juror that is an issue, he wrote me a note, so

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maybe it is more than one person. I don't know who those are.

THE COURT: I don't know which juror it is. I mean, I have not seen one who appeared to be sitting with his eyes closed this afternoon but I don't know if I can determine what his name is without bringing all of them back out here and ask him.

MS. LIVELY: The individual I have been told of, his last name, his name is McGee, is that correct?

DEPUTY SHERIFF: Yes.

MS. LIVELY: I don't know his number.

THE COURT: That is juror 176.

MS. LIVELY: Yes, sir.

THE COURT: Okay, Mr. McGee, if you can just bring him out.

BAILIFF: McGee?

(Juror McGee now present in the courtroom).

THE COURT: Mr. McGee?

JUROR: Yes, sir.

THE COURT: You're not the gentleman I thought. We brought you out here by accident.

JUROR: You had me scared.

(Juror McGee excused from the courtroom).

THE COURT: All right, so it is not Mr. McGee. Is it McCray, number 175? No, it's not him.

(Juror Franklin Lincoln present in the courtroom).

THE COURT: Are you Mr. Lincoln?

JUROR: Yes, sir.

THE COURT: How you doing?

JUROR: Fine.

THE COURT: It appeared this afternoon there were several times you were sitting down and had your eyes closed. Were you asleep or --

JUROR: I'm paying attention but my eyes have been messing with me.

THE COURT: They have? Have you got a medical condition with them?

JUROR: No.

THE COURT: Just tired.

JUROR: Yes, just kind of tired.

THE COURT: Do you work at night?

JUROR: No, I stay up late.

THE COURT: You stay up late?

JUROR: Yes.

THE COURT: So, you're telling me, and of course you're still under oath from when you got

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sworn in yesterday, you haven't missed any of the testimony?

JUROR: No.

THE COURT: Okay.

JUROR: I was paying attention.

THE COURT: All right. Well, I understand how people get tired but I have to ask you about that.

JUROR: I was just drinking a Coca Cola back there so I could get some caffeine.

THE COURT: You're telling me you weren't asleep, right?

JUROR: No, huh-uh (negative), no.

THE COURT: Were you or --

JUROR: I wasn't sleeping, I wasn't sleeping but my eyes were closed, I was paying attention.

THE COURT: You're confident you haven't missed any of the proceedings?

JUROR: Yes, not the proceedings.

THE COURT: All right. Thank you very much.

JUROR: All right.

(Juror Franklin Lincoln was excused from the courtroom).

THE COURT: Okay. Anybody want me to ask any follow-up questions?

MS. LIVELY: That's fine, Your Honor, I appreciate you doing that. That is uncomfortable, I know, but I wanted to make sure. Maybe now everyone will --

THE COURT: I appreciate that. Mr. Fox, anything you want to add?

MR. FOX: No, Your Honor, that's sufficient.

THE COURT: I'm just trying to follow the procedure that is set forth in State versus Smith. I find based on his responses that he has not committed any kind of juror misconduct. I find that he stated he hasn't missed any of the proceedings, he heard the testimony and I certainly didn't see or hear him snoring or anything like that or anything that indicated he was in fact asleep so I would have to deem his testimony credible about his state of mind, so anything further before we bring the jury back in?

MS. LIVELY: No, Your Honor, the State is ready to proceed.

THE COURT: All right.

Okay.

(The jury returned to courtroom).

THE COURT: Okay, ladies and gentlemen, I got your note that you had selected Miss Jenkins to be

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the foreperson and, Ma'am , you will just be the liason between the Court and jury. If anyone on the jury needs to communicate with me I can only talk to you on the record or through written notes that will be made part of the record, so keep that in mind as far as communication, and during the deliberations you will preside over the deliberations and your vote doesn't count more than anybody else's, you will simply be the foreperson, and thank you for your service.

With that statement, call your next witness.

MS. LIVELY: Yes, sir, Your Honor. The State would call Dr. Carol Rahter to the stand.

DR. CAROL ANN RAHTER, after being first duly sworn, testified as follows:

THE CLERK: Please be seated and state your name for the record.

THE WITNESS: Carol Ann Rahter.

DIRECT EXAMINATION BY MS. LIVELY:

Q Dr. Rahter, where do you currently work?

A I'm an emergency physician at Georgetown Hospital Systems, most commonly Waccama Hospital, working the night shift, and I'm also medical director of the Children's Recovery Center.

Q And working the night shift, does that mean you were in the middle of sleep whenever we called you today?

A Absolutely.

Q Okay. Thank you for coming. Now, Dr. Rahter, please tell us your educational background in regards to your being a medical doctor.

A I have four years of college and graduated from St. Louis University, then went to medical school at Kansas City, Missouri for four years, then I did a one year rotating internship in Dallas, Texas and then a two year emergency medicine residency in Pontiac, Michigan. I moved to South Carolina in 1990 and became Board

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Certified in emergency medicine in 1993.
Q All right. And have you worked since that time in emergency medicine?
A Yes, I have.
Q Have you gotten any type of specialties or additional training in regards to any kind of sexual assault or child sexual assault training?
A Yes.
Q Tell the jury about that.
A The Children's Recovery Center was established I believe in 1994 and I went for specialty training in the evaluation and examination of children who have been physically or sexually abused. It is really training that, it is a multidisciplinary training that's twice a year, it is about 40 hours of training. I try to get to one of those smeinars a year, so I have had seventeen years of 40 hours of training on forensic interviewing and examining of children that are physically or sexually abused.
Q Are these a lot of times intertwined because of the type of cases that come to you in the Children's Recovery Center?
A Yes, they are.
Q Okay. And are there times whenever you not

only conduct the medical but you also do forensic interview of them?

A Yes. In the beginning of the Children's Recovery Center I was the forensic interviewer the majority of the time. Fortunately I have two forensic interviewers now, so I do mostly medical exams.

Q In regard to medical exams regarding allegations of sexual abuse, about how many of those have you conducted in your career?

A Over 2,000.

Q And in your work in doing that through the Children's Recovery Center do you have a specialized, any specialized equipment that you use in order to perform this type of examination?

A Yes, I do.

Q What is that?

A it is called a colposcope. It is a big word but basically it is a microscope that is connected to a camera. It is magnified fifteen times and when we do these exams we start at the children's toes, show the toes, the wrinkles on the bottom of their feet, look at, look at the fingerprint, any scars they have on their body. Because it is hooked to a TV, the child gets to look at the whole

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exam so by the time I actually get to the genital exam they think it is pretty cool, so they are very much more comfortable with it.

Q And in regard to using a colposcope how many times has that been a part of your practice in conducting the child sexual assault medical exams?

A Every time I have ever done an exam at Children's Recovery Center.

Q And in regard to the Chiildren's Recovery Center and using the colposcope there, how do you actually document your findings?

A It is all videotaped so it goes onto a disc.

Q Okay. That information is not provided to myself in these particular cases, is that correct?

A Correct.

Q Okay. Now, Dr. Rahter, in regard to it being video recorded, is there anything else you do to document your findings from your examination?

A I dictate my findings in the exam right after I finish with the child. That is then transcribed and becomes a part of the medical records.

Q Okay. All right.

MS. LIVELY: Your Honor, at this time the State would offer Dr. Carold Rahter as an expert in child sexual assault medical examination.

THE COURT: Any voir dire?

MR. FOX: Being offered as an expert in child sexual assault medical examination, correct?

MS. LIVELY: Yes.

MR. FOX: No questions, Your Honor, no objection.

THE COURT: Okay, she is qualified.

Ladies and gentlemen, under the law witnesses typically can only testify as to things they personally observed or otherwise as sensed through one of of their senses. There is an exception for people who by virtue of their education, training or experience have achieved some expertise in their given field and these witnesses who are sometimes called expert witnesses, if properly qualified, may give their opinions about things they have observed or learned about, so unlike other witnesses they are not limited to just testifying about their personal observations, they may in fact give opinions they have drawn from those observations. You as the jury are the sole judge of the credibility of all the witnesses, including expert witnesses.

Yes, ma'am, you may continue.

MS. LIVELY: Thank you, Your Honor.

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BY MS. LIVELY:

Q Now, Dr. Rahter, just in general for the jury to hear, when you do a sexual assault examination of a child what type of things are you looking for that would be abnormal or something that would raise some concerns for you?

A Well, first of all the majority of children that are examined for sexual assault have normal exams and the reason for that is because -- several reasons. We rarely see a child right after the sexual assault occurs. Like once or twice a year I have a child that I see immediately after or within a 24 hour period of time after the child has been sexually assaulted.

The second reason is that the tissue down there is, heals very rapidly. It is kind of like the inside of your mouth. When you bite it and it hurts really bad, you kind of have a groove there, three days later it is gone, you can't see anything, it is completely healed. Well, it's the same tissue. Mucosal tissue that is on the inside of the cheek is also in the vaginal area, so when there is an injury, which there very well might be right after it occurs, by the time we see the children it is normally healed. Sometimes it will

heal with a scar and so you can see a scar. The majority of the time when the child is sexually assaulted the exam is normal.

Q Just for hypothetical, a hypothetical question, have you actually had a situation where the child denies any sexual abuse but you do find physical evidence of sexual abuse?

A Yes. That is why I do an evaluation of a child who is able to speak, do both a forensic interview and medical exam. Sometimes in the forensic interview the child will deny everything and then you will find sexually transmitted disease like gonorrhea or syphilis or herpes or something where you know clearly the child has had some kind of sexual assault or they wouldn't have gotten this infection. So that is why you do both and you kind of put them together to determine if the child has been injured.

Q Okay. So part of what you're doing is not only getting information but wanting to seek treatment and help for the child?

A Correct.

Q Okay. So even if there had been no disclosure would a follow-up at Children's Recovery Center still be referred to you for a medical exam?

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A Yes.
Q With a disclosure obviously you would also receive this referral or the next step would be for you to do the examination. Correct?
A Correct.
Q Now, whenever you do the medical examination is it actually at the Children's Recovery Center, that facility?
A Yes. There is one in Georgetown and there is one in Myrtle Beach.
Q Is the culpascope you were describing to the jury actually within that examination room at the Children's Recovery Center?
A Yes, it is in my exam room in both facilities.
Q Okay. And whenever you do the examination of the child who is normally in the room with you, if anyone?
A Well, it is whoever the child wants to be in the room. In the Georgetown facility it is a closet that we made into my medical exam room. Sometimes it is really crowded in there but oftentimes they want their mother in there. Some children don't want anybody in there and if that's the case we usually have one of the staff of the

Children's Recovery Center in there with me to assist me but most of the time it's usually a mother, an aunt, a grandmother, somebody like that.

Q Okay. Just for the purposes of the jurors' understanding, is this an intrusive gynecological exam?

A Everything, we just look at the outside of the body, nothing is placed inside a child at anytime at any age.

Q Okay, all right. And the culpascope does not have to be intrusive?

A Let me back up. Fifteen years ago we used to do cultures. Now we actually do all those by having them urinate in a cup. In the last five years there is nothing goes inside the child.

Q All right. Now, as part of what you might be looking for as a potential injury, what part of the female anatomy do you look at to determine if there has been any type of injury in the vaginal area?

A Well, first of all you look at the whole body because you can find things other places, and we don't just assess for sexual abuse, we also assess for physical abuse and neglect, if the child is under weight and so forth, so you look at the whole body. With the culpascope, specifically on the

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genital exam, you look at the exterior structures, which is the labia majora, labia minora, commonly called the lips of the genital area. You look at the area between the vagina and the anal area to see if there is any scarring. Then you put traction on the labia and actually look at the hymen, which is kind of the opening to the vagina. And when you put traction you can then see into the vagina. Then you examine the anal area to make sure there is no abnormalities there.

Q Okay. And just for the, from your experience in child sexual assault medical examinations, is that whole idea of once you have penetration the hymen is always either torn or broken, is that correct?

A That is completely a myth. I examine 80 year old women in the emergency department that still have hymens, that have given birth to ten children. It doesn't just go away. That is what people commonly think, that is not at all the case. The hymen changes from the time you're born until the time you die. Certainly the hymen of a fourteen year old is not going to be the same as the hymen of an 80 year old but there is still hymenal tissue there when you die. When a child, prior to having

their period, they have a hymen that looks completely different than after they have their period, because after they have their period it gets kind of thickened and stretchy, so that it looks completely different than the hymen of a child who has not yet started their period.

Q Okay. Let me get specifically to this particular case, Dr. Rahter, if you don't mind. Did you have the opportunity to conduct a medical sexual assault in regard to, child sexual assault examination of an individual by the name of [redacted] in October, 2010?

A It was November 4th of 2010.

Q So, was that the forensic interview but a week later?

MR. FOX: May we approach, Your Honor?

THE COURT: Sure

(Unrecorded bench conference).

BY MS. LIVELY:

Q Dr. Rahter, do you mind if I actually have a copy of your notes?

A Sure.

Q Thank you.

MS. LIVELY: All right, back on the record, Your Honor, regarding this matter. Thank you.

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Q Dr. Rahter, thank you for providing me with a copy of your findings from that date. Once again to be clear, you actually examined Miss [redacted] on November 4, 2010, correct?

A Correct.

Q And based upon the information you had, and it is actually documented, she had already received her forensic interview, is that right?

A Correct.

Q Okay. Now, did you or would you have had the opportunity to review the forensic interview by your associate Dianne Nordeen before conducting the medical exam?

A I seriously doubt that this was, that her interview was typed up yet. It was only five or six days later and I don't have a whole lot of detail in here like her report would have, so I think I probably just got verbal communication about what the disclosure was.

Q Okay. And what is important for you to know regarding the disclosure so that you know medically what to look for?

A If there has been a disclosure of actual penile vaginal penetration I do cultures or I test for sexually transmitted diseases. If there is not

a disclosure of that type of abuse then we don't put the child through that kind of testing.

Q Okay. Was there --

A Unless I find something on exam that looks like it is infected.

Q Okay. So if you see something that raises an eyebrow you would do it anyway?

A Correct.

Q Okay. And in this particular case what did you actually test for?

A In this case I didn't test for anything.

Q Okay. So the information that you were provided did not lead you to be concerned about getting cultures and testing for STD's?

A Correct.

Q Okay. Still, did you conduct a typical medical examination with a culpascope as you would in every other case?

A Yes, I did.

Q And based upon your examination of the child [redacted] at that time what were the results of your examination?

A That her physical exam was without abnormalities, which does not rule in or rule out sexual abuse.

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Q And you have already testified in regard to the anatomy of the female body in that particular area, so in your opinion was this, was the fact of these findings any concern to you in regard to doing any additional follow-ups for STD's or anything like that?
A I would expect that her exam would be normal with the disclosure that she made.
Q Okay. And once again, were you aware as to the timing of the last event that she claimed had occurred that was sexual in nature, and if you don't know from your note that's fine but do you have any idea?
A I know it was over a month prior.
Q Okay. In a situation where it was over a month prior and you're not testing for penile vaginal penetration would this be unusual for there to be normal findings?
A I would expect the exam to be normal.
Q Okay, and it was?
A Yes, it was.
Q During your medical examination of the child did you retrieve any information from her about time and place of any event?
A No, I don't believe she personally told me.

I think I got that information from the forensic interviewer.

Q That's fair. Once again that --

A Sometimes I see children prior to the forensic interview and so I have to ask all the questions myself and if they had gone through the forensic interview and all those questions have been asked I take either the report or verbal report from the forensic interviewer.

Q All right. Let me ask you a hypothetical. If a child at the age of fourteen suffered from some type of digital penetration and the disclosure was two months later would you expect to find any physical indication of that assault?

A I would not expect to find any abnormalities.

MS. LIVELY: Thank you. Answer any questions Mr. Fox may have for you.

MR. FOX: One moment.

No questions, Your Honor.

THE COURT: All right. Thank you, Doctor.

THE WITNESS: Thank you.

(Witness excused).

THE COURT: Okay, the State may call the next witness.

MS. LIVELY: Thank you, Your Honor. At this

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time the State rests.

THE COURT: All right. Ladies and gentlemen, the State has completed their presentation of evidence. At this time I have to take a short recess and discuss some things with the lawyers at this stage. Please keep an open mind and don't talk about the case and just return to the jury room for a few minutes. Thank you.

(Jury excused from the courtroom).

THE COURT: Okay, any motions or matters at this time?

MR. FOX: Yes, Your Honor. At this time I move for a directed verdict on both indictments, both the criminal sexual conduct with a minor as well as lewd act on a minor. Basically the State has not met its burden of proof with regard to each element of each offense, they have not proved each element beyond a reasonable doubt.

THE COURT: Okay. Mr. Fox, I find the record does contain evidence sufficient to withstand a motion for directed verdict and will be a matter for the jury to decide. I think obviously under Rule 19 I can't weigh the evidence or evaluate the credibility, but only whether any exists. I think there is in the record evidence that I believe

would support each element of the crime on both indictments. I respectfully deny your motion.

MR. FOX: Thank you, Your Honor. That's all at this point.

THE COURT: Does the State have anything at this time?

MS. LIVELY: No, Your Honor.

THE COURT: How long do you think -- I'm just trying to decide for when we need to break.

MR. FOX: Judge, I have two witnesses, I believe, and we can make sure, I believe Mr. Love is going to testify. He of course would be a bit longer. My intention would be to call his wife Tabitha as the other witness, I don't think she will be particularly long, and that might be a good point to break.

THE COURT: That sounds good.

MR. FOX: We can do Mr. Love and argue and charge in the morning.

THE COURT: That sounds like a good plan. All right, you can bring the jury back out. Thank you.

(The jury returned to the courtroom).

THE COURT: All right, ladies and gentlemen, the State did rest their case. At this time the

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defense has the opportunity but not the obligation to present any evidence it wishes to.

So, yes, sir, Mr. Fox.

MR. FOX: Thank you, Your Honor. The defense calls Tabitha Love.

TABITHA LOVE, after being first duly sworn, testified as follows:

THE CLERK: Please be seated and state your name for the record.

THE WITNESS: Tabitha Love.

DIRECT EXAMINATION BY MR. FOX:

Q Tabitha, where do you live?

A In Murrells Inlet.

Q And who is your husband?

A Wayne Love, the defendant.

Q Okay. How long have you all been married?

A Eight years in March.

Q Do you have any children?

A We do, we have two.

Q How old are they?

A Courtney will be nine in July and Aden just turned seven.

Q Okay. And how long have you lived in the Murrells Inlet area?

A Since 2008, so four years.

Q And where in Murrells Inlet do you live?

A Right now we currently are not at the same place but we did live on Wilco Avenue.

Q Back in 2010 did you live on Wilco Avenue?

A Wilco Avenue.

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Q And do you know the Bellamy family?
A Yes, sir, I do.
Q Okay. You saw Tony and Shannon and [redacted] here testify, you know all of them?
A Yes.
Q When you lived on Wilco Avenue where did they live in relation to you?
A Approximately two miles, on Hyatt.
Q Just a couple minute drive?
A Yes, sir.
Q How did you come to meet the Bellamy family?
A Through my husband, he was associating with the dad and the mom, with Green Wing, with Shellcracker and dog weigh in, and after they had spent some time together and everything, probably a couple months later that I ended up meeting them. I knew of them but didn't actually meet them until a couple months later.
Q Approximately when was that?
A November, 2009, I believe, because of a Ducks Unlimited banquet, I believe it was November or either October, I'm sorry.
Q As you got to know them how would you describe your relationship with Shannon and Tony? They had two children, right?

A They do. One is there part-time. We became very close. [redacted] pretty much became a younger sister to me, me and Shannon were pretty much like sisters, we were able to talk, anything I needed to talk to her about I was able to go to her. Tony even, I don't know how to quite describe it, a friend, a person I looked up to.

Q What type of things would you all do together?

A Cook out, hang out together, going out to eat, every Wednesday night we went out to eat together at the same restaurant, birthday party, Ducks Unlimited, pretty much those kind of things or anything that really involved the kids.

Q So it wasn't just the adults that were mixing?

A No.

Q Hanging out together?

A No, not necessarily. Every time there was a family function my children were there and so were theirs.

Q Okay. Were they ever over at your house?

A A great bit.

Q How about Brittany, that would include

[redacted]

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A That would include Minor
Q Was it always the entire families together?
A No, not always. A lot of times it was just Minor and Minor would be over there with just me and my kids a good bit of time, spending time with us. There were times we went to the beach together and sat on the beach, just girls' day, sometimes Aden went with us, my little boy. There was times that I would have a friend over with Minor there. There were times, you know, the whole family was there.
Q In an average week how many times would you say Minor came around or did things with you at your house?
A I would say at least once a week she was at my house. If not that, I would see her at her house at least once or twice a week.
Q Did she ever babysit for you?
A A lot.
Q Okay. In the evenings?
A Every Wednesday night she actually was my babysitter when we went out to eat. There was a couple times she babysat at my house, there was a couple times we had other things we went and done and she did babysit.

Q What did you think of [redacted]

A A very sweet, loving girl that had some emotional problems that she confided in me about but besides that, a straightforward girl.

Q What type of things did she confide in you about?

A Things that were going on inside the home, things that she did not want to discuss with her mother, that she felt she could confide in me because of the bond that we had, she knew I wouldn't go back to her mom and tell her, I told her she could talk to me about anything. She would tell me about fighting, about the stress that was going on, problems that she was having at school, anything, things that were going on between her and a friend, boyfriend matters, anything, pretty much like two friends or, you know, siblings would even talk about.

Q But you're a good bit older, aren't you?

A I am.

Q How old are you?

A I'm 28.

Q She was how old, about, at this time?

A Thirteen, fourteen.

Q Okay. Did she ever tell you anything that

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gave you concern?
A There was two things that really gave me concern. One was her doing pills and another was that she was on a roof about to jump off.
Q Let's start with the pills. Did she indicate what kind of pills she was doing?
A Yes, she did.
Q And what was that?
A Vicodin.
Q Did you find out where she was getting these pills?
A Yes.
Q Did she have a prescription for them?
A No.
Q Where was it she was obtaining these pills?
A Dad's prescription bottles and from a friend Ashley.
Q When you say dad, who are you referring to?
A Her step-dad, Anthony Carter.
Q Okay. Mr. Carter has testified he had multiple shoulder surgeries, correct?
A Yes, sir.
Q Did she give you any indication of how often or how many pills she was doing?
A Not really. There was a time that she had

stated she was high from doing them, this was via text directly to me. The time she was up on the roof she had stated she was high on the pills. There was never actually a number.

Q Let me ask you this. You mentioned that she texted you. Did you communicate with her, obviously she would come to the house and you all would go do things and you would speak face to face, did you communicate other ways with her?

A We texted and called a lot.

Q How often would you say that happened on average, say, in a day or week?

A We would text at least twice a day and it could be three times back and forth, which would mean probably six at a time. Sometimes on the weekend more.

Q Now, tell me about, you mentioned one time she texted you and she was what, she was where?

A On the roof top.

Q What roof top?

A At her friend Ashley's, she had went and stayed the night with Ashley.

Q Was there anything more to it than, "I'm just up on the roof"?

A No, "I'm about to jump off of the roof."

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Q What did you do when you got that message?
A I responded to her over and over and told her I was going to tell her mom if she didn't get off the roof and pretty much after I threatened her a couple times she dropped the subject. I then, thinking because Tony is a great friend of my husband, I called my husband and told him about it and he called her and talked her out of it. I did not call her mother, I should have but I did not.
Q Did you go over to make sure she was okay?
A No. I did not know where Ashley lived. At the time I was in Carolina Forest.
Q So, you say over the course of time that Ashley was confiding these very serious things to you about pills?
A [redacted] was.
Q Problems in her life, and even at least suggesting she was open to the idea of suicide, you never went to her mother or step-dad?
A I did not.
Q Why not?
A I kept it confidential because I felt that is what she wanted.
Q Now, you are aware, you mentioned that Wayne was also -- let me ask you. Was Wayne, would your

husband be around when you did these family things?
A Some of them, some not.
Q Sometimes he was?
A Exactly.
Q Okay. And were you aware that there was any communication back and forth between Wayne and [redacted]
A Yes, I was.
Q What kind, what was the nature of that?
A Texting, calling. He treated her like at sister. When we would go over there to their house to hang out he would carry her on his shoulders, did the same thing to my kids. Other than that I never saw anything out of the ordinary.
Q Now, the phones, you had your own cell phone, correct?
A I did.
Q And Wayne had a phone?
A He does.
Q Did you ever have a mixing of those phones, did you use his phone, he use your phone?
A Oh, yes.
Q Tell us how that was.
A If there was one phone laying around and it went off we either one would grab a phone closest

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to us and look at it. There was never a trust barrier there that said, "Okay, you can't look at my phone." If it was a friend that may text I knew who they were, a lot of times I would respond back or I would answer the phone. There was times he would leave his phone there and just go out for the day. Yes, we both answered each other's phone, we still do to this day.

Q Were there any of those times Wayne was ever involved in those communications with [redacted]

A Yes, there was.

Q Do you have any estimate how often that may have happened?

A I say probably about 25 or 30 percent of the time if Wayne was at home and the phone was there I would grab it.

Q And that may be [redacted] on the other end?

A Exactly.

Q Whether a text or phone call?

A Exactly.

Q So, if someone was to pull records of calls to and from your husband's phone, some of those, the person actually using that phone at least a chunk of the time might be you?

A Oh, yes.

Q Okay. Now --.

MR. FOX: One moment.

Q Now, you and Wayne were together, living as husband and wife, living in Murrells Inlet New Year's Eve, 2009-2010?

A Yes, sir, we were.

Q Okay. Tell me what you remember you did that night.

A There was a New Year's party, my kids and my whole family were invited over, we went over, I did consume I know at least two drinks.

Q You say you were invited over. Where?

A To the Bellamy house.

Q Okay.

A I did consume some alcohol, I admit that. My husband did also. We danced around, done stuff in the back yard, shot guns off at midnight, pretty much, you know, just spent the time together, had a cookout, pretty much that is what we did that night. We probably were there until probably about 1:00 o'clock.

Q Okay. What happened at 1:00 o'clock?

A We left and went home.

Q Who was we?

A My husband, I and my two children.

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Q Anybody else?
A No, sir.
Q Anybody come by later?
A Not that I recall.
Q Anybody there other than your husband and your two children in the morning when you woke up?
A Not that I recall.
Q Did you have any plans to do anything New Year's day with [redacted]
A I do not recall that. It has been some time. Normally that day I would text her and let her know, "Let's do this," or call her mom and ask her if she could come over. I mean, during Christmas holidays we did do a lot of stuff together.
Q But did [redacted] spend New Year's Eve, 2009-2010 at your home?
A No, sir, she did not.
MR. FOX: Thank you. Please answer any questions the State has.
THE COURT: Cross-examination.
MR. FOX: Your Honor, I'm sorry, I have one further questions.
THE COURT: Yes, sir.
BY MR. FOX:
Q Miss Love, you have a record, don't you?

A Yes, sir, I do.
Q Okay. What is that for?
A I have a record from six years ago of assault and battery high and aggravated nature.
MR. FOX: Okay, thank you.
CROSS EXAMINATION BY MS. LIVELY:
Q How did you know that [redacted] was claiming that she was sexually assaulted by your husband in the home while you were sleeping on New Year's Eve, 2009?
A I found that out when the mother came to my house threatening. I found that out on October 25th, 26th, the day, because they came to my house the day before asking questions and about cigarettes, the next day mom came to the house by herself.
Q And you obviously immediately went to the police to tell them, "There is no way possible because I was there all night long and that child never spent the night in my home," didn't you?
A She did not tell me the allegations. She told me she was hunting for my husband.
Q Okay. Well, did you learn about this information a month later?
A Once the information was provided he had

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already went to the cops about it.
Q Okay. I'm asking about you, Miss Love, you're here testifying on behalf of your husband. Correct?
A Right.
Q Okay. At what point in time did you go to the police to declare that you were an alibi witness for your husband for that night because he was with you all night and [redacted] was never there?
A I never did, I did not know the whole statement.
Q Okay, all right. So are you saying that now during this trial is the first time you are hearing that he sexually assaulted her at your home?
A No. I have heard it since the beginning of the time he got locked up.
Q Okay.
A And at that point it had already been made a point to the police.
Q Did it seem important to you?
A Yes. I have been steadily in touch with the lawyers, back and forth with my witness, with anybody that I felt was important, any questions I had. I contacted the bondsmen, anything I had

questions about, you know, I would call lawyers and ask them, several times I sat in with lawyers to find out what my place could be.

Q I mean, you said you have got a conviction for ABHAN, correct?

A Yes, ma'am, I do.

Q So you have been through the system?

A Yes, ma'am.

Q You know how it works?

A Yes, ma'am.

Q You know how important it is to provide any piece of information that could be helpful to an investigation especially if it might mean that your husband could be acquitted of such a serious crime of sexual assault, correct?

A Right, and I was told that the only information I needed to provide was to the lawyer who would be investigating that on my behalf, on my husband's behalf.

Q Okay. All right. Now, you agree that you were very close with the Bellamy family pretty early on whenever your husband actually met Tony Carter at Ducks Unlimited meetings, correct?

A Yes, ma'am.

Q Okay. And there were times whenever you all

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would spend time together over at the Bellamy house and there were times whenever they, [redacted] would come over to your house and spend time with you?

A Yes, ma'am.

Q Okay. And during that time you stated that [redacted] got to the point where she looked up to you kind of like a big sister and confided in you some things, right?

A Yes, ma'am.

Q All right. Now, you also mentioned that she considered your husband a great friend. Is that right?

A She looked at us as a brother and sister, great friend, yes.

Q Okay. As a parent yourself of two children and raising two children yourself was there no time whatsoever when you became concerned about this great friendship between your husband, a 30 year old man, or 29 to 30, and this fourteen year old girl?

A No, because pretty much the same relationship they had, I had also.

Q Okay. And in that relationship you were aware that they had actually gone fishing together and they would be alone in the boat together during

this fishing tournament, is that fair?
A That is true.
Q And you had no concerns?
A No, I did not.
Q All right. And as time progressed and there was a continued relationship between [redacted] and your husband was there no time whenever you got any indication that there might have been something else going on between the two of them?
A Not at all.
Q Well, you have been sitting in here during the whole trial and everybody's testimony, right?
A I have.
Q How did you feel about Ashley's description of it being a boyfriend-girlfriend relationship?
A I pretty much laughed at the matter because that was the first time I have ever seen Ashley with my own eyes, so it kind of stunned me, okay, "You said that you're such great friends with my husband, you know my husband by being around, but I have never seen you."
Q Now let's get to the situation where you're talking about [redacted] telling you about the pills, okay?
A Uh-huh (Affirmative).

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Q All right. Now, I understand that you said that she admitted to you she had taken some pills, correct?
A Correct.
Q The Vicodin?
A Uh-huh (Affirmative).
Q And according to your testimony, you took that confidential information and basically let that trump any parental need you would have to share this information with her parents. Is that a fair assessment?
A I did and I do realize it was a mistake.
Q That was a mistake, okay. Well, let me ask you this, then. In regard to her telling you that she is on the roof and going to jump, your response to that is that you sent text messages and tried to talk her out of it. Right?
A Correct.
Q And then instead of calling the police or her parents you contact her great friend and your husband the defendant, didn't you?
A Yes, I did.
Q Because you knew out of anybody he had the most influence over [redacted] at that time, didn't you?

A I knew as a brotherly friend, contact, that [redacted] normally did pay attention when he talked.
Q So, [redacted] pretty much did whatever it was that Wayne felt she should do?
A Not necessarily that. If she was having problems Wayne would say, you know, "You shouldn't be handling things that way." A lot of times she mainly argued, she is not very open to taking suggestions, you have to pretty much put it in her head, and I had already been pretty much telling her over and over she shouldn't do it and threatening to call mom but I fell since Wayne was clear, in that area of where he worked and her being in Surfside because that was the only place I knew, she was somewhere in Surfside, that pretty much, you know, he might could get to her faster if he felt the need of it. I mean, of course, I didn't know exactly where I was.
Q You have a child that is telling you she's taking Vicodin pills and she's on the roof of a house and you don't call the police?
A No, I did not because I know police do not take it seriously a lot of times.
Q So you take that upon yourself, to make that assumption?

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A I have been through a lot myself.
Q Okay. And so the person that you called, once again, is the defendant, your husband, to go and talk to [redacted]
A To call her, yes.
Q Okay. And once again, when you have a fourteen year old child who is threatening suicide, at what point in time did you ever decide, "This has gone too far, this is a good family, they pay my husband to do work at their house, feed my children, I need to go and talk to them and tell them what is going on with their daughter"?
A My question to you --
Q No, you need to answer my question first, then maybe we can talk.
A I'm sorry. I did not decide that. I didn't think it had gotten that far because we had spoken to [redacted] and she was calm and level headed, so no, I did not think we needed to push it that far.
Q At what point in time have you brought up this situation where she was going to jump from the roof?
A I told her mother that the night that she confronted me about the cigarette and the pills.
Q Okay. Now let's talk about September the

11th of 2010. You have now been in here long enough to hear the allegations of whatever happened on that particular day?

A Yes, ma'am, I have.

Q Okay. All right. And your husband had plans to go with Mr. Carter and A. J. and originally [redacted] to the Dead Dog Saloon for their celebration. Is that right?

A That is not correct.

Q That's not correct?

A That is not.

Q Okay, now you have information that you want to share with all of us regarding the September 11th event as well?

A Yes, ma'am.

Q Well, please share, please tell us exactly what it is you can enlighten us about now that we're on the day of trial, Miss Love, what happened on that day?

A On that day my children, my husband and myself, we went to Dead Dog around 11:00, 12:00. We were there with the firefighters and everybody. We then left after there and went home with friends, I do have friends that were there at my house and watched the Carolina football game. My

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husband does not miss a game. He did not leave the house after that point, he was at home.

Q So, once again you come to us on the day of trial to provide us with alibi information that you were with your husband all day on September the 11th of 2010, today is April the 24th of 2012 and this is the first time we're hearing that your husband was with you all day and never with the Bellamy family?

A The information was provided to the defense.

Q To the defense, to your lawyer?

A Yes, it was.

Q Okay, all right. Well, then, let me ask you if I can make this assumption, okay? The text messages between the telephone number that your husband has and Minor on the day of September 11th, 2010 --

A Uh-huh (Affirmative).

Q Over 140 messages, that was between you and her?

A No, not all of them.

Q Okay. Between who?

A My husband and her.

Q Okay. And you have friends that you say that you were with that day that were also with your

husband, that will say you were with him all day long?
A Yes, ma'am, I do.
Q Okay. What are their names and telephone numbers?
A She's actually sitting in the courtroom.
Q What is her name?
A Regina Frye.
Q Okay. All right, who else?
A It was her husband, I'm not sure if he was there the whole time because he does work. And her three children --
Q Okay.
A -- were at my house watching the football game.
Q Okay. I'm talking about Dead Dog, how long were you all at Dead Dog together?
A She did not go to Dead Dog with me, she met me at the house, at the football game.
Q What time was the football game?
A The football game started 12:00 o'clock, we were late getting there, we got there at 1:00 o'clock at my house.
Q At anytime at all on that date, September 11th, 2010, did your husband leave your sight?

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A He did not leave.
Q He never left?
A No, ma'am, he did not.
Q Okay. And once again this is the first time we're hearing all this?
A Yes, ma'am.
Q Fair enough. That picture of your husband where he is sitting on a duck, did you send that to [redacted] on September 12th, 2010, or did he?
A I do not know about the picture. I did not know about the picture at all.
Q Okay. Were you with your husband whenever he asked for [redacted] to send him a nude picture of herself?
A I was with him and I do not recall that message being sent.
Q Now, whenever, about the September 11th, 2010, whenever you said you were with your husband, at that point in time was your husband still doing work for the Bellamys?
A He had done work off and on. I am not for certain if he was still working over there because he was actually doing air brushing, air brushing the week and the weekend, that week of Labor Day, so, yes, he could have went over there during the

week and done some work but he had done work for them, just not that day.

Q Okay. As of that date had you all had any type of falling out or problems with the Bellamys?

A None that I can recall.

MS. LIVELY: One moment.

Q Now, Miss Love, what I want to know, on September 11th, because this is the first time I'm hearing you, bear with me for a minute so I can get an idea of your time line, you said that you all were watching a football game about 12:00 or 1:00 o'clock on September 11th?

A Right.

Q Okay. And were you watching it at your house?

A At my house.

Q At your house. Who was playing?

A It was the Carolina football game and if I recall right it was the Bulldogs, Georgia Bulldogs.

Q And if the game started around noon, then do you recall about what time it was when the game was over?

A Around 4:30, 5:00 o'clock.

Q And at 4:30, 5:00 o'clock, once the game was over what did you do?

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A Our friends and us, we sat there and pretty much we finished all the food and everything, we hung out together.

Q At your house?

A At my house.

Q So is it your testimony that Wayne never left your house and went to the Dead Dog Saloon that night?

A He did not.

Q I just wanted to be sure.

A Yes.

Q I'm just curious, Miss Love, just one more thing. Did you not think it was somewhat inappropriate for your husband to be texting [redacted] like over a hundred times in a day?

A I did not realize it was a hundred times in day. I did realize they did text an awful lot because he would sit there and text her in my living room with me right there next to her. I did not realize it was that many times but, no, I did not think nothing of it. Like I said, I also was doing the same thing with her, you know, off and on texting her. I mean, we were close friends, I mean, there is nothing wrong.

Q Did you ever provide [redacted] with any

alcohol?
A No, I did not.
Q Are you still on probation for that ABHAN?
A Yes, ma'am, I am.
Q You are? Assault and battery of a high and aggravated nature?
A Yes, ma'am.
Q How many years probation?
A It's five. I have another year and a half.
Q Was there anyone else other than Regina that you say was at your house, and the children, to watch that South Carolina game?
A Her husband was at several football games, I can't recall if he was at that actual one.
Q What is his name?
A His name is Trey and last name is Frye.
Q Okay.
MS. LIVELY: Thank you.
THE COURT: Redirect?
MR. FOX: Just a moment, Your Honor.
REDIRECT EXAMINATION BY MR. FOX:
Q Tabitha, did you ever see any adult give alcohol to [redacted] in your presence, that you saw yourself?
A I have seen alcohol in her hand, I did not

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know who gave it to her.
Q Now, you're in your late twenties now?
A I am.
Q At some point you were a teenager, correct?
A Yes.
Q Either in your own life or with other teenagers that you have known is it your experience that teenagers don't always want to reveal things to their parents?
A Oh, yes.
MS. LIVELY: Objection, Your Honor She's asking for some type of supposition.
MR. FOX: I'm asking from her experience, Your Honor, her own personal experience.
MS. LIVELY: Speculation.
MR. FOX: I will withdraw it.
BY MR. FOX:
Q Now, you testified [redacted] told you about some difficulty she was having in school and with her family and other things, correct?
A Correct.
Q Did that have any bearing on your decision not to, specifically her difficulties with her family, not to inform her parents about the things she was revealing to you, the pill use, suicide, et

cetera?

A A lot. I feared for [redacted] I really did.

MR. FOX: Thank you. No further questions.

THE COURT: Recross?

MS. LIVELY: None, Your Honor.

THE COURT: All right. Thank you, ma'am, you may step down.

(Witness excused).

THE COURT: Okay, let's adjourn. We're going to adjourn for the day. Let's be back in the jury room at 9:30 in the morning. Don't talk about the case, continue to keep an open mind and we'll resume the case tomorrow.

(The jury was excused from the courtroom).

THE COURT: Okay, anything before we recess for the evening?

MR. FOX: No, Your Honor.

MS. LIVELY: Your Honor, the only thing I would like to say, the State was never provided with any alibi witness testimony. That is obviously what the defense witness was called to do and at this point in time I'm going to have my investigators try to follow up some of this information and I'm just going to ask the defense to provide me with telephone numbers of who these

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witnesses were who were supposedly there, that said the defendant never left and did not go to the Dead Dog Saloon, so my investigators can do a follow-up investigation. That may delay me getting started in the morning because I may now have to call rebuttal witnesses. I'm going to ask for that and bring that to the Court's attention.

MR. FOX: I'm sorry, I don't mean to talk over Miss Lively. Just so we're clear, that information did not come out in response to my questions.

MS. LIVELY: She said she told the lawyers and everybody else who was asking all along for a year and a half.

MR. FOX: There was a previous lawyer assigned to this case. I can only say I think from my question it was clear why she was called, whatever good that may do my case, and she did not give that information in response to a question from me, so I'm aware of my responsibility to reveal alibi defense, I didn't do it because I did not intend to present an alibi defense.

MS. LIVELY: I'm just asking for some leeway, I'm going to need to have my investigators follow up on it. Typically we're given time, place,

information according to the rule so that we can follow up and determine the reliability of any type of an alibi claim by the defense and I'm not saying, I understand Mr. Fox is correct, Richard Colvin did originally represent this defendant but this case has been pending for such a long time, the defendant was arraigned months ago, so that's the reason why this is coming out of the clear blue for me, so I would just like to have the opportunity, I'm going to have my investigator talk to Miss Frye and get information and talk to her husband and follow up in regard to the alibi information so that I can be prepared. I'm obviously going to have to call rebuttal witnesses in regard to this information that has been provided to the State in the middle of trial. I just want to give the trial judge a heads up.

THE COURT: I think what Mr. Fox is saying, he didn't raise any alibi defense or elicit any testimony, that came out on cross-examination.

MS. LIVELY: No, Your Honor, she testified that on the September 11th information, he asked her about September the 11th and she said he was with her the whole day, that is what I'm talking about, and also she said on the night of New Year's

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Eve that Minor never came home with them.

MR. FOX: I would say that is not really alib, saying someone wasn't there. We already know there is no question with regard to New Year's Eve he was in his own home, that's not the question, it's not really an alibi because the allegations are it occurred in his own home, the testimony was Minor wasn't there, it not really an alibi.

MS. LIVELY: If she's saying that he was with her and not with the victim, the victim was not there, that is splitting hairs but that pretty much being an alibi, she was with, she was with the defendant and the victim wasn't there.

MR. FOX: She was saying the defendant was home, Minor not.

MS. LIVELY: Either way, especially with regard to the September 11th claim by this witness, the State is just going to probably need a little bit of time to follow up.

THE COURT: Okay.

MS. LIVELY: If the Court will give me, indulge me in that regard.

THE COURT: Sure.

MS. LIVELY: And maybe we can have the, it is already 5:00, it is a little before 5:00 today,

maybe if we can have the jury come back at 10:00 in the morning.

THE COURT: They're gone, I told them to come back at 9:30.

MS. LIVELY: That's fine. If we can get enough done without tonight, then we'll just do it.

THE COURT: Okay. Just let me know.

MS. LIVELY: Yes, sir, thank you.

THE COURT: Thank you, ma'am.

All right, see you back in the morning.

MR. FOX: Thank you, Your Honor.

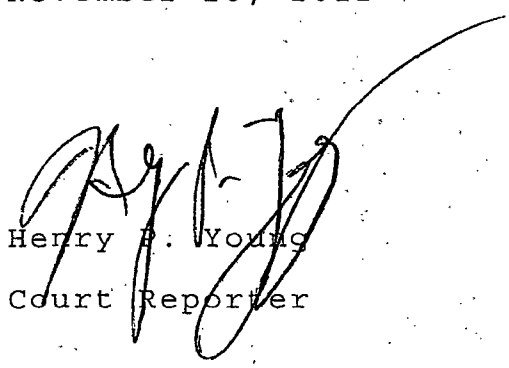
(Recessed at 4:55 p.m.).

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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Georgetown County, South Carolina, on the 23rd and 24th days of April, 2012.

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

November 28, 2012



Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

COURT OF GENERAL SESSIONS
2011-GS-22-00432

STATE OF SOUTH CAROLINA,)
)
-vs-)
)
PRENTIS WAYNE LOVE,)
)
Defendant.)

April 23/25, 2012

B E F O R E:

HONORABLE D. GARRISON HILL

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

CANDICE A. LIVELY, Esquire
Attorney for the State

JONATHAN ERIC FOX, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

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(Reconvened at 10:04 a.m., April 25, 2012).

THE COURT: Okay. We had some delay getting all the jurors assembled. We have everybody we need, so anything before we bring the jury?

MS. LIVELY: Yes, sir, Your Honor.

THE COURT: Okay, yes, ma'am?

MS. LIVELY: If you will allow me a moment.

THE COURT: Sure.

MS. LIVELY: I'm sorry, I had to get my computer up here.

Your Honor, the State does have a couple matters I want to address with the Court.

THE COURT: Okay.

MS. LIVELY: As you recall, late yesterday afternoon the defense called witness Tabitha Love to the stand, at which time she provided under direct examination an alibi to the date of September the 11th, 2010, for the defendant, stating that he was, they had gone to the Dead Dog earlier that day before the Carolina football game, then they went home, watched the Carolina football game all day, that he never left the home again.

Your Honor, I did attempt cross-examination without having the opportunity to have my own investigators follow up on this alibi which I was

never provided notice of and I will gladly provide to the Court that document that shows first of all this defendant was arraigned, which is standard with our office, September 8th of 2011 and was notified that the case was being called to trial.

Then, Your Honor, an acknowledgement of discovery document was signed by defense attorney Eric Fox on February 9th, 2012, and along with that notice, at the bottom it says, "Please acknowledge receipt of copies of the above documents at the bottom of the place provided and return a signed copy to this office. Also enclose and serve timely a notice of mutual reciprocal discovery motion," which obviously as the Court knows would include the Rule 5 request for any type of alibi, mental issues with the defendant. That was not provided to the State.

The State is also entitled to a fair trial in this matter. Under the circumstances, Your Honor, whenever I cross-examined Tabitha Love regarding her alibi I did not have benefit of knowing and following up on this alibi information. At that time I did ask the Court at the end of the day yesterday if the State would be allowed to follow up, talk to the witness that was in the courtroom

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who Tabitha Love actually mentioned was also there during the day, to prove or disprove the alibi.

Your Honor obviously told me that was my right and allowed me to then leave and we did follow up, Your Honor, until about 7:00 o'clock last night. Myself, Investigator Pop and Steven Brown with our Circuit, 15th Circuit investigators' office did meet with Regina Frye did speak with her. She provided a written statement which I have now provided to the defense regarding the information for the alibi.

Also, Your Honor, upon leaving the courthouse myself I witnessed that Tabitha Love was continuously on the phone. This was also witnessed by Investigator Pop. It was her idea as well as Steven Brown, my investigator, to pull the phone record from the jail and at which time the phone records between calls with this defendant and his wife, it is clear from these records that this whole matter was planned by the defendant and his wife in regard to what she would say and how it would be said.

Your Honor, I am asking the Court, since we have not moved on from testimony, and as a remedy for the State in regard to not being provided

proper notice, whether it was from this attorney or the prior defense counsel, either way, that Tabitha Love take the stand and I be allowed to continue to cross-examine her regarding this new information that I received and follow my investigation of this alibi I was not provided notice of.

THE COURT: Okay. Thank you, ma'am.

MS. LIVELY: Thank you.

THE COURT: Mr. Fox?

MR. FOX: Yes, Your Honor. It is absolutely true I did not provide any notice of alibi, I'm aware of that requirement under the rules, no question I received that request in getting discovery from the Solicitor's office. The simple reason I did not do that I did not believe that was an issue.

I guess I have to address each of the three instances a little bit. On the issue of New Year's Eve, I didn't feel that was an alibi since Mr. Love wasn't somewhere else with some other people. It was a question, I may have been splitting hairs, it wasn't my intention, but the testimony that I believe will come out was that Miss [redacted] was not at the defendant's home, not that he was off somewhere, he couldn't have done it, but

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I guess it may be splitting hairs. I didn't see that as an alibi issue.

With regard to the instance that allegedly occurred on the boat, there was never an alibi issue there. I don't want to preview what Mr. Love is going to testify about because he hasn't testified, I'm saying there was no alibi in any of the incidents that occurred during the fishing tournaments.

That leaves what we're talking about today, the 9/11 incident. I think we have a difference of opinion on how that information came out, I guess we may have to refer to the record, I do not recall asking Miss Love, as sure as I can be I did not ask her about that issue about what she was doing or where Wayne was that day. I know recollection is that that was brought out in cross-examination. There was no intent by me to stonewall or surprise the Solicitor with that testimony and I guess, and I don't doubt that Miss Lively remembers it differently, and if I'm wrong I'm wrong but I think the record reflects it another way. If it was asked on direct examination it possibly makes it an issue but if it was asked on cross-examination I don't believe it is an issue. I didn't offer any

alibi testimony, is my position.

Now, again, if the record reflects differently and I remember it incorrectly, I'm not trying to deceive anybody. My recollection is that information was elicited on cross-examination, so it wasn't put in evidence, didn't need to be provided by me, by the defense, I don't need to provide notice of something I don't introduce in evidence, just like, you know, if there is a medical report or something that I don't intend to introduce, if I don't intend to make it a part of my case, if it comes out on cross-examination I violated no rules by not providing that document.

That brings us to the jail calls. It is standard, maybe not in every case but it is certainly something that occurs to law enforcement and the Solicitor in a great number of cases where a defendant is incarcerated for more than a day to go and see if there is any incriminating evidence by pulling jail calls. This case is a year and a half old. They certainly had knowledge, I mean, I'm very sure Mr. Brown and the Sheriff's office, Miss Lively has had cases where they have done this, where they pulled jail calls. Not like it wouldn't have occurred to them until yesterday, so

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to me we don't even have to get to the issue, they certainly weren't provided to me until literally just this moment, although requested under Rule 5 and all discovery motions.

MS. LIVELY: Just so, I don't mean to interrupt you but I do want to be clear, those jail calls are from last night. No other jail calls were pulled, so I would be clear, I got it this morning, he got it within the time I could burn him a disc.

MR. FOX: Okay.

MS. LIVELY: Okay.

MR. FOX: I wasn't aware of that. I don't think we have to get to that issue. First, Your Honor, the Court has to decide whether I violated, intentionally or not, whether there is any violation of the requirement to notify the State of an alibi defense. My position is there wasn't and we didn't present any evidence of that, of an alibi. Therefore we don't even have to get to this issue. If that is the case there is no right for them to recall Tabitha Love. There is no reason to get into these jail calls. If it is done, if in fact the Court determines that we did and there is a violation, then of course I would need time to

listen to this before we can proceed this morning. My position is there was no violation, we didn't elicit any evidence about it, that was done on cross-examination and therefore there is no violation of Rule 5.

THE COURT: So, would you be seeking an instruction on alibi?

MR. FOX: I am not. Of course, Your Honor, if you feel the evidence presented is a factual issue and that justifies a charge you are certainly, that would be in your discretion, but we did not, again, at least up to this point have not introduced any evidence.

THE COURT: You won't ask for one, is that what you're telling me, you wouldn't want me --

MR. FOX: Mr. Love has not testified yet. I expect if he does he is going to say he was home on September the 11th.

THE COURT: Doesn't that get back to the very question Miss Lively is raising, that there was going to be an alibi?

MR. FOX: Your Honor, I can say this.

THE COURT: Hold on a minute.

MR. FOX: I'm sorry.

THE COURT: You should have notified her

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pursuant to the rule?

MR. FOX: This is how that happened, Your Honor. I guess I have to get into some of my conversations with Mr. Love. We can do this, we can take testimony. One reason I didn't have Miss Frye testify about that, about 9/11, or the wife, ask the question about it, because my understanding was Mr. Love actually had left later, that he had been at Dead Dog earlier as you heard testimony about, earlier in the day, he had gone to watch the game, my understanding was he had left the home later. That was incorrect. I had been told that when this came up yesterday and Miss Love and Mr. Love and myself discussed it he said, "No, I was home," so that was my misunderstanding.

As I say, it wasn't deliberate, it may have been poor on my part but I truly thought that was not an issue because my understanding was Mr. Love had in fact been back out of the house at some point, didn't have a specific alibi, we were talking about around 5:00 p.m., late afternoon on September 11th was the key time and frankly, well, with my understanding that it was just about the football game, the football game would have been over mid afternoon, 3:00, 3:30, I didn't think Miss

Love provided him with an alibi. If I was correct, if he was off somewhere, somewhere off after that I didn't think his wife could give an alibi because the football game didn't even come past the time that was at issue.

THE COURT: May I see the statement Miss Frye gave?

MS. LIVELY: Absolutely. I do want to have it made at a Court's exhibit, Your Honor.

THE COURT: Sure.

THE COURT: I'm going to take a recess, I would like to listen to the recordings if you have another copy of those.

MS. LIVELY: Yes, sir. Your Honor, because Mr. Fox hasn't had a chance to listen to it and before we get the jury and everything going, I kind of debated on how to do this but I feel like in an effort to make sure that the Court is completely aware of everything, when you hear this other issue I was going to bring up in regard to Tabitha Love, she actually is instructing the defendant how he is to testify in regard to what happened September 11th and tells him, "You better stick with it, otherwise I'm going to get in trouble for perjury," so it's out there, and so that is going to be

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another reason why I feel like I can recall this witness and there are some pretty critical issues but Mr. Fox has the recording, I'm more than happy to provide you with my copy. We have it on the computer downstairs.

THE COURT: How long does it take?

INVESTIGATOR POP: The entire recording is 14 minutes and 45 seconds.

MS. LIVELY: So, it is not overly long. I actually marked seven minutes is where I was going to go in regard to impeachment of Tabitha Love but I will be glad to provide this to you. Do we want to make this as a Court's exhibit as well?

(Regina Frye statement marked as Court Exhibit Number 4).

(Jail phone recording marked as Court Exhibit 5).

MS. LIVELY: Your Honor, we have a secure call platform which actually documents the calls and I'm going to make a copy of it and give it to the Court as well just as guidance as to -- this is just a call log, basically. It is what is on the disc, Your Honor, that is the calls that were pulled with this defendant's PIN number from the jail, and if we need to, if we are going to have,

if the Court determines that it is something we can address before the jury we're prepared to authenticate it and have my investigator as well as the jail explain how PIN numbers are assigned and how we know it would be this defendant that we're dealing with.

THE COURT: Okay.

MS. LIVELY: Okay.

THE COURT: All right, let's take a recess while we review this and Mr. Fox will have a chance to review it, too, during the recess.

MS. LIVELY: Yes, sir, thank you very much.

(Brief pause).

THE COURT: Okay, I had a chance to review the CD with the recordings which is made Court's Exhibit 5, as well as Court's Exhibit 4, the statement by Miss Frye.

Does anybody wish to be heard further before I rule on the State's request?

MR. FOX: I do inquire whether Your Honor has checked the trial transcript with regard to how this supposed alibi information was brought out, whether by cross or direct examination. I do think that is an important distinction as to how that information was brought out. If it was

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cross-examination, again our position is we didn't introduce it, the State is stuck with the answer they get, we're not into rebuttal issues. If in fact it did come out on direct examination there is still an argument not to introduce it but it is a different analysis. However, we ask the Court whether you have done that and if not would request that you do so.

THE COURT: Well, I have not done that but I frankly view it as a separate issue at this point. I think the issue now is whether the State's sole request as I understand it was whether they could recall Miss Love to the stand.

Is that right?

MS. LIVELY: Your Honor --

THE COURT: If she could be recalled and continue to be cross-examined.

MS. LIVELY: The thing is the State is looking for a remedy for the alibi that came out, that we were not provided notice of, and that clearly was an alibi statement by the witness and whether the defense had intended to ask the Court to charge the jury that or not, it is in front of the jury. It can't be, I mean, taken away once it's out there, so she clearly stated he was with

her that holiday and that put the defendant somewhere else than the crime and the time line that we're looking at is, from what my witnesses have testified to, is whenever the mother went to work at 3:00, around 3:00 and then around 5:00 o'clock or so whenever the victim was alone at the house, until her friend Ashley Jenkinson's mother came and picked her up. So, obviously it is right in the time line that she said after the Carolina game which was at noon, "He never left the house, he stayed with me."

So, that is where we're at, so what I asked specifically on the record whenever I left last night was based on this information it does meet the terms of an alibi, the State wants to get information regarding this and be allowed to follow up. If I get that information, I'm not asking for any kind of sanction, I'm not saying the defense attorney knew or should have known, I'm not going to go down that route, I'm saying as a remedy to the State, since we haven't called any additional witnesses and the defense hasn't, the defense is in their case in chief right now, that I should be allowed to continue to cross-examine Miss Love based on the alibi information that she produced on

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the stand without providing any notice. That is all I'm saying. And the thing is, Your Honor, if I had been given notice of the alibi obviously I would have done exactly what I did last night and follow up with Regina Frye, which you have a statement from her, and I would have had benefit of cross-examining Tabitha Love regarding that statement.

MR. FOX: Judge, I think we're arguing backward, though. Rule 5, and specifically in the reciprocal discovery request, says the State requests written notice of defendant's intention to offer an alibi defense. I had no intention, I did not offer an alibi defense, I'm under no obligation to provide them, to guess what my witnesses might say on cross-examination. I mean, I can't do that, that is impossible, and I think it is an important determination as to how that information came out. If I didn't elicit it, if my witness didn't put it out as part of my case I'm under no obligation to provide any notice and the Solicitor is stuck with the answer she gets on cross-examination, she can't say, "Well, I didn't expect that answer and now I'm going to go back and do these other things, we're going to recall this witness and introduce other

testimony." So, I think it is an important distinction as to how that came out. I'm under no obligation to anticipate what might happen under cross-examination, I can't do it.

MS. LIVELY: What we're dealing with here today, we had the wife of the defendant who has specifically testified as to time and place event which we have been very clear about on the record regarding access to the child and timing of the event.

MR. FOX: In response to the State's question.

MS. LIVELY: Your Honor --

THE COURT: Well, let's just, I will just, Mr. Young can queue it up and I can look at it.

(Brief pause).

THE COURT: In reviewing the transcript it appears Mr. Fox asked about the New Year's Eve time frame and there was testimony about that, that Miss Love was at the Bellamy house and probably stayed there until 1:00 o'clock, when they left and went home, and stated she was with her husband and two children, and Mr. Fox asked, "Anybody there other than your husband and your two children in the morning when you woke up," and the answer was, "Not

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that I recall."

And then later he asked about, "Did [redacted] Bellamy spend New Year's Eve, 2009-2010, in your home?" Answer, "No, she did not."

Then he asked about her conviction and then cross-examination commences, so that is what the record reveals.

MS. LIVELY: Your Honor, regarding September 11th, was there any questions from the defense regarding the September 11th event?

THE COURT: Not that I can find.

MS. LIVELY: On direct? Nothing about the Carolina game or anything?

THE COURT: No, I did not see anything. That comes up much later during the cross-examination, which is what, as I mentioned yesterday, I recalled it coming, I didn't recall it coming up on direct but certainly my memory isn't perfect but it doesn't appear anything in the record that shows it did but as I earlier stated, I believe the issue at this point is whether Miss Love can be recalled for cross-examination based on the evidence, and I'm referring to Court's Exhibits 4 and 5 that the State collected during the overnight recess, I don't view that as having any link to a Rule 5

violation or the propriety of an alibi defense. It seems to me the question really boils down to whether or not the State can recall the witness to delve into those newly discovered matters, but I'm certainly willing to hear any arguments you all wish to make in that regard.

MS. LIVELY: Yes, sir. First of all I just want to tell the Court that I apologize for misinterpreting when it came out. From whatever I was listening and, you know, and being in the middle of the heat of trial and everything, my thing was I believed at some point in time she had mentioned something about him staying and watching the football game. That is whenever I started trying to look up whatever time the game happened. That might be because by the time I got up and started to cross-examine her, like I said, I was right in the thick of it, so under those circumstances I just want to make sure I'm clear. Like I said, we're just here trying to find out the truth at this point. This is the point that I am trying to make in regards to the problems they have. The problem that I have right now is that throughout the cross-examination, whenever that newly discovered evidence came out and it is

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clearly an alibi by the defense, the Court has already ruled it is not a Rule 5 violation regarding when it came out, under those circumstances, with that newly discovered evidence and with the fact it does rise to a level of an alibi, clearly that is what it is. Whether it is, whether the defense is going to ask for you to charge it or not, the jury has already heard it.

At the end of my questioning of her I asked the Court to allow me to do the investigation that I would have done if this had been disclosed and if the defense had knowledge of it, just like any other type of alibi notice that would have been given ten days ahead of time prior to the trial. That is what I was asking the Court to do. Since this defense witness is the one that provided this information I am asking the Court to allow me to impeach her based upon my follow-up investigation from the alibi information that was disclosed with or without the defense's knowledge at the time of my cross-examination and if the Court is at this point determining that that is not a remedy available for the State, then we haven't moved on to any other testimony and the defense still has its case open, then what I will be seeking to do is

obviously through rebuttal addressing new information that was brought up during the defense case.

So, either way, what I plan on doing is I'm going to go there, I'm trying to determine the best way to handle it and I believe that because we have womeone who is still under oath, who was being cross-examined, this information came out, I ask the Court to allow me some leniency in retrieving information regarding her statement, and also what she's doing, she is perpetrating a fraud on the Court at this point. We clearly have got someone who planned this out and made these statements and bringing this information out clearly knowing what she is saying is false, so under those circumstances that is the reason why I'm asking the Court to allow me to impeach her under cross-examination, knowing this information that I have, especially because she doesn't have clean hands in regard to what has occurred at this time.

THE COURT: Thank you.

Mr. Fox?

MR. FOX: The fact Miss Love gives testimony that isn't complying with the Solicitor's version of the facts doesn't make it perpetration of fraud

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on the Court, otherwise we couldn't have trials. If the jury comes back with a not guilty verdict does that mean all the State's witnesses are going to be perpetrating fraud on the court? That is just a nonargument in my view. She has testified, she is under oath, the jury can decide the weight and value of that testimony.

Now, in terms of the remedy, Your Honor has decided there is not a Rule 5 violation, you know, the witness was finished and I don't know if excused or not. The State had their full chance to cross-examine. As they say, you're stuck with the answer you get sometimes. I don't know that the remedy is to allow them to recall her and cross-examine her further. If rebuttal is appropriate, then I would say that is the way to address it, Your Honor.

THE COURT: All right. Well, pursuant to the discretion I have under the rules of evidence I'm going to allow her to be recalled if the State wishes to recall her at this time or call her later, that is up to them in terms of their trial strategy choices but I would certainly allow her to be re-examined at this time before we move on to another witness if the State chooses to do that.

MR. FOX: Yes, sir.

MS. LIVELY: Yes, sir, Your Honor, that is what the State would choose to do at this time.

THE COURT: Okay. We'll bring the jury in.

MR. FOX: Could I please go to the restroom before we bring the jury out?

THE COURT: Sure.

MR. FOX: Your Honor, if I may, when the jury comes out I assume the Solicitor is going to play the CD from the jail in cross-examining Miss Love, I would request the entire 15 minutes be played, not just an excerpt. I think the jury needs to see, if you take it in isolation it sounds one way, when you hear the whole thing I think it takes on a very different tone. That is my opinion, anyway, but I think the jury is entitled to hear the whole thing and have it in context. It is about, it's less than a minute, Your Honor has heard it, it is a very short segment of that entire disc that is an issue but I think the jury needs to hear the entire thing, I would make that request, Your Honor.

MS. LIVELY: I was just going to ask her specific questions and give her an opportunity to either admit or deny making the statement, to impeach her, and if she denied it I was going to

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play it. I was kind of going to use, if that was her initial statement, was her testimony, because I don't have a prior inconsistent, I was going to follow along with the guidelines provided for prior inconsistent statement, to give her an opportunity to respond.

THE COURT: I think that would be the appropriate way to do it.

MS. LIVELY: Yes, sir.

MR. FOX: Yes, Your Honor.

THE COURT: Okay, bring the jury on in, please.

(The jury returned to the courtroom).

THE COURT: All right, ladies and gentlemen, I apologize for the delay in getting started this morning. We had a matter arise that we had to spend some time resolving. Hopefully that will streamline things as we go forward, so I know it is puzzling and frustrating to sit back there not knowing exactly what is going on but we appreciate your patience.

All right, yes, ma'am, Miss Lively.

MS. LIVELY: Yes, sir, thank you, Your Honor. As you recall, at the end of the close yesterday afternoon we were cross-examining defense witness

Tabitha Love. The State asked the Court to allow us to recall her as a witness and continue with our cross-examination at this time.

THE COURT: Okay. Miss Love, come forward and, ma'am, you are still under oath.

FURTHER CROSS EXAMINATION BY MS. LIVELY:

Q Miss Love, yesterday whenever we were talking about the September 11th incident that has been testified about for the past couple days you provided me with some information regarding where your husband was on that day. Do you recall that?

A Yes, ma'am, I do.

Q Okay. And that would be September the 11th of 2010. Correct?

A Yes, ma'am.

Q All right. And your testimony, if I recall, was that you all had gone to the Dead Dog sometime earlier that morning and then went home and watched the Carolina football game, Carolina versus Georgia. Is that correct?

A That is correct.

Q All right. And that Carolina football game was at 12:00 o'clock on September 11th, 2010, is that correct?

A That's correct.

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Q Then after that football game your testimony to me was that you and your husband stayed at home for the rest of the night. Right?
A Yes, ma'am.
Q Okay. Now, you remember, the Court has told you you're under oath, right?
A Yes, ma'am, I do.
Q Now, is there anything about that testimony that you wish to change right now?
A No, ma'am.
Q All right. You mentioned to me that a Regina Frye was with you on that day as well. Is that right?
A Yes, ma'am, as far as I can recall. I did mention that, though.
Q Okay. I told you specifically tell me the names of people who were there with you and you said Regina Frye, her husband and their kids?
A I said that the husband might not have been at that one because he does work. Most of the games Regina was there, she might not have been there at that one but as I recall she was there.
Q All right. Let's back up a minute, okay?
A Uh-huh.
Q So now you're saying she might not have been

there?
A As far as we can recall, my husband, I, even asking her, she did recall being there when I spoke to her because she initially told me she wanted to be here because she was at my house that day.
Q You all talked about this yesterday, didn't you?
A Before that time, before that time also.
Q You all looked up the football game on the internet, didn't you, to see when the game was being played, didn't you?
A I did not.
Q You did not?
A No, ma'am.
Q You just off the head remembered at 12:00 o'clock noon Carolina played Georgia on September 11, 2010?
A I do recall it but Regina did look it up.
Q And whenever you talked to Regina about it, isn't it true in your statement yesterday, and we can have the court reporter go back and look it up, that Regina Frye was with you and your husband on the date of September 11th, 2010, watching the Carolina football game?
A Yes, ma'am, as far as my memory goes, yes,

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ma'am.

Q So your memory is faltering from yesterday?

A No, ma'am. I remember her being there.

Q You remember her being there, okay. Let's stick with what we remember, okay?

A Okay.

Q Thank you. Now let's talk about some conversations that you had last night.

A Okay.

Q Now, last night you had some conversations with the defendant your husband, is that correct?

A Yes, ma'am, I did.

Q Okay. And those phone calls were made to the Georgetown Detention Center, is that right?

A From there, yes, ma'am.

Q Okay. And in regard to those calls between yourself and your husband you discussed your testimony, did you not?

A I told him that I told the truth during the trial.

Q Well, thank you, I appreciate that but I'm just asking you if you discussed your exact testimony?

A Yes, ma'am.

Q And in your exact testimony isn't it true

that you told him, "No, you did not go back to the Dead Dog Saloon on September the 11th," whenever he told you he thought he had?

A He asked me, "Did I," and I said, "No, you didn't," because I did not remember and I just clarified, "No, you didn't."

Q Okay. And clearly in your response to him you said, "If you say you went, then I'm going to jail for perjury." Didn't you say that?

A I'm not sure if those were the exact words but I told him to say what he believed, I did not tell him to lie, I told him to, "Say what you believe," and I said, "But if you do change it they will get me for perjury."

Q Well, why are you scared of perjury? Do you know what perjury is?

A Yes, for lying under oath. The reason I'm scared of that, because after yesterday afternoon you all scared me half to death following me to my house and stuff like that. That is what scared me, I have been shaken up ever since, I didn't know what was going on.

Q All right. Well, let's clear that up, we don't want the jury to be confused. Isn't it true that when you provided information to us that

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Regina Frye was going to also be a witness regarding the issue of what you're claiming is an alibi for your husband, that I then asked to be able to speak with Miss Frye?

A Yes, you did.

Q Okay. And in speaking with Miss Frye, in receiving information did you not provide a statement to the defense attorney regarding her statement to us?

A This morning.

Q Okay. And this was after you had all these conversations with your husband last night, right?

A Yes, it was.

Q Okay. So, this is before you even knew exactly what Regina was going to come back and say today, is that right?

A No, but it was after I spoke to Regina a short period of time last night.

Q Were you ever threatened by anybody from my office?

A No, not from your office.

Q Okay. Whenever somebody from my office went with Regina it was to pick up her clothes from her home, from your place where she was staying because she didn't want to stay with you, is that correct?

A That is correct.
Q So she came back and actually stayed here in Georgetown simply waiting for today, is that correct?
A That's correct.
Q What scared you, you knew that everything you had been saying was getting ready to blow full wide open in front of this jury, is that not correct?
A No. That didn't scare me.
Q Is there any part, I'm going to ask you one more time, in your testimony that you want to change?
A No, ma'am.
Q So you're still standing by the fact that Wayne was home with you all day on September the 11th?
A Yes, ma'am.
Q And you love your husband, right?
A Yes. We have our problems but, yes, I love him.
Q And clearly you talked to him for no less than fourteen minutes off and on last night about your testimony and his testimony, what your testimony had been and what his testimony was going to be today?

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A It was not me saying what he needed to say, I told him to say what he believed in. I did tell him, you know, "No, you didn't go to Dead Dog," but I told him to stay calm, I told him, you know, he was with me, just to keep going, you know, don't give up, but it was never exactly saying for him not to say certain things or get on the stand and lie or anything like that.

Q Because if he gets up there and says anything different than you, you didn't say, "They're going to know I'm confused," "They're going to get me for perjury," isn't that right?

A Yes, because that's what had been brought up to me, not by you all, but yes.

Q I didn't threaten you with perjury, did I?

A No.

MS. LIVELY: One moment.

Q And once again in regard to the, you stating that your husband was home with you all day on 9/11, didn't you have Regina come and spend the night with you the night before you were going to testify and discuss what your testimony was going to be?

A She did spend the night with me, she needed a place to stay with her coming down from Columbia.

We did not discuss my actual testimony. We did go, she wanted to see what the file had in it because she had not seen anything, she did go over the file with me, she picked out stuff that stood out to her, took notes, she also took notes yesterday. It was not as setting up a testimony.

Q She was just practicing?

A I would guess so.

Q Okay, thank you.

MS. LIVELY: One moment, Your Honor.

Q I just want to be clear on something before I stop questioning you right now, okay?

A Uh-huh (Affirmative).

Q The exact words regarding testimony of September the 11th, 2010, your husband was asking you, "Didn't I go back to Dead Dog with Tony and A. J.," and you said, "No, you did not. If you say you went, then I'm going to jail for perjury." Are those the words that you used?

A That is the words that I recall but I did not say right after that fact but yes, those words were in that area.

MS. LIVELY: Thank you.

THE COURT: Mr. Fox.

REDIRECT EXAMINATION BY MR. FOX:

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Q Tabitha, why did Regina Frye need to stay with you?
A She had nowhere else to stay.
Q Where is she from?
A Columbia.
Q Is she a friend of yours?
A We have been friends for a long time.
Q Okay. Since I have been representing your husband have you been a part of some of the discussions in preparation for this trial?
A Yes, I have.
Q Have I spoke to you about your recollection of different events?
A Somewhat.
Q In the course of those discussions did Regina Frye's name ever come up?
A Yes.
Q What is your understanding for why she came down here?
A To be a witness on our side.
Q Is that because of conversations I had with her?
A You did have conversations with Regina yourself.
Q And from your own knowledge was it my

intention once she got here and I spoke to her further, was it your understanding whether she was actually going to be a defense witness or not?

A She was not going to be.

MS. LIVELY: I object to leading, Your Honor.

MR. FOX: Okay.

Q So, where has she been during the trial of this case?

A Right beside me.

Q Okay. So did she come down to Georgetown at my request or your request?

A At both.

Q Now, have you had the opportunity this morning to listen to a recording of your call to your husband last night, from your husband last night?

A I did.

Q Have you had a chance to listen to the whole thing?

A Yes, sir, I did.

Q Okay. And did you recognize the voices on that recording?

A Yes, I did.

Q And who was on that recording?

A My husband and myself.

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Q Okay. I'm going to show you what is marked for identification a defense exhibit. Tell me if you recognize that?

A I do.

Q And what is that?

A That's the recording of our conversation last night.

Q And is this the one that we listened to this morning?

A That is somewhat.

MR. FOX: At this time I would like to publish this recording to the jury.

MS. LIVELY: Your Honor, I'm going to object because there are details on there that could be problematic if heard by the jury. As Your Honor knows, you actually listened to it yourself.

THE COURT: All right, let me ask you all to come up here real quick.

(Unrecorded bench conference).

THE COURT: Okay, ladies and gentlemen, we'll take a brief recess while we consider this issue. Don't talk about the case. Continue to keep an open mind.

(The jury was excused from the courtroom).

THE COURT: All right, the question is --

MS. LIVELY: Yes, sir.

THE COURT: -- the admissibility of the recorded conversation? I think the State's concern and it is one I shared, there were statements made on the recording that referenced plea negotiations or plea offers and while we were at the bench conference the question became the admissibility of Mr. Love's prior statement and so I will be glad to hear either side on that issue.

MR. FOX: Since I'm the one seeking to admit it I will speak first. There are very short portions, it's about a seventeen minute tape, there is a short portion where there is a plea discussion. We redact statements all the time, whether it is a written statement or an audio statement, transcript. That easily can be identified, we can stop it and go past that. It is probably a fifteen or twenty second snippet out of the whole thing, easily addressed.

In terms of the admissibility, we can authenticate it, if I have to I can get the investigator that pulled it off. I think the witness authenticated it was her voice on there, she can say it contains the entire conversation, she is familiar with the conversation from being a

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participant and in listening to it again this morning, I think we can authenticate it, I think it is relevant to show the whole picture. She's been asked about this conversation, about her statements regarding perjury and I think the jury is entitled and we're entitled to present the entire picture of that conversation, have that testimony put in context, so I think it is clearly admissible and we can easily address the question of redacting that small portion is concerned.

THE COURT: I just don't understand, are you offering it to show a consistent statement she made, or inconsistent statement?

MR. FOX: No, I'm just offering it as to put in context what she has been asked about. The Solicitor has asked her about this recording, I guess it constitutes a statement, in cross-examination the State has inquired about that and I'm simply trying to present the context of the whole picture. The information is there, it has already been asked about, I'm simply trying to --

THE COURT: Yes, Miss Lively?

MS. LIVELY: We addressed this before at the start of this particular witness, as to how I was going to handle it in regard to impeachment of the

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witness. We're trying at this point to, or what Mr. Fox is proposing to do is actually bring in extrensic evidence on a witness regarding a statement that now she's admitting to and is consistent with what she said on the recording, so the recording itself is extrensic evidence of everything that was said. I don't see how that comes in because it is a collateral issue regarding this particular witness. It is not a defendant's statement at this point in regard to this particular witness.

If the defendant were to get on the stand and there was issues regarding a prior statement by a party opponent defendant then we might have to, you know, get back into this issue again but, Your Honor, in regard to what I questioned her about, she's clearly responded. I was given the opportunity to impeach her on it, what she said was in response, then to put the tape in, and he's on recross at this point, he is putting in a recording under that limited scope of recross regarding what I questioned her on and as I stated before, she's had opportunity to respond, she explained her statement and as a witness that would be extrensic evidence and it shouldn't come in.

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THE COURT: Okay. Well, under Rule 613(B), assuming that the theory of admissibility by the defense is that it was some kind of inconsistent prior statement, she's admitted to making the statement, so extrensic evidence of the conversation on the phone to her husband at the jail would be inadmissible under 613(B). There is no way under Rule 801 it would come in, that I'm aware of, and under 801(D) there are only four ways a prior statement of a witness, not a party but a witness can come in and I don't see the foundation being laid for any of the four, so I would sustain the objection to the playing of the conversation that includes statements of this witness.

MR. FOX: Well, Your Honor, just to put on the record my argument under 801(D), statements which are not hearsay would be (D)(1)(B), this would be evidence regarding a statement, a prior statement consistent with declarant's testimony offered to rebutt an expressed or implied charge against the declarant. Which is exactly what we have, that she has committed perjury in her testimony.

There were questions on cross-examination yesterday about how this is the first time the

story has ever been told, the testimony has ever been given, so it would be offered for that reason, to rebutt it, to reply to the charge of recent fabrication.

THE COURT: How does that meet the foundation that requires prior statement of the events, that fabrication arose?

MR. FOX: It was made last night. I think the charge was made today, based on questions by the State, that the implication of the witness' recent fabrication has been renewed today.

THE COURT: So, if you're asking for it to be admitted under that rule, what is the conversation last night consistent with?

MR. FOX: Well, it's consistent with her testimony yesterday and today.

THE COURT: Okay. So --

MR. FOX: And to rebutt a charge that she has fabricated her testimony.

THE COURT: So when did the motive of fabricating arise?

MR. FOX: Well, the implication is it arose when she testified both yesterday and this morning.

THE COURT: How would her motive be different today than it was yesterday? Isn't that the key

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question?

MR. FOX: Well, I don't know there would be any difference but the charge, the implication is the same again today, that was clearly the tone and direction of the questioning from the prosecutor in cross-examination, that Miss Love has come to court both yesterday and today because it carried over, but that she has lied and tried to get others to change their testimony and that that is a recent concoction on her part.

THE COURT: Of course the witness' statement normally can be corroborated by proof of a prior statement consistent with the witness' testimony, however 801(D)(1)(B) permits and grants nonhearsay status to prior consistent statements that are offered to rebutt expressed or implied charge against the witness of recent fabrication or improper influence or motive. In order for the prior consistent statement to be admissible pursuant to this rule the statement -- well the following elements have to be present. First, the declarant has to testify and be subject to cross-examination, which obviously Miss Love is.

Second, the opposing party, here the State, must explicitly accuse Miss Love of recently

fabricating the statement. Here the State is not accusing her of fabricating the statement she gave last night, they are implicitedly perhaps accusing her of fabricating her testimony yesterday, so that element has not been met.

The third, the statement must be consistent with declarant's testimony. I suppose there were parts of the conversation recorded last night that the defense may argue to be consistent with her testimony this morning and yesterday, so that element is met.

And fourth, the statement must have been made prior to the alleged fabrication or prior to the existence of the alleged improper influence or both. First of all the alleged fabrication was testimony yesterday. The statement made last night obviously occurred after the alleged fabrication.

In addition, the statement did not occur before the existence of the alleged improper influence or motive arose. The improper influence or motive would be to falsify testimony to aid her husband, and that motive is the same yesterday as it was last week or last month, as it is today, so the recorded conversations or statements of Mrs. Love made last night would not be admissible under

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rule 801(D)(1)(B).

Okay, anything else before we bring the jury back in?

MS. LIVELY: Nothing from the State, Your Honor.

MR. FOX: No, Your Honor.

THE COURT: All right, thank you.

(The jury returned to the courtroom).

THE COURT: Okay, yes, sir, Mr. Fox, you may continue.

MR. FOX: Thank you, Your Honor.

BY MR. FOX:

Q Miss Love, with regard to Regina Frye, did you ever suggest to her that she shouldn't talk to the police or the Solicitor's investigators?

A No, I did not.

Q Did you ever do anything to interfere with her talking to the police or the Solicitor's investigator?

A No, I did not.

Q Did you ever tell Regina Frye what she needed to say if she were called as a witness?

A No, I did not.

MR. FOX: Thank you. Please answer any further questions from the Solicitor.

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MS. LIVELY: None, Your Honor. Thank you.

THE COURT: Okay. Thank you.

(Witness excused).

THE COURT: Okay, you may call your next witness.

MR. FOX: Thank you, Your Honor. The defense calls Prentis Wayne Love.

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PRENTIS WAYNE LOVE, after after being first duly sworn, testified as follows:

THE CLERK: Thank you. Please be seated. State your name.

THE WITNESS: Prentis Wayne Love.

DIRECT EXAMINATION BY MR. FOX:

Q Mr. Love, where do you live?

A In Murrells Inlet.

Q Get closer to that microphone.

A Yes, sir.

Q Where do you presently live?

A 5098 Highway 17.

Q How long have you lived in the Murrells Inlet area?

A Four years.

Q Did you live somewhere previous to where you live now?

A Yes, sir.

Q And where was that?

A [redacted], Murrells Inlet.

Q And is that anywhere near Hyatt Street or Hyatt Avenue in Murrells Inlet?

A Yes, sir, it is.

Q Approximately how far?

A A mile and a half, two miles, depending on

which route you take.
Q So, there is more than one way to get from your old house to that house on Hyatt?
A Correct.
Q And were you living in that house near Hyatt Avenue in 2009, 2010?
A Yes.
Q Who did you live there with?
A My wife and two kids.
Q Did you, do you know the Bellamy family?
A Yes, I do.
Q Tell me how you came to know the Bellamy family.
A Well, to start with I was working at Shellcrackers doing weigh in for Harris Willard, I met Tony Carter, the father, as I was working there with Ducks Unlimited and met his wife or fiance and his daughter.
Q And that would be [redacted]
A [redacted] yes, sir.
Q And when was that, roughly?
A 2008, 2009.
Q Describe how that relationship developed or what was the nature of that relationship as time went on.

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A It started out as acquaintance, we talked every now and then when we saw each other at Shellcrackers on Wednesday nights for the meetings. Then it went a lot farther, I opened up to Tony and it was more like a father-son relationship that we had, I opened up to him because I didn't really have a father figure growing up and everything that he was doing as far as the attention and the guidance that he was giving me was given like a father figure, so I took to Tony very close.

Q What about with the rest of the Bellamy family?

A Miss Bellamy, the mother, I didn't really discuss much with. I talked to her when I was there with, you know, the wife, the kids, I don't know much about her. Brittany, the daughter, Tony introduced us and I came to be like a big brother to her.

Q What does that mean to you, you were like a big brother to her?

A She could confide in me, she could ask me for anything and I would help her in any way that I could. I just, a big brother role to me is someone that is going to be there for her or for them and do whatever they needed as a brother.

Q Can you give any specific examples of that and what that might entail?
A One, one I recall is she would text, she would text my wife and she would text me about taking pills and being on a roof, and it hurt a lot to know she was doing that. I asked her why, what was the reason, and the only thing she could keep telling me was that all the time she was taking the pills or doing stupid stuff like that is because of the family fighting and the argument.
Q And then what is your response when you get that kind of message or communication, what is your response to that?
A I told her she needed to get down, it wasn't worth it.
Q Anything more than that?
A No.
Q Did you find out what happened to her?
A I never -- as far as I know she got off the roof, she quit taking pills.
Q Did you do anything to follow up when you got that information that she was troubled, she is doing things that are dangerous for a thirteen year old? What did you do to follow up with that?
A I didn't really follow up to it. I would ask

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her how she's doing, is she okay. Other than that I really didn't pursue it, I let it go in one ear and out the other.

Q Was that something that, that kind of situation with someone you knew, was that something that was new to you, that kind of situation?

A Yes.

Q You indicated that [redacted] would text you?

A Correct.

Q Tell us how that would happen.

A She would text numerous of times. She would text me while she was at school, she would text me after school. She just, like I said, I was that brotherly figure to her, or big brother, so she would always text, see how I was doing, how the kids were doing, how my wife was doing, just to have, you know, contact with her brother.

Q Would you ever initiate contact, would you ever text her first?

A There was times that I would text her to see how she was doing or if Tony was around because I would call and he wouldn't answer his phone or something like that.

Q Do you have any idea how often you would have text or communication with [redacted] on average, say

in a week?
A In a week? It varied. It all depended on what was going on with her, depending on when I would get a text from her.
Q So there might be gaps of time?
A Most definitely. She could text me one week three or four times a day for three or four days straight, then I might not hear from her for a week, week and a half unless I'm over, physically over at their house with Tony, Shannon and them and she will mention something to me then.
Q Now, as you got to know the Bellamy family better did your families do things together?
A Yes, sir.
Q Describe that.
A We would have cookouts, parties, go out to eat. It was like a big family get-together every time. My kids looked up to Tony and Shannon and Minor My daughter loved Minor
Q Did Minor do things with your family?
A Oh, yes, she would come over and cook out, do cookies, of course, play with my daughter, every weekend my daughter would go, "Can Minor come over and play?"
Q How old is your daughter, was she at that

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time?
A She was six.
Q Talking specifically around basically through the year 2010, so two years ago.
A Okay.
Q Your daughter was six then?
A Yes, sir.
Q And how old was Minor then?
A Thirteen, fourteen.
Q When Minor would come over to your house were you always around?
A No, sir.
Q Now, I heard about these fishing tournaments.
A Correct.
Q Tell me what you remember about the fishing tournaments.
A I worked for J. Allen Landscaping and also did air brushing, so it was hard for me to do the tournaments sometimes but there would be times that I would go out fishing for the tournament, I love to fish, I mean, something that runs in my family. Sometimes Minor would go with Tony if Shannon was working or she would be in the boat with me.
Q How did that work, why would she sometimes be with you?

A She was with me because either Tony had Shannon in the boat with him or A. J. his son or someone else was riding along with him.
Q So, would her parents know if she went off in the boat fishing with you?
A Yes, they would.
Q Now, again, during this period of 2010, two years ago, the best you remember how often were those tournaments?
A Every week.
Q During warm weather, basically?
A From daylight savings, from the start of daylight savings, to four months after.
Q Okay. So, every week, so four times a month, maybe 15 or so tournaments?
A 15, 20.
Q Okay. As best you can remember how many of those do you think you participated in?
A Two, maybe three tops.
Q How many times did [redacted] go with you?
A That I can recall, I know of two.
Q And would it just be the two of you?
A Correct.
Q What kind of boat do you have?
A I had a fourteen foot flat bottom Jon boat

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with three seats in it, which the front of it wasn't a seat until we made it into a platform and it made it a two seat boat.

Q Is it like benches across the width of the boat?

A Yes, sir. In the back is the bench seat and it had a pedestal seat in it so I could rotate while I'm driving, there was no room to sit anywhere else in the back because of the big seat. Up front was the pedestal we put on the deck of the boat, so the only thing left was the center and that is where the live well and the tackle and everything was there, so there was really no room to sit right there in the center seat, so you either sit in the front of the boat or the back of the boat.

Q And just for people that aren't familiar with that, when we say fourteen foot, how wide is that boat?

A Two and a half, three foot tops.

Q All right. So, narrow and long?

A Yes, sir.

Q Now, during the times that [redacted] fished with you where would you go?

A We would pull out of Waca Wache Marina, which

is where we started the tournament, we would go into the marina, fish there, or we would go to a couple little creeks that were close by because at the time I had just bought the boat and the motor was still not running properly so I could not run five or six miles up river to fish or anything like that so I always stayed right around the marina.

Q Could you go back, though, in any of those areas, some of these winding creeks we heard about?

A Yes, sir, I could.

Q And could you get, because of the nature of the vegetation and everything, could you get out of sight of other boats?

A Yes, sir.

Q Could other boats do the same?

A Yes, they could.

Q Was that unusual, for boats, in looking for fish in a tournament, to get off the main channel and go back into the creeks?

A Yes, sir.

Q It was unusual or not unusual?

A It was not unusual.

Q Okay. Did anything happen between you and [redacted] during any of these fishing tournaments when she was on your boat?

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A No, sir.
Q Did you do anything to [redacted]
A No, sir.
Q Did you kiss her?
A No, sir.
Q Did you hug her?
A No, sir.
Q Did you fondle her breasts?
A No, sir.
Q Did you try to put your hand inside her pants?
A No, sir.
Q Did you ask her to do any of those things?
A No, sir.
Q Did you talk to her about anything sexual?
A No, sir.
Q Did you talk about movies or pictures or things you had seen on the internet of a sexual nature?
A The only thing that was brought to me from her was nude pictures.
Q I'm sorry, go ahead.
A She texted me and asked me -- actually to begin with she started with my wife, she texted my wife and asked her what she should do, that her

boyfriend at the time asked for a nude picture. She texted my wife, my wife said no, my wife told me and I asked what's going on and she told me that her boyfriend had asked for a nude picture and she asked me what did I think, I told her, "No, you shouldn't do it."

Q Did you ever ask her to send you a nude picture of herself?

A No, I did not.

Q Did she ever send you a nude picture of herself?

A No, sir, she did not.

Q Did you ever send her any sexy pictures of yourself?

A No, I did not.

Q Speaking of pictures, what has been marked as State's Exhibit 11, which were pulled off Brittany's phone, there are some pictures there. Do you see any that have you in them?

A The very first one.

Q All right, tell me what you see there.

A That is a duck's head or something.

Q Do you know when that picture was made?

A No.

Q Is it a real duck?

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A No.
Q All right.
A It's like a mascot or something.
Q Do you know how that picture got on Brittany's phone?
A No, sir.
Q Anything about that picture that embarrasses you?
A No, sir.
Q Do you care if anybody sees that picture?
A No, sir.
Q Let me get back to the boat, we got off on the nude photograph. So, during a couple times that Minor [redacted] you -- and how long would the tournament last, you went out, you left Waca Wache and you went out to fish, about how long would that be each time?
A Normally the tournaments started at 5:00, 5:30, they would go until dark, so at the beginning of the tournament it was be back by 7:00, 10 minutes to 7:00. Later on the tournaments would go until 8:30, 9:00 o'clock, until dark.
Q During any of these tournaments all that time there was nothing sexual that transpired between you and Minor [redacted]

A No, sir.
Q All right. Now, do you recall New Year's Eve of 2009, going into 2010?
A Yes, sir.
Q Do you recall what you were doing that evening?
A Yes, sir.
Q Please tell us.
A New Year's Eve we went over to Tony and Shannon's for a party, for a New Year's Eve party, had a blast, alcohol was consumed by me and everybody else there at the party. I mean, it was, started at I would say 6:30, 7:00 o'clock that night, we had food, I mean, went out that day and picked oysters out of the inlet because there was a lot of us liked oysters. We did that. After the oysters, eating oysters and everything, it was dark and we started listening to fireworks going off. Midnight come around, me, Tony, Shannon, [redacted], my wife, even my two youngest kids shot off a shotgun at midnight for New Year's. After that, 1:00, 1:30 we went home, me and my wife and two kids.
Q How did you get to and from that party?
A I drove.

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Q Your vehicle?
A My vehicle, yes, sir.
Q Anybody come home with you?
A No, sir.
Q Did Minor come home with you that night?
A No, sir.
Q Was she in your home at anytime overnight?
A Of New Year's, no, sir.
Q Would you know if she was there?
A Yes, sir.
Q Did you have, other than being at the party for any time that you saw Minor did you have any physical contact with Minor
A No, sir.
Q Did you hug her?
A Not that I recall.
Q Did you hug her in a romantic or sexual way?
A No, sir.
Q Did you kiss her?
A No, sir.
Q Did you try to kiss her?
A No, sir.
Q Did you ask to kiss her?
A No, sir.

Q Did you fondle her in any way?
A No, sir.
Q Did you try to fondle her in any way?
A No, sir.
Q Did you ask to fondle her in any way?
A No, sir.
Q Did anything at all of a sexual nature occur between you and Minor on New Year's Eve that year?
A No, sir.
Q Now, on 9/11, later that year, still 2010.
A Correct.
Q Do you recall that day?
A Yes, sir.
Q How come you can remember that day?
A Because that was the tribute to the fallen soldiers at Dead Dog.
Q Tell us what you did on that day.
A I went to work for a short period of time that morning, I only had a few yards, I think it was like two or three yards I had to go finish up from Friday before, got back to the house, got the wife and kids and went to Dead Dog that day, I guess it was around lunch time. Went back home, did watch the Carolina-Georgia game because I am a

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big Carolina fan. After the game was over we stayed there.

Q Do you recall who was there?

A At the house to watch the game? My wife, my two kids, me and Regina.

Q Did you see [redacted] on 9/11, that day?

A No, I did not.

Q Anywhere that day?

A No, I did not.

Q Did you have any communication from her that day?

A Not that I recall.

Q Why was it as a thirty your old man that you were having this texting and calling and this communication with this thirteen year old girl?

A Because she was, like I said, she was like a daughter, a sister to me, she looked up to me.

Q In your mind was there anything romantic about that relationship?

A No, never.

Q Was there anything that was stimulating to you sexually about that relationship?

A No.

Q Did you ever wish there could be something?

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A No.
Q Did you ever suggest to her that there be anything more than being a big brother?
A No.
Q Now, Mr. Love, you have got a criminal record, do you not?
A Correct.
Q Could you tell us what that's for?
A Breach of trust for under 5,000 and assault and battery high and aggravated nature.
Q Okay.
MR. FOX: Please answer any questions the Solicitor has.
THE COURT: Cross-examination.
MS. LIVELY: Thank you, Your Honor.
CROSS EXAMINATION BY MS. LIVELY:
Q Mr. Love, let's be clear. Your prior convictions make you a felon, isn't that correct, you're a convicted felon?
A Correct, for the breach of trust, yes, ma'am.
Q Thank you.
MS. LIVELY: If I may approach and retrieve some documents, Your Honor.
THE COURT: Sure.
Q Now, wherever you met [redacted] in 2009 she

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was only thirteen years old, right?
A Correct.
Q How old were you?
A I was 28, going on 29.
Q And clearly whenever you met her there was quite a maturity difference between the two of you, would you agree?
A Yes, ma'am.
Q And your attorney just asked you why a thirty year old man would be texting and having a relationship with such a young girl?
A Yes, he did.
Q Correct. And your response, basically she looked up to you, you were sort of a brother figure as well as a friend?
A Correct.
Q Okay. And in regard to being this person that she could confide in because she had, you said, some family arguing and things going on, so she felt that she could come to you and talk to you about anything?
A Correct, she could come to me or my wife.
Q Or your wife, okay. And in coming to you and talking to you about anything, then you knew probably from the conversations you had with her

that you were her only outlet in regards to problems that she was having and questions she had. Is that a fair statement, like for instance the drugs?

A Okay.

Q You knew about it?

A Correct, I did know about the drugs.

Q A young man asking her, according to what you're saying, to send a nude picture of herself, you knew about that?

A Correct.

Q You said you knew about her supposedly being on a roof high?

A Yes, sir, or yes, ma'am.

Q Considering suicide, obviously?

A Uh-huh (Affirmative).

Q Is that a yes?

A Yes, ma'am.

Q And your responsibility as a mature adult who she trusted was to ignore it. Correct?

A No, ma'am.

Q Okay. So your response to help this teenager who had some issues, who you had befriended her family and eaten dinner with them was to not tell her family. Correct?

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A Correct.
Q Does that sound like something a teenage friend would do for another friend or something a mature father of two would to for a fourteen year old?
A A teenage friend.
Q A teenage friend, because in your mind you considered yourself her teenage friend, didn't you?
A No.
Q Well, you just said it was more like being a teenage friend, how you treated her, how you responded to her cries for help. Isn't that true?
A I responded to her as a big brother, yes.
Q A big brother, okay. But would you agree it's not being a very mature and caring big brother by not tell parents or people who could help her?
A Yes, it was a mistake, I should have said something.
Q Okay. But instead you continued this isolated relationship. I know you said your wife was somewhat involved, too, but you continued this isolated relationship that was more like a teenage boy and a teenage girl between yourself and Minor and you even put yourself alone in places with this child at different times, like fishing.

Correct?
A Yes, we did fish together.
Q Okay. So you admit to being alone with her in creeks for an entire day, up until dark at times with this troubled young teenager?
A No, ma'am, it wouldn't be all day. It would only be for an hour, hour and a half to start with.
Q But you would be alone with her?
A Correct, but there was people in sight.
Q And during this time when you would have had, if you were in a creek, an opportunity to get close to her and touch her and kiss her and reassure her, you're telling us that did not happen?
A I'm telling you it did not happen.
Q If it had happened would you admit it to us, Mr. Love?
A Yes, I would, if I had done something I would admit it.
MR. FOX: I object to that question. She just asked if he stopped beating his wife, that is an improper question, I ask that be struck, and the response.
THE COURT: Overruled.
Q Well, let me ask you this. If [redacted] had come on to you sexually would you provide us with

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that information?
A If she was to come on to me?
Q Yes.
A Yes, because she never did.
Q She never did, okay. And would you consider her an immature, inexperienced young girl?
A No, I would not say she was immature. I would say that she was very smart, intelligent, so I would not say she was immature. There were some problems with her, yes, I do admit that, but immature, no.
Q So, problems that the two of you all discussed at length that she was having, fair to say?
A What do you mean?
Q I'm talking about the pills again and the problems at home.
A Correct, yes, she would confide in me and talk about that, yes.
Q Okay. Now, on New Year's, 2009 --
A Uh-huh (Affirmative).
Q -- the thing that it appears that we can all agree on is that you were at the Bellamy home for the New Year's Eve party and there were several people there, right?

A Correct.
Q And [redacted] was there, right?
A Correct.
Q Your wife, your kids and Tony Carter, everybody, and there was drinking going on. Correct?
A Yes.
Q Okay. And so you all left after midnight, so you were there for the actual, you say you all shot off the shotgun or something?
A Yes. We didn't have fireworks, we pulled out the shotguns me and his son went duck hunting with and shot them up in the air for fireworks instead.
Q All right. So, after you do this, and you're saying that you went home and that [redacted] did not go home with you and your wife and your kids, correct?
A Correct.
Q Okay. So, you're saying that it would have been impossible on that evening, and I'm asking, just clearly, you're saying that it was impossible that evening for you to have had intimate contact with [redacted]
A Impossible?
Q I'm asking you.

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A No, nothing happened.
Q I'm just asking you to answer, I know you're saying nothing happened but I'm asking you that night you're saying she didn't go home with you?
A Correct.
Q Is it possible you were intoxicated and you don't recall her going home --
A No.
Q -- with you all?
A No, it's not possible.
Q So you're saying that she did not go home with you that night and you did not touch her in any way?
A That's what I'm saying, it did not --
A She has spent the night over at your house before, correct?
A Not that I can recall.
Q Not that you can recall? So, you deny you kissed her and put your hand up her shirt?
A Yes, ma'am.
Q All right. Well, she turns fourteen in February of 2010, correct, do you recall?
A As I recall, yes.
Q Okay. She's turning fourteen at this point and before the fishing tournaments you and her are

basically, like you said, just kind of a brotherly love type situation?
A Correct.
Q All right. And you are at that time communicating to and with her by phone. Is that true?
A She would text me or she would call me, yes.
Q Okay. But you would text and call her back?
A Correct.
Q Okay. And what is your cell phone number?
A It was 283-2720.
Q 2720. What was her cell phone number?
A In honesty I could not tell you.
Q Okay. But you did have her saved as a contact in your phone, didn't you?
A That's correct.
Q That's correct. And she had you saved in her phone as big brother?
A Correct.
Q All right. So both of you all are in phones and so probably you would hit Brit and just do either a call or respond text to her, is that fair to say?
A If she would text me it would show up and all I would have to do is hit reply.

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Q And clearly, and I will be glad to show you the records, clearly you were pretty consistent in responding to any texts that she would send you. Would you agree with that statement?

A Yes, I would. It might not have been right away but, yes, if she would send me a message I would respond.

Q Okay. And most of the times would you agree that it was within one to five minutes?

A Sometimes.

Q Okay. Do you remember ever sending her any unsolicited texts, meaning that you initiated the text communication?

A I might have sent her a text saying, "Hey, how are you today, is everything going okay?" It was always a question of what's going on, just to check and see how she was if something happened the day before, so for instance, if she got caught for doing something or got in trouble at school and her mom found out the next day, "Hey, how's it going, are you okay," that kind of message, yes.

Q Well, let me go back, then, to the September 11th date, okay? Before I get to that, the nude pictures, you said that Minor [redacted] first texted your wife about whether or not she should respond to

this teenage boy about sending a nude picture and that your wife then asked you about it?

A Correct.

Q That's correct, I want to make sure I'm clear. Okay, so your wife comes to you and says, "Hey, [redacted] has texted me about whether or not she should send a nude picture to some boy"?

A Yes.

Q Okay. And you choose to respond to [redacted] about a nude picture on behalf of your wife, is that what I'm understanding?

A No.

Q Okay. Because --

A [redacted] --

Q Go ahead.

A -- texted my wife and was wondering about how to send, you know, picture sending and everything and wanted to know what my wife thought about this guy asking her for a nude pictre. My wife then told me about it and I kind of got upset, I got upset because my little sister is getting a text, even though she's not my blood sister she was like a sister to me, was getting a text from some guy wanting a nude picture.

Q Was it because you were jealous?

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A No, not at all. I have nothing to be jealous over, I've got a wife and two kids.
Q I understand, I understand but I'm just trying to figure out why you jumped in to respond to this nude picture request instead of your wife?
A Because right after the text went to my wife it came to me and she asked for my opinion and my opinion was, "No, do not send a nude picture. Why does he want it?"
Q Well, why would a man want a nude picture of a little girl?
A Any teenager would do that, I can understand what you're asking on that.
Q Did you ever ask her to send a nude picture?
A No, I did not.
Q Let's get to September 11th, then. All right, September 11th you're telling this jury that you never saw [redacted] that day?
A I never saw [redacted] that day.
Q You also said you never communicated with her that day?
A Correct.
Q Okay.
A That I can recall, I did not.
Q I'm just repeating your statement you just

gave on direct.

A That's what I'm saying, I cannot recall ever communicating with her that day.

Q Okay.

MS. LIVELY: May I approach, Your Honor?

THE COURT: Sure.

Q I will show you what is marked for ID State's Exhibit Number 5 and ask you, regarding this highlighted portion right here, whose telephone number do you see listed on this document?

MR. FOX: Your Honor, I'm going to object to that. It is not in evidence and there is, first of all there is not a foundation about whether he can identify it, there is not a foundation for that, it is not a record in evidence, that is specifically not in evidence.

MS. LIVELY: I'm using it for impeachment purposes based on his statement he never had contact with the victim that day. He can either admit or deny whether or not he is familiar with this.

MR. FOX: I'm sorry, they have records have not been authenticated, it is not admissible, Your Honor. It is a back door way to try to get in evidence.

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THE COURT: All right, I sustain the objection.

MS. LIVELY: Thank you.

BY MS. LIVELY:

Q Mr. Love, you heard the testimony from Miss Bellamy regarding contact that she had with you. Correct?

A Correct.

Q Okay. I mean, you have been in here obviously for the entire trial so you're aware of all the testimony regarding constant contact between you and her, correct?

A Correct.

Q And did it surprise you to hear when [redacted] said that you all had over a hundred texts on the date of September 11th, 2010?

A Yes, it did.

Q It surprised you, and why did it surprise you?

A Because I never texted her that much.

Q You didn't?

A No, I did not.

Q Okay. But you admit that your number is 283-2720?

A Yes.

Q So you would deny texting her from 8:00 o'clock that morning, until 11:59 a.m. on September 11th, 2010, over a hundred times?
A Yes.
Q I'm sorry?
A Yes, I am.
Q Now let's talk about when you went to Dead Dog. You said you went that morning prior to the Carolina game which was at noon, is that right?
A Correct.
Q And then in the afternoon you stated that you stayed home and you never left?
A Correct.
Q Do you recall actually telling Investigator Pop that you actually did go to the Dead Dog Saloon that evening?
A No, I do not recall telling her.
Q You don't recall that?
A No.
Q So you don't remember telling her that you had gone there that evening and that [redacted] had texted you and asked you to stop by and bring her some cigarettes?
A No.
Q And so you deny that you went there and

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actually had dinner with Mr. Carter and some of his friends?

A Correct.

Q And you discussed with your wife about how you should testify today regarding that issue, didn't you?

A No, ma'am, I did not.

Q You didn't talk to her yesterday?

A I talked to her last night on the phone, correct.

Q Okay. Regarding the fact you needed to say, "I stayed home that afternoon," right?

A No.

Q No?

A When I called my wife last night from the jail she was messed up, she was in a panic and I asked her what's going on, she said that she was still at the courthouse because of the incident with Miss Frye and I said, "What do you mean, what is going on?" She said, "I can't talk, call me back." Then 30, 45 minutes later I called back, the phone had not been recharged, money had not been put on the phone yet as of 7:30. I guess time wise I say a quarter to 8:00, 8:15, somewhere in that time range because there is no clock in the

holding cell I'm in, I called her back and asked her what's going on, what happened. She told me that at that time that Miss Pop and a couple other people came to our place where we're staying, grabbed her stuff and escorted her back to the Georgetown area. I said, "Okay, what's the reason and why?" She says, "I don't know, I can't explain it." I said okay and I asked her, I said, "How did you feel about yesterday, about the trial?" She said, "I felt really good." I said, "You did very good, I was proud of you." I said, "9/11, you were right." I said, "At one point I thought maybe I did leave," and she said, "No, you didn't, we stayed there with the kids." I said okay, she said, "If you were to say that you did leave, then they would get me for perjury." So did I leave? No, I did not leave and it is not because of what my wife said.

Q All right. Okay, so let me back up, then. You did talk to Investigator Pop in November of 2010 regarding all of these issues. Correct?

A I remember talking to Officer Pop, correct. The date, I do not recall because it's been awhile.

Q And what you're telling me now is that you deny saying that you went to the Dead Dog later

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that day and [redacted] had texted you and asked you to come by and bring her cigarettes?

A Yes, I'm denying that.

Q Okay.

MS. LIVELY: Your Honor, may we have a brief recess so I can address this issue? I do have the recorded statement to play for the jury.

THE COURT: All right.

MS. LIVELY: It might be -- well, actually I've got it queued up but I don't know, just that particular statement in regard to a prior inconsistent statement is what I would be playing that portion for, I'm not intending to play the entire statement.

THE COURT: I think, I will certainly take blame for it but I think we have probably imposed on the jurors' patience enough this morning. I'm going to let you all take a lunch break, just come back at 2:00 o'clock, don't talk about the case, continue to keep an open mind.

(The jury was excused from the courtroom).

THE COURT: Okay. Do you want to discuss anything before we break?

MS. LIVELY: No, Your Honor, we can go ahead and break. Like I said, I have got it queued up,

what I can do when we come back, if Your Honor needs to hear any portion of it I can play it, that is my position regarding it. He has denied it, clearly that would fit the rule in regard to a prior inconsistent statement. I will proffer that statement so Your Honor can make that judgment as to whether it is actually an inconsistent statement with what he said and I'm prepared to do that. I can do it now or do it when we come back from lunch. I know it's gotten late.

THE COURT: All right. Mr. Fox, anything you want to say?

MR. FOX: No, Your Honor. I have to hear the proffer, I understand the issue of a prior inconsistent statement, but not at this time.

THE COURT: I mean, it would be a statement of a party?

MS. LIVELY: That's true, Your Honor.

THE COURT: Thank you. All right, we'll break until 2:00.

MS. LIVELY: Yes, sir, thank you.

THE COURT: Thank you.

(Recessed at 12:40 p.m.).

(Resumed at 2:15 p.m.).

THE COURT: Anything before we bring the jury

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back?

MS. LIVELY: Your Honor, the State, before we recessed, was going to actually play a portion of a Mirandized statement. I questioned the defendant in regards to the September 11th event where he denied having communication with [redacted] on that day, denied going to the Dead Dog later that day to meet Tony and A. J., which is the father or stepfather of [redacted] and her brother. While I was talking to my investigator and we were going back through Mr. Love's statement there is also another point where I asked him, "Did she ever spend the night at your house," and he said, "Not that I can recall," and I have, and I did check with the court reporter to make sure that that is the question I asked, and on page 66 of his transcript it does show that was the question and the defendant denied it, said, "Not that I can recall it," and in his statement to Investigator Pop he clearly said, "On nights she would spend the night at our house," he clearly did admit she had spent the night at his house before, so those are the two matters which I intend to impeach the defendant on and I have queued them up based on where they are in the statement and will be

prepared to play them before the jury. If the Court wants me to proffer them I can allow the Court and the defense to hear them at this time.

THE COURT: They are recorded statements?

MS. LIVELY: I'm sorry?

THE COURT: This is not a written statement?

MS. LIVELY: This is an audio statement, yes, sir.

THE COURT: Okay. I didn't know anything about that.

MS. LIVELY: Yes, the defendant gave an audio, video recorded statement to Investigator Pop on November the 2nd of 2010. Basically for the most part until the defendant has testified now pretty much a self serving statement, that is the reason why I did not even seek to introduce it during my case in chief. I intended, if it came up during his testimony, if he decided to testify, then I would just use that Mirnadized statement and any of his comments to Investigator Pop for impeachment purposes only.

THE COURT: Mr. Fox?

MR. FOX: Just addressing the different, clearly the difference between a recorded statement, and I will just address the specifics

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without regard to it being Mirandized, with regard to Minor spending the night, his testimony today was, "Not that I can recall." That's not a denial, it's, "I can't remember." I don't think that is inconsistent from previously telling the officer that she did. He said, he didn't say no, he said, "I can't remember." That is not inconsistent.

The other is about any contact with Minor, or with Tony and E. J. I listened to the part about Tony and the Dead Dog. I don't think there is any question about not having contact with Minor. I think it is clear in his previous statement and what he testified today there is possibly an inconsistency that can be played so I don't have an objection to that part.

Not meeting Tony and E J, I would ask to proffer that simple segment because simply what I heard, my interpretation was he was talking about, in that audio he was talking about what he testified to, which was going in the morning or around midday and meeting them, not in the evening. So I would just ask the Solicitor to proffer that because I'm not sure there is an inconsistency on that particular point, Your Honor.

THE COURT: You're not requesting nor do you

see any reason to have a Jackson v. Deno hearing on these statements, is that correct?

MR. FOX: Your Honor, I think you certainly need to make a finding. I'm not, I think the Court certainly needs to make a finding but I believe at the beginning the tape is very clear that he is Mirandized, asked questions about that, he understands his rights, the right to speak to a lawyer and all those things. I think Your Honor does need to make a fidning, perhaps that very beginning needs to be played so you can make that finding. I don't contest it but I think the Court has to make a finding on it.

THE COURT: You're not contesting, you're not requesting there be testimony about that?

MR. FOX: That's correct, Your Honor.

THE COURT: Okay.

All right, yes, ma'am?

MS. LIVELY: Yes, sir, Your Honor. I can, if it will help the Court in just hearing how the Mirandized statement was provided to the defendant just for the record and have that played I can do that. If they are not contesting it and the Court doesn't see a need to and they are not claiming it was an involuntary statement at this time I will

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just play the part I'm intending to play based upon, you know, it being a prior statement by the defendant.

THE COURT: Okay.

MS. LIVELY: And what I will do is, I'm going to play, since I have it queued up in the earlier part, this will actually be the statement he made regarding [redacted] ever spending the night. And I don't have it in front of me, I can get it for the Court but it is my understanding how the case law reads in regards to prior inconsistent statements, it can be an outright denial or it can even be an I don't recall, I don't remember the situation, and that has been held to include what is under the perview of an inconsistent statement and I might, I had to deal with this issue before in a case I had about four or five months ago, I don't have that in front of me but I can get it for the Court. That is my understanding of a prior inconsistent statement as well. It can be from a flat out denial or it can even be from an, "I don't recall, I don't remember," because I specifically then did ask him about the interview that he had with Investigator Pop and he says, you know, "I don't recall, I don't remember making a statement," and

in regard to that, that would then be where I could say well, didn't you say like on September 11th that you actually went into, that you received communications from Minor and that you went to the Dead Dog to meet Tony and A. J.?" "No." So, I'm going to play it and let the Court hear for yourself, you know, the two parts that I'm talking about.

The first part is -- let me make sure I'm plugging this in right.

(Audio tape of statement played to the Court).

MS. LIVELY: That was regarding her spending the night.

The other statement regarding the September 11th event, I have to be real careful because there is a lot of statements about his prior record in here. That was a statement regarding communication as well as talking to Tony and A. J. before going to the Dead Dog.

THE COURT: Okay.

MS. LIVELY: Those are the two places, Your Honor, where the State is going to impeach the defendant regarding his current testimony.

MR. FOX: Your Honor, I would say with regard

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to the no contact testimony, no contact with [redacted] on 9/11, I agree he testified this morning he did not have contact and you can hear for yourself what he said to the officers in that. I think that is probably an inconsistent statement. Your Honor can decide whether saying I don't recall is the same as a denial, which makes it inconsistent.

And in terms of I think the last portion, in terms of meeting Tony and A. J., it is not clear from that statement when they're talking about, I'm not sure there has been an inconsistency shown on the issue of whether he went down to the Dead Dog Saloon. He talked about it but didn't give a time frame, which is the whole point of the testimony. I don't think there is an inconsistency shown there.

So, that will be our position on those, Your Honor.

THE COURT: All right. Well, I find that they're admissible either under 801(D)(1)(A), which is prior inconsistent testimony, and Rule 613. They are clearly admissible under 801(D)(2) as a statement offered against a party, so anything further as far as the voluntariness, being

Mirandized? Do you want to listen to that?

MS. LIVELY: Yes, I can put that up real quick to hear it and we can even, for the Court we can actually provide the Mirandized statement signed by the defendant and Miss Pop as a Court's exhibit or we can just agree to enter it into evidence. The only thing is that I always am worried about doing anything like that and the jury seeing the Miranda statement and being like, you know, they are going to hear obviously there was a statement given by the defendant.

THE COURT: We'll make it a Court's exhibit.

MS. LIVELY: Okay. I think it is clearer, easier for the jury. I will show this to opposing counsel.

Your Honor, I will start at the very beginning if the Court wants to hear the time the defendant was actually read those rights and then signed.

THE COURT: Yes, ma'am.

(Audio tape of statement played to the Court).

MS. LIVELY: Your Honor, that was the extent of it, the rights being read to him and then the defendant signing it where it is indicated, which

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is on the Court's Exhibit and the witness is Ginger Pop, who Investigator Pop, like I said, being my lead investigator, has been here the whole time, she is available if the Court needs me to proffer any additional information.

THE COURT: Okay. Any objection to the portion she wants to introduce?

MR. FOX: No, Your Honor.

THE COURT: I understand the State has demonstrated by proof beyond a reasonable doubt that the statement was made after he was adequately advised of his constitutional rights against self incrimination, that he was provided a written statement which is signed and also originally advised and there was no indication he was impaired, intoxicated or otherwise unavailable to completely exercise his will and choice and there is no evidence that he was threatened in any way, therefore I find the State has met its burden of proof to have the statement introduced and of course the jury will have to determine whether the defendant made the statement but it can be admitted.

All right, anything else?

MS. LIVELY: Your Honor, no, the State is

ready to proceed at this time with continuing with the cross-examination.

THE COURT: Okay. Mr. Love, if you want to resume your seat up here, sir.

You can bring the jury on in.

(The jury returned to the courtroom).

THE COURT: Yes, ma'am, Miss Lively.

MS. LIVELY: Thank you, Your Honor.

BY MS. LIVELY:

Q Now, Mr. Love, whenever we broke for lunch we had gone through quite a few things. I'm just going to back up on a couple matters regarding your testimony earlier. One of the things that I had asked you was whether or not [redacted] had spent the night over at your house and you stated, "Not that I can recall," is that correct?

A That is correct.

Q And then in relation to that we have been talking about the New Year's Eve party that had occurred in December of 2009. Do you recall that?

A Yes, ma'am.

Q All right. Then another time I went on to the September 11th event where the allegation is that you went to [redacted]s house when her step-dad and mother weren't there and had some type of

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sexual contact with her there and you said you never went by her house. Is that right?

A Correct.

Q As a matter of fact, when I asked you did you have any contact or communication with her that day you denied having any contact or communication with her. Is that right?

A I did say I could not recall any contact with her that day.

Q Okay. You said you did not communicate with her that day?

A That I can recall, correct.

Q That you could recall, okay. And then at that point in time I asked you whether or not you remember having given a statement to Investigator Pop after being Mirandized in November of 2010. Do you recall me asking you about that?

A I do recall that.

Q And that was actually, would have been pretty close in time to that September 11th tribute event that we're talking about, wouldn't you agree?

A Two months away, yes, ma'am.

Q Two months away and we're looking at right now about a year and a behalf away from whenever all this stuff had happened. Right?

A Yes, ma'am.
Q All right. So, we've got this statement from you and in the statement to Officer Pop you discussed these issues I have asked you, didn't you?
A From what I recall.
Q I'm sorry?
A The one that I recall from listening to it just shortly a while ago, yes, I recall saying it now.
Q Okay. Let me -- I appreciate that.
MS. LIVELY: Your Honor, at this time I want to publish to the jury the statement by Mr. Love, the defendant, regarding the two matters that I have just questioned him about.
THE COURT: Okay, ma'am.
MS. LIVELY: Thank you.
(Portions of taped interview played to the jury).
BY MS. LIVELY:
Q Now, Mr. Love, in that statement that you gave to Investigator Pop, again that was only two months after all these things had happened. Correct?
A Correct.

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Q So, if we wanted to look at when your recollection of what had actually occurred would have probably been better it would have been at that time in November of 2010 than a year and a half, which would be now. Would that be a fair statement?

A I'm confused on that.

Q Would your recollection of what happened two years ago be better a month after it happened or two years after it happened?

A A month after it happened if anything happened.

Q All right. And clearly in your statement to Investigator Pop you did say Minor would spend the night at your house on occasion and it was never a problem, right?

A At first I said I did not recall but now after hearing that, yes, I did say that.

Q All right. And then also in regard to the September 11th event where you said earlier in your testimony that you had absolutely no communication with Minor that day, and truly looking back at that statement you did have contact with her. Isn't that true?

A As I said before, first I did not recall, now

hearing it, yes, I did say it.

Q You did say it, all right. And in that same statement you're saying that you had just talked to Tony and that you were on your way to the Dead Dog tribute and she said, "Well, will you bring me some cigarettes," and you are like, "No, I'm on the way." Isn't that a fair assessment?

A Yes, that is what I said.

Q Okay. Now, whenever you were talking about the New Year's Eve incident, one of the things that I was wanting to go back and ask you about was you stated that you had been drinking that night. I mean, it was a New Year's Eve party, correct?

A Correct.

Q And you said you don't remember or you said that [redacted] did not go and stay at your house that night, that it was just you, your wife and your kids. Is that correct?

A Correct.

Q Okay. And I do understand that you had quite a bit to drink that night.

A I had a few. I wouldn't say that I was intoxicated but yes, I did have a few.

Q Okay. And whenever you actually went home were you the one that drove your wife and children

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home after drinking that alcohol?
A Yes, I was.
Q Okay. And under those circumstances would you agree that would be a poor decision?
A That was a very poor decision.
Q Okay. And in fact in making a poor decision such as that wouldn't you agree that possibly being intoxicated you made another poor decision and that was fondling [redacted].
A No, I can't say that I did that.
Q You can't say that you did that or you won't say that you did that?
A I didn't do that, she was nowhere around.
MS. LIVELY: One moment, Your Honor.
Q Just a couple more, all right? Now, earlier you testified that on September the 11th that you were at home watching the Carolina game with your wife and kids and was Regina Frye with you all during that time as well?
A As far as I can recall, yes, ma'am, she was.
Q Okay. As far as you can recall. Can you, in regard to that, do you agree that is a pretty important date in your life at this point in time?
A 9/11, yes, ma'am.
Q Okay. So if you really tried hard to think

about it and really focus on it, okay, can you tell us yes or no whether or not Regina Frye was there with you that day?

A I'm almost 99.9 percent positive she was there.

Q All day?

A For the football game.

Q For the football game, okay. And then you never left from the football game, is that right?

A Correct.

MS. LIVELY: Thank you.

MR. FOX: Redirect, Your Honor?

THE COURT: Yes, sir, Mr. Fox.

REDIRECT EXAMINATION BY MR. FOX:

Q Mr. Love, with regard to New Year's Eve, when you left to go home that night did anyone know you were leaving, the other people at the party, anybody see you leaving?

A Not that I can recall.

Q Do you recall anyone trying to stop you from leaving, saying, "No, man, we'll get you a ride home, we'll take you home, you're too drunk to drive"? Did anybody stop you from driving?

A No, sir.

Q Now with regard to 9/11, now that you have

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heard what you have told the police back in 2010 does that refresh your memory?

A Yes, it does.

Q Okay. Now, specifically with 9/11, have you heard anything, does your recollection change in any way about whether you saw [redacted] in person on 9/11, 2010?

A No, sir, I did not see her.

Q Any doubt in your mind at all about that?

A No doubt.

Q And when we're talking about, you heard again what the police asked you, about making plans with Tony and A. J. and that sort of thing, when was that during the day you were talking about, when you were planning to meet A. J. and Tony at Dead Dog, when were you talking about that?

A That was that morning, around lunch.

MR. FOX: Nothing further.

MS. LIVELY: Nothing further, Your Honor.

THE COURT: Thank you, Mr. Love, you may step down.

(Witness excused).

THE COURT: All right, you may call your next witness, Mr. Fox.

MR. FOX: The defense rests, Your Honor.

THE COURT: All right. Ladies and gentlemen, I'm just going to have to ask you to go back to the jury room for a moment while we take up a matter. Don't talk about the case, continue to keep an open mind.

(The jury was excused from the courtroom).

THE COURT: All right, motions at this time?

MR. FOX: Yes, Your Honor. At this time I renew the motion for directed verdict as to each indictment. The reasons stated now at the conclusion of all the evidence or at least at the conclusion of the State's case, I mean the State and defense's case, that at this point there is no evidence, the State has not satisfied its burden of proof as to each element beyond a reasonable doubt.

I would also renew the previous objections we made as to evidence being admitted. On those bases I would ask the Court to direct a verdict on each indictment, Your Honor.

THE COURT: All right. Thank you, Mr. Fox. I respectfully deny the motion.

MR. FOX: Yes.

THE COURT: Is the State going to have reply testimony or evidence?

MS. LIVELY: Yes, sir, Your Honor, the State

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is going to call Steve Suzch, S-u-z-c-h. I provided that name to Mr. Fox earlier. He will specifically be called for the very limited purpose of the September the 11th Dead Dog Saloon issue and then also we are calling Regina Frye on the same issue.

THE COURT: Okay. All right, anything else before we bring the jury back out?

MR. FOX: No, Your Honor.

MS. LIVELY: Not from the State, Your Honor.

THE COURT: Okay, then they can come on back out.

(The jury returned to the courtroom).

THE COURT: All right, ladies and gentlemen, as you saw, the defense has rested. That means they have concluded their presentation of evidence. I told you a little bit about the structure of a criminal trial when we started this case. I did not go over with you one nature of the criminal structure which you are actually going to see in this case but it is the fact that the State does have the right to call reply witnesses under certain circumstances and my understanding is the State is going to do that in this case and, Miss Lively, you may call your first reply witness.

MS. LIVELY: Thank you, Your Honor. The State would call Regina Frye to the stand.

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REGINA FRYE, after being first duly sworn, testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record, please.

THE WITNESS: Regina Frye.

DIRECT EXAMINATION BY MS. LIVELY:

Q Regina, spell your last name.

A F-r-y-e.

Q All right. Regina, how do you know the defendant in this case?

A I met him through his wife.

Q And that would be Tabitha Love?

A Tabitha Love, yes.

Q Now, Regina, why are you in town this week?

A I was called by the defendant's wife and asked to come down, that she needed me and that I may have to testify.

Q Okay. When was the first time you talked to her about testifying here in court?

A Monday.

Q Monday, this week?

A This week.

Q Okay. Now, Regina, in that conversation what information were you ready to provide to the Court on behalf of the defendant?

A The only thing that I thought I was here for, based on talking to Tabitha, was his birthday party.
Q Okay. When is his birthday?
A August -- October, I'm sorry.
Q October?
A October 6th, I believe.
Q When was the first time that you heard anything about the date September 11th, 2010, in regard to this defendant?
A Well, I heard about it on Monday.
Q Okay.
A But I heard about it one other time previous but I don't know an exact date.
Q That's fine. Did you talk to Tabitha about the day of September 11th, 2010, and why that date was important?
A Yes, I did.
Q Okay. Tell the jury what it is that your testimony is regarding September the 11th, 2010, as you relayed it to Tabitha?
A That September 11th, 2010, was not an important date to me and I think that it was football season and we got together and watched football games but September 11th was just like any

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other regular date to me.
Q Okay. Let me specifically ask you, okay? When you and Tabitha talked about September 11th, 2010, and the Carolina football game how did you know what time and who Carolina played?
A I looked it up on line.
Q You looked it up on line?
A I did.
Q When you looked it up on line and you talked to Tabitha about it again were you or were you not at her home on September the 11th, 2010, for that game?
A No, ma'am, I was not.
Q And did you provide that information to Investigator Pop?
A I did.
Q Now, Miss Frye, did we force you to come in here and testify today?
A No, ma'am, absolutely not.
Q Do you want to be here?
A No, ma'am, I don't.
Q Okay. When you discussed what you were going to testify about if you testified on behalf of the defendant, was it ever discussed what time you needed to be at their home?

A Yes, ma'am, it was.
Q Is it your testimony you were not there?
A Yes, ma'am.
Q Did you see Wayne Love that day at his house?
A No, ma'am, I did not.
MS. LIVELY: Thank you.
THE COURT: Cross-examination?
MR. FOX: Yes, Your Honor.
CROSS EXAMINATION BY MR. FOX:
Q Miss Frye, you and I spoke before, hadn't we?
A We spoke on Monday, yes, sir.
Q All right. And Tabitha called you first, didn't she?
A She did.
Q And said, "Mr. Fox would like to talk to you"?
A Yes, sir.
Q What we spoke about was specifically New Year's Eve, wasn't it?
A Yes, sir.
Q And you told me that the best you could recall you had been with Wayne and Tabitha on New Year's Eve, spent the night, because you had come down and you were friends with Tabitha and Wayne, correct?

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A Right.
Q And did you not tell me on Monday when we spoke that you had been, New Year's Eve, you seemed to know what time we were talking about and that you had spent the night, correct, with the Loves?
A Correct, but when you asked me the question you said it wasn't this New Year's Eve, it was the year prior.
Q We'll get to that, that is exactly right. But what you told me at first was, "I was there, I spent the night, no Minor [redacted] that night," correct?
A The New Year's I spent the night?
Q I'm talking about when we had the conversation that is what we talked about, correct?
A Correct.
Q And based on that, before we hung up the phone I asked you to come down to Georgetown from Columbia, did I not?
A You did not.
Q Okay. Did Tabitha?
A She did.
Q And you came?
A Correct.
Q No subpoena, you just came?

A Correct.
Q When you got here on yesterday we spoke again, right?
A We did.
Q And we talked again about New Year's Eve, right?
A Correct.
Q And in the course of that conversation we figured out we were talking about a different New Year's Eve, didn't we?
A Yes, sir.
Q And you told me, "Look, I don't think it was that '09-'10 one, right?
A Correct.
Q At that point I said, "I don't think you need to be a witness," correct?
A Correct.
Q And we talked a little bit in general, I didn't ask you about 9/11, did I?
A No, sir, you did not.
Q Okay. And then once you knew you weren't going to be a witness where have you been for the last two days?
A When I came to town I stayed with Tabitha and after I talked to the investigator last night --

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Q Before that.
A Before I came to town?
Q You have been in the courtroom the last two days, right?
A Yes, I have.
Q You have heard pretty much everything that's been said in court from yesterday morning until now, right?
A Yes, sir.
Q Okay. Now, at the end of court yesterday, based on testimony that was given the Solicitor and Solicitor's office, Ginger Pop wanted to speak to you, correct?
A That is correct.
Q And they spoke to you, right?
A They did.
Q Where did they take you?
A Downstairs into the Solicitor's office.
Q Who was there?
A Investigator Pop and another detective, I'm not sure, I don't recall his name, I think it was Brown.
Q Steve Brown?
A I think so.
Q Investigator for the Solicitor's office?

A Yes, sir.
Q You were downstairs in the Solicitor's office?
A Yes, I was.
Q How long were you there?
A A good two hours.
Q Okay. At the end of that time what happened?
A I asked to be separated from Tabitha Love.
Q Was that their idea?
A No, it was not.
Q Did Tabitha make any threats to you?
A She did not.
Q You came down here as friends, correct?
A I did.
Q You came down here to testify potentially on her husband's behalf, correct?
A I didn't know that I was going to have to testify because I didn't, I didn't know --
Q Initially when you came down, when you made the decision to come down Tabitha asked you to come, that was after you and I had spoken on the phone, correct?
A Correct.
Q Was it not your understanding that you night have to testify about, now it turned out the wrong

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New Year's Eve, not to have you testify but at the time you left Columbia to come here did you not understand you would probably be sitting right there talking about New Year's Eve?

A When I spoke with her I was under the impression that she wanted me down here to be with her as a friend.

Q Okay. So, you didn't understand you were a potential witness at that point?

A That is correct.

Q Okay. But no question you and I spoke about it and we talked about New Year's Eve?

A That is correct, we did speak about New Year's Eve.

Q Okay. And you say that 9/11, 2010, was not a particular day to you --

A Correct.

Q -- in your life, okay. So if Tabitha needed to talk to you about the time things happened and jog your memory, that is understandable because it wasn't a date that stood out in your mind, isn't that fair to say?

A Fair to say.

MR. FOX: Thank you. I have no further questions.

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THE COURT: Redirect?

MS. LIVELY: That's all, Your Honor, with this witness.

THE COURT: Thank you, Miss Frye.

THE WITNESS: Thank you.

(Witness excused).

THE COURT: You may call your next witness.

MS. LIVELY: The State calls Steve Szuch to the stand.

Your Honor, may Regina Frye be excused?

THE COURT: Any objection?

MR. FOX: No.

THE COURT: All right, thank you.

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STEVEN SZUCH, after being first duly sworn, testified as follows:

THE CLERK: Thank you. Please be seated and state your name for the record, please.

THE WITNESS: My name is Steven Szuch.

DIRECT EXAMINATION BY MS. LIVELY:

Q Will you spell your last name?

A S-z-u-c-h.

Q Okay. Mr. Szuch, are you a Georgetown resident?

A Yes, ma'am.

Q And do you work here?

A Yes, ma'am.

Q How do you know [redacted] Tony Carter and Shannon Bellamy?

A I met Tony about fifteen, sixteen years ago when we was working together at Hoover Chrysler Dodge here in Georgetown.

Q Okay, and have you all been close since?

A Yes, ma'am.

Q All right. Now, you were contacted kind of late in the game regarding this particular case yesterday, is that a fair statement?

A Yes, ma'am.

Q Okay. Are you aware of everything that has

gone on between the Defendant Love and --
A Only what I was told between now and last night and what I heard today.
Q Okay, all right, that's fair. Now, Mr. Szuch, did we have an opportunity to speak this morning regarding the scope of your testimony?
A Yes, ma'am.
Q Okay. I'm just going to ask you about a particular event on September 11th of 2010.
A Yes, ma'am.
Q What were you, what were the plans for you that day that you can recall?
A Well, usually every Saturday me and my daughter and her boyfriend, we usually do yard sales and then, you know, if we decide to go to the mall or whatever, so it was that day we did yard selling and then we ended up going, it was either the mall or Bass Pro Shop, I really can't remember. Then on the way back I called Tony and asked Tony what he was doing, he said, "Well, we're out at 9/11," so we stopped coming back from, like I say, I can't remember if the mall or Bass Pro Shop, and we stopped at Murrells Inlet, 9/11.
Q Okay. 9/11, you have heard the testimony, are you talking about the tribute?

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A Yes, ma'am.
Q Is that the tribute for firefighers?
A Yes, ma'am.
Q Now, the tribute, where was it being held?
A At Dead Dog Saloon.
Q At Dead Dog Saloon? Whenever you went there was it before lunch or after lunch?
A It was after lunch, ma'am.
Q It was after lunch?
A Yes, ma'am.
Q Do you recall approximately when it was that you would have gotten there?
A I'm going to say somewhere between 4:30 and 6:00, I'm going to say, I mean roughly. I really can't remember but I know it was late in the afternoon.
Q Okay. What was going on whenever you got to the Dead Dog?
A It was people everywhere.
Q Okay. And was there food being served?
A Yes, there was food being served in Dead Dog like they do every year.
Q Okay.
A I mean, I met up with Tony and A. J. and we were standing in line, then the next thing I know I

see Wayne come up and he asked Tony for some money and Tony handed him some money.

Q Okay. All right. And are you sure this was at the September 11th tribute?

A Yes, ma'am. I been going there, this is, this year coming up will be the fourth year for me.

Q And whenever -- you said you saw Tony and A. J. there. Correct?

A Uh-huh.

Q That's a yes?

A Yes, ma'am.

Q All right. And then after you met up with them are you sure that the person that showed up and talked to Tony Carter was the defendant Wayne Love?

A Yes, because he asked Tony for some money.

Q Okay. You specifically remember that?

A Yes, ma'am. We was standing in line waiting to get our food.

Q Okay.

A Yes, ma'am.

Q Do you know how long you stayed?

A Me?

Q Yes, how long did you stay?

A It was probably an hour and a half or so,

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maybe not even that. I would say that long because my daughter wanted to get home and all that.

Q Whenever the defendant came up and asked Mr. Carter for some money did you notice anyone that seemed to be with him at that time?

A No. I didn't pay all that attention, ma'am, because there was people everywhere.

Q All right.

MS. LIVELY: Okay, thank you. Answer any questions the defense may have for you.

CROSS EXAMINATION BY MR. FOX:

Q You say you saw Mr. Love, I can't really remember, between 4:30 and 6:00, he came up and asked for money from Tony. What did he do after that?

A He stood there and talked in line.

Q And you were there for about an hour and a half?

A Yes, I would say, yes.

Q Could you see Mr. Love from time to time while you were there?

A Yes.

Q Okay. So, while you were there Mr. Love was there?

A I can't say the whole time but I know there

was times that I did see him, yes, sir.
Q Fair enough. Now, you have known Mr. Carter for fifteen or sixteen years?
A Yes, sir.
Q Okay. Close to him?
A We're friends, yes, sir.
Q Okay. Know his family?
A Yes, sir.
Q Okay. Know his daughter?
A Yes, sir.
Q [redacted] I'm talking about, I guess stepdaughter?
A Yes, sir.
Q You know [redacted]
A Yes, sir.
Q Okay. How does Tony regard [redacted] from your observation? It is not his blood relative, right?
A He treats her like a daughter, like his own.
Q So, she is important to him?
A Yes, sir.
Q Tony is important to you?
A Yes, sir.
Q Were you aware at anytime that [redacted] had disclosed to her family that somebody had sexually

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assaulted her?
A I did not know, I mean in the last couple years Tony didn't want to talk about it and I, that is how we left it, I left it alone about that.
Q So you didn't know details but were you aware that was out there?
A Not all, not everything what's going on now, no, I didn't, no.
Q Are you saying that you didn't know the specifics or are you saying you weren't even aware there was this issue that his daughter had said --
A I knew about the issue. That is about as far as it went.
Q Okay, thank you. That is what I was getting at. So you have known that for how long?
A Probably, let's say maybe a year to six months, if that.
Q Okay. So for a year you have known that?
A Maybe. I can't recall.
Q Okay, fair enough. Anyone ever -- withdrawn. What time did you get up that moring, 9/11/2010?
A The yard sales start about 7:00 o'clock in the morning, sir.
Q So you usually went to the yard sales? How do you know you went to one that day?

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A Because we usually go every Saturday.
Q Usually? Does usually to you mean every Saturday?
A Just about, yes, sir.
Q Does that mean every Saturday without fail or sometimes you miss one?
A Sometimes I miss one.
Q Okay. So how do you know you didn't miss one that Saturday?
A Because I was at 9/11, I ended up at 9/11 that Saturday so I know because, I mean, there was a church right there on Murrells Inlet that had a big yard sale that we stopped at before, I mean before we come back through.
Q Okay, fair enough.
MR. FOX: The Court's indulgence.
THE COURT: Sure.
Q How long were you at that yard sale?
A Well, we start here in Georgetown and work our way all the way up to Murrells Inlet sometimes, sir.
Q Are yard sales still going on at 3:00 and 4:00 o'clock in the afternoon?
A No. At that time I was probably at the mall, just leaving the mall or Bass Pro Shop.

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MR. FOX: Thank you. No further questions.

MS. LIVELY: No other questions, Your Honor.

THE COURT: All right, thank you, sir.

THE WITNESS: You're welcome.

(Witness excused).

THE COURT: Okay, any further reply?

MS. LIVELY: No further reply from the State, Your Honor.

THE COURT: All right. Ladies and gentlemen, I'm going to ask you to go back to the jury room briefly and don't talk about the case, continue to keep an open mind.

(Jury excused from the courtroom).

THE COURT: All right. Any motions at this stage?

MR. FOX: Your Honor, now I believe we're at the conclusion of all the evidence, I renew the previous motions for directed verdict as to both indictments and again for the reasons stated, the burden of proof, you have to prove the elements of each charge beyond a reasonable doubt. I also renew, renew any previous objections, Your Honor, and move for directed verdict.

THE COURT: Okay. I respectfully deny the motion.

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Is there any requests to charge that either side specifically wishes me to make as far as --

MS. LIVELY: Your Honor, typically I do ask for the charge in regard to no corroboration necessary in sexual assault cases. I think the section is 16-3-57. It's the specific statute that incorporates criminal sexual conduct cases, all the CSC with minor cases, it is specifically that statement that no corroboration is necessary in regard to a sexual assault case. I'll pull that up, I have the exact Code Section I'm referring to and that I typically request especially when we have a case such as this where everything involves testimony and there is not actual DNA evidence or other physical evidence, it is completely based on testimony of witnesses as well as the victim in the particular case.

MR. FOX: Your Honor, I actually have it, I know what she's talking about, I believe it is 16-3-657. I think that refers to testimony of the victim need not be corroborated in prosecutions of CSC. It does not apply to those ones not in those sections, lewd act with a minor I believe is not one of those included.

MS. LIVELY: That's correct. Only with

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regard to CSC cases, it is not in regard to lewd act.

MR. FOX: I would, Your Honor, there is also case law to say it is not error if Your Honor chooses not to charge it. It's within your discretion, it is not error if you do, it is not error if you don't, and I would ask Your Honor not to or at least make clear it is specific to the CSC charge.

MS. LIVELY: Your Honor, I think it would be quite simple for the Court to do that in regard to charging on the CSC with a minor second degree, that you could say pursuant to this particular section no corroboration of the victim's testimony is necessary in a prosecution, or whatever the language is with regard to that. Typically what I do in cases like this I usually have lewd act with minor as a direct indictment or an additional indictment anyway because obviously sexual gratification, fondling cases go hand in hand within the actual battery offense, so what I typically do, I can provide a copy of that to Your Honor, is have the CSC minor second degree typical charge that is used and then have the no corroboration statute actually directly follow that

in regard to that particular statute and clearly encompassing just the sexual battery element.

THE COURT: All right. I'm aware of the case law on it and it is discretionary and I choose not to charge that. I just think it is a best practice not to. You certainly can argue that.

MS. LIVELY: Yes, sir.

THE COURT: All right.

MS. LIVELY: Okay.

THE COURT: I'm convinced, persuaded by the views of Justice Pleicones on that particular issue.

MS. LIVELY: Your Honor, is it at this point in time which you will actually provide us with what your proposed charges are?

THE COURT: Yes, I have it right here.

MS. LIVELY: Other than that specific request, that is typically what I ask to have, but everything else regarding I'm assuming prior inconsistent statement, you know, expert witness testimony, testimony of lay witnesses, circumstantial, direct, all that kind of stuff, standard things, I'm not asking for anything additional other than that one I had mentioned.

THE COURT: I will let you look at the

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charge. I don't know about alibi. What do you want me to do about that?

MR. FOX: I'm not making that request. Judge, I think arguably there has been testimony about it so, you know, I think my understanding of an alibi charge would be if it is raised it is not for the defendant to prove an alibi, but the State to disprove, my understanding. I'm not requesting one, I will address our remarks based on your decision to charge or not to charge.

THE COURT: Miss Lively?

THE COURT: Are you saying, Mr. Fox, it is a strategic decision on your part and your client's wishes?

MR. FOX: Your Honor, truthfully, I don't know it is going to change how I argue, to be honest with you. It wasn't my intention, as we discussed in other matters, to specifically bring it up. I didn't think it actually applied. He doesn't deny he was with her during the alleged incidents on the boat, he denies doing anything but he doesn't claim he was somewhere else and couldn't have done it, so it is not an issue with those incidents.

With regard to New Year's Eve, I don't mean

to split hairs but it didn't occur to me that was actually an alibi to say, "The victim wasn't there, I was home." You know, it is not going to change how I argue. Now, he has testified he was not with her and was at home on 9/11, so that testimony is there but --

MS. LIVELY: Your Honor, would you provide me with what your proposed alibi charge would be so that I can look at it and see whether or not the actual information that came out during the trial, because I was kind of a little bit thrown by the whole potential alibi issue, I didn't have a lot of research on it so I would like to look at it and just see what you would propose to put in and see whether or not because of the way everything unfolded, if it would be helpful to the jury or not to have that information.

THE COURT: Right.

MR. FOX: I would agree.

THE COURT: I'm going to have to have some statement in the record from you, Mr. Fox, and your client that it's a strategic decision on your part to not want me to charge alibi and I may have to charge it anyway but the only way I'm going to consider not charging it is if your client and you

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make that statement, and I don't know if you, if that is your strategy, but that is the only way I would consider not charging it.

MR. FOX: Yes, sir, just I would need to see your proposed charge and make that decision based on that.

THE COURT: I will pull it up and print it out and give it to you. Let's take a break until about 3:30, all right?

MS. LIVELY: Yes, sir.

THE COURT: And let you look at it.

MR. FOX: While we're here and on the record, our preference would be to argue and charge in the morning, in part because it's going to be 3:30 or so before we start doing that and I think it is a fair estimate that it will be well after 4:30 before we would actually be giving the case to the jury. In part, it has been another long day and another long week, in part because we have had problems with jurors, though I haven't seen it today, jurors nodding off, I would ask that we stop and let the jury go home and get refreshed, give myself a chance to gather my notes and thoughts overnight and start first thing in the morning and argue, charge and get it to the jury.

THE COURT: What is your position on it, Miss Lively?

MS. LIVELY: Well, I mean, I'm ready to proceed just because it is all fresh in my mind right now but, you know, I don't want the jury nodding off but they have actually seemed to perk up at this point, so I will leave it to your discretion, Your Honor, what you feel is best.

THE COURT: How long do you anticipate your closing argument to be?

MR. FOX: Judge, I intend to keep it fairly simple, so I would think 15 or 20 minutes at the very outside. I surely don't intend to go on a long spew. I think probably fifteen minutes is pretty safe, give or take just a little.

MS. LIVELY: That is for you?

MR. FOX: For me, yes.

MS. LIVELY: I wish I could say the same, Your Honor. I tend to be a little bit more long winded than that but I will try to not ramble on as much because I typically will go on probably 30 to 45 minutes.

MR. FOX: Don't hold me to 15 but I would say generally speaking this is one time I intend to be a little brief.

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MS. LIVELY: There is just a lot of testimony. I could probably, you know, keep it to around 30 minutes with everything that I have out there since there wasn't a lot of technical evidence, it is all about credibility, I could probably limit my closing to probably around that amount of time.

THE COURT: 30 minutes, 45 minutes?

MS. LIVELY: Yes, sir, I'll try.

MR. FOX: Again, at that point, with your charge we're well over an hour at that point.

THE COURT: Yes, I would have to agree with Mr. Fox. The charge probably takes about 20 minutes and so we're after 5:00 o'clock getting it to them. My experience is that it is counter-productive, so they are going to be worn out and probably won't be as efficient and fresh as they would be in the morning, so I think we'll just ask them to come back out and start back in the morning.

MR. FOX: Thank you, Your Honor.

MS. LIVELY: That's fine, Your Honor.

THE COURT: And you all can look at the charge.

All right.

(The jury returned to the courtroom).

THE COURT: It's almost, it's 3:25 and we have left in the case the closing argument of the lawyers and the instruction on the law. By the time we got through with all that it would be approaching 5:00 o'clock and I know you all probably have obligations tonight or other things you would rather be doing during the evening than deliberating so I think we're going to start that in the morning when everybody is fresh, and I apologize for the herky jerky nature of the proceedings today. It was just unavoidable and I appreciate your understanding.

I told you Monday we do our best to respect your time and you probably don't think we have been doing that but we have been out here working on various aspects of the case that had to be resolved outside your presence. I know that is frustrating. Somebody wanted to compare jury service to sitting in an airport waiting for an unscheduled flight to leave. I'm sure that's probably how you felt today.

So, I appreciate your good will and patience on that and we'll just come back in the morning at 9:15 and we'll try to get under way at that time,

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and don't talk about the case, don't do any kind of outside investigation and continue to keep an open mine.

Thank you very much. Have a good evening.

(The jury was excused from the courtroom).

THE COURT: Okay, thank you very much. We have the proposed verdict, we have the proposed verdict form and alibi instruction up here if you all want to see that. We'll see you in the morning.

MS. LIVELY: Yes, sir.

(Recessed at 3:26 p.m., April 25, 2012).

(Reconvened at 9:45 a.m., April 26, 2012).

(CD excerpts were marked as Court's Exhibit Number 7).

THE COURT: Okay. As far as the alibi instruction and instruction on the substantive elements of the offenses, is there anything either the State or the defense wishes to place on the record?

MS. LIVELY: In regards to the charges, Your Honor, no, the State is fine with what the Court has chosen to charge the jury. I do have just one little clean up matter that I need to do and I talked to the court reporter this morning.

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Yesterday whenever we actually, I put in certain portions of the defendant's interview, the Mirandized statement where the Court made a finding it was voluntary and met everything that needed to be met in regards too Jackson v. Deno.

THE COURT: Yes, ma'am.

MS. LIVELY: We did not put the entire interview in, it was never my intent to do it only because I was just using it for impeachment purposes. However, I needed to make sure for the record that we actually make it a Court exhibit. We have done so, Court Exhibit Number 7, and for the record it has been done, I have put it in this folder, it is now marked and I'm going to hand it up to the Court.

THE COURT: All right.

MS. LIVELY: I wanted to make sure for the record that that had been done.

and that would be all for the State, Your Honor.

THE COURT: Thank you.

Mr. Fox?

MR. FOX: Yes, Your Honor. I reviewed Your Honor's proposed instructions to the jury. I have no objections or additions in addition to that. My

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mind having cleared after court yesterday, I do request that Your Honor charge alibi. I think it is justified we make that specific request, Your Honor.

THE COURT: Okay, I will charge it. If you all will give me back the charge, I don't think I kept a copy of what I gave you.

MS. LIVELY: The alibi charge or all the ones you handed --

THE COURT: All the ones I gave you.

MS. LIVELY: Yes, sir.

THE COURT: All right, anything else before we bring the jury in? I was advised we had all them present, there was someone late.

MS. LIVELY: I'm ready, Your Honor.

MR. FOX: Ready, Your Honor.

THE COURT: Do you waive opening on the law?

MS. LIVELY: Yes.

THE COURT: All right. Okay, yes, sir, bring the jury out.

(The jury returned to the courtroom).

THE COURT: All right, good morning, ladies and gentlemen. We're at the stage now where we will have closing argument. After we have closing argument I will give you instructions on the law,

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then the case will be in your hands for a decision, to reach a verdict.

So, Mr. Fox, yes, sir.

MR. FOX: Thank you, Your Honor, may it please the Court.

Good morning, ladies and gentlemen. You're about at the time of the case where the case will be in your hands. I do thank you again, it has been a long week and I do appreciate it. I know when you drew up a list of a thousand things you wanted to do this week jury service wasn't one of them but it certainly should be very clear to you by now why it is extremely important to both the State and the defense.

We have rules that govern a football game. If you watch a football game or play in a football game there are rules about what you can and cannot do, you have a referee to enforce those rules. We have the same thing here. The way the rules are I have to talk first, closing argument, Miss Lively gets to go next, I don't get a chance to come back up and respond.

So, part of what I'm going to do, Miss Lively does not need me to speak for her and I don't mean to put words in her mouth but I do have to at least

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anticipate things she is going to say and argue to you because I don't get a chance to come back and say, "Hey, wait a minute, it is like this." So, again, I'm not trying to do her job, she doesn't need any help, but I'm going to have to address some of those things.

The judge will define for you at the end of the case the law that applies, again explain reasonable doubt. He will say reasonable doubt is something that leaves, the absence of reasonable doubt would be you're firmly convinced of the defendant's guilt. In other words, to get beyond a reasonable doubt based on the testimony you have heard and the evidence, the physical evidence you're going to have in the jury room with you, if you are not left firmly convinced of the defendant's guilt, Mr. Love's guilt, in other words, if you're not convinced beyond a reasonable doubt you must return a verdict of not guilty.

I heard a lawyer when I first started practicing say something to a jury in a situation like this I thought was very interesting and instructive. He pointed out, of course you all know South Carolina was a colony of Great Britain, our legal system is based very much on the British

model. I don't know if it is still true but in colonial days in the British system there were three verdicts in a criminal trial. Guilty, which is convinced beyond a reasonable doubt the man is guilty, they did it. Innocent or not guilty, which is we're convinced he didn't do it. And then not proven.

Not proven was for that situation where the jury thought, "Well, we can't say for sure that man is innocent but we don't believe we've got enough evidence to say he's guilty, we have not been convinced beyond a reasonable doubt." It had the same effect of a not guilty verdict.

In South Carolina, in the United States over the years we simply merged those two verdicts, not proven and not guilty. What does that mean for you all? Obviously if you're convinced, firmly convinced beyond a reasonable doubt that Wayne Love has done these things then you're duty requires you to return a verdict of guilt. But if you feel and you're convinced he is innocent or that the State simply has not met its burden of proof, that you're not sure, you've got doubts about it, it's not proven, your duty requires you to return a not guilty verdict, and the judge will explain that.

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Now, you've got two different charges, you've got to reach a verdict on each one, criminal sexual conduct with a minor, lewd act. Again, you may decide based on the evidence that he is guilty of both, not guilty of both or guilty of one and not guilty of the other. I'm going to ask you find he is not guilty of both but again, the verdict must be unanimous, whatever it is, guilty or not guilty, and it must be a separate determination for each.

Unanimous does not mean that you all are unanimous in what your doubts may be, okay? If you have a doubt based on the evidence and the testimony about the guilt of Mr. Love that's a not guilty. One juror's doubt does not have to be based on the same evidence and testimony as another. You do not have to be unanimous about what those doubts are but the verdict itself must be unanimous.

Now, enough of the preliminaries. When you boil it down it is obviously a very emotional and very powerful case. If you are a parent, if you know anyone, if you know any young girls, twelve, thirteen, fourteen years old, you can't help but be concerned and moved by the allegations in this case. It makes your blood curdle. But your

verdict cannot be made on the basis of emotion or sympathy. You are not here to reward or punish anybody. You are here to make an impartial determination.

I will address at the end why someone might make up these allegations, might lie. The case itself in terms of the evidence is fairly straightforward. This is not a case like on CSI with DNA, fingerprint and ultraviolet light finding hair and fibers and that kind of thing. It is just not that kind of case. It is really testimony. I mean, you've got these photographs, they may help paint a picture for you, I don't think either of those photographs really get you very far in determining it did or didn't happen but it may help you get the picture, you have photographs of Brittany's house.

The evidence is all from the witness stand and it really comes down to [redacted] and Wayne Love. You are the sole judge of the credibility and believability of the witnesses. I am very sure you're going to hear the argument with regard to Wayne Love and his wife Tabitha, "Well, they have a motive to lie, don't believe them, they've got a motive to lie."

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Well, undeniably they do. Any defendant who comes into this courtroom and is facing a prison sentence has a motive to lie, there is no getting around that. But if you stop your analysis there, if you say, "Well, he's just going to lie because he's facing, he doesn't want to go to prison, he would lie about anything," if that is as far as you get then you're violating your oath and you're standing our criminal justice system right on its head because you have now taken away the defendant's right to get on the stand and testify and speak to you and be evaluated like any other witness.

So, yes, I can't tell you to ignore it and say that is not an issue at all but if that is the end of your thought process on it then you are really destroying the criminal justice system. Every defendant has that issue and, yes, the other witness we called was his wife Tabitha, she clearly loves him. Whatever else you may think or decide, clearly she loves him, clearly she supports him, clearly she does not want him to go to prison.

But again, base your decision about her credibility and on what she told you and how she told you, her demeanor, her consistency, the things

you would do with any witness, the things you do in your everyday life, how did this person talk to me, how did they address me, their body language, those type things you do every day, not what is her relationship to the defendant, at least not solely on what is her relationship to Mr. Love.

We don't walk around in our lives with an unknown person 24 hours a day so that if we ever get in trouble there is going to be an impartial witness. The people that we interact with in our daily lives are our friends and loved ones and our co-workers and people that know us. Obviously if we ever find ourselves in court the people that are going to be witnesses for the most part are going to be people that know us and very frequently are going to be family members. Don't punish a defendant for that. If you choose not to believe Miss Love because you don't find her believable, well, that certainly is within your purview, but not simply because she's his wife.

Now let's talk about some of the other witnesses, and I need to get to [redacted] the big one, at the end. Regina Frye was here yesterday and Regina Frye thought she could remember after much prodding that 9/11 in 2010 that she was not in

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fact at the Love household watching the Carolina football game. Okay. Well, Miss Frye also, when I got to question her, told you that she had in fact had a conversation with me, that she is friends with the Loves, she and I spoke earlier this week, we talked about actually the New Year's Eve party that we heard about and we have talked about that and based on that conversation and at my request, although through Tabitha Love, at my request she came all the way down here from Columbia to possibly testify about New Year's Eve and the fact that her memory was that New Year's Eve [redacted] Bellamy wasn't around and she told you then when she got here I talked to her some more and we determined that in fact she was mistaken, she has the wrong New Year's Eve, couldn't remember. Okay?

Well, that's not helpful to anybody, it is certainly not helpful to my case and it doesn't help anybody to come to a conclusion, so now she is not my witness, but she stayed, you have probably seen her sitting in the courtroom next to Miss Love this week.

Then she says after court on, I guess that was Tuesday, today is Thursday, that the Solicitor's office and Ginger Pop from the

Sheriff's office decided they wanted to talk to her and they took her downstairs and for two hours they took her down in the office and they talked to her and talked to her and at the end of that long talk she now remembered that not only New Year's Eve but now she has decided she wasn't at Wayne's house on the date of the Carolina-Georgia game.

Well, frankly I don't know she remembered that. I think you have a great deal of reason to question what she remembers about anything based on her initially being sure enough that she was at New Year's Eve, on the relevant New Year's Eve, that I asked her to come down here, and being mistaken about that, I think you can certainly question whether she remembers accurately.

She certainly said, "Yes, sometimes I went to watch ballgames and I might have been there, I don't think I was there." I don't think she really gets you very far at all, I think you can dismiss her completely, I think my impression is she's got inhale and exhale written on her hand to remind her to breathe.

But the other witness Steve Szuch who was here yesterday, and Mr. Szuch was a very likeable guy, I think he was the last witness, and he spoke

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also about 9/11, and Mr. Szuch said, you know, he is a friend of the Bellamy family, knows Tony Carter and that he talked about going to the yard sales, Murrells Inlet all along, then he was at Dead Dog Saloon late in the afternoon. That's the whole point, what time was he there, did he see anybody there? He says, "I was there in the late afternoon, I saw Wayne Love there." Of course that is an issue because Wayne said, "I did not go down to Dead Dog later in the day," he was there earlier, so that is a big issue, obviously.

Now, interesting about that, I think it is also possible, given the passage of time, it is hard to remember exactly when. I would say that is true about Wayne, clearly at times when he testified he said, "I can't recall certain things," and then Miss Lively would play conversations he had with Ginger Pop back when this was all fresher in his mind, and he said, "Okay, yes, I remember that." That is perfectly normal, I think, for anybody because we're talking about events that are two years or more old, at least a year and a half and some of them going on two years, plus.

But Mr. Szuch, I wondered about that with Mr. Szuch. I mean, he has got the time a little bit

off, but interesting, one thing I do know is Minor said on 9/11 that Wayne came over to her house about 5:00, and again we can allow for a few minutes either way, no one expects her to pinpoint that but number one, you have got Wayne that says, "I was home at 5:00," his wife says he was home at 5:00. But, you know, if he doesn't remember and he's not right, there is somebody else that says he was not, and he says without question, Wayne says without question, "I was not down at the Bellamy house and I was not with Minor I did not see her."

There is somebody else that said that at least late in the afternoon, and that is Steve Szuch. Steve Szuch said, "I got there at Dead Dog about 4:30, not long after I got there I saw Wayne, Wayne came up and asked Tony for money, I stayed about an hour and half and I saw Wayne throughout that time." So, you've got two ways to get to Wayne Love not being with Minor at 5:00 o'clock on 9/11, in the afternoon. You've got Wayne saying, "I wasn't even there."

There are some questions about a conversation he had with his wife in the jail, he is asking, "Did I leave, I don't remember?" She said, "No,

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you were here watching the game." But he had those questions from Miss Lively to Tabitha Love, so I think maybe Wayne doesn't remember exactly but Steve Szuch seemed to remember, so even Steve Szuch said, "He wasn't here," I mean, "He was here at Dead Dog," but he wasn't at the Bellamy house, "I saw him at the Dead Dog at 5:00 o'clock."

Now, I will talk about Tabitha first. Tabitha Love testified, she testified, she doesn't claim to know whether -- well, back up. She does say on New Year's Eve, three different times we talked about, New Year's Eve, 2009-2010, the boats, and then the 9/11. And Tabitha says, "Look, I was with him, we went to this party at the Bellamys, we came home and [redacted] did not come with us." She was very sure about that and you can judge with all these witnesses, you can judge how definite were they, how sure were they, what was the opportunity to know, to have knowledge of what they're testifying about, what was their demeanor, how were they in response to different questions, did they stay consistent, again the things you would do with anybody, and I think Tabitha Love was all those things in terms of believability.

So, yes, she is Wayne's wife, yes, she loves

him, doesn't want anything bad to happen to him but I thought she was very definite all through her testimony about things and very open. For example, when she was asked by the Solicitor, "Well, didn't you talk to Wayne about perjury and didn't you talk to him when you talked from the jail, didn't you talk to him about the Dead Dog game, the ballgame and whether you left or didn't leave, you have already testified this way," she admitted, "I might be up for perjury if I testifiy a different way." She's a lay woman, she's not a lawyer, she shouldn't be judged on that basis alone, inconsistent testimony wouldn't be a basis for perjury but she was very open about that. She didn't try to deny having that conversation and she also told you, "I also told him," in response to Miss Lively's question, she also said, "And I told Wayne tell the truth, don't worry, you're going to be all right." I think when you kind of put all that in context it makes her more believable.

She also, she doesn't know anything about the different fishing tournaments, she wasn't around. The nature of those allegations, at least the timing of them, make it very difficult to defend, quite frankly, and there is no requirement that

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they be able to say on this specific day at this tournament this happened, but it makes it a little hard. Wayne said, "They had these tournaments," and Tony said also, "Had these tournaments about once a week every week for several months, 15, 20 tournaments during the season and I went to some but most of them I didn't."

If you had particular dates, specific dates it would be much easier if you're defending a case and say, "Wait a minute, I don't know where I was on that day or not," but Wayne admitted it, "Yes, I would go out with Minor sometimes if somebody else was in her dad's boat, that was fine and everybody knew that, we did that two or three times, no one had a problem with it."

No one had a problem with Wayne at all, no one saw anything, they were friends and very close friends, these families were like family together, the daughters were friends with the adults and the kids were friends with the kids and the adults did things with each other and they were back and forth to each other's house, sounds like a real good friendship, no one had any issues with Wayne at all, didn't have any issues with Minor going out and spending time with him in the boat, saw nothing

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that set off alarm bells. People can be fooled about that, that is for sure, people that have evil intentions toward young girls don't typically advertise it but there was nothing that set off any alarm bells for anybody in the Bellamy family.

And again, think about Wayne Love's testimony. Let's talk about Wayne now. How was Wayne's demeanor when he testified? Yes, again, he is a defendant facing very serious allegations, facing going to prison, that is certainly a motivating force in your testimony.

I tell you what is another motivating force, is not going to prison for a crime you didn't commit. That is a motivator, too. So you decide how was he when he testified, not just to me, that is the easy part, when your own lawyer is asking you questions, you ask the easy questions and you lead him through and that is the easy part.

But how was he both with that and how was he in cross-examination? Was he believable, was he credible about things, was he consistent about things? Did he a couple times say, "I don't recall about that," but when one of those was about having contact with [redacted] on 9/11, first he said, "I don't think I did, the best I can recall I didn't."

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But when Miss Lively was able to show him or play him that, a bit of that interview he had with Ginger Pop when he was first contacted about all this, shortly after all these events he said, "Oh, yes, now that refreshes my memory, I know that, of course I couldn't deny I know it at that point, I was on tape, this is what she did," she called him, had contact, call or text about, "Bringing me a cigarette." He said, "I'm not bringing you a cigarette, I'm on my way somewhere else, it's not going to happen." He didn't recall that.

Did he deny they had had conversations through text and the phone back and forth? He described that relationship, everybody described that relationship as a big brother, big sister relationship. Might be that is a little strange? I think it is not unusual for teenagers for good reasons and bad not to want to confide in their parents, sometimes because they don't want their parents to know what they're doing and sometimes because they don't want to disappoint their parents and sometimes both, but probably all of you as teenagers had certain things you did not tell. They weren't real bad things, part of that is just becoming an independent person, there is nothing

sinister in and of itself having someone other than your parents you can confide to and talk about your troubles to. If some of the troubles are with your parents, not because they are bad people, but if some of your problems are with your parents, you're not happy at home, you don't like being told what you can can do or can't do, that is normal teenage stuff.

It wasn't just like it was Wayne Love as a confidant. She had Ashley Jenkinson, her own age, who was a friend, and Tabitha, and I'm sure there are other people. Those are the relevant people in this trial but it is not like it was just Wayne and some master puppeteer manipulating her to get her confidence so he could manipulate her. "Yes, I had much contact with her, usually back and forth, it usually started with [redacted] contacting me, really all of it, how you doing, what's up?"

There were some more dramatic things, he admitted about her taking pills and being up on a roof, it was just a text, maybe she was just being dramatic, maybe she was up on the roof, and Tabitha admitted that was not the best way to do it. They saw themselves more as confidants and felt they could do more to help her through whatever issue

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she had as a confidant, big brother, than tell the parents. That ain't the way to do it. As a parent that is not the way to do it but it is also not a sinister thing, it was not done to hurt anybody, so it may have been dumb, even immature, but it wasn't criminal.

You had hoped you were going to get through this trial without hearing about that stupid picture again, you will have it for yourself, "Why is Mr. Fox talking about that stupid picture that's on Brittany's phone," with Wayne Love and the duck or pelican, whatever the heck it is. You will see it. "Why did he talk about that again?" I'm going to let you in on a secret. When I was cross-examining Ginger Pop the other day, in the time it took me to walk from that chair to about here I lost my train of thought and I could not remember what the next brilliant question that I was going to ask her that was going to just blow this case wide open and so rather than let you all see that and scrambling and trying not to look like a complete fool, as I glanced about the courtroom I saw those phone records and I said let's see where that goes, and I thought I could at least get an admission that I knew there were no nude photos of

Wayne or anything inappropriate, thought I could at least go in that direction, and I couldn't even get Ginger Pop to concede that there was nothing strange about this photograph.

You know, we went back and forth, and even though I was doing that, I thought this is really silly, I can't believe we're having this dialogue about this stupid picture of a man with looks like either a stuffed animal you get at the state fair or maybe to me it looks like the Myrtle Beach Pelican head. If you have ever been to a Myrtle Beach Pelican game, it looks like a mascot head or something, but stuffed animal, something like that, and she couldn't even concede that there was nothing strange or weird about that, she said, "I don't know, it's a man with a duck." The answer is not what is important, the attitude is what is important. She finally concedes the picture speaks for itself.

The reason I bring that back up with you is this. Tabitha Love, when Miss Lively cross-examined her, one of her big lines of questioning was, "Why haven't you told anybody, you say Wayne was with you on 9/11 and never left, you say that [redacted] didn't spend the night on New

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Year's Eve, why haven't you told anybody all this time?"

Well, I don't think it is at all far fetched to imagine the reception she would have gotten either the day after Wayne was arrested or a week or a month or a year later if she had walked into Ginger Pop's office or the Solicitor's office and said, "Listen, Wayne was with me on 9/11, he never left, he couldn't have done this, Wayne was with me on New Year's Eve and [redacted] was not there, he couldn't have done it." Do you really think you would have seen this, "Well, thank God, now we know, thank you, Miss Love, for coming down here and setting us straight, we can put this case behind us now, God bless you, Miss Love, for straightening us out, case dismissed"? Would anybody think that would have been the reaction? At best it would have been a polite, "No, thank you, ma'am, don't let the door hit you in the butt on the way out." At worse there would have been threats and intimidation about perjury and obstruction of justice. She did what she was supposed to do, she told her husband's lawyers and she came to court and put her hand on the Bible and swore an oath to tell the truth and she told you

the truth and that is the way it is supposed to happen.

So that is just fluff and nonsense about her waiting to come. If she hadn't told anybody before, fine, she hadn't, at least not the Solicitor, and of course she had no opportunity to tell any of you before now.

What it all boils down to really, though, is [redacted] and Wayne and their testimony. The rest really helps fill in the gaps, it helps paint the big picture, but that is really what it boils down to. You had a chance to hear them. It is not fun for anybody, thank goodness I have never been a criminal defendant but have been a witness in the chair sitting there, and I tell you the microphone is this big in your mind, not a comfortable feeling sitting in this chair and answering questions even when you're not in trouble. I have no doubt it was unpleasant for everybody, including [redacted] to sit in that chair and testify.

I debated whether to even bring, to address it this way but there is no way around it. The elephant in the room is, whether anyone said it or not, you will probably hear it from Miss Lively, the elephant in the room is why would [redacted] lie?

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Well, I don't have to give you an answer to that. The defendant, any defendant, including this one, has no burden of proof, he doesn't have to offer you a reason why any witness would come in and lie about it but, you know, it's there. You're going to have that, I have been thinking about that from the beginning of this case, no question in my mind, whether the Solicitor mentioned it or not, you're going to go back in that jury room and you're going to say to yourselves and among yourselves why in the world would [redacted] lie about this? I don't know.

I don't think it's as simple as, "Well, she's got caught with a Vicodin." It is very hard to comprehend but a Vicodin and a cigarette and she may be in trouble with her family, that might be a part of it, I don't think it is that simple but I have no way of knowing.

There is some testimony that maybe there were some family issues but again it doesn't sound like really any more than normal teenage stuff but I know and probably most of you know from your own experience that there is no human being on earth so overwraught and dramatic and tense and troubled sometimes as a thirteen year old girl. It is just

kind of the nature of the beast and I know, I don't know why they do it but I know sometimes they do lie about stuff like this and sometimes once things are out there it is easier, as strange as that seems, to stay with that even all the way through coming to court than not.

Now, that's not logical, it doesn't make sense. Why would someone start a situation that is going to end with them having to go get interviewed and examined and talk to all these strangers and come into court? It makes no sense. But thirteen year old girls don't always make sense. I know it happens and we see it.

I love history, you see it through history, you might have read about the Salem Witch Trials in school back in Massachusetts in the 1690's when all these twelve, thirteen, fourteen year old girls got in some trouble because they were out late and doing things they weren't supposed to do and not worshiping the right way and might be sexual in a way at that time would seem bad and they made all these allegations and it wasn't just about witches, it was about abuse and it went on and on and on for a very long time, to the point where people were hanged. It made no sense, I'm pretty sure there

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were no witches in Massachusetts in the 1690's and yet people followed all the way through and, I mean, as a lawyer we could sit through any number of those.

Now, that doesn't matter, the fact other people might lie doesn't mean Minor does, of course other than it does happen and there is no logical explanation for it. I don't have one for you. I don't have any reason why she would lie. And of course the defendant, maybe Wayne has that motivation, you can't get around that either but does everything else back that up, does everything else back up her allegations? And I don't think that it does.

I think a lot of the things that we spent time on, I'm just about done, ladies and gentlemen, in cross-examining Wayne and testimony, a lot about the contact between them and the number of texts and phone calls and things, I don't know exactly what that was, the mother said a very large number, Tabitha said, "Look, a lot times I had Wayne's phone, we were at home, either one of us would pick up the phone."

I don't know how you decide, we know, some idea from that phone number, we don't know which

ones, how many are from Wayne and not from his wife, but he admitted, yes, lots of contact. It gets to be kind of like I was referring to what the reaction would have been if Tabitha had gone down and talked, tried to give her husband an alibi with the police, what the reaction would have been.

Perception is hard once you get allegations in any criminal case, certainly in one like this where the natural sympathy is with someone who says they were abused, but perception is hardened. One of those is Wayne Love is a nasty pervert predator. I hate to say it in those exact words but that's the perception. "Look at how much contact and look at how often he was texting [redacted]

Well, things, when you get in those situations sometimes from the prosecution point of view things tend, they want to present you with the most sinister interpretation. My grandfather used to tell about the story, he said, there was a farmer and the farmer had trouble with his shed, people kept coming to his shed and taking tools and sometimes a little minor vandalism all around his farm, he was just furious and he was convinced it was this teenage boy down the road and he called, he never found anything, never could catch, he

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tried to catch him in the act, couldn't catch the person, never did find the stolen stuff but he was just convinced it was this teenage boy he would tell the police and they would say why do you think it was that boy? He would say because he looks like a thief and walks likes a thief and talks like a thief, and sometime later they discovered who really was doing it and it was not the teenage boy, no question about it, and then the teenage boy became a teenage boy again.

I think a lot of what we have involving this case with Wayne and they want to make him look sinister and evil and predatory, because the preception is already there and he looks like a thief and he talks like a thief and he walks like a thief. So, I simply ask you to pay very careful attention to the judge's instructions and think very hard about what you have heard and render a fair verdict, a just verdict.

Justice, as I told you before, doesn't just mean conviction. Justice is getting each case right one by one and we get justice in general at the end. I think the right verdict in this case is not guilty.

Thank you, ladies and gentlemen.

THE COURT: Thank you, Mr. Fox.

Miss Lively.

MS. LIVELY: Thank you, Your Honor.

One thing about going second is the feeling I have to immediately kind of junk everything I was thinking about the night before that I was so convinced was going to sound fantastic and you guys were going to immediately believe everything I said and you would be done with it, then I get caught up in some of the things the defense said. The reason why is as I sit here sometimes and using my common sense and trying to pull myself away from being, you know, a state prosecutor, I also, I used to be a defense attorney, I also used to do family law, so I have been in domestic court and, you know, so I have seen it from all sides and that kind of helps me sometimes to understand one of those things you sometimes lose when you go straight into prosecuting cases, that there are other sides to the story, but when it comes down to it as jurors, as a prosecutor, as a defense attorney, as witnesses in a case, the one thing that never fails is whenever you listen to everything and use your common sense.

I mean, you've got to go with your gut

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sometimes because really what happens is you can get caught up in the idea of, you know what, if there is just a little bit of maybe, could of or would of, is that what I focus on, or do I focus on what is reasonable, okay? That is what reasonable doubt is. It is not an impossible doubt, it is what is a reasonable doubt, okay?

So, that is what I have to always want to start backing out on, so the only thing I do want to just respond to real quick, he had mentioned Investigator Pop and whether or not Tabitha should have just gone to her immediately. I understand why she probably didn't.

But this is the thing. The reason why investigations happen the way they do, I don't know whether or not all of you watch any of these investigation shows but there is actually one out there called like the first 24 hours or something like that, because the first 24 or 48 hours whenever something is reported is so crucial and that's the reason why if Tabitha had gone in there and, I don't know, this is all a what if that the defense brought up I want to address real quick, then I will get into what I want to talk about. If she had gone in right then and said, you know, "My

husband was with me all day on September 11th," the reason why I emphasize September 11th as the most important time because that is when we have the most agregious conduct, that is the one where we have the actual digital penetration of a fourteen year old child, okay, so I'm going to focus on that one.

If she had said, "You know what, he was with me all day, he didn't go back to the Dead Dog Saloon and also Regina Frye was there with us." Regina might not be in a situation where she had to sit there and look it up on the internet and determine whether or not a Carolina game even happened on that day, and if so, what time and what time she needed to be there in order for it to fit the story.

So, you can try and make Ginger Pop out to be the evil person who is out there just trying to lock up anybody who is claiming to be a pervert, or you can have her out there doing, getting information and reacting to what you get, that is what it is. So, if I had to deal with Tabitha getting on the stand and saying, "I recorded that, he was with me all day," and Ginger went up there and said, "Did you all see this guy here September

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11th, do you remember him?" "No, No." "Mr. Szuch, do you remember seeing him there?" You know, "No, no." Well, guess what, they would have had a pretty good airtight alibi.

But that is not what we have. We have people who have been working on their story up until the day of trial, we have people who are working on their story up during the trial, up until right before the defendant got on that stand. I mean, come on, let's use our common sense. That is what was going on.

But this is what I want to do. I tried to break it down so I could get through it quick enough to where I don't lose anybody today because this has been a long week, it's a lot longer than we thought it was going to be but it is truly, as Mr. Fox said, it is so important because the charges deal with a lot of things that are just so crucial in what happens in our society, the reality as we know what happens and that is sexual abuse happens, so it doesn't necessarily have to be from a crazy person that is looking at kids when they are out playing in kindergarten. That is not it. A lot of times it is not the freaky person that you expect to see, the person with the pedophile face.

What we have is people who become opportunistic, who are in a situation when opportunity arises and they take it. That is it. It is as simple as that.

So, what I have done, I will pull this up, I was going to do a Power Point, if you don't mind turning it on, Keith.

What I wanted to do is kind of help you all follow along, too, in some of the stuff I'm going to say so we can kind of go through it. I want to kind of bring it all together for all of you and try to keep it as simple as I could.

The charges against the defendant. Now, what I have is he has two charges, and clearly the charges, and we talked about it over and over again, but the charges are real important for you to understand so you can also see what the State has had to prove beyond a reasonable doubt. Remember, reasonable, not beyond all doubt, and remember the first thing I told you all whenever I started this case, that sexual abuse happens in private. That's the reason why we don't have pictures. I mean, this isn't a child pornography case. You know, if we had gotten nude pictures or if Minor might have sent one to the defendant,

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you know, but because of his, you know, being an upstanding guy and telling her, "Maybe you shouldn't do that," he was trying to be a big brother to her, according to him, thank goodness we don't have a nude picture of the victim floating around on the internet.

Okay, so what we have is criminal sexual conduct with a minor second degree. I have that up here on the screen for you, too, but the State has to prove each element of every crime so the elements, being sexual battery, what is a sexual battery? That is one item I had mentioned to you before, too, any type of penetration, however slight, of the victim, and sometimes people look at me and say how do you just throw that stuff out there? Well, you know, it's the law. I have to present you with what the judge is going to charge you with later, so I can't sugar coat it, I'm going to have to, fortunately [redacted] before she got up here in front of you people you had no idea who she was, what you were going to think of her.

I said, "I'm sorry I have to ask you the questions, you're going to have to stay." So I'm not trying to be brutal, I'm not trying to offend anyone, I'm doing what the law requires me to do, I

have to say these things.

So, sexual battery in this particular case, that would be the digital penetration of [redacted] on September the 11th by the defendant and no one has said the victim was not eleven to fourteen years old. We clearly have the date and time and age of everybody, obviously the defendant was 29 to 30 years old at the time, okay?

And that the perpetrator was older than the victim. This says for criminal sexual conduct with a minor, second degree, consent is not a defense. That is why you haven't heard it. And, so, if she had been laying there asking him for a type of sexual activity he could not do it, she cannot consent, period.

Also in regard to what I said with the State saying that she can't consent, there is another thing that the State says. In a sexual battery case such as this we do not have to show specific corroboration of the event. Again, remember I told you there is not going to be necessarily pictures. If there were you would have seen them. There is not going to be audio taped conversation of, "I love you, thank you for yesterday, that was the best sexual experience I have ever had." We're not

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going to have that. If we did I would have presented that to you.

For that reason, because sexual abuse happens in private, because of the whole nature of him baiting her, texting her, having this inappropriate relationship with her, it happens in private. [redacted] had a crush, she was completely enveloped in this relationship. So that's the reason why our state legislature has seen the wisdom in cases like this, because there are victims out there, to say no corroboration is needed in a CSC with a minor second degree case because the victim, we don't want them to be scared to come forward, we want to be able to stop sexual abuse in our state of South Carolina, okay? So, that is why this case is all about credibility.

The other charge, lewd act on a minor, this is kind of an interesting charge, it kind of sits out there separate and distinct. It is in a whole different section of our law and when you look it up, if you were to look it up, it kind of goes under crimes against virility, morality and decency. It is kind of one of those things where we're trying to include anything and everything that someone might do to a child and maybe doesn't

quite cross that line of the sexual battery. What we're talking about is, "Come sit on my lap, let me kiss you, fondle you, put my hand up your shirt."

Now, does that mean when you're giving a child like a five year old a bath and you're washing this child that that is sexual? No. That is where your common sense comes into play, ladies and gentlemen, that is what I'm talking about. It has to clearly be for sexual gratification purposes, meaning he touched her chest not to fix her bathing suit, but it is because it was something he sexually wanted to do.

He didn't kiss her, french kiss her because that's how he learned to do it whenever he was growing up, when you love somebody, brotherly love, it's because the next step was going to be sexual gratification. That is what lewd act means and that is what she described to you. That is how the progression of the events between the defendant and the child Minor came about. It was the little things at first and that is something that a thirteen, confused young thirteen, fourteen year old girl, which Mr. Fox stated, you know, they are just out there, drama, the whole thing, but one thing that was very clear in just about everything

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Minor did was she was pretty closed off. She's not the kind of person that was out there, you know, talking to everybody, doing wild and crazy things, she was real close to her friend Ashley and she was really close to the defendant.

So, the State has, based on the information you have, from what happened between the two of them, clearly these acts were not innocent, they were for a sexual purpose, okay? So, that was the other charge that I talked to you about initially.

Then, the relationship time line. This is the thing. You know, the time line is so important because it kind of shows the progression or gradual progression of things between Minor and the defendant. What happens is they meet sometime in the late fall of 2009, okay? So really, you know, the consistency was that they really didn't have a long time to get to know each other, it was like they almost jumped into this whole taking Prentis Love and his wife and kids into their family but I think it is, you can hear from what Tony said and Shannon, they just kind of do all kind of functions in the Murrells Inlet area, they have all kind of friends, they have people coming by all the time, they go to these functions every year, and it is

one of those type of very open families and I think overly trusting and that is the reason why whenever the defendant got into this family, I mean, they paid him to do landscaping, they did things, they kept hem around, they were still paying him to do landscaping even up until three or four days before Minor discloses what happened. These people have no reason whatsoever to get up here and put themselves through this before you.

December 31st, 2009, Minor spent the night at the defendant's home, he kisses her and molests her breasts. That is what Minor is telling you. She hadn't been drinking that night. The people who had been drinking, the defendant and his wife, and drove their children home. A good thing it's not a far drive. That is the reason why I wanted to show you all the map.

Yes, I don't have pictures of them in some type of compromising position but what I wanted to do was I wanted to show you guys, look, these people are so close to each other they are riding by each other's houses all the time. That just kind of shows why there was a constant contact. It wasn't that I thought it was going to be such a huge revealing thing but, you see, every time the

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defendant would leave his home, I mean, he would take a road and, you know, get out to 17, he is driving past the victim's house, you know, two miles away. So, he had constant ability to ride by there, to do what, to see if Tony is home, to see if Shannon is home. He didn't even have to do that because he is texting Minor hundreds of times a day.

Then Minor turns fourteen and the fishing tournament. There is absolutely no one saying that they were not alone during these fishing tournaments, okay? That, we all can agree on. On those occasions Minor tells you he kisses her again, puts his hand up her shirt and molests her breasts and tries to put his hand down her pants but she pulls away and says no. Okay?

And because he is in a situation where somebody might turn the corner in the creek, these winding creeks that I wanted Investigator Pop to explain to you, he probably knew, "This isn't a time for me to push it because in my two and a half foot wide boat," which I'm sorry, that scares me to think they were actually letting a child go in a two and a half foot wide boat, okay, and I know, I mean, I think some stuff people are out there on

the river on, that is why I don't go out there with my children anymore, we've got this, so we've got about this wide and you've got these two people on there, they are fishing, he's made some type of makeshift plank up front or something, so they are pretty, I mean, they are packed in there, so, you know, there is not going to be a whole lot of opportunity to have a wonderful relationship and sexual experience with somebody in a two and a half foot wide boat and when you're in these winding creeks and somebody comes around the corner real quick but it's secluded and you can take that chance. Yes, ladies and gentlemen, because he had an opportunity, he had that opportunity and he took it.

Now we're getting into September 11th, 2010, [redacted] tells you she's home, her mom has gone to work, Tony and A. J. have already left to go to the Dead Dog, she is sitting there and she texts the defendant and his response, according to her, and believe him or believe her, who has the motive to lie here, "Are you home alone? Have Tony and A. J. already gone?" And he goes by the house, knowing, "I don't have long at all because Ashley's mom is getting ready to come pick her up, she's going to

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go spend the night at Ashley's house that night." She tells you it only takes five to ten minutes for him to do the deed and this time no one is around. He is inside the home, no one is creeping around the corner of a creek, he has her completely under his control, his wife is not in the bedroom while they're up on New Year's Eve and he's going to take a chance on the couch. He is in that home alone, he's already called Tony, Tony tells you, "Man, where are you, where are you, we're already at Dead Dog, what's going on, what' going on?" He hadn't gotten there yet. He knows Shannon is at work, she's not going to accidentally walk in on them. And she confirms by talking to [redacted] she's waiting on Ashley's mom to get off work and come there. He has just enough time and no interruptions. Opportunity, ladies and gentlemen. Okay?

So, that is where we have the digital penetration, the fondling, he kisses her and then he actually, finally the sexual gratification with this fourteen year old child.

Now, the relationship, according to the defense, brotherly love, great friend, confidant, but I finally got the defendant to say, "Yes, it

was more like a teenage boy and teenage girl." I mean, that speaks volumes. Maybe his mentality is that of a teenage boy, that is why he thought it was okay. According to what we are saying, big brother, yes, boyfriend, girlfriend, Ashley said they were talking all the time, said it was like boyfriend, girlfriend.

Without a doubt, without a doubt it was an inappropriate relationship. What 29 or 30 year old man has a reason to text someone up to fifty and a hundred times a day back and forth? How many times can you ask somebody how they're doing? It just doesn't make sense. Use your common sense, ladies and gentlemen, but he was definitely a family friend and he took advantage of that. Undisputed fact, [redacted] was a minor, the defendant was 29 years old, up to 30.

The Defendant Love is a convicted felon, breach of trust over a thousand and assault and battery of a high and aggravated nature. He's been in the system, he knows how it works. Tabitha Love, she's got a conviction for assault and battery of a high and aggravated nature.

The defendant and [redacted]s family were close. They all agreed [redacted] was a smart girl,

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we know the defendant was at Brittany's house in 2009, [redacted] and the defendant were alone in his boat during three fishing tournaments, without a doubt he had access to her those three times.

There was a 9/11 tribute at the Dead Dog Saloon in 2010, no one said that wasn't true, we just have people all over the place at all different times. And then [redacted] got in trouble for having Vicodin.

Okay, I think that is all of those things that we can say, so what do you have to consider as jurors, other than using your common sense and what I have said? Credibility, ladies and gentlemen, that is what this case is about, credibility. The State's witnesses, no one has a criminal record, no one has a motive to lie, no inconsistent statement, no change in testimony, all of them corroborate the time and place of the assaults.

Let's look at the defense witnesses. We have criminal records, the defendant is a convicted felon, inconsistent statements all over the place. I don't normally get that but it was all over the place. Planned testimony. Regina Frye, I mean, I wasn't going to call her as a witness, Tabitha told me, "She's right there. What is her name? Regina

Frye. Really? Can I talk to her?" I mean, what is she going to tell me, she was there, too. I mean, yes, you might say we don't believe anything Regina said, I mean, but is that the point? She wasn't my witness. I'm trying to get to the truth here as well, ladies and gentlemen, so that's the reason why I called her, that is why we talked to her. If I didn't do that I wouldn't be doing my job, I wouldn't be doing justice for that child.

So, she told you, "We talked about my testimony, we looked up the Carolina game, we talked about when I needed to be there."

Lack of recollection on the crucial issues? That would be Wayne. Now, if you think about it, the things he doesn't recall are the times he would have that direct access to [redacted] "I don't recall her ever spending the night." "Well, let me refresh your memory, Mr. Love. You said she would spend the night at a minimum, she called and you would say come on over." Oh, we don't want that coming out. But he had to concede he had told that to Investigator Pop.

Another crucial issue, he didn't remember going back to the Dead Dog that Saturday on September the 11th, and I will talk to you about

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that. Tabitha actually makes a comment about perjury. Ladies and gentlemen, it is so clear what was going on, she's trying to protect her husband, but liars lie for one reason, it's because the truth is going to get them in trouble, period. They have something to hide.

The defendant's inconsistent statements, I broke them down for you. The statement he actually gave within a month or month and a half from the time whenever the disclosure came out and he was talking to Ginger, and you all heard it, when Minor's would spend the night she would sleep on the couch, so matter of fact, "It was not an unusual occurrence, she would call and ask to sleep over and I would say come on."

All right, trial testimony. "Mr. Love, tell us about Minor's spending the night." "I don't recall Minor ever spending the night at my house." That is a pretty big discrepancy, it is not like I don't know if she spent the night on February the 2nd or not, I said, "At all?" "No, I don't recall that."

All right. Then we have another inconsistent statement. I'm asking about contact with [redacted] on September the 11th, I'm just trying to get him

to say or trying to get him to admit that, you know, "You at least texted her?" I mean, we have Minor and her mom say, you know, when they looked up the record, and she testified to it, there was over a hundred texts that day on September 11th. Ashley said, "God, the whole time after we would pick up Minor she was just texting all night long." "Did you look at any of those texts?" "Yes." "Who were they from?" "The defendant."

Okay, trial testimony. "I never communicated with Minor on September 11th, 2010, I never left home after the Carolina game, the game was at noon."

All right. His statement to Ginger Pop only a month and a half or so later. In response to questions regarding contacts with [redacted], "Yes, Minor texted me and asked me to bring her cigarettes. I told her no, I said I had spoken to Tony and was on my way to Dead Dog."

Guess what, ladies and gentlemen, if you're leaving your house watching the Carolina game and you're with your wife and you're on your way to Dead Dog, guess what road you're going down? You're going right past the victim's house. She

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texts you and said, "Bring me cigarettes." Why would she say, "Bring me cigarettes"? Because she's home alone. If her mom or dad was there, step-dad, do you think she would expect him to pull up in the driveway with a pack of cigarettes for her? Absolutely not. Why? Because when she got busted for cigarettes and a Vicodin she got her phone taken away from her, her life, okay, and for a thirteen and fourteen year old girl her phone is like losing a limb, okay?

But she asked him to bring her some cigarettes, she was home alone. He had just talked to Tony, he knew he was already gone to Dead Dog, he was on the way, and the time line, ladies and gentlemen, I did not narrow down the time line, and the reason why is because it's not necessary. And let me tell you why. We know it was after the Carolina game, so it was probably about 3:30 or 4:00, we know her mom was gone by 3:00, we know that Tony was already at the Dead Dog, he went and when Steve Szuch got there, you can ask to listen to his testimony again, he said, "I don't remember exactly but I remember in the afternoon I was there for maybe an hour and a half, I don't know, 4:30, 5:00, and I was probably there until about 6:00 but

I know I saw Wayne there because he came up and asked to borrow some money."

I mean, isn't the issue here that he went to the Dead Dog that afternoon when he is saying, "I never left my house, I stayed with my wife that night, I never left my house," because if he left his house he would have driven right past and had five or ten minutes to sexually assault [redacted], which is what he did. That is why, that is why he has to convince you he never left his house.

Alibi witness Tabitha Love. "I was with Wayne all day, we watched the Carolina game at noon, he never left the house after that." Really? Why are you just now telling me this? "Was anybody else there?" "Regina Frye will testify she was there on 9/11, 2010, with me and Wayne." Regina? "I was not at their home on September 11, 2010, I did not see Wayne Love on September 11, 2010, I don't want to be here." Oh.

Tabitha Love, this week she and Regina looking at the Carolina games to determine what time she needed to be there. She calls her husband, the defendant, "Didn't I go back to the Dead Dog with Tony and A. J?" Tabitha, "No, you

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did not. If you say you went with them I'm going to jail for perjury." How much more clear can it be? You can put whatever spin on it you want, they are lying to you, and why? Because they have a reason to lie, ladies and gentlemen.

I will tell you as a prosecutor that is the first time I have ever had the opportunity to put someone's testimony in who said, "I could get caught for perjury." It is interesting to have someone actually, even a lay person, throw that out there in the middle of a trial.

Now, I will read the list of State's witnesses so you can remember who they were. I don't expect you will want to go back and listen to anyone's testimony, which is your right, you are weighing the testimony here because you have to believe beyond a reasonable doubt that these matters occurred, okay? So, I have listed them so you can remember who they are.

Now, the thing is, another reason why, and you have got eyes, I'm going to be fair here, I have to explain some inconsistencies that we have put up there that is confusing, that I think is going to maybe give you all some doubt, because right now everything looks pretty reasonable about

what has come out, everything kind of falls into place in regard to our witnesses and what they told you, which is direct evidence but guess what, State's witnesses and inconsistencies. None, none, none. We have already gone through that.

It is important for you to understand the motive issue that Mr. Fox is talking about that I have come back to is that there is no motive, there is no reason why a fourteen year old girl would want to be sitting in here talking to all of you about a sexual experience she had with a 30 year old man. She has been victimized by him already, she had to come in here and face him, face all of you and be victimized again.

Now, I'm almost finished. Our inconsistencies, as I said, none. Disclosures of the sexual abuse, consistent. New Year's Eve on the couch in the living room, three times on defendant's boat, afternoon of 9/11, 2010, hundreds of texts between them. She was alone, he drove by, took the opportunity. So, who corroborates these times and places? Shannon, Ashley Jenkinson, Dianne Nordeen.

Dianne Nordeen, she doesn't have a dog in this fight. What she does is she gets a referral,

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she sits the kid in there and she starts asking them stuff like what do you call your personal private parts, what do you call this, has anybody touched you and made you feel uncomfortable or something you didn't want to do? That is where, I mean, that is the time, if she's going to say, "I don't want to talk about it, I don't want to talk about it," she can just stop dead right there.

But the reason why we do the forensic interview and we don't have Ginger Pop doing it, we don't have mom sitting her down and talking to her about it, we don't have, you know, her counselor coming in, and I didn't bring her in to testify either because we want the initial fresh interview of the child so we can try and get details.

Ginger Pop didn't do anything else on her investigation until she got that interview from [redacted] because she didn't know what to follow up on. It is just an allegation at that point, just like if Tabitha walked in there and said, "Hey, I've got witnesses here for an alibi, Miss Pop, can you go check this out?" If she didn't and I had her on the stand and said, "Why didn't you go talk to Regina Frye, you were provided that information?" "Because I have a one track mind, I

want to hook him up."

I mean, ladies and gentlemen, that is not what our job is here and that is not, that is not our focus. We're here to get to the truth and we're here because of the victim and they don't have anything to gain by testifying. If nothing else, they're embarrassed, you know, mom has to sit up there and say, "I should have known, I didn't look at her phone, boy, I will never do that again," the guilt, you know, she's a parent, she loves her daughter. Tony Carter, you know, he found out someone molested his stepdaughter. How bad do you think he felt, he was paying the defendant to clean and cut his grass, imagine the guilt. I mean, you don't want to think someone you trust would do that but they can and he did.

Reasonable conclusion. The defendant took advantage of a young and insecure teenager, insecure teenager. He knew she was having problems at home, a lot of teenagers do, she didn't trust her mom. He becomes her friend, he's baiting her, he's bringing her in. Someone doesn't have to be the devil to have evil intent. He sees an opportunity and takes it.

He had the inappropriate relationship with a

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thirteen year old, no matter how you look at it. She has a crush, she talked about it with her friend Ashley, Ashley is the first one that learns about it and Ashley says, "I thought it was weird, I mean, he is older but she talked about him like he was her boyfriend." He's taking the time, building trust with the victim and her family. He would have never stopped, ladies and gentlemen, [redacted] had he gotten her to a point where she wasn't going to tell somebody unless she knew she was about to get busted, when her mama took that phone from her and she looked at her with those eyes that your mom might look at you with and said, "I am going to look at your phone and we're going to find out every single person you have had contact with, we're going to find out everything that's been going on with you for the past few months, you're going to counseling, you're doing this, you're doing that," you're sitting there and the next thing you know is like, "Holy crap, I've got to alert all my friends, and the other thing I've got to do I better give it up because if I don't and my mama finds out," you heard her say it herself, she was going to kill her. She was scared.

So, logically enough, the fact that her step-mom found that pill in North Carolina is the reason why [redacted] at this point never had, I'm not making any conclusion but you can use your common sense, it never got any farther. Thank you, thank you, Ashley Jenkinson for giving your friend up.

Now, he counted on her to never tell, he never counted on her coming in here and doing this. The only reasonable conclusion, he's guilty, ladies and gentlemen. I mean, he is. He had a relationship with a child, had opportunity to take advantage of it, you know, sometimes he was drinking and, you know, that maybe kind of lessened his inhibitions.

And the duck photo, I will tell you the reason we put it in, it was on her phone, it's not a big deal but the thing is it is a little weird. I don't know, you might think it's fine, that's fine. My thing with the duck photo, we pulled everything off the phone but of course she had already deleted some things. The kind of phone she had, it wasn't one when you dump it you're going to get all the text messages and everything like that, but the thing is that was, you know, I guess maybe

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I'm a little jaded, but what grown man sends a picture of him sitting on a duck to a girl unless, you know, he is thinking of himself as kind of a kid himself. You know, I'm putting it in, you can break the pieces down and it might not make sense but when you look at everything together there is only one conclusion, he was having a sexual relationship with this child and, like I said, it wasn't going to stop. If he cared about this girl, if he was truly a big brother and he thought she was on the roof high he would have called the police, he would have called her parents, but he is not a mature grown man doing that. No, he's a buddy, "I'm not going to tell your parents, [redacted] we'll talk about this later." He texted her.

Then, you know, I mean, it is what it is, and the other thing is, the nude photo thing, then I'm going to finish because I know I get long winded, but the nude photo thing was so bizzare. She first, according to the defense, you know, according to them she sent Tabitha a text, "Hey, this teenage boy wants a nude picture, what do you think I should do?" Tabitha doesn't respond, she tells Wayne, "Why don't you deal with this."

That's just bizzare.

I'm going to tell you right now if somebody sent me a text about them sending a nude picture, the last thing I'm going to do is give it to my husband for him to deal with. I mean, I don't get it. It makes no sense. It's because it didn't happen that way, it's because the defendant said exactly what Minor said he said, "Hey, send me a naked picture." This was on September 11th. "No." "Are you alone?" He had worked himself up, he knew she was alone and he wanted that nude photo, he was baiting her, he was bringing it up to a point where at some point it was going to be more than what it was. By then it had gotten too far, he sexually assaulted her, it is clearly a sexual battery, he had been fondling her, he is nothing but guilty, not not proven, he is guilty. There is no other reasonable explanation for everything.

I want to thank you so much for listening, for your patience. I know it is not easy but it is so important, so crucial. Every single one of you has such an important role in this case and I want to thank all of you all for listening to us, even when you didn't want to. I appreciate it. Remember your oath, weigh the evidence and come

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back with a guilty verdict.

I'm going to get out of the way and turn it over to the Honorable Judge Hill and move all my stuff.

Thank you, Judge.

THE COURT: Thank you Miss Lively.

Ladies and gentlemen, you have heard all the evidence in the case, you have the heard arguments of the lawyers. It is now my duty to instruct you on the law that applies to this case and it is your duty to find the facts from all the evidence in the case and to those facts you must apply the law as I give it to you and you must follow the law as I give it to you and you should not be concerned with what the law should be but with what it is and you must not be influenced by any personal likes or dislikes or opinions or undue sympathy or prejudices, and that means you must decide this case solely on the evidence and according to the law.

Now, you will recall you took an oath to do just that when we began this case on Monday, and in following my instructions you must follow all of them and not single out some of them or others, because they are all equally important. You must

not read into any of these instructions or anything I may have said or done during the course of this trial as indicating to you what I think the facts are or what I think your verdict should be because I told you at the beginning you were the sole judge of the facts under our constitution and system of justice and I'm not allowed to have an opinion as to the facts of this case and you and you alone are the exclusive judges of what the facts are.

Just as I know you would not interfere with my right as the judge of the law to tell you what the law is, I'm not going to interfere with your right as the judge of the facts to tell you what the facts are.

Now, how do you decide what the facts are? You do that by weighing and evaluating the evidence you have heard during the course of this trial. It is entirely a mental process. It is certainly not a physical experiment where I give you a set of scales you take back to the jury room and weigh evidence. Of course that is not what I'm talking about. What I'm talking about instead is weighing evidence in the sense of determining, based on what you have heard during this trial, what rings true to you and what you think is the truth based on

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your good common sense, sound judgment and your sense of logic and reason.

Now, you determine what the facts are from the evidence and I told you at the outset that evidence consists of two sources, sworn witness testimony and exhibits. I believe we have had both in this case and it is from those two things and those two things alone that you must determine what the facts are. Everything else is not evidence.

While the lawyers in this case have argued to you about what they think the evidence showed, they are not witnesses, so what they say is not in itself evidence, so if you remember something differently from the way the lawyers remembered it your memory controls. Likewise, anything you may have seen or heard when court is not in session is obviously not evidence and anything that may have been stricken from the record is not evidence either.

Now, there are also two types of evidence. What I'm talking about now, ladies and gentlemen, is direct evidence and circumstantial evidence. Direct evidence is direct proof of a fact such as the testimony of an eyewitness. Circumstantial evidence is indirect evidence, or put another way,

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circumstantial evidence is proof of a chain of facts and circumstances from which you could find that another fact exists even though that fact had not been proven to you directly. The law makes no distinction as to what weight you are to give either direct or circumstantial evidence. You can consider both types of evidence and give the evidence in this case whatever weight you think it deserves.

Now, ladies and gentlemen, it is up to you to determine whether a fact has been proven by direct or circumstantial evidence and in making that decision you must consider all the evidence in light of reason, common sense and experience. I told you at the beginning of this as judge of the facts you would also be a judge of the credibility of every witness who testifies and every exhibit that has been introduced. That means that you determine whether those things are worthy of belief.

I gave you some guidelines you could use in determining at the outset the credibility of witnesses who testified. I'm not going to repeat that because I know you heard me the first time but I will tell you this. You can believe everything a

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witness says or you can believe nothing a witness says. You can believe part of a witness' testimony and disbelieve other parts. You can believe one witness over several or several over one. But you're the sole and exclusive judges of the credibility of each witness and each exhibit and I know you will not perform this task arbitrarily, but instead you will have a sound reason and logical basis for decisions you make as to credibility.

Now, ladies and gentlemen, if you find that witnesses have made statements before this trial that are not consistent with statements they made testifying at the trial you may use this evidence to decide whether to believe the witness. You may also use evidence of any of the other statements to determine the truth of those statements but it is up to you to decide what evidence to believe. If a witness has been shown to testify untruthfully concerning any matter you may consider this in determining whether to trust the witness' testimony as to other matters.

Now, this is a criminal case, as you know, and I told you at the beginning and I will instruct you again now that the mere fact that the defendant

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Mr. Love was arrested and charged and indicted doesn't constitute evidence of anything or create even a suspicion of guilt. The indictment is simply the formal written document that allows the State to go forward and notifies the citizen of what he is charged with and is the way the case is brought into court.

Mr. Love pled not guilty to the indictments and that plea puts the burden of proof on the State, and one charged with committing a crime is never required to prove himself innocent or prove himself not guilty. It is an important and fundamental rule of law that no matter what the charge may be a citizen will always be presumed innocent of the crime for which the indictment was issued unless and until guilt has been proven by evidence satisfying you of guilt beyond a reasonable doubt.

The presumption of innocence does not end when your deliberations begin but instead it accompanies a defendant into the deliberations themselves and throughout the trial and can only be removed if and only if you find the State has met its burden of proving each and every element of the crime beyond a reasonable doubt. The presumption

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of innocence is not just some legal technicality, it is a fundamental right to which every citizen is entitled and you must treat it accordingly.

Now, ladies and gentlemen, there are two indictments in this case and you will have to consider and weigh the evidence as to each indictment and determine whether the State has met its burden of proof as to each element of each crime and you must consider the indictments separately, and that means that you must weigh the evidence as to one indictment and determine whether the State has met its burden of proof and not let your decision on that indictment affect your decision on the other indictment. You must give the defendant individual and separate consideration as to each indictment.

Now, you have heard me use the term reasonable doubt, so what does that term mean? The law defines reasonable doubt as the kind of doubt that would cause a reasonable, sincere, honest and conscientious person to hesitate to act in an important matter in their own affairs. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt, and there are few things that can be known with

absolute certainty so in criminal cases the law does not require proof that overcomes every possible doubt.

If based on your view of the evidence you are firmly convinced that Mr. Love is guilty of the crime charged you must find him guilty. On the other hand, if you think there is a reasonable possibility that he is not guilty you must give him the benefit of the doubt and find him not guilty.

A reasonable doubt may arise from the evidence or from a lack of evidence and a defendant is entitled to every reasonable doubt that may arise in a case and that simply means that if as to any issue of fact that is essential to a conviction you have a reasonable doubt as to how that issue should be resolved it is your duty to resolve that doubt in favor of Mr. Love.

In order to establish a criminal conviction the State is always required to prove intent beyond a reasonable doubt. Criminal intent is something that can't be proven to a mathematical certainty. Obviously we can't disect someone's brain and determine what they might have had in mind at a particular moment in time, so the law allows criminal intent to be inferred from the

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circumstances.

It is not necessary to establish intent by direct and positive evidence but it may be established by inference or circumstantial evidence in the same way as any other fact, by taking into consideration the acts of the party and all the facts and circumstances. Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances.

Now, in this case we have two indictments, as you know. The first is second degree criminal sexual conduct with a minor. In order to convict Mr. Love of this charge the State must prove two things beyond a reasonable doubt. First, the State must prove beyond a reasonable doubt that Mr. Love engaged in a sexual battery with the victim. A sexual battery is defined as sexual intercourse, connilingus or any intrusion however slight of any part of a person's body or of any object into the genital or anal openings of another person's body except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes.

Second, the State must prove beyond a

reasonable doubt that the victim was at least eleven years old but not more than fourteen years old at the time of the sexual battery. Consent, willingness and indifference or ignorance on the part of the minor, if any, as to what was taking place does not in any way affect the crime of criminal sexual conduct with a minor because an unmarried woman under the age of fourteen cannot legally consent to sexual intercourse.

The defendant is also charged with lewd act on a minor, and a minor is a person under the age of eighteen. The state must first prove, in order to convict Mr. Love of this offense, must first prove beyond a reasonable doubt that the defendant was over the age of fourteen. Next, they must prove that the defendant willfully and lewdly committed or attempted a lewd or lacivious act on or with the body or its parts of a child under the age of sixteen years with the intent to arouse, appeal to or gratify the lust, passions or sexual desires of the defendant or the child. Willfully means voluntarily and intentionally with the specific intent to do something the law forbids. Lewd means obscene, lustful, indecent, lecherous. Lacivious means intending to incite lust, obscene

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or tending to deprive the morals with respect to sexual relations.

Now, ladies and gentlemen, a statement allegedly made by the defendant has been admitted into evidence in this case. While the Court has determined that the statement is admissible, you the jury make the ultimate decision of whether the defendant made the statement. if the defendant did make the statement you must determine whether the statement was made by the defendant voluntarily and of his own free will, and that means the statement was not caused by pressure or force or fear, threat or coercion or intimidation or by hope of a promise of leniency or a reward of any kind.

In determining whether a defendant made a statement and whether it is voluntary you should consider the characteristics of the defendant and the details of the questioning. You may consider the age of the defendant, his education, the defendant's mental capacity, his intelligence, his background, environment, place and length of detention, the nature of the questioning, the advice or lack thereof to the defendant of his constitutional rights, including the right to remain silent, that this statement could be used

against him in a court of law, the right to have a lawyer present, that if he could not afford a lawyer a lawyer would be appointed to him free of charge and that he could stop making the statement at anytime.

You must carefully consider all the surrounding circumstances before you give any weight to an alleged statement. The State has the burden of proving beyond a reasonable doubt that the statement was voluntary. If you determine it was you may give the statement any further consideration you deem proper and if you determine the statement was not the free and voluntary statement of the defendant you should not consider it at all.

Now, the defendant has raised the defense of alibi. In order to establish an alibi it must be shown that the defendant was at another specified place at the time the crime was committed and that it was therefore impossible for the defendant to have been at the scene of the crime. Mere denial of presence at the scene of a crime does not constitute alibi. There is no burden on the defendant to prove an alibi. The burden is on the State to prove beyond a reasonable doubt that the

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defendant actually was present at the scene of the crime, actually participated in it and was not somewhere else. In other words, the State has the burden of disproving the defendant's alibi defense.

Now, that covers the substantive law in this case and let me just give you some closing remarks on your deliberations. You don't serve as jurors to be partisans or advocates for either the State or defense. You were chosen because both sides believed you could be fair and impartial and you could decide this case without any kind of preconceived notions or prejudices or other ideas that you brought in with you. Both sides believe you can be fair and impartial and decide this case solely on the evidence and according to the law, and that means you are to use your experiences in life and your good common seems and your sense of logic and reason and you bring those things to bear on the evidence you have heard and once you do that you will be able to determine what the facts are and when you determine what the facts are you take the law I have just given to you and you apply it to those facts and you will be able to reach a decision and a verdict.

If you looked up the word deliberation in the